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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–1078; Product Identifier 2017–CE–038–AD; Amendment 39–19178; AD 2018–03–05]

RIN 2120–AA64

Airworthiness Directives; Various Aircraft Equipped With BRP-Rotax GmbH & Co KG 912 A Series Engine

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for various aircraft equipped with a BRP-Rotax GmbH & Co. KG (formerly BRP-Powertrain GmbH & Co. KG; Bombardier-Rotax GmbH & Co. KG; Bombardier-Rotax GmbH) 912 A series engine. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and address an unsafe condition on an aviation product. The MCAI describes the unsafe condition as defective valve push-rod assemblies manufactured from June 8, 2016, through October 2, 2017. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective March 20, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 20, 2018.

ADDRESSES: You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1078; or in person at Docket Operations, U.S. Department of Transportation, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

For service information identified in this AD, contact BRP-Rotax GmbH & Co. KG, Rotaxstrasse 1, A–4623 Gunskirchen, Austria; phone: +43 7246 601 0; fax: +43 7246 6370; internet: *http://www.flyrotax.com.* You may view this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *http://www.regulations.gov* by searching for Docket No. FAA–2017–1078.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@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 various aircraft equipped with a BRP-Rotax GmbH & Co. KG (formerly BRP-Powertrain GmbH & Co. KG; Bombardier-Rotax GmbH & Co. KG; Bombardier-Rotax GmbH) 912 A series engine. The NPRM was published in the **Federal Register** on November 22, 2017 (82 FR 55527). The NPRM proposed to address an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country.

The MCAI states:

> Power loss and engine RPM drop have been reported on Rotax 912/914 engines in service. It has been determined that, due to a quality control deficiency in the manufacturing process of certain valve push-rod assemblies, manufactured between 08 June 2016 and 02 October 2017 inclusive, partial wear on the rocker arm ball socket may occur, which may lead to malfunction of the valve train.
>
> This condition, if not detected and corrected, may lead to rough engine operation and loss of power, possibly resulting in a forced landing, with consequent damage to the aeroplane and injury to occupants.
>
> To address this potential unsafe condition, BRP-Rotax issued Service Bulletin (SB) SB–912 i–008/SB–912–070/SB–914–052 (single document), providing applicable instructions.
>
> For the reason described above, this [EASA] AD requires a one-time inspection and, depending on findings, replacement of affected parts. This [EASA] AD also prohibits installation of affected parts on an engine].

The MCAI can be found in the AD docket on the internet at *https://www.regulations.gov/document?D=FAA-2017-1078-0002.*

Comments

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

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM for addressing 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 BRP-Rotax GmbH & Co KG Rotax Aircraft Engines BRP Service Bulletin SB–912 i–008 R1/SB–912–070 R1/SB–914–052 R1 (co-published as one document), Revision 1, dated October 12, 2017. The service information describes procedures for inspecting and, if necessary, replacing the valve push-rod assembly on the left and/or right rocker arms. 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 of this AD.

Costs of Compliance

We estimate that this AD will affect 63 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic inspection requirement of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $70 per product.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $9,765, or $155 per product.

In addition, we estimate that any necessary follow-on actions will take about 2 work-hours to replace all 8 valve push-rod assemblies and associated parts on all 4 cylinders and require parts costing $3,093, for a cost of $3,263 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to small airplanes, gliders, balloons, airships, domestic business jet transport airplanes, and associated appliances to the Director of the Policy and Innovation Division.

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, 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.

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–2017–1078; or in person at the Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–03–05 Various Aircraft: Amendment 39–19178; Docket No. FAA–2017–1078; Product Identifier 2017–CE–038–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective March 20, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all serial numbers of the airplanes listed in table 1 to paragraph (c) of this AD, certificated in any category that are either:

(1) Equipped with a BRP-Rotax GmbH & Co. KG (formerly BRP-Powertrain GmbH & Co. KG; Bombardier-Rotax GmbH & Co. KG; Bombardier-Rotax GmbH) 912 A series engine (Rotax 912 A series engine) with a serial number (S/N) listed in table 2 to paragraph (c) of this AD; or

(2) equipped with a Rotax 912 A series engine with any S/N that has had a part number (P/N) 854861 valve push-rod assembly replaced in-service (*e.g.,* during engine repair, maintenance, or general overhaul) during the time frame of June 8, 2016, to the effective date of this AD.

Table 1 to Paragraph (c) – Affected Airplanes

Type Certificate Holder	Aircraft Model	Engine Model
Aeromot-Indústria Mecânico-Metalúrgica Ltda	AMT-200	912 A2
Diamond Aircraft Industries	HK 36 R "SUPER DIMONA"	912 A
DIAMOND AIRCRAFT INDUSTRIES GmbH	HK 36 TS and HK 36 TC	912 A3
Diamond Aircraft Industries Inc.	DA20-A1	912 A3
HOAC-Austria	DV 20 KATANA	912 A3
Iniziative Industriali Italiane S.p.A.	Sky Arrow 650 TC	912 A2
SCHEIBE-Flugzeugbau GmbH	SF 25C	912 A2, 912 A3

Table 2 to Paragraph (c) – Affected Engine Serial Numbers (S/N)

Engine	Affected S/N
912 A series	4 411 126 through 4 411 146 and 4 411 401 through 4 411 492

(d) Subject

Air Transport Association of America (ATA) Code 72: Reciprocating Engine.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and address an unsafe condition on an aviation product. The MCAI describes the unsafe condition as defective valve push-rod assemblies manufactured from June 8, 2016, through October 2, 2017. We are issuing this AD to prevent rough engine operation, which could cause loss of power and result in loss of control.

(f) Actions and Compliance

Unless already done, do the following actions:

(1) *For aircraft with engines that have 160 hours time-in-service (TIS) or less since first installed:* Before exceeding 170 hours TIS on the engine since first installed or within the next 3 months after March 20, 2018 (the effective date of this AD), whichever occurs first, visually inspect the valve push-rod ball sockets of each valve push-rod using the Accomplishment Instructions in Rotax Aircraft Engines BRP Service Bulletin SB–912 i–008 R1/SB–912–070 R1/SB–914–052 R1 (co-published as one document), Revision 1, dated October 12, 2017 (Rotax SB SB–912 i–008 R1/SB–912–070 R1/SB–914–052 R1).

(2) *For airplanes with engines that have 160 hours TIS or more since first installed:* Within the next 10 hours TIS after March 20, 2018 (the effective date of this AD) or within the next 3 months after March 20, 2018 (the effective date of this AD), whichever occurs first, visually inspect the valve push-rod ball sockets of each valve push-rod using the Accomplishment Instructions in Rotax SB SB–912 i–008 R1/SB–912–070 R1/SB–914–052 R1.

(3) *For all affected airplanes:* If a valve push-rod with a black surface is found during the inspection required in paragraph (f)(1) or (f)(2) of this AD, before further flight, replace the valve push-rod and its affected parts with airworthy parts using the Accomplishment Instructions in Rotax SB SB–912 i–008 R1/SB–912–070 R1/SB–914–052 R1.

(4) *For all affected airplanes:* As of March 20, 2018 (the effective date of this AD), do not install a valve push-rod that was manufactured from June 8, 2016, through October 2, 2017.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) *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, Small Airplane Standards Branch, FAA; or European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community.

(h) Related Information

Refer to MCAI EASA AD No. 2017–0208, dated October 13, 2017, for related information. You may examine the MCAI on the Internet at *https://www.regulations.gov/document?D=FAA-2017-1078-0002.*

(i) 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) Rotax Aircraft Engines BRP Service Bulletin SB–912 i–008 R1/SB–912–070 R1/SB–914–052 R1 (co-published as one document), Revision 1, dated October 12, 2017.

(ii) Reserved.

(3) For BRP-Rotax GmbH & Co KG service information identified in this AD, contact BRP-Rotax GmbH & Co. KG, Rotaxstrasse 1, A–4623 Gunskirchen, Austria; phone: +43 7246 601 0; fax: +43 7246 6370; Internet: *http://www.flyrotax.com.*

(4) You may view this service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. In addition, you can access this service information on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1078.

(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 Kansas City, Missouri, on February 5, 2018.

Melvin J. Johnson,

Deputy Director, Policy & Innovation Division, Aircraft Certification Service.

[FR Doc. 2018–02747 Filed 2–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0067; Product Identifier 2017–CE–048–AD; Amendment 39–19188; AD 2018–03–15]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Limited Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Pacific Aerospace Limited Model 750XL airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as abrasion damage of components or wiring behind the instrument panel. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective March 5, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 5, 2018.

We must receive comments on this AD by March 30, 2018.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Pacific Aerospace Limited, Airport Road, Hamilton, Private Bag 3027, Hamilton 3240, New Zealand; phone: +64 7843 6144; fax: +64 843 6134; email: *pacific@aerospace.co.nz;* internet: *www.aerospace.co.nz.* You may view this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *http://www.regulations.gov* by searching for locating Docket No. FAA–2018–0067.

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–2018–0067; or in person at Docket Operations 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 Docket Operations (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The Civil Aviation Authority, which is the aviation authority for New Zealand, has issued CAA AD DCA/750XL/22, dated December 19, 2017 (referred to after this as ''the MCAI''), to correct an unsafe condition for Pacific Aerospace Limited Model 750XL airplanes. To accompany that MCAI, the CAA issued Notification of Airworthiness Directive issued for New Zealand Aeronautical Products IAW ICAO Annex 8, dated December 19, 2017; the Notification states:

This [CAA] AD with effective date 28 December 2017 mandates an inspection of components and wiring behind the instrument panel for possible abrasion damage caused by ventilation hose chafing per the instructions in Pacific Aerospace Mandatory Service Bulletin (MSB) PACSB/XL/083 issue 1, dated 15 December 2017, or later approved revision.

The [CAA] AD is prompted by two reports of finding abrasion damage behind the instrument panel caused by ventilation hose chafing.

In addition to the required inspection, this AD requires wrapping the ventilation hose with anti-abrasion tape and rerouting the hose. This AD also requires contacting the manufacturer for corrective action if abrasion damage is found during the required inspection. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0067.

Related Service Information Under 1 CFR Part 51

Pacific Aerospace Limited has issued Pacific Aerospace Mandatory Service Bulletin PACSB/XL/083, Issue 1, dated December 15, 2017. The service information describes procedures for inspection of the ventilation hose behind the instrument panel, wrapping the ventilation hose with anti-abrasion tape, and rerouting the hose. 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 of the AD.

FAA's Determination and Requirements of the AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because chafing of the ventilation hose on instrument components and wiring could cause abrasion damage and lead to short circuit, smoke, and/or fire. Therefore, we determined that notice

and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

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–2018–0067; Directorate Identifier 2017–CE–048–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 we receive about this AD.

Costs of Compliance

We estimate that this AD will affect 22 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $90 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $7,590, or $345 per product.

The extent of abrasion damage could vary from airplane to airplane. We have no way of knowing how many airplanes may have abrasion damage or the extent of that damage; therefore, we have no way of determining an estimated cost for repair.

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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to small airplanes, gliders, balloons, airships, domestic business jet transport airplanes, and associated appliances to the Director of the Policy and Innovation Division.

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 AD:

2018–03–15 Pacific Aerospace Limited: Amendment 39–19188; Docket No. FAA–2018–0067; Product Identifier 2017–CE–048–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective March 5, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pacific Aerospace Limited Models 750XL airplanes, all serial numbers up to and to include serial number XL220, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 21: Air Conditioning.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as abrasion damage of components or wiring behind the instrument panel. We are issuing this AD to detect and prevent abrasion damage of the wiring and components behind the instrument panel, which could lead to short circuit, smoke, and/or fire.

(f) Actions and Compliance

Unless already done, do the following actions.

(1) Within 15 days after March 5, 2018 (the effective date of this AD), inspect the ventilation hosing, components, and wiring behind the instrument panel for signs of chafing and/or damage following the Accomplishment Instructions in Pacific Aerospace Mandatory Service Bulletin PACSB/XL/083, Issue 1, dated December 15, 2017.

(2) If any signs of chafing and/or abrasion are found during the inspection required in paragraph (f)(1) of this AD, before further flight, contact the manufacturer for an FAA-approved repair approved specifically for this AD. Use the contact information found in paragraph (i)(3) of this AD to contact the manufacturer.

(3) Within 45 days after March 5, 2018 (the effective date of this AD), wrap the ventilation hose in anti-abrasion tape and reroute the hose following the Accomplishment Instructions in Pacific Aerospace Mandatory Service Bulletin PACSB/XL/083, Issue 1, dated December 15, 2017.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Small Airplane Standards Branch, 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: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *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, Standards Office, FAA; or the Civil Aviation Authority of New Zealand (CAA).

(h) Related Information

Refer to the MCAI by the CAA, AD DCA/750XL/22, dated December 19, 2017; and Pacific Aerospace Mandatory Service Bulletin PACSB/XL/083, Issue 1, dated December 15, 2017, for related information. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0067.

(i) 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) Pacific Aerospace Mandatory Service Bulletin PACSB/XL/083, Issue 1, dated December 15, 2017.

(ii) Reserved.

(3) For service information identified in this AD, contact Pacific Aerospace Limited, Airport Road, Hamilton, Private Bag 3027, Hamilton 3240, New Zealand; phone: +64 7843 6144; fax: +64 843 6134; email: *pacific@aerospace.co.nz;* internet: *www.aerospace.co.nz.*

(4) You may view this service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *http://www.regulations.gov* by searching for locating Docket No. FAA–2018–0067.

(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 Kansas City, Missouri, on February 5, 2018.

Melvin J. Johnson,

Deputy Director, Policy & Innovation Division, Aircraft Certification Service.

[FR Doc. 2018–02604 Filed 2–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0066; Product Identifier 2017–CE–046–AD; Amendment 39–19187; AD 2018–03–14]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Limited Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Pacific Aerospace Limited Model 750XL airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as non-conforming fuel tank caps, which could lead to fuel loss during flight. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective March 5, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 5, 2018.

We must receive comments on this AD by March 30, 2018.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Pacific Aerospace Limited, Airport Road, Hamilton, Private Bag 3027, Hamilton 3240, New Zealand; phone: +64 7843 6144; fax: +64 843 6134; email: *pacific@aerospace.co.nz;* internet: *www.aerospace.co.nz.* You may view this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *http://www.regulations.gov* by searching for locating Docket No. FAA–2018–0066.

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–2018–0066; or in person at Docket Operations 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 Docket Operations (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The Civil Aviation Authority (CAA), which is the aviation authority for New Zealand, has issued CAA AD DCA/750XL/20 (referred to after this as ''the MCAI''), to address an unsafe condition for Pacific Aerospace Limited Model 750XL airplanes. To accompany that MCAI, the CAA issued Notification of Airworthiness Directive issued for New Zealand Aeronautical Products IAW ICAO Annex 8, dated December 8, 2017; the Notification states:

> The [CAA] AD is prompted by the possibility that non-conforming fuel tank caps may be installed on certain aircraft, which could result in fuel loss from the aircraft fuel tanks. The POH supplement requires an inspection of the fuel tank caps before every flight, and careful monitoring of the aircraft quantity indication system for fuel use above normal consumption throughout the flight, until a maintenance engineer inspects the fuel tank caps per requirements 2 of the [CAA] AD.

This AD requires inspection of the fuel tank caps and replacement of the fuel tank caps if damaged or non-conforming caps are found. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0066.

Related Service Information Under 1 CFR Part 51

Pacific Aerospace Limited issued Pacific Aerospace Mandatory Service Bulletin PACSB/XL/089, Issue 01; dated December 8, 2017, which describes procedures for inspection and replacement of the fuel tank caps. The CAA issued Supplement to AIR 2825 and AIR 3237, Section 2, Limitations, Revision 1, dated December 8, 2017, which is a supplement to the pilot's operating handbook/airplane flight manual and describes procedures for inspection of the fuel tank caps and procedures for monitoring fuel consumption. 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 of the AD.

FAA's Determination and Requirements of the AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because non-conforming fuel tank caps could result in fuel loss and lead to fuel starvation and inflight engine shutdown. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

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–2018–0066; Directorate Identifier 2017–CE–046–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 we receive about this AD.

Costs of Compliance

We estimate that this AD will affect 22 products of U.S. registry. We also estimate that it would take about 3 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 the AD on U.S. operators to be $5,610, or $255 per product.

In addition, we estimate that any necessary follow-on actions would take about 8 work-hours and require parts costing $1,540, for a cost of $2,220 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to small airplanes, gliders, balloons, airships, domestic business jet transport airplanes, and associated appliances to the Director of the Policy and Innovation Division.

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 AD:

2018–03–14 Pacific Aerospace Limited: Amendment 39–19187; Docket No. FAA–2018–0066; Product Identifier 2017–CE–046–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective March 5, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pacific Aerospace Limited Models 750XL airplanes, serial numbers 101 through 205, 208, 210, 214, and 216, certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and address an unsafe condition on an aviation product. The MCAI describes the unsafe condition as non-conforming fuel tank caps. We are issuing this AD to detect and address non-conforming fuel tank caps, which could result in fuel loss and lead to fuel starvation and inflight engine shutdown.

(f) Actions and Compliance

Unless already done, do the following actions.

(1) Within 15 days after March 5, 2018 (the effective date of this AD), insert the CAA, Civil Aviation Authority of New Zealand, Supplement to AIR 2825 and AIR 3237, Section 2, Limitations, Revision 1, dated December 8, 2017, into the pilot's operating handbook/airplane flight manual (POH/AFM).

(2) Within 45 days after March 5, 2018 (the effective date of this AD), inspect the fuel tank caps, part number (P/N) 457–1015–12, following the Accomplishment Instructions in Pacific Aerospace Mandatory Service Bulletin, PACSB/XL/089, Issue 01, dated December 8, 2017.

(3) If a damaged or non-conforming fuel tank cap is found during the inspection required in paragraph (f)(2) of this AD, before further flight, replace any damaged or non-conforming fuel tank cap with a modified fuel tank cap, P/N 11–21087–1.

(4) After replacement of damaged or non-conforming fuel tank caps with P/N 11–21087–1, as required in paragraph (f)(3) of this AD, remove the CAA Supplement to AIR 2825 and AIR 3237, Section 2, Limitations, Revision 1, dated December 8, 2017, from the POH/AFM.

(5) Replacement of damaged or non-conforming fuel tank caps with P/N 11–21087–1, as required in paragraph (f)(3) of this AD, terminates the repetitive inspections required in the CAA Supplement to AIR 2825 and AIR 3237, Section 2, Limitations, Revision 1, dated December 8, 2017.

(6) Long-range aircraft delivery ferry flights and oceanic flights are prohibited until the inspection required in paragraph (f)(2) of this AD and any necessary replacements required by paragraph (f)(3) of this AD have been completed.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Small Airplane Standards Branch, 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: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *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, Small Airplane Standards Branch, FAA; or the CAA, which is the aviation authority for New Zealand.

(h) Related Information

Refer to MCAI from the CAA, AD DCA/750XL/20, dated December 8, 2017; Pacific Aerospace Mandatory Service Bulletin PACSB/XL/089, Issue 01, dated December 8, 2017; and CAA Supplement to AIR 2825 and AIR 3237 (POH/AFM), Section 2, Limitations, Revision 1, dated December 8, 2017, for related information. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0066.

(i) 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) Pacific Aerospace Mandatory Service Bulletin PACSB/XL/089, Issue 01, dated December 8, 2017.

(ii) CAA, Civil Aviation Authority of New Zealand, Supplement to AIR 2825 and AIR 3237, Section 2, Limitations, Revision 1, dated December 8, 2017.

(3) For service information identified in this AD, contact Pacific Aerospace Limited, Airport Road, Hamilton, Private Bag 3027, Hamilton 3240, New Zealand; phone: +64 7843 6144; fax: +64 843 6134; email: *pacific@aerospace.co.nz;* internet: *www.aerospace.co.nz.*

(4) You may view this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *http://www.regulations.gov* by searching for locating Docket No. FAA–2018–0066.

(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 Kansas City, Missouri, on January 25, 2018.

Melvin J. Johnson,

Deputy Director, Policy & Innovation Division, Aircraft Certification Service.

[FR Doc. 2018–02611 Filed 2–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0068; Product Identifier 2017–CE–049–AD; Amendment 39–19176; AD 2018–03–03]

RIN 2120–AA64

Airworthiness Directives; Textron Aviation Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Textron Aviation Inc. Models 401, 401A, 401B, 402, 402A, 402B, 402C, 411, 411A, 414, 414A 421, 421A, 421B, 421C, and 425 airplanes. This AD requires repetitively inspecting the left and the right forward lower carry through spar cap for cracks and replacing the carry through spar if cracks are found. This AD was prompted by a report of a fully cracked lower forward carry through spar cap found on an affected airplane. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 28, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 28, 2018.

We must receive comments on this AD by March 30, 2018.

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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Textron Aviation Inc., Textron Aviation Customer Service, One Cessna Blvd., Wichita, Kansas 67215; telephone: (316) 517–5800; email: *customercare@txtav.com;*

internet: *www.txtav.com.* You may view this service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0068.

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–2018–0068; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Bobbie Kroetch, Aerospace Engineer, Wichita ACO Branch, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4155; fax: (316) 946–4107; email: *bobbie.kroetch@faa.gov* or *Wichita-COS@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We received a report of a fully cracked lower forward carry through spar cap found on a Textron Aviation Inc. (type certificate previously held by Cessna Aircraft Company) Model 402C airplane. Investigation revealed that the crack is a result of metal fatigue. At this time, the cracking has only been found on the Model 402C airplanes. However, the carry through spar cap and surrounding structure on the other model airplanes included in this AD are similar and the loads on the other model airplanes are similar to (or higher than) the Model 402C airplanes.

This condition, if not addressed, could cause failure of the carry through spar cap during flight and result in loss of control. We are issuing this AD to address the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

We reviewed Textron Aviation Multi-engine Mandatory Service Letter MEL–57–01 and Textron Aviation Conquest Mandatory Service Letter CQL–57–01, both dated December 18, 2017. As applicable, these service letters describe procedures for repetitively inspecting the forward lower carry through spar cap for cracks. 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.

Other Related Service Information

We reviewed Textron Aviation Conquest Service Bulletin CQB–57–01, Textron Aviation Multi-engine Service Bulletin MEB–57–01, and Textron Multi-engine Service Bulletin MEB–57–02, all dated December 20, 2017. As applicable, these service bulletins provide the manufacturer's optional procedures for installing access panels for easier access to the forward lower carry through spars. This AD does not require installing the access panels.

FAA's Determination

We are issuing 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.

AD Requirements

This AD requires repetitively inspecting the left and the right forward lower carry through spar cap for cracks and replacing the carry through spar if cracks are found. This AD also requires sending the inspection results to the FAA.

Interim Action

We consider this AD interim action. Textron Aviation Inc. is evaluating the initial and repetitive inspection intervals, as well as designing a replacement lower carry through spar cap from an improved material. After the evaluations are complete and the design modification is developed, approved, and available, we may consider additional rulemaking.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because cracks in the left and/or the right forward lower carry through spar cap could cause the carry through spar cap to fail during flight and result in loss of control. Therefore, we find good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reason stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2018–0068 and Product Identifier 2017–CE–049–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. We will consider all comments received by the closing date and may amend this final rule 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 final rule.

Costs of Compliance

We estimate that this AD affects 2,147 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
Inspect the left and the right forward lower carry through spar cap for cracks (without inspection access panels).	12 work-hours × $85 per hour = $1,020 per inspection cycle.	Not applicable	$1,020 per inspection cycle.	$2,189,940 per inspection cycle.

We estimate the following costs to do any necessary replacement that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need this replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace carry through spar	800 work-hours × $85 per hour = $68,000	$5,000	$73,000

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW, Washington, DC 20591. ATTN: Information Collection Clearance Officer, AES–200.

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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to small airplanes, gliders, balloons, airships, domestic business jet transport airplanes, and associated appliances to the Director of the Policy and Innovation Division.

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):

2018–03–03 Textron Aviation Inc.: Amendment 39–19176; Docket No. FAA–2018–0068; Product Identifier 2017–CE–049–AD.

(a) Effective Date

This AD is effective February 28, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Textron Aviation Inc. (type certificate previously held by Cessna Aircraft Company) model airplanes, that are certificated in any category:

TABLE 1 TO PARAGRAPH (C) OF THIS AD—AFFECTED MODELS AND SERIAL NUMBERS

Model	Serial numbers
401	401–0001 through 401–0322
401A	401A0001 through 401A0132
401B	401B0001 through 401B0221
402	402–0001 through 402–0322
402A	402A0001 through 402A0129
402B	402B0001 through 402B1384
402C	689, 402C0001 through 402C1020
411	411–0001 through 411–0250
411A	411–0251 through 411–0300
414	414–0001 through 414–0965
414A	414A0001 through 414A1212
421	421–0001 through 421–0200
421A	421A0001 through 421A0158
421B	421B0001 through 421B0970
421C	421C0001 through 421C1807
425	425–0001 through 425–0236

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report that a fully cracked lower forward carry through spar cap was found on a Textron Model 402C airplane. We are issuing this AD to prevent failure of the carry through spar cap during flight. The unsafe condition, if not addressed, could result in loss of control.

(f) Compliance

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

(g) Initial Inspection for All Affected Airplanes With 24,975 Hours Time-In-Service (TIS) or More on the Carry Through Spars

Within the next 25 hours TIS after February 28, 2018 (the effective date of this

AD), do a detailed visual inspection of the left and right forward lower carry through spar cap for cracks. Using a 10X magnifier visually inspect the bottom surface of the carry through spar cap in the areas around the fasteners located just inboard of the left-hand and right-hand forward lower wing fittings. If a crack is not positively identified during the detailed visual inspection but is suspected or the area is questionable, before further flight, do a surface eddy current inspection of the suspected area. Do these inspections using the Accomplishment Instructions in Textron Aviation Multi-engine Mandatory Service Letter MEL–57–01 and Textron Aviation Conquest Mandatory Service Letter CQL–57–01, both dated December 18, 2017, as applicable.

(h) Initial Inspection for All Affected Airplanes With Less Than 24,975 Hours TIS on the Carry Through Spars

Using the compliance times listed in paragraphs (h)(1) through (3) of this AD, do a detailed visual inspection of the left and right forward lower carry through spar cap for cracks. Using a 10X magnifier visually inspect the bottom surface of the carry through spar cap in the areas around the fasteners located just inboard of the left-hand and right-hand forward lower wing fittings. If a crack is not positively identified during the detailed visual inspection but is suspected or the area is questionable, before further flight, do a surface eddy current inspection of the suspected area. Do these inspections using the Accomplishment Instructions in Textron Aviation Multi-engine Mandatory Service Letter MEL–57–01 and Textron Aviation Conquest Mandatory Service Letter CQL–57–01, both dated December 18, 2017, as applicable.

(1) *For Models 401, 401A, 401B, 402, 402A, 402B, 402C, 411, 411A, 414, 414A, 421, and 421A airplanes:* Before the accumulation of 15,000 TIS on the carry through spars or within the next 50 hours TIS after February 28, 2018 (the effective date of this AD), whichever occurs later.

(2) *For Models 421B and 421C airplanes:* Before the accumulation of 12,000 hours TIS on the carry through spars or within the next 50 hours TIS after February 28, 2018 (the effective date of this AD), whichever occurs later.

(3) *For Model 425 airplanes:* Before the accumulation of 11,000 TIS on the carry through spars or within the next 50 hours TIS after February 28, 2018 (the effective date of this AD), whichever occurs later.

(i) Repetitive Inspections for All Affected Airplanes

If no cracks are found during the detailed visual inspections or the surface eddy current inspections required in paragraphs (g) and (h) of this AD, repetitively thereafter inspect at intervals not to exceed 50 hours TIS. Inspect as specified in paragraphs (g) and (h) of this AD using the service information specified in each paragraph as applicable.

(j) Replacement of Carry Through Spars for All Affected Airplanes

If cracks are found during any inspection required in paragraphs (g) through (i) and paragraph (k) of this AD, before further flight, replace the carry through spar.

(k) Initial and Repetitive Inspections of Newly Replaced Carry Through Spars for All Affected Airplanes

At the compliance times in paragraphs (k)(1) through (3) of this AD, do a detailed visual inspection of the left and right forward lower carry through spar cap for cracks. Using a 10X magnifier visually inspect the bottom surface of the carry through spar cap in the areas around the fasteners located just inboard of the left-hand and right-hand forward lower wing fittings. If a crack is not positively identified during the detailed visual inspection but is suspected or the area is questionable, before further flight, do a surface eddy current inspection of the suspected area. Do these inspections using the Accomplishment Instructions in Textron Aviation Multi-engine Mandatory Service Letter MEL–57–01 and Textron Aviation Conquest Mandatory Service Letter CQL–57–01, both dated December 18, 2017, as applicable.

(1) *For Models 401, 401A, 401B, 402, 402A, 402B, 402C, 411, 411A, 414, 414A, 421, and 421A airplanes:* Before the accumulation of 15,000 hours TIS on the newly installed carry through spar. If no cracks are found, repetitively thereafter inspect at intervals not to exceed 50 hours TIS.

(2) *For Models 421B and 421C airplanes:* Before the accumulation of 12,000 hours TIS on the newly installed carry through spar. If no cracks are found, repetitively thereafter inspect at intervals not to exceed 50 hours TIS.

(3) *For Model 425 airplanes:* Before the accumulation of 11,000 hours TIS on the newly installed carry through spar. If no cracks are found, repetitively thereafter inspect at intervals not to exceed 50 hours TIS.

(l) Reporting Requirement for All Affected Airplanes

Within 30 days after each inspection required by paragraphs (g) through (i) and paragraph (k) of this AD, report the results of the inspection to the FAA representative identified in paragraph (q) of this AD using the undated Attachment (titled Spar Cap Inspection Results Form and Spar Cap Inspection Results Form Continued) to Textron Aviation Multi-engine Mandatory Service Letter MEL–57–01 and Textron Aviation Conquest Mandatory Service Letter CQL–57–01, both dated December 18, 2017, as applicable. Please identify AD 2018–03–03 in the subject line if submitted through email.

(m) Installation of Optional Access Panels All Affected Airplanes

Textron Aviation Conquest Service Bulletin CQB–57–01, Textron Aviation Multi-engine Service Bulletin MEB–57–01, and Textron Multi-engine Service Bulletin MEB–57–02, all dated December 20, 2017, provide the manufacturer's optional procedures for installing access panels for easier access to the forward carry through spars. This AD does not require installing the access panels, but does not restrict the owner/operator from doing so.

(n) Credit for Actions Done Following Previous Service Information for Affected Airplanes

This AD allows credit for the initial inspection of the forward lower carry through spar cap required in paragraphs (g) and (h) of this AD if done before February 28, 2018 (the effective date of this AD) using the following documents:

(1) *Models 401, 401A, 401B, 402, 402A, 402B airplanes:* Cessna Aircraft Company Model 401/402 Supplemental Inspection Document, Supplemental Inspection Number 57–10–10, dated June 3, 2002.

(2) *Model 402C airplanes:* Cessna Aircraft Company Model 402C Maintenance Manual, Supplemental Inspection Number 57–10–14, dated June 3, 2002.

(3) *Models 411 and 411A airplanes:* Cessna Aircraft Company Model 411, Supplemental Inspection Document, Supplemental Inspection Number 57–10–10, dated January 6, 2003.

(4) *Model 414 airplanes:* Cessna Aircraft Company Model 414 Supplemental Inspection Document, Supplemental Inspection Number 57–10–10, dated August 1, 2002.

(5) *Model 414A airplanes:* Cessna Aircraft Company Model 414A Supplemental Inspection Document, Supplemental Inspection Number 57–10–14, dated August 1, 2002.

(6) *Models 421, 421A, and 421B airplanes:* Cessna Aircraft Company Model 421 Supplemental Inspection Document, Supplemental Inspection Number 57–10–10, dated March 3, 2003.

(7) *Model 421C airplanes:* Cessna Aircraft Company Model 421C Supplemental Inspection Document, Supplemental Inspection Number 57–10–14, dated January 6, 2003.

(o) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 15 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW, Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(p) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita ACO Branch, 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 certification office, send it to the attention of the person identified in paragraph (q) 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.

(q) Related Information

For more information about this AD, contact Bobbie Kroetch, Aerospace Engineer, Wichita ACO Branch, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4155; fax: (316) 946–4107; email: *bobbie.kroetch@faa.gov* or *Wichita-COS@faa.gov*.

(r) 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) Textron Aviation Multi-engine Mandatory Service Letter MEL–57–01, dated December 18, 2017 (includes the undated Attachment titled Spar Cap Inspection Results Form and Spar Cap Inspection Results Form Continued).

(ii) Textron Aviation Conquest Mandatory Service Letter CQL–57–01, dated December 18, 2017 (includes the undated Attachment titled Spar Cap Inspection Results Form and Spar Cap Inspection Results Form Continued).

(3) For Textron Aviation service information identified in this AD, contact Textron Aviation Inc., Textron Aviation Customer Service, One Cessna Blvd., Wichita, Kansas 67215; telephone: (316) 517–5800; email: *customercare@txtav.com;* internet: *www.txtav.com*.

(4) You may view this service information at FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(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 Kansas City, Missouri, on February 2, 2018.

Melvin J. Johnson,

Deputy Director, Policy & Innovation Division, Aircraft Certification Service.

[FR Doc. 2018–02551 Filed 2–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0952; Product Identifier 2017–CE–028–AD; Amendment 39–19189; AD 2018–03–16]

RIN 2120–AA64

Airworthiness Directives; Stemme AG Gliders

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2017–10–11 for Stemme AG Model Stemme S10–VT gliders (type certificate previously held by Stemme GmbH & Co. KG). This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and address an unsafe condition on an aviation product. The MCAI describes the unsafe condition as certain propeller front transmission gear wheels having insufficient material strength because of improper heat treatment during manufacturing. We are issuing this AD to require actions to address the unsafe condition on these products and to add Stemme AG Model Stemme S 12 gliders to the Applicability section.

DATES: This AD is effective March 20, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 20, 2018.

ADDRESSES: You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0952; or in person at Docket Operations, U.S. Department of Transportation, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

For service information identified in this AD, contact STEMME AG, Flugplatzstrasse F2, Nr. 6–7, D–15344 Strausberg, Germany; telephone: +49 (0) 3341 3612–0, fax: +49 (0) 3341 3612–30; internet: *https://www.stemme.com*. You may view this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *http://www.regulations.gov* by searching for Docket No. FAA–2017–0952.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@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 Stemme AG Model Stemme S10–VT gliders (type certificate previously held by Stemme GmbH & Co. KG) and all Stemme AG Model Stemme S 12 gliders equipped with a certain front gearbox, part number 11AG. That NPRM was published in the **Federal Register** on October 10, 2017 (82 FR 46938), and proposed to supersede AD 2017–10–11, Amendment 39–18885 (82 FR 24239, May 26, 2017) (''AD 2017–10–11'').

Since we issued AD 2017–10–11, we have type certificated Stemme AG Model Stemme S 12 gliders in the United States and have determined those model gliders should also be included in the applicability of AD 2017–10–11. In addition, Stemme AG has issued new service information with procedures for addressing the unsafe condition.

Comments

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

Request for Manufacturer To Be Responsible for All Associated Cost

Taylor Ray stated that the manufacturer should be responsible for replacing the front gearbox on the affected gliders at no cost to the owners/operators. We infer that the commenter is referring to the cost for both parts and labor.

Taylor Ray stated that since the unsafe condition resulted from the manufacturing process, the manufacturer should be responsible for fixing the unsafe condition.

We neither agree nor disagree since the FAA does not get involved in who pays for the cost of mitigating an unsafe condition. The primary concern the FAA has when issuing an AD is addressing unsafe conditions on various aircraft flying in the United States. While we provide information related to the estimated labor and parts cost associated with each AD, we do not control warranty coverage for owner/operators of the affected aircraft nor can

we mandate the manufacturer to cover all associated costs. We have contacted Stemme AG about this issue. The following is the response we received: ''All costs will be paid by Stemme AG (parts + work) for customers who are affected within the one-year warranty. Customers who are out of the one-year warranty will receive parts for free, but unfortunately, they have to pay for the necessary work (approx. 10 working hours).'' Based on this response from Stemme AG, we revised the Cost of Compliance section in this AD. We changed the number of estimated work-hours per product to replace the front gearbox from 19 to 10, updated the total cost on U.S. operators and cost per product based on this change, and added standard warranty information.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM for addressing 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

Stemme AG has issued STEMME Service Bulletin Dok. Nr.: P062–980010, Issue: 01, dated June 14, 2017, and STEMME Procedural Specification Dok. Nr.: P320–900060, dated June 14, 2017. In combination, the service information describes procedures for replacing the front gearbox. 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 of this AD.

Differences Between This AD and the Service Information

The service information for this AD allows the owner/operator to do certain maintenance tasks. Also, the service information specifies certain maintenance tasks be done by Stemme AG. However, for this AD, we do not allow the owner/operator to do any maintenance tasks; all maintenance tasks must be done by an appropriately certified mechanic or maintenance shop. In addition, we do not require any maintenance tasks be done specifically by Stemme AG; any appropriately certified mechanic or maintenance shop may do the tasks required by this AD.

Costs of Compliance

According to the U.S. registry, we have a total of 51 of both glider types registered, but there are still only 14 serial numbers of the part number 11AG front gearbox. Therefore, the most gliders that will be affected remains 14. According to Stemme AG, there are a total of 4 of the affected front gearboxes on both glider types of U.S. registry (2 for each model).

It will take an estimated 10 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $2,000 per product.

Based on these figures, if we consider the costs for all 14 affected gearboxes, then we estimate the cost of this AD on U.S. operators to be $39,990, or $2,850 per product.

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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to small airplanes, gliders, balloons, airships, domestic business jet transport airplanes, and associated appliances to the Director of the Policy and Innovation Division.

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, 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.

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–2017–0952; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–18885 (82 FR 24239, May 26, 2017), and adding the following new AD:

2018–03–16 Stemme AG: Amendment 39–19189; Docket No. FAA–2017–0952; Product Identifier 2017–CE–028–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective March 20, 2018.

(b) Affected ADs

This AD replaces AD 2017–10–11, Amendment 39–18885 (82 FR 24239, May 26, 2017) (''AD 2017–10–11'').

(c) Applicability

This AD applies to Stemme AG Model Stemme S10–VT gliders (type certificate previously held by Stemme GmbH & Co. KG), all serial numbers, and Stemme AG Model Stemme S 12 gliders, all serial numbers, that are:

(1) Equipped with a front gearbox, part number (P/N) 11AG, with a serial number listed in table 1 to paragraph (c) of this AD; and

(2) are certificated in any category.

TABLE 1 TO PARAGRAPH (c) OF THIS AD—AFFECTED P/N 11AG (FRONT GEARBOX) S/NS

80058/0814	80059/0915	80060/0915	80061/1115	80062/1215
80063/0116	80064/0416	80065/0616	80066/0716	80067/0916
80068/1016	80069/0117	80070/0217	80071/0217	.....

Note 1 to paragraph (c) of this AD: Page 2 of Stemme AG Service Bulletin No. P062–980010, dated April 21, 2017, provides a pictorial of where the serial number of the affected gearboxes are located.

(d) Subject

Air Transport Association of America (ATA) Code 61: Propellers/Propulsors.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and address an unsafe condition on an aviation product. The MCAI describes the unsafe condition as certain propeller front transmission gear wheels having insufficient material strength because of improper heat treatment during manufacturing. We are issuing this AD to add a model glider to the Applicability, paragraph (c) of this AD, and to prevent failure of the propeller front transmission gear wheels. This failure could cause loss of power between the engine and the propeller, which could result in reduced control.

(f) Actions and Compliance

Unless already done, do the following actions:

(1) *For Model Stemme S10–VT gliders:* Before further flight after June 15, 2017 (the effective date of AD 2017–10–11), replace the front gearbox following STEMME Procedural Specification Dok. Nr.: P320–900060, as specified in STEMME Service Bulletin Dok. Nr.: P062–980010, Issue: 01, both dated June 14, 2017.

(2) *For Model Stemme S 12 gliders:* Before further flight after March 20, 2018 (the effective date of this AD), replace the front gearbox following STEMME Procedural Specification Dok. Nr.: P320–900060, as specified in STEMME Service Bulletin Dok. Nr.: P062–980010, Issue: 01, both dated June 14, 2017.

(3) As of March 20, 2018 (the effective date of this AD), do not install a front gear box listed in table 1 of paragraph (c) of this AD.

(4) The service information for this AD allows the owner/operator to do certain maintenance tasks. Also, the service information specifies certain maintenance tasks be done by Stemme AG. However, for this AD, we do not allow the owner/operator to do any maintenance tasks; all maintenance tasks must be done by an appropriately certified mechanic or maintenance shop. In addition, we do not require any maintenance tasks be done specifically by Stemme AG; any appropriately certified mechanic or maintenance shop may do the tasks required by this AD.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Small Airplane Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

(i) Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(ii) AMOCs approved for AD 2017–10–11, Amendment 39–18885 (82 FR 24239, May 26, 2017) are approved as AMOCs for the corresponding provisions of this AD.

(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, Small Airplane Standards Branch, FAA; or the European Aviation Safety Agency (EASA).

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2017–0072–E, dated April 26, 2017, and Stemme AG Service Bulletin No. P062–980010, dated April 21, 2017, for related information. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. *https://www.regulations.gov/document?D=FAA-2017-0952-0002.*

(i) 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) STEMME Service Bulletin Dok. Nr.: P062–980010, Issue: 01, dated June 14, 2017.

(ii) STEMME Procedural Specification Dok. Nr.: P320–900060, dated June 14, 2017.

(3) For Stemme AG service information identified in this AD, contact STEMME AG, Flugplatzstrasse F2, Nr. 6–7, D–15344 Strausberg, Germany; telephone: +49 (0) 3341 3612–0, fax: +49 (0) 3341 3612–30; internet: *https://www.stemme.com.*

(4) You may view this service information at FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148. In addition, you can access this service information on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0639.

(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 Kansas City, Missouri, on February 5, 2018.

Melvin J. Johnson,

Deputy Director, Policy & Innovation Division, Aircraft Certification Service.

[FR Doc. 2018–02749 Filed 2–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0694; Product Identifier 2017–NM–007–AD; Amendment 39–19192; AD 2018–03–19]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

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

ACTION: Final rule.

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

Dassault Aviation Model FALCON 7X airplanes. This AD was prompted by a report indicating that fuselage panels were manufactured with defects that could reduce panel fatigue limits. This AD requires a one-time inspection of the affected panels and repair if necessary, and for certain airplanes, installation of a stiffener. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 20, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 20, 2018.

ADDRESSES: For service information identified in this final rule, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *http://www.dassaultfalcon.com*. You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW, Renton, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0694.

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–2017–0694; 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: Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW, Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Dassault Aviation Model FALCON 7X airplanes. The NPRM published in the **Federal Register** on July 14, 2017 (82 FR 32498) (''the NPRM''). The NPRM was prompted by a report indicating that fuselage panels were manufactured with defects that could reduce panel fatigue limits. The NPRM proposed to require a one-time inspection of the affected panels and corrective actions if necessary. We are issuing this AD to detect and correct discrepancies of certain fuselage lateral panels, which could lead to crack propagation and possible reduced structural integrity of the fuselage.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2016–0250, dated December 15, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Dassault Aviation Model FALCON 7X airplanes. The MCAI states:

> A few pockets of fuselage Section T5 lateral panels were manufactured with defects in certain chemically-milled profiles. The technical investigation concluded that the fatigue limit of the affected panels might be reduced, depending on the defect characteristics.
>
> This condition, if not detected and corrected, could lead to crack propagation, possibly resulting in reduced structural integrity of the fuselage.
>
> To address this potential unsafe condition, DA published Service Bulletin (SB) F7X–042 providing inspection instructions.
>
> For the reasons described above, this [EASA] AD requires a one-time [detailed] inspection of the chemically-milled profiles of the pockets of the Section T5 fuselage lateral panels and, depending on findings, accomplishment of applicable corrective action(s). This [EASA] AD also requires, for some aeroplanes, the installation of a stiffener on the forward pocket.

Applicable corrective actions include repair, if necessary. 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–2017–0694.

Comments

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

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

We reviewed Dassault Service Bulletin 7X–042, Revision 1, dated May 3, 2016. This service information describes the inspection of the chemically milled profiles of the pockets of the Section T5 fuselage lateral panels and the installation of a stiffener on the forward pocket on affected airplanes. 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 4 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
Panel inspections	Up to 10 work-hours × $85 per hour = $850.	$0	Up to $850	Up to $3,400.
Stiffener installation (up to 3 airplanes).	2 work-hours × $85 per hour = $170.	8,769	$8,939	Up to $26,817.

According to the manufacturer, all 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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

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):

2018–03–19 Dassault Aviation: Amendment 39–19192; Docket No. FAA–2017–0694; Product Identifier 2017–NM–007–AD.

(a) Effective Date

This AD is effective March 20, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 7X airplanes, certificated in any category, serial numbers (S/Ns) 2 through 19 inclusive, except S/Ns 3 and 8.

(d) Subject

Air Transport Association (ATA) of America Code 51, Structure.

(e) Reason

This AD was prompted by a report indicating that a few pockets of fuselage Section T5 lateral panels were manufactured with defects that could reduce the fatigue limit of the affected panels. We are issuing this AD to detect and correct discrepancies of certain fuselage lateral panels, which could lead to crack propagation and possible reduced structural integrity of the fuselage.

(f) Compliance

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

(g) Inspection

Within 99 months or 4,100 flight cycles, whichever occurs first, after the effective date of this AD, do a detailed inspection to measure the pocket depth of the Section T5 fuselage lateral panels, in accordance with the Accomplishment Instructions of Dassault Service Bulletin 7X–042, Revision 1, dated May 3, 2016.

(h) Repair

During the inspection required by paragraph (g) of this AD, if any discrepancy is found, as defined in Accomplishment Instructions of Dassault Service Bulletin 7X–042, Revision 1, dated May 3, 2016, before further flight, contact the FAA, the European Aviation Safety Agency (EASA), or Dassault Aviation's EASA Design Organization Approval (DOA) for approved repair instructions, and, within the compliance time specified in those instructions, accomplish the repair accordingly.

(i) Installation

For airplanes having S/Ns 16, 17, and 19: Within 99 months or 4,100 flight cycles, whichever occurs first, after the effective date of this AD, install a stiffener on the forward pocket of Section T5 fuselage lateral panels, in accordance with the Accomplishment Instructions of Dassault Service Bulletin 7X–042, Revision 1, dated May 3, 2016.

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g) and (i) of this AD, if those actions were performed before the effective date of this AD using Dassault Service Bulletin 7X–042, dated January 3, 2011.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, 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 International Branch, send it to the attention of the person identified in paragraph (l)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(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, International Section, Transport Standards Branch, FAA; or the EASA; or Dassault Aviation's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2016–0250, dated December 15, 2016, 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–2017–0694.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW, Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

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

(m) 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) Dassault Service Bulletin 7X–042, Revision 1, dated May 3, 2016.

(ii) Reserved.

(3) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *http://www.dassaultfalcon.com.*

(4) You may view this service information at the FAA, Transport Standards Branch, 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 January 30, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–02748 Filed 2–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–1068; Product Identifier 2017–CE–034–AD; Amendment 39–19190; AD 2018–03–17]

RIN 2120–AA64

Airworthiness Directives; Aeroclubul Romaniei Gliders

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Aeroclubul Romaniei Model IS–28B2 gliders. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracks at stringers in the rear fuselage of several Model IS–28B2 gliders. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective March 20, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 20, 2018.

ADDRESSES: You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1068; or in person at U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

For service information identified in this AD, contact Aeroclubul Romaniei, Bd.Lascar Catargiu, Nr.54, cod: 010673, Sector 1, Bucharest, Romania; telephone: 011+40 021–312–36–19; fax: 011+40 021–312–36–19; internet: *www.aeroclubulromaniei.ro;* email: *www.aeroclubulromaniei.ro/contact/.* You may view this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *http://www.regulations.gov* by searching for Docket No. FAA–2017–1068.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@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 Aeroclubul Romaniei Model IS–28B2 gliders. The NPRM was published in the **Federal Register** on November 14, 2017 (82 FR 52676). The NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country. The MCAI states:

> Cracks were reportedly detected, located at stringers in the rear fuselage of a number of IS–28B2 sailplanes. The subsequent investigation attributed these cracks to induction of a pre-stress during the manufacturing process of the affected parts.
>
> This condition, if not detected and corrected, could lead to reduced structural strength, possibly resulting in a loss of structural integrity of the sailplane.
>
> To address this potentially unsafe condition, Aeroclubul Romaniei (AR) issued Service Bulletin (SB) SB–IS–28B2–AR–01 to provide inspection instructions. AR is currently developing modification(s) to provide a design solution for the affected sailplanes.
>
> For the reasons described above, this [EASA] AD requires repetitive inspections of the structure of the rear fuselage and, depending on findings, accomplishment of applicable corrective action(s).
>
> This [EASA] AD is considered to be an interim action and further AD action may follow.

The MCAI can be found in the AD docket on the internet at: *https://www.regulations.gov/document?D=FAA-2017-1068-0002.*

Comments

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

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

We reviewed Aeroclubul Romaniei Service Bulletin No.: SB–IS–28B2–AR–01, Revision 003, dated February 9, 2017 (ARSB No. AR–01), and Aeroclubul Romaniei Service Bulletin No.: SB–IS–28B2–AR–02, Revision 01, dated February 24, 2017 (ARSB No. AR–02). ARSB No. AR–01 describes procedures for inspection of the rear fuselage area to detect any cracks, ruptures, or corrosion. ARSB No. AR–02 describes procedures for installation of a modification to the upper stringer of the rear fuselage. 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 of the AD.

Costs of Compliance

We estimate that this AD will affect 30 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with

the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $5,100, or $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 15 work-hours and require parts costing $1,000, for a cost of $2,275 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to small airplanes, gliders, balloons, airships, domestic business jet transport airplanes, and associated appliances to the Director of the Policy and Innovation Division.

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, 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.

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–2017–1068; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–03–17 Aeroclubul Romaniei: Amendment 39–19190; Docket No. FAA–2017–1068; Product Identifier 2017–CE–034–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective March 20, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Aeroclubul Romaniei Model IS–28B2 gliders, all serial numbers, certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracks at stringers in the rear fuselage of several Model IS–28B2 gliders. We are issuing this AD to detect and correct cracks, which could lead to reduced structural strength resulting in loss of structural integrity and loss of control.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) through (3):

(1) Within 90 days after March 20, 2018 (the effective date of this AD) and repetitively thereafter at intervals not to exceed 50 hours time-in-service (TIS), inspect the rear fuselage structure following the instructions in Aeroclubul Romaniei Service Bulletin (SB) No.: SB–IS–28B2–AR–01, Revision 003, dated February 9, 2017.

(2) If any crack or corrosion is detected during any inspection required in paragraph (f)(1) of this AD, before further flight, modify the rear fuselage structure following the instructions in Aeroclubul Romaniei SB No.: SB–IS–28B2–AR–02, Revision 01, dated February 24, 2017.

(3) Completion of the modification to the rear fuselage structure as required in paragraph (f)(2) of this AD terminates the repetitive inspections required in paragraph (f)(1) of this AD.

(g) Reporting Requirement

Although Aeroclubul Romaniei SB No.: SB–IS–28B2–AR–01, Revision 003, dated February 9, 2017, specifies to submit certain information to the manufacturer, this AD does not require that action.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) *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, Small Airplane Standards Branch, FAA; or the European Aviation Safety Agency (EASA).

(i) Related Information

Refer to MCAI AD No.: 2016–0233, dated November 23, 2016. The MCAI can be found in the AD docket on the internet at: *https://www.regulations.gov/document?D=FAA-2017-1068-0002.*

(j) 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) Aeroclubul Romaniei Service Bulletin No.: SB–IS–28B2–AR–01, Revision 003, dated February 9, 2017.

(ii) Aeroclubul Romaniei Service Bulletin No.: SB–IS–28B2–AR–02, Revision 01, dated February 24, 2017.

(3) For Aeroclubul Romaniei service information identified in this AD, contact: Aeroclubul Romaniei, Bd.Lascar Catargiu, Nr.54, cod: 010673, Sector 1, Bucharest, Romania; telephone: 011+40 021–312–36–19; fax: 011+40 021–312–36–19; internet: *www.aeroclubulromaniei.ro;* email: *www.aeroclubulromaniei.ro/contact/.*

(4) You may view this service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. In addition, you can access this service information on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1068.

(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 Kansas City, Missouri, on February 5, 2018.

Melvin J. Johnson,

Deputy Director, Policy & Innovation Division, Aircraft Certification Service.

[FR Doc. 2018–02601 Filed 2–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0943; Product Identifier 2017–NE–34–AD; Amendment 39–19186; AD 2018–03–13]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain General Electric Company (GE) CT7–5A2, CT7–5A3, CT7–7A, CT7–7A1, CT7–9B, CT7–9B1, CT7–9B2, CT7–9C and CT7–9C3 model turboprop engines. This AD requires initial and repetitive visual inspection and fluorescent-penetrant inspection (FPI) of the main propeller shaft. This AD was prompted by the failure of a main propeller shaft. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 28, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 28, 2018.

We must receive comments on this AD by March 30, 2018.

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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact General Electric Company, GE-Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; fax: 513–552–3329; email: *geae.aoc@ge.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0943.

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–2017–0943; 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 final rule, 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: Michael Richardson-Bach, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7747; fax: 781–238–7199; email: *michael.richardson-bach@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We received a report that a condition was found after an incident where the main propeller shaft on a GE CT7–9B failed in flight, resulting in the loss of the propeller. The condition is cracking initiating from undiscovered corrosion in the dowel pin hole on the flange of the main propeller shaft. This proposed AD would require visually inspecting the main propeller shaft for wear and corrosion and FPI for cracks. This condition, if not addressed, could result in failure of the main propeller shaft, resulting in in-flight loss of the propeller, loss of engine thrust control, and damage to the airplane. We are issuing this AD to address the unsafe condition on these products.

A similar propeller separation incident occurred in 1992 because of a material defect. The affected parts were purged from the field at that time.

Related Service Information Under 1 CFR Part 51

We reviewed SPM 70–32–03, SPOT–FLUORESCENT PENETRANT INSPECTION, TASK 70–32–03–230–002, from the GE Commercial Engine Standard Practices Manual GEK 9250, Rev. 106, dated April 01, 2007. This procedure provides instruction for spot FPI.

We also reviewed MM 72–10–00, PROPELLER GEARBOX INSPECTION and MM 72–10–00, PROPELLER GEARBOX—CLEANING, from the GE CT7B Maintenance Manual SEI–576, Rev. 60, dated October 1, 2017. These procedures provides instructions for inspection and cleaning, respectively, of the main propeller shaft.

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.

Other Related Service Information

We reviewed GE Service Bulletin (SB) CT7–TP S/B 72–0531, dated June 22, 2017. The SB references standard procedures for initial and repetitive visual and FPI of the main propeller shaft for SF340 aircraft.

We also reviewed GE SB CT7–TP S/B 72–0533, dated October 3, 2017. The SB references standard procedures for initial and repetitive visual and FPI

of the main propeller shaft for CN235 aircraft.

FAA's Determination

We are issuing 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.

AD Requirements

This AD requires visually inspecting the main propeller shaft for wear and corrosion and FPI for cracks.

Differences Between This AD and the Service Information

The inspection plan in this AD adds visual inspection and FPI to the repetitive inspections. This AD adds upper limits to the ''inspect within'' times to avoid conflicting times to inspect.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the compliance time for the action is less than the time required for public comment. Therefore, we find that notice and opportunity for prior public comment are impracticable. In addition, for the reason stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number Docket No. FAA–2017–0943 and Product Identifier 2017–NE–34–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. We will consider all comments received by the closing date and may amend this final rule 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 final rule.

Costs of Compliance

We estimate that this AD affects 176 engines installed on 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
Initial FPI	2 work-hours × $85 per hour = $170	$0	$170	$29,920

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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

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):

2018–03–13 General Electric Company: Amendment 39–19186; Docket No. FAA–2017–0943; Product Identifier 2017–NE–34–AD.

(a) Effective Date

This AD is effective February 28, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company (GE) CT7–5A2, CT7–5A3, CT7–7A, CT7–7A1, CT7–9B, CT7–9B1, CT7–9B2, CT7–9C and CT7–9C3 model turboprop engines with main propeller shaft, part number 77581–11, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7210, Turbine Engine Reduction Gear.

(e) Unsafe Condition

This AD was prompted by the failure of a main propeller shaft. We are issuing this AD to prevent failure of the main propeller shaft. The unsafe condition, if not addressed, could result in in-flight loss of the propeller, loss of engine thrust control, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) For propeller gear boxes (PGBs) with 46,000 hours time since new (TSN) or more, perform cleaning, visual inspection, and fluorescent-penetrant inspection (FPI) within 150 hours time in service (TIS) after the effective date of this AD, or one month after the effective date of this AD, whichever occurs first.

(2) For PGBs with 40,000 hours TSN or more, but less than 46,000 hours TSN, perform cleaning, visual inspection, and FPI within 500 hours TIS after the effective date of this AD, not to exceed 46,150 TSN or four months after the effective date of this AD, whichever occurs first.

(3) For PGBs with 30,000 hours TSN or more, but less than 40,000 hours TSN, perform cleaning, visual inspection, and FPI within 1,000 hours TIS after the effective date of this AD, not to exceed 40,500 TSN or eight months after the effective date of this AD, whichever occurs first.

(4) For PGBs with less than 30,000 hours TSN, perform cleaning, visual inspection, and FPI at the next propeller removal, not to exceed 31,000 hours TSN.

(5) Perform the cleaning, visual inspection and FPI, as follows:

(i) Clean the main propeller shaft flange. Use the instructions in paragraph 5, ''Main Propeller Shaft,'' in MM 72–10–00, PROPELLER GEARBOX—CLEANING from GE CT7B Maintenance Manual SEI–576, Rev. 60, dated October 1, 2017.

(ii) Visually inspect the main propeller shaft for wear, corrosion, and cracking. Use the instructions in paragraph 5.A., ''Main Propeller Shaft,'' in MM 72–10–00, PROPELLER GEARBOX—INSPECTION from GE CT7B Maintenance Manual SEI–576, Rev. 60, dated October 1, 2017.

(iii) Spot-fluorescent-penetrant inspect the area on the main propeller shaft flange face within 0.5 inches radially adjacent to the dowel pin holes for cracks. Use the instructions in SPM 70–32–03, SPOT-FLUORESCENT PENETRANT—INSPECTION, Task 70–32–03–230–002 from GE GEK 9250, Commercial Engine Standard Practices Manual, Rev. 106, dated April 1, 2007.

(6) Repeat the cleaning, visual inspection, and FPI of the main propeller shaft at each removal of the propeller.

(7) Before further flight, remove from service any main propeller shaft found cracked, or with corrosion or wear beyond the limits specified in SPM 70–32–03, SPOT-FLUORESCENT PENETRANT—INSPECTION, Task 70–32–03–230–002, from GE GEK 9250, Commercial Engine Standard Practices Manual, Rev. 106, dated April 1, 2007.

(h) Credit for Previous Actions

Main propeller shafts that were replaced with new zero-time parts at an overhaul of the PGB within the last 10,000 hours TIS, or inspected in accordance with GE Service Bulletin (SB) CT7–TP S/B 72–0531, dated June 22, 2017, or GE SB CT7–TP S/B 72–0533, dated October 3, 2017, satisfy the requirements specified in paragraph (g)(5) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, 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 ECO Branch, send it to the attention of the person identified in paragraph (j) of this AD. You may email your request to: *ANE–AD–AMOC@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.

(j) Related Information

For more information about this AD, contact Michael Richardson-Bach, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7747; fax: 781–238–7199; email: *michael.richardson-bach@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) SPM 70–32–03, SPOT-FLUORESCENT PENETRANT INSPECTION, TASK 70–32–03–230–002, from the GE Commercial Engine Standard Practices Manual GEK 9250, Rev. 106, dated April 01, 2007.

(ii) MM 72–10–00, PROPELLER GEARBOX INSPECTION, from the GE CT7B Maintenance Manual SEI–576, Rev. 60, dated October 1, 2017.

(iii) MM 72–10–00, PROPELLER GEARBOX—CLEANING, from the GE CT7B Maintenance Manual SEI–576, Rev. 60, dated October 1, 2017.

(3) For GE service information identified in this AD, contact General Electric Company, GE-Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; fax: 513–552–3329; email: *geae.aoc@ge.com.*

(4) You may view this service information at FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

(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 Burlington, Massachusetts, on February 8, 2018.

Robert J. Ganley,

Acting Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2018–02917 Filed 2–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–1082 Airspace Docket No. 17–AGL–22]

Amendment of Multiple Air Traffic Service (ATS) Routes; North Central United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: The FAA is amending four high altitude Area Navigation (RNAV) Q-routes (Q–140, Q–818, Q–935, and Q–947) that cross the United States (U.S.)/Canada border in the north central U.S. This action updates the latitude/longitude coordinates for three Canadian waypoints listed in the Q-route descriptions contained in the FAA aeronautical database to match the Canadian aeronautical database source information.

DATES: Effective date 0901 UTC, May 24, 2018. 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 7400.11B, 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 7400.11B at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the route structure as required to preserve the safe and efficient flow of air traffic.

History

On September 26, 2014, the FAA published in the **Federal Register** a final rule (79 FR 57758), Docket No. FAA–2014–0295, that amended, removed, and established multiple Air Traffic Service (ATS) routes in the north central U.S. to reflect and accommodate route changes being made in Canadian airspace as part of a Canadian airspace redesign project. During a recent aeronautical review, the FAA identified three Canadian waypoint geographic coordinate updates that were required for the waypoints RUBKI, IKNAV, and REVEN.

This rule makes the Canadian waypoint corrections to ensure the Q-routes and FAA aeronautical database are in concert with the Canadian aeronautical database source information.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 by modifying RNAV Q-routes Q–140, Q–818, Q–935, and Q–947. The route modifications correct the RUBKI, IKNAV, and REVEN waypoint geographic coordinates used in the routes to match the Q-route descriptions and the FAA aeronautical database with the Canadian aeronautical database source information. The amendments result in no substantive changes or impact on the public and ensure safe and efficient across border connectivity.

The RNAV route modifications accomplished by this action are outlined below.

Q–140: Change the RUBKI waypoint geographic coordinates from ''Lat. 44°14′56.00″ N, long. 082°15′25.99″ W'' to read ''Lat. 44°14′54.82″ N, long. 082°16′07.65″ W.''

Q–818: Change the IKNAV waypoint geographic coordinates from ''Lat. 42°57′43.00″ N, long. 078°59′04.00″ W'' to read ''Lat. 42°57′43.00″ N, long. 078°58′04.00″ W.''

Q–935: Change the IKNAV waypoint geographic coordinates from ''Lat. 42°57′43.00″ N, long. 078°59′04.00″ W'' to read ''Lat. 42°57′43.00″ N, long. 078°58′04.00″ W.''

Q–947: Change the REVEN waypoint geographic coordinates from ''Lat. 45°33′09.70″ N, long. 070°42′01.90″ W'' to read ''Lat. 45°33′09.74″ N, long. 070°42′01.90″ W.''

Because the changes in this technical amendment result in no substantive change, we find notice and public procedures under 5 U.S.C. 553(b) is unnecessary.

High altitude United States RNAV Q-routes are published in paragraph 2006 and high altitude Canadian RNAV Q-routes are published in paragraph 2007 of FAA Order 7400.11B dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The high altitude United States and Canadian RNAV Q-routes listed in this rule will be subsequently published 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. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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.

Environmental Review

The FAA has determined that this action of modifying four high altitude RNAV Q-routes qualifies for categorical exclusion under the National Environmental Policy Act and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F. *Environmental Impacts: Policies and Procedures,* Paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). Therefore, this action is not expected to cause any potentially significant environmental impacts. In accordance with FAAO 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, this action has been reviewed for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis, and it is determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

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 FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017, is amended as follows:

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–140 WOBED, WA to YODAA, NY [Amended]

WOBED, WA	WP	(Lat. 48°36′01.07″ N, long. 122°49′46.52″ W)
GETNG, WA	WP	(Lat. 48°25′30.57″ N, long. 119°31′38.98″ W)
CORDU, ID	FIX	(Lat. 48°10′46.41″ N, long. 116°40′21.84″ W)
PETIY, MT	WP	(Lat. 47°58′46.55″ N, long. 114°36′20.31″ W)
CHOTE, MT	FIX	(Lat. 47°39′56.68″ N, long. 112°09′38.13″ W)
LEWIT, MT	WP	(Lat. 47°23′00.21″ N, long. 110°08′44.78″ W)
SAYOR, MT	FIX	(Lat. 47°13′58.34″ N, long. 104°58′39.28″ W)
WILTN, ND	FIX	(Lat. 47°04′58.09″ N, long. 100°47′43.84″ W)
TTAIL, MN	WP	(Lat. 46°41′28.00″ N, long. 096°41′09.00″ W)
CESNA, WI	WP	(Lat. 45°52′14.00″ N, long. 092°10′59.00″ W)
WISCN, WI	WP	(Lat. 45°18′19.45″ N, long. 089°27′53.91″ W)
EEGEE, WI	WP	(Lat. 45°08′53.00″ N, long. 088°45′58.00″ W)
DAYYY, MI	WP	(Lat. 44°10′10.00″ N, long. 084°22′23.00″ W)
RUBKI, Canada	WP	(Lat. 44°14′54.82″ N, long. 082°16′07.65″ W)
PEPLA, Canada	WP	(Lat. 43°47′50.98″ N, long. 080°00′53.56″ W)
SIKBO, Canada	WP	(Lat. 43°39′13.00″ N, long. 079°20′57.00″ W)
MEDAV, Canada	WP	(Lat. 43°29′19.00″ N, long. 078°45′46.00″ W)
AHPAH, NY	WP	(Lat. 43°18′19.00″ N, long. 078°07′35.11″ W)
HANKK, NY	FIX	(Lat. 42°53′41.82″ N, long. 077°09′15.21″ W)
BEEPS, NY	FIX	(Lat. 42°49′13.26″ N, long. 076°59′04.84″ W)
EXTOL, NY	FIX	(Lat. 42°39′27.69″ N, long. 076°37′06.10″ W)
MEMMS, NY	FIX	(Lat. 42°30′59.71″ N, long. 076°18′15.43″ W)
KODEY, NY	FIX	(Lat. 42°16′47.53″ N, long. 075°47′04.00″ W)
ARKKK, NY	WP	(Lat. 42°03′48.52″ N, long. 075°19′00.41″ W)
RODYY, NY	WP	(Lat. 41°52′25.85″ N, long. 074°35′49.39″ W)
YODAA, NY	FIX	(Lat. 41°43′21.19″ N, long. 074°01′52.76″ W)

Excluding the airspace within Canada.

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Paragraph 2007 Canadian Area Navigation Routes.

* * * * *

Q–818 Flint, MI (FNT) to GAYEL, NY [Amended]

Flint, MI (FNT)	VORTAC	(Lat. 42°58′00.38″ N, long. 083°44′49.08″ W)
TANKO, Canada	WP	(Lat. 43°01′32.48″ N, long. 082°23′02.38″ W)
KITOK, Canada	WP	(Lat. 43°02′30.00″ N, long. 081°55′34.00″ W)
DERLO, Canada	WP	(Lat. 43°03′59.00″ N, long. 081°05′43.00″ W)
IKNAV, Canada	WP	(Lat. 42°57′43.00″ N, long. 078°58′04.00″ W)
WOZEE, NY	WP	(Lat. 42°56′01.65″ N, long. 078°44′19.64″ W)
KELIE, NY	FIX	(Lat. 42°39′37.32″ N, long. 077°44′41.05″ W)
VIEEW, NY	FIX	(Lat. 42°26′22.07″ N, long. 077°01′33.30″ W)
Binghampton, NY (CFB)	VORTAC	(Lat. 42°09′26.96″ N, long. 076°08′11.30″ W)
BUFFY, PA	FIX	(Lat. 41°56′27.98″ N, long. 075°36′45.35″ W)
STOMP, NY	WP	(Lat. 41°35′46.78″ N, long. 074°47′47.79″ W)
MSLIN, NY	FIX	(Lat. 41°29′30.82″ N, long. 074°33′14.28″ W)
GAYEL, NY	FIX	(Lat. 41°24′24.09″ N, long. 074°21′25.75″ W)

Excluding the airspace within Canada.

* * * * *

Q–935 MONEE, MI to Boston, MA (BOS) [Amended]

MONEE, MI	FIX	(Lat. 43°14′25.80″ N, long. 084°27′50.95″ W)
HOCKE, MI	WP	(Lat. 43°15′43.38″ N, long. 082°42′38.27″ W)
OMRAK, Canada	WP	(Lat. 43°16′15.45″ N, long. 082°15′52.31″ W)
DERLO, Canada	WP	(Lat. 43°03′59.00″ N, long. 081°05′43.00″ W)
IKNAV, Canada	WP	(Lat. 42°57′43.00″ N, long. 078°58′04.00″ W)
WOZEE, NY	WP	(Lat. 42°56′01.65″ N, long. 078°44′19.64″ W)
HANKK, NY	FIX	(Lat. 42°53′41.82″ N, long. 077°09′15.21″ W)
JOSSY, NY	WP	(Lat. 42°53′29.93″ N, long. 077°02′36.80″ W)
AUDIL, NY	FIX	(Lat. 42°52′18.74″ N, long. 076°26′35.07″ W)
FABEN, NY	WP	(Lat. 42°51′12.04″ N, long. 075°57′07.91″ W)
PONCT, NY	WP	(Lat. 42°44′48.83″ N, long. 073°48′48.07″ W)
Gardner, MA (GDM)	VOR/DME	(Lat. 42°32′45.32″ N, long. 072°03′29.48″ W)
Boston, MA (BOS)	VOR/DME	(Lat. 42°21′26.82″ N, long. 070°59′22.37″ W)

Excluding the airspace within Canada.

* * * * *

Q–947 REVEN, Canada to DUVOK, Canada

REVEN, Canada	WP	(Lat. 45°33′09.74″ N, long. 070°42′01.90″ W)
TOPPS, ME	FIX	(Lat. 45°20′24.65″ N, long. 067°44′19.11″ W)
CUZWA, ME	WP	(Lat. 45°17′48.49″ N, long. 067°27′58.22″ W)
DUVOK, Canada	WP	(Lat. 44°55′37.33″ N, long. 065°17′11.66″ W)

Excluding the airspace within Canada.

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Issued in Washington, DC, on February 6, 2018.

Rodger A. Dean Jr.,

Manager, Airspace Policy Group.

[FR Doc. 2018–02808 Filed 2–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31177; Amdt. No. 3785]

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 February 13, 2018. 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 February 13, 2018.

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 January 26, 2018.

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 1 March 2018

Hope, AR, Hope Muni, NDB RWY 16, Amdt 5A
Rexburg, ID, Rexburg-Madison County, RNAV (GPS) RWY 35, Amdt 1C
Pittsburg, KS, Atkinson Muni, RNAV (GPS) RWY 17, Amdt 3A
Laredo, TX, Laredo Intl, VOR OR TACAN RWY 14, Amdt 10A
Laredo, TX, Laredo Intl, VOR OR TACAN RWY 32, Amdt 11A

Effective 29 March 2018

San Diego, CA, San Diego Intl, ILS Y OR LOC Y RWY 9, Amdt 2A
San Diego, CA, San Diego Intl, ILS Z OR LOC Z RWY 9, Orig
San Francisco, CA, San Francisco Intl, ILS OR LOC RWY 28L, ILS RWY 28L (SA CAT II), Amdt 26
San Francisco, CA, San Francisco Intl, ILS OR LOC RWY 28R, ILS RWY 28R (SA CAT I), ILS RWY 28R (CAT II), ILS RWY 28R (CAT III), Amdt 14
San Francisco, CA, San Francisco Intl, RNAV (GPS) RWY 28L, Amdt 6
San Francisco, CA, San Francisco Intl, RNAV (GPS) PRM RWY 28L (CLOSE PARALLEL), Amdt 2
San Francisco, CA, San Francisco Intl, RNAV (GPS) Z RWY 28R, Amdt 6
San Francisco, CA, San Francisco Intl, RNAV (RNP) Y RWY 28R, Amdt 4
St Augustine, FL, Northeast Florida Rgnl, ILS OR LOC RWY 31, Amdt 1
St Augustine, FL, Northeast Florida Rgnl, RNAV (GPS) RWY 31, Amdt 2
Douglas, GA, Douglas Muni, RNAV (GPS) RWY 4, Amdt 2
Douglas, GA, Douglas Muni, RNAV (GPS) RWY 22, Amdt 2
Independence, IA, Independence Muni, NDB RWY 18, Amdt 3A, CANCELED
Independence, IA, Independence Muni, RNAV (GPS) RWY 18, Amdt 1
Independence, IA, Independence Muni, RNAV (GPS) RWY 36, Amdt 1
Boise, ID, Boise Air Terminal/Gowen FLD, ILS OR LOC RWY 28R, Orig-B
Boise, ID, Boise Air Terminal/Gowen FLD, ILS Y OR LOC Y RWY 10R, ILS Y RWY 10R (SA CAT I), ILS Y RWY 10R (CAT II), ILS Y RWY 10R (CAT III), Amdt 13
Boise, ID, Boise Air Terminal/Gowen FLD, NDB RWY 10R, Amdt 28B, CANCELED
Chicago/West Chicago, IL, DuPage, RNAV (GPS) RWY 2R, Orig-D
Chicago/West Chicago, IL, DuPage, RNAV (GPS) RWY 10, Orig-E
Chicago/West Chicago, IL, DuPage, RNAV (GPS) RWY 20R, Amdt 1E
Springhill, LA, Springhill, Takeoff Minimums and Obstacle DP, Amdt 1
Boston, MA, General Edward Lawrence Logan Intl, ILS OR LOC RWY 4R, ILS RWY 4R (SA CAT I), ILS RWY 4R (CAT II), ILS RWY 4R (CAT III), Amdt 10D
Boston, MA, General Edward Lawrence Logan Intl, ILS OR LOC RWY 15R, Amdt 1G
Nantucket, MA, Nantucket Memorial, ILS OR LOC RWY 6, Amdt 2A
Nantucket, MA, Nantucket Memorial, ILS OR LOC RWY 24, Amdt 16A
Minneapolis, MN, Anoka County-Blaine (Janes Field), ILS OR LOC RWY 27, Orig-C
Minneapolis, MN, Anoka County-Blaine (Janes Field), RNAV (GPS) RWY 9, Amdt 1
Minneapolis, MN, Anoka County-Blaine (Janes Field), RNAV (GPS) RWY 18, Orig-F
Minneapolis, MN, Anoka County-Blaine (Janes Field), RNAV (GPS) RWY 27, Orig-D
Minneapolis, MN, Anoka County-Blaine (Janes Field), VOR RWY 9, Amdt 12D
Princeton, MN, Princeton Muni, RNAV (GPS) RWY 15, Orig-B
Princeton, MN, Princeton Muni, RNAV (GPS) RWY 33, Orig-A
Latrobe, PA, Arnold Palmer Rgnl, ILS OR LOC RWY 24, Amdt 17A
Latrobe, PA, Arnold Palmer Rgnl, RNAV (GPS) RWY 6, Amdt 1A
Latrobe, PA, Arnold Palmer Rgnl, RNAV (GPS) RWY 24, Amdt 1A
Latrobe, PA, Arnold Palmer Rgnl, Takeoff Minimums and Obstacle DP, Amdt 7
Hot Springs, SD, Hot Springs Muni, RNAV (GPS) RWY 1, Orig-B
Hot Springs, SD, Hot Springs Muni, RNAV (GPS) RWY 19, Orig-B
Memphis, TN, Memphis Intl, ILS OR LOC RWY 9, Amdt 27B
Memphis, TN, Memphis Intl, ILS OR LOC RWY 18C, Amdt 1D
Memphis, TN, Memphis Intl, ILS OR LOC RWY 18L, Amdt 2D
Memphis, TN, Memphis Intl, ILS OR LOC RWY 18R, Amdt 14D
Memphis, TN, Memphis Intl, ILS OR LOC RWY 27, Amdt 4C
Memphis, TN, Memphis Intl, RNAV (GPS) RWY 9, Amdt 1B
Memphis, TN, Memphis Intl, RNAV (GPS) RWY 27, Amdt 2D
Memphis, TN, Memphis Intl, RNAV (GPS) RWY 36C, Amdt 1C
Memphis, TN, Memphis Intl, RNAV (GPS) RWY 36L, Amdt 1C
Memphis, TN, Memphis Intl, RNAV (GPS) RWY 36R, Amdt 1D
Memphis, TN, Memphis Intl, RNAV (GPS) Z RWY 18C, Amdt 2B
Memphis, TN, Memphis Intl, RNAV (GPS) Z RWY 18L, Amdt 2D
Memphis, TN, Memphis Intl, RNAV (GPS) Z RWY 18R, Amdt 2E
Memphis, TN, Memphis Intl, RNAV (RNP) X RWY 18L, Orig-D
Memphis, TN, Memphis Intl, RNAV (RNP) X RWY 18R, Orig-E
Memphis, TN, Memphis Intl, RNAV (RNP) Y RWY 18C, Orig-E
Memphis, TN, Memphis Intl, RNAV (RNP) Y RWY 18L, Orig-D
Memphis, TN, Memphis Intl, RNAV (RNP) Y RWY 18R, Orig-E
Murfreesboro, TN, Murfreesboro Muni, Takeoff Minimums and Obstacle DP, Amdt 4
Fillmore, UT, Fillmore Muni, RNAV (GPS) RWY 4, Amdt 1B
Ogden, UT, Ogden-Hinckley, ILS OR LOC RWY 3, Amdt 4D
Ogden, UT, Ogden-Hinckley, RNAV (GPS) Y RWY 3, Orig-A
Ogden, UT, Ogden-Hinckley, VOR–A, Orig
Ogden, UT, Ogden-Hinckley, VOR/DME RWY 7, Amdt 6, CANCELED
Vernal, UT, Vernal Rgnl, RNAV (GPS) Y RWY 35, Orig-A

Vernal, UT, Vernal Rgnl, RNAV (GPS) Z RWY 35, Orig-A
Vernal, UT, Vernal Rgnl, VOR RWY 35, Orig-A

[FR Doc. 2018–02681 Filed 2–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31178; Amdt. No. 3786]

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 amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures 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 for the 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 February 13, 2018. 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 February 13, 2018.

ADDRESSES: Availability of matter 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 online 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 Procedures Division, 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, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but 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 contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and 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 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 and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

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 these 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 January 26, 2018.

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 amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, 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:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

Effective Upon Publication

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
1–Mar–18	MA	Beverly	Beverly Rgnl	8/2210	1/16/18	Takeoff Minimums and Obstacle DP, Amdt 3A.
1–Mar–18	IA	Maquoketa	Maquoketa Muni	8/2971	1/11/18	Takeoff Minimums and Obstacle DP, Amdt 1.
1–Mar–18	SD	Rapid City	Rapid City Rgnl	8/3793	1/11/18	RNAV (GPS) Rwy 32, Amdt 2.

[FR Doc. 2018–02682 Filed 2–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 170710645–8098–02]

RIN 0648–BH03

Fisheries of the Northeastern United States; Northeast Skate Complex; Framework Adjustment 4

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

ACTION: Final rule.

SUMMARY: The final rule approves regulations to implement the Northeast Skate Complex Fishery Management Plan Framework Adjustment 4 management measures. This rule implements several measures to reduce the risk of the skate bait fishery from effectively closing down as it did in fishing year 2016. This action will reduce the skate bait season 3 possession limit and establish a separate skate bait incidental possession limit. This action is needed to better control the catch of skate bait and provide a more consistent supply of skate bait to the lobster fishery.

DATES: Effective March 15, 2018.

ADDRESSES: New England Fishery Management Council staff prepared an environmental assessment (EA) for Northeast Skate Complex Framework Adjustment 4 that describes the proposed action and other considered alternatives. The EA provides a thorough analysis of the biological, economic, and social impacts of the proposed measures and other considered alternatives, a Regulatory Impact Review, and economic analysis. Copies of the Framework 4 EA are available on request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. This document is also available from the following internet addresses: *http://www.nefmc.org* or *https://www.regulations.gov/docket?D=NOAA-NMFS-2017-0099.*

FOR FURTHER INFORMATION CONTACT: Debra Lambert, Fishery Policy Analyst, (301) 427–8560.

SUPPLEMENTARY INFORMATION:

Background

The Northeast Skate Complex Fishery Management Plan (FMP), developed by the New England Fishery Management Council and implemented in 2003, manages a complex of seven skate species (barndoor, clearnose, little, rosette, smooth, thorny, and winter skate) off the New England and Mid-Atlantic coasts. Skates are harvested and managed in two different fisheries: one for food (the wing fishery) and one for lobster bait (the bait fishery). Fishery specific allocations, called total allowable landings (TALs), are set through biennial specifications. Additional information on the skate fisheries can be found online at: *https://www.greateratlantic.fisheries.noaa.gov/sustainable/species/skate/index.html.*

The bait and wing fisheries have different seasonal quotas and possession limits. Generally, the bait fishery operates under an exemption from the wing fishery possession limits; however, the inseason adjustments to possession limits have been linked between the two fisheries. The bait fishery is managed under a 3-season fishing year: Season 1 is May 1–July 31; Season 2 is August 1–October 31; and, Season 3 is November 1–April 30. Previously, when the bait fishery reached 90 percent of a season's TAL, or 90 percent of the annual bait TAL, the bait fishery possession limit reverted to the substantially lower wing possession limit. The linked inseason adjustment for these fisheries became problematic in fishing year 2016, as the possession limit in the skate bait fishery was reduced twice, effectively closing the bait fishery. Further background can be found in the proposed rule for Framework Adjustment 4 to the FMP, which published on October 20, 2017 (82 FR 48781). Additional information on previous and current skate management measures can be reviewed through the Council's website at *http://www.nefmc.org/management-plans/skates.*

In response to the closure, the Council developed Framework 4 to reduce the likelihood of a lengthy in-season closure while ensuring bait landings do not exceed the TAL. As mentioned above, on October 20, 2017, NMFS published a proposed rule (82 FR 48781) identifying the measures in Framework 4. Comments on the proposed rule were accepted through November 6, 2017.

Approved Measures

NMFS is approving the regulatory changes for the skate bait fishery as recommended by the Council in Framework 4 and detailed in our proposed rule. The approved measures are:

1. Reduce the Season 3 Bait Skate Possession Limit

The Season 3 (November 1 through April 30) possession limit is reduced from 25,000 lb (11,340 kg) to 12,000 lb (5,443 kg). Because Season 3 is the longest season in the bait fishery (6 months), reducing the trip limit should slow the catch rate and lessen the chance of closing the fishery.

2. Reduce the Season 3 Bait Skate TAL Threshold Trigger

The trigger for implementing an inseason adjustment to possession limits in Season 3 is reduced from 90 to 80 percent of the TAL (*i.e.,* when 80 percent of the TAL has been reached). The trigger for implementing an inseason adjustment to possession limits in Season 1 and 2 will remain at 90 percent of the seasonal TAL.

3. Establish a Separate Bait Skate Incidental Possession Limit

This action de-couples the inseason adjustments for the skate wing and bait fisheries. Once the trigger for implementing an inseason adjustment to possession limits in the skate bait fishery has been reached, the incidental possession limit will be 8,000 lb (3,629 kg) for the remainder of the season.

4. Implement a Bait Skate Fishery Closure When the TAL Is Harvested

The bait fishery will be closed when 100 percent of the bait TAL is projected to be harvested. This measure will better ensure that the skate bait fishery does not exceed its TAL.

5. Removal of Incidental Possession Limit if Necessary To Achieve TAL

This action also clarifies that if NMFS determines that an in-season possession limit reduction (putting in place the incidental possession limit) could prohibit the skate bait fishery from achieving its annual TAL, NMFS may remove the in-season reduction and reinstate the standard seasonal possession limit.

Comments and Responses

We received four public comments on the proposed rule, two of which were not responsive to the action.

Comment 1: Two commenters, the Atlantic Offshore Lobstermen's Association and the Cape Cod Commercial Fishermen's Alliance, support de-coupling the skate wing and bait inseason possession limit adjustments and support the measures in the proposed rule.

Response: We are approving Framework 4 and the accompanying measures because they allow the fishery to more effectively harvest its optimum yield. The Framework 4 measures are expected to better ensure that the skate bait fishery remains open throughout Season 3. If it becomes necessary to implement an incidental possession limit for the skate bait fishery, those measures will function independently of the skate wing fishery, and would allow fishing to continue at a lower level.

Changes From the Proposed Rule

Only two minor revisions were made to the regulatory text that was specified in the proposed rule. Section 648.322(c)(4) was revised to reduce redundancy by deleting the following phrase from the end of the sentence: ''or whole skates greater than 23 inches (58.42 cm) total length.'' Section 648.322(f) was revised for clarity by adding the phrase ''possession limit'' towards the end of the sentence.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that Framework 4 to the FMP is necessary for the conservation and management of the northeast skate complex and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law.

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

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA) in support of this action. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS' responses to those comments, and a summary of the analyses completed to support the action. A copy of this analysis and the EA are available from the Council (see **ADDRESSES**). A description of why this action was considered, and the objectives of this rule, is contained in the preamble to the proposed rule and this final rule and is not repeated here.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

We received four public comments on the proposed rule, two of which were not responsive to the action. For a summary of the comments, and NMFS' response, see the Comments and Responses section above. The comments did not raise any issues or concerns related to the IRFA or the economic impacts of the rule more generally. In addition, no comments were filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule. No changes were made to the rule as a result of comments.

Description and Estimate of the Number of Small Entities to Which the Rule Would Apply

This rule will affect vessels that hold Federal open access commercial skate permits that participate in the skate fishery or affiliated groups that hold multiple open access commercial skate permits that participate in the skate fishery. Within the skate bait fishery, the majority of affiliated groups consist of a single permit-holder, or 71 vessels in fishing year 2015, the most recent year for which complete information was available during the Council's impact analyses. Four vessels belong to affiliated groups that hold two or more permits.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. The Council's analysis indicates the maximum number of small fishing entities that may be affected by this action is 69 (71 vessels), based on 2015 data. During fishing year 2015, only 69 affiliated groups landed any amount of skate for bait. At the permit level, every skate landing permit is defined as a small business according to size standards (the top five vessels have total revenues between 600 thousand and 1.9 million dollars in 2015).

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not introduce any new reporting, recordkeeping, or other compliance requirements.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statues

The Council considered revising the skate bait trigger for implementing an inseason adjustment, reduced possession limit, and closure independently, but elected to include all of the measures into a single action. The Council was concerned that, independently, the measures would not restrict catch enough and leave the fishery at risk of a substantial closure with accompanying economic impacts. Incorporating all of the measures accomplishes the goals and objectives of the FMP and minimizes the economic impact on small entities. Retaining the status quo management measures would not slow catch and would result in the fishery having a higher likelihood of closing for an extended period, resulting in greater profit losses to industry and bait shortages to the lobster fishery—both issues the Council sought to avoid by the Framework 4 action.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as a small entity compliance guide was prepared. Copies of this final rule are available from the Greater Atlantic Regional Fisheries Office (GARFO), and the compliance guide, *i.e.,* permit holder letter, will be sent to all holders of permits for the skate fishery. The guide and this final rule will be posted or publically available on the GARFO website.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: February 8, 2018.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.322, revise paragraphs (c) through (e), and add paragraphs (f) and (g) to read as follows:

§ 648.322 Skate allocation, possession, and landing provisions.

* * * * *

(c) *Bait Letter of Authorization (LOA).* A skate vessel owner or operator under this part may request and receive from the Regional Administrator an exemption from the skate wing possession limit restrictions for a minimum of 7 consecutive days, provided that when the vessel is fishing pursuant to the terms of authorization at least the following requirements and conditions are met:

(1) The vessel owner or operator obtains and retains onboard the vessel a valid LOA. LOAs are available upon request from the Regional Administrator.

(2) The vessel owner or operator fishes for, possesses, or lands skates only for use as bait.

(3) The vessel owner or operator possesses or lands no more than 25,000 lb (11,340 kg) of whole skates per trip during Seasons 1 or 2 and no more than 12,000 lb (5,443 kg) of whole skates per trip during Season 3.

(4) The vessel owner or operator possesses or lands only whole skates less than 23 inches (58.42 cm) total length, and does not possess or land any skate wings.

(5) Vessels that choose to possess or land skate wings during the participation period of this letter of authorization must comply with possession limit restrictions under paragraph (b) of this section for all skates or skate parts on board. Vessels possessing skate wings in compliance with the possession limit restrictions under paragraph (b) of this section may fish for, possess, or land skates for uses other than bait.

(6) The vessel owner or operator complies with the transfer at sea requirements at § 648.13(h).

(d) *In-season adjustment of skate bait possession limits.* When the Regional Administrator projects that 90 percent of the skate bait fishery seasonal quota has been landed in Seasons 1 or 2, or 80 percent of the annual skate bait fishery TAL has been landed, the Regional Administrator shall, through a notice in the **Federal Register** consistent with the Administrative Procedure Act, reduce the skate bait trip limit to 8,000 lb (3,629 kg) of whole skates for the remainder of the quota period, unless such a reduction would be expected to prevent attainment of the seasonal quota or annual TAL.

(e) *In-season closure of skate bait fishery.* When the Regional Administrator projects that 100 percent of the skate bait fishery TAL will be landed, the Regional Administrator shall, through a notice in the **Federal Register** consistent with the Administrative Procedure Act, close the skate bait fishery, unless such a closure would be expected to prevent attainment of the annual TAL. During a skate bait fishery closure all skate bait LOAs as described in paragraph (c) of this section are void. All skates harvested and landed during a skate bait fishery closure will be attributed towards the skate-wing TAL as described in this section.

(f) *Removal of in-season possession limit reductions.* If it is determined that an in-season trip limit reduction as described in paragraphs (d) and (e) of this section could prohibit the skate bait fishery from achieving its annual TAL, the in-season possession limit reduction may be removed.

(g) *Prohibitions on possession of skates.* A vessel fishing in the EEZ portion of the Skate Management Unit may not:

(1) Retain, possess, or land barndoor or thorny skates taken in or from the EEZ portion of the Skate Management Unit.

(2) Retain, possess, or land smooth skates taken in or from the GOM RMA described at § 648.80(a)(1)(i).

[FR Doc. 2018–02967 Filed 2–12–18; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 30
Tuesday, February 13, 2018

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0049; Product Identifier 2017–CE–031–AD]

RIN 2120–AA64

Airworthiness Directives; Textron Aviation Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; correction.

SUMMARY: The FAA is correcting a Notice of Proposed Rulemaking (NPRM) that published in the **Federal Register**. That NPRM applies to certain Textron Aviation Inc. Models 172N, 172P, 172Q, 172RG, F172N, F172P, FR172K, R172K, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R, T182, F182P, F182Q, F182RG, R182, TR182, 206, P206/TP206, U206/TU206, 207/T207, 210–5 (205), 210–5A (205A), 210B, 210C, 210D, 210E, 210F, and T210F airplanes. The Docket No. throughout the document is incorrect. This document corrects that error. In all other respects, the original document remains the same.

DATES: The last date for submitting comments to the NPRM (83 FR 4605, February 1, 2018) remains March 19, 2018.

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

FOR FURTHER INFORMATION CONTACT: Bobbie Kroetch, Aerospace Engineer, Wichita ACO Branch, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4155; fax: (316) 946–4107; email: *bobbie.kroetch@faa.gov* or *Wichita-COS@faa.gov*.

SUPPLEMENTARY INFORMATION: Notice of Proposed Rulemaking (NPRM), Product Identifier 2017–CE–031–AD (83 FR 4605, February 1, 2018), proposes to require repetitively inspecting the lower area of the forward cabin doorposts for cracks and repairing any cracks found by modifying the area with the applicable Cessna service kit.

As published, the Docket No. throughout the document is incorrect.

No other part of the preamble or regulatory information has been changed; therefore, only the changed portion of the NPRM is being published in the **Federal Register**.

The last date for submitting comments to the NPRM remains March 19, 2018.

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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to small airplanes, gliders, balloons, airships, domestic business jet transport airplanes, and associated appliances to the Director of the Policy and Innovation Division.

Correction of Non-Regulatory Text

In the **Federal Register** of February 1, 2018, Product Identifier 2017–CE–031–AD is corrected as follows:

On page 4605, in the first column, on line four in the heading, change ''Docket No. FAA–2017–0049'' to ''Docket No. FAA–2018–0049.''

On page 4605, in the second column, on line four and five under the heading Examining the AD Docket, change ''Docket No. FAA–2017–0049'' to ''Docket No. FAA–2018–0049.''

On page 4605, in the second column, on line five and six under the heading Comments Invited, change ''Docket No. FAA–2017–0049'' to ''Docket No. FAA–2018–0049.''

Correction of Regulatory Text

§ 39.13 [Corrected]

■ In the **Federal Register** of February 1, 2018, on page 4606, in the third column, under the heading **PART 39 —AIRWORTHINESS DIRECTIVES**, paragraph 2., on line four, of Product Identifier 2017–CE–031–AD is corrected to read as follows:

* * * * *

Docket No. FAA–2018–0049

* * * * *

Issued in Kansas City, Missouri, on February 7, 2018.

Melvin J. Johnson,

Deputy Director, Policy & Innovation Division, Aircraft Certification Service.

[FR Doc. 2018–02881 Filed 2–12–18; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA–R02–OAR–2017–0723; FRL–9974–27–Region 2]

Outer Continental Shelf Air Regulations Update To Include New Jersey State Requirements

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to update a portion of the Outer Continental Shelf (OCS) Air Regulations applying to OCS sources located within 25 miles of states' seaward boundaries which must

be promulgated into the regulations and updated periodically to remain consistent with the requirements on the corresponding onshore area (COA), which is typically the state geographically closest to the OCS source. The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the State of New Jersey is the COA. The intended effect of approving the OCS requirements for the State of New Jersey is to regulate emissions from OCS sources in accordance with the requirements onshore. The requirements discussed below are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: Written comments must be received on or before March 15, 2018.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R02–OAR–2017–0723 at *http://www.regulations.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, 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: Viorica Petriman, Air Programs Branch, Permitting Section, U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007, (212) 637–4021, *petriman.viorica@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we,'' ''us,'' and ''our'' refer to the EPA.

Table of Contents

I. Background Information

Why is the EPA taking this action?

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from the Outer Continental Shelf (OCS) sources in order to attain and maintain Federal and State ambient air quality standards (AAQS) and to comply with the provisions of part C of title I of the CAA. Part 55 applies to all OCS sources offshore of the states except those located in the Gulf of Mexico west of 87.5 degrees longitude.

Section 328(a) of the CAA requires that for such sources located within 25 miles of a State's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the corresponding onshore area (COA). Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that the EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

To comply with this statutory mandate, the EPA must incorporate by reference applicable rules in effect for onshore sources into part 55. This limits EPA's flexibility in deciding which requirements will be incorporated into 40 CFR part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into 40 CFR part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the CAA. Inclusion in the OCS rule does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. The EPA's Evaluation

What criteria were used to evaluate rules to update 40 CFR part 55?

In updating 40 CFR part 55, the EPA reviewed the New Jersey Department of Environmental Protection (''NJDEP'')'s air rules currently in effect, to ensure that they are rationally related to the attainment or maintenance of Federal and State AAQS or part C of title I of the Act and that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. The EPA has also evaluated the rules to ensure they are not arbitrary and capricious. 40 CFR 55.12(e). The EPA has excluded New Jersey's administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of Federal and State AAQS.

III. What action is EPA proposing to take?

To comply with the statutory mandate of Section 328(a)(1) of the CAA, the EPA must incorporate by reference all relevant state rules into part 55 so they can be applied to OCS sources located offshore. 40 CFR 55.12 specifies certain times at which part 55's incorporation by reference of a state's rules must be updated. One such time a consistency update must occur is when any OCS source applicant submits a Notice of Intent (NOI) under 40 CFR 55.4 for a new or a modified OCS source. 40 CFR 55.4(a) requires that any OCS source applicant must submit to EPA a NOI before performing any physical change or change in method of operation that results in an increase in emissions. EPA must conduct any necessary consistency update when it receives an NOI, and prior to receiving any application for a preconstruction permit from the OCS source applicant. 40 CFR 55.6(b)(2) and 55.12(f).

On December 21, 2017, the EPA received a NOI for a new OCS source off the coast of New Jersey. In today's action, the EPA is proposing to update the ''New Jersey'' section of Appendix A to 40 CFR part 55 to incorporate by reference the following relevant New Jersey air pollution control rules that are currently in effect:

Chapter 27 Subchapter 2—Control and Prohibition of Open Burning (Effective 6/20/1994),

N.J.A.C. 7:27–2.1 through 2.4,7:27–2.6 through 2.8, and 7:27–2.12 through 2.13;

Chapter 27 Subchapter 3—Control and Prohibition of Smoke from Combustion of Fuel (Effective 2/4/2002);

Chapter 27 Subchapter 4—Control and Prohibition of Particles from

[1] The reader may refer to the Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

[2] Each COA, which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, as in New Jersey, EPA will use its own administrative and procedural requirements to implement the substantive requirements. See 40 CFR 55.14(c)(4).

Combustion of Fuel (Effective 4/20/2009);

Chapter 27 Subchapter 5—Prohibition of Air Pollution (Effective 10/12/1977);

Chapter 27 Subchapter 6—Control and Prohibition of Particles from Manufacturing Processes (Effective 6/12/1998);

Chapter 27 Subchapter 7—Sulfur (Effective 11/6/2017), N.J.A.C. 7:27–7.1 and 7.2;

Chapter 27 Subchapter 8—Permits and Certificates for Minor Facilities (and Major Facilities without an Operating Permit) (Effective 1/16/2018), N.J.A.C. 7:27–8.1 through 8.9, 7:27–8.11 through 8.21, 7:27–8.23 through 8.25, 7:27–8.27, and Appendix 1;

Chapter 27 Subchapter 9—Sulfur in Fuels (Effective 9/20/2010);

Chapter 27 Subchapter 10—Sulfur in Solid Fuels (Effective 9/6/2011);

Chapter 27 Subchapter 11—Incinerators (Effective 5/4/1998);

Chapter 27 Subchapter 12—Prevention and Control of Air Pollution Emergencies (Effective 5/20/1974);

Chapter 27 Subchapter 16—Control and Prohibition of Air Pollution by Volatile Organic Compounds (Effective 1/16/2018), N.J.A.C. 7:27–16.1 through 16.10, 7:27–16.12 through 16.13, 7:27–16.16 through 16.23, 7:27–16.27, and Appendix I and II;

Chapter 27 Subchapter 18—Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rules) (Effective 11/6/2017);

Chapter 27 Subchapter 19—Control and Prohibition of Air Pollution from Oxides of Nitrogen (Effective 1/16/2018), N.J.A.C. 7:27–19.1 through 19.8, 7:27–19.11, 7:27–19.13 through 19.21, 7:27–19.23, and 7:27–19.25 through 19.26;

Chapter 27 Subchapter 20—Used Oil Combustion (Effective 9/6/2011);

Chapter 27 Subchapter 21—Emission Statements (Effective 1/16/2018);

Chapter 27 Subchapter 22—Operating Permits (Effective 1/16/2018);

Chapter 27B Subchapter 1—Sampling and Analytical Procedures for Determining Emissions of Particles from Manufacturing Processes and from Combustion of Fuels (Effective 6/21/1976);

Chapter 27B Subchapter 2—Procedures for Visual Determination of the Opacity (Percent) and Shade or Appearance (Ringelmann Number) of Emissions from Sources (Effective 6/21/1976); and

Chapter 27B Subchapter 3—Air Test Method 3: Sampling and Analytical Procedures for the Determination of Volatile Organic Compounds from Source Operations (Effective 12/1/2008).

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the NJDEP air rules that are applicable to OCS sources and which are currently in effect. These regulations are described in Section III (''What Action is EPA Proposing to Take?'') of this preamble. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 2 Office. Please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore air control requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into part 55 as they exist onshore. 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, the EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the Clean Air Act. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy discretion by the EPA. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993); and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandate Reform Act of 1995 (Pub. L. 04–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, nor does it impose substantial direct costs on tribal governments, nor preempt tribal law.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: January 31, 2018.

Peter D. Lopez,

Regional Administrator, Region 2.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

■ 1. The authority citation for 40 CFR part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

■ 2. Section 55.14 is amended by revising the sixth sentence in paragraph (e) introductory text and paragraph (e)(15)(i)(A) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) *State and local requirements.* * * * Copies of rules pertaining to particular states or local areas may be inspected or obtained from the EPA Docket Center—Public Reading Room, EPA West Building, Room 3334 1301 Constitution Avenue NW, Washington, DC 20004 or the appropriate EPA regional offices: U.S. EPA, Region 1 (Massachusetts) One Congress Street, Boston, MA 02114–2023; U.S. EPA, Region 2 (New Jersey and New York), 290 Broadway, New York, NY 10007–1866; U.S. EPA, Region 3 (Delaware), 1650 Arch Street, Philadelphia, PA 19103, (215) 814–5000; U.S. EPA, Region 4 (Florida and North Carolina), 61 Forsyth Street, Atlanta, GA 30303; U.S. EPA, Region 9 (California), 75 Hawthorne Street, San Francisco, CA 94105; and U.S. EPA, Region 10 (Alaska), 1200 Sixth Avenue, Seattle, WA 98101. * * *

* * * * *

(15) * * *

(i) * * *

(A) State of New Jersey Requirements Applicable to OCS Sources, January 16, 2018.

* * * * *

■ 3. Appendix A to part 55 is amended by revising paragraph (a)(1) under the heading ''New Jersey'' to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated By Reference Into 40 CFR Part 55, By State

* * * * *

NEW JERSEY

(a) * * *

(1) The following State of New Jersey requirements are applicable to OCS Sources, as of January 16, 2018. New Jersey State Department of Environmental Protection—New Jersey Administrative Code. The following sections of Title 7:

Chapter 27 Subchapter 2—Control and Prohibition of Open Burning (Effective 6/20/1994)

N.J.A.C. 7:27–2.1. Definitions
N.J.A.C. 7:27–2.2. Open burning for salvage operations
N.J.A.C. 7:27–2.3. Open burning of refuse
N.J.A.C. 7:27–2.4. General provisions
N.J.A.C. 7:27–2.6. Prescribed burning
N.J.A.C. 7:27–2.7. Emergencies
N.J.A.C. 7:27–2.8. Dangerous material
N.J.A.C. 7:27–2.12. Special permit
N.J.A.C. 7:27–2.13. Fees

Chapter 27 Subchapter 3—Control and Prohibition of Smoke From Combustion of Fuel (Effective 2/4/2002)

N.J.A.C. 7:27–3.1. Definitions
N.J.A.C. 7:27–3.2. Smoke emissions from stationary indirect heat exchangers
N.J.A.C. 7:27–3.3. Smoke emissions from marine installations
N.J.A.C. 7:27–3.4. Smoke emissions from the combustion of fuel in mobile sources
N.J.A.C. 7:27–3.5. Smoke emissions from stationary internal combustion engines and stationary turbine engines
N.J.A.C. 7:27–3.6. Stack test
N.J.A.C. 7:27–3.7. Exceptions

Chapter 27 Subchapter 4—Control and Prohibition of Particles From Combustion of Fuel (Effective 4/20/2009)

N.J.A.C. 7:27–4.1. Definitions
N.J.A.C. 7:27–4.2. Standards for the emission of particles
N.J.A.C. 7:27–4.3. Performance test principle
N.J.A.C. 7:27–4.4. Emissions tests
N.J.A.C. 7:27–4.6. Exceptions

Chapter 27 Subchapter 5—Prohibition of Air Pollution (Effective 10/12/1977)

N.J.A.C. 7:27–5.1. Definitions
N.J.A.C. 7:27–5.2. General provisions

Chapter 27 Subchapter 6—Control and Prohibition of Particles From Manufacturing Processes (Effective 6/12/1998)

N.J.A.C. 7:27–6.1. Definitions
N.J.A.C. 7:27–6.2. Standards for the emission of particles
N.J.A.C. 7:27–6.3. Performance test principles
N.J.A.C. 7:27–6.4. Emissions tests
N.J.A.C. 7:27–6.5. Variances
N.J.A.C. 7:27–6.7. Exceptions

Chapter 27 Subchapter 7—Sulfur (Effective 11/6/2017)

N.J.A.C. 7:27–7.1. Definitions
N.J.A.C. 7:27–7.2. Control and prohibition of air pollution from sulfur compounds

Chapter 27 Subchapter 8—Permits and Certificates for Minor Facilities (and Major Facilities Without an Operating Permit) (Effective 1/16/2018)

N.J.A.C. 7:27–8.1. Definitions
N.J.A.C. 7:27–8.2. Applicability
N.J.A.C. 7:27–8.3. General provisions
N.J.A.C. 7:27–8.4. How to apply, register, submit a notice, or renew
N.J.A.C. 7:27–8.5. Air quality impact analysis
N.J.A.C. 7:27–8.6. Service fees
N.J.A.C. 7:27–8.7. Operating certificates
N.J.A.C. 7:27–8.8. General permits
N.J.A.C. 7:27–8.9. Environmental improvement pilot tests
N.J.A.C. 7:27–8.11. Standards for issuing a permit
N.J.A.C. 7:27–8.12. State of the art
N.J.A.C. 7:27–8.13. Conditions of approval
N.J.A.C. 7:27–8.14. Denials
N.J.A.C. 7:27–8.15. Reporting requirements
N.J.A.C. 7:27–8.16. Revocation
N.J.A.C. 7:27–8.17. Changes to existing permits and certificates
N.J.A.C. 7:27–8.18. Permit revisions
N.J.A.C. 7:27–8.19. Compliance plan changes
N.J.A.C. 7:27–8.20. Seven-day notice changes
N.J.A.C. 7:27–8.21. Amendments
N.J.A.C. 7:27–8.23. Reconstruction
N.J.A.C. 7:27–8.24. Special provisions for construction but not operation
N.J.A.C. 7:27–8.25. Special provisions for pollution control equipment or pollution prevention process modifications
N.J.A.C. 7:27–8.27. Special facility-wide permit provisions

Appendix 1

Chapter 27 Subchapter 9—Sulfur in Fuels (Effective 9/20/2010)

N.J.A.C. 7:27–9.1. Definitions
N.J.A.C. 7:27–9.2. Sulfur content standards
N.J.A.C. 7:27–9.3. Exemptions
N.J.A.C. 7:27–9.4. Waiver of air quality modeling

Chapter 27 Subchapter 10—Sulfur in Solid Fuels (Effective 9/6/2011)

N.J.A.C. 7:27–10.1. Definitions
N.J.A.C. 7:27–10.2. Sulfur contents standards
N.J.A.C. 7:27–10.3. Expansion, reconstruction or construction of solid fuel burning units
N.J.A.C. 7:27–10.4. Exemptions
N.J.A.C. 7:27–10.5. SO_2 emission rate determinations

Chapter 27 Subchapter 11—Incinerators (Effective 5/4/1998)

N.J.A.C. 7:27–11.1. Definitions
N.J.A.C. 7:27–11.2. Construction standards
N.J.A.C. 7:27–11.3. Emission standards
N.J.A.C. 7:27–11.4. Permit to construct; certificate to operate
N.J.A.C. 7:27–11.5. Operation
N.J.A.C. 7:27–11.6. Exceptions

Chapter 27 Subchapter 12—Prevention and Control of Air Pollution Emergencies (Effective 5/20/1974)

N.J.A.C. 7:27–12.1. Definitions
N.J.A.C. 7:27–12.2. Emergency criteria
N.J.A.C. 7:27–12.3. Criteria for emergency termination
N.J.A.C. 7:27–12.4. Standby plans
N.J.A.C. 7:27–12.5. Standby orders
Table I Emission Reduction Objectives
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Table III Emission Reduction Objectives

Chapter 27 Subchapter 16—Control and Prohibition of Air Pollution by Volatile Organic Compounds (Effective 1/16/2018)

N.J.A.C. 7:27–16.1. Definitions
N.J.A.C. 7:27–16.1A. Purpose, scope, applicability, and severability
N.J.A.C. 7:27–16.2. VOC stationary storage tanks
N.J.A.C. 7:27–16.3. Gasoline transfer operations
N.J.A.C. 7:27–16.4. VOC transfer operations, other than gasoline
N.J.A.C. 7:27–16.5. Marine tank vessel loading and ballasting operations
N.J.A.C. 7:27–16.6. Open top tanks and solvent cleaning operations
N.J.A.C. 7:27–16.7. Surface coating and graphic arts operations
N.J.A.C. 7:27–16.8. Boilers
N.J.A.C. 7:27–16.9. Stationary combustion turbines
N.J.A.C. 7:27–16.10. Stationary reciprocating engines
N.J.A.C. 7:27–16.12. Surface coating operations at mobile equipment repair and refinishing facilities
N.J.A.C. 7:27–16.13. Flares
N.J.A.C. 7:27–16.16. Other source operations

References

Appendix

Chapter 27B Subchapter 3—Air Test Method 3: Sampling and Analytical Procedures for the Determination of Volatile Organic Compounds from Source Operations (Effective 12/1/2008)

N.J.A.C. 7:27B–3.1. Definitions
N.J.A.C. 7:27B–3.2. Sampling and analytical protocol: acceptable test methods
N.J.A.C. 7:27B–3.3. Operating conditions during the test
N.J.A.C. 7:27B–3.4. Sampling facilities
N.J.A.C. 7:27B–3.5. Source operations and applicable test methods
N.J.A.C. 7:27B–3.6. Procedures for the determinations of vapor pressures of a single known VOC or mixtures of known and/or unknown VOC
N.J.A.C. 7:27B–3.7. Procedures for the direct measurement of volatile organic compounds using a flame ionization detector (FID), a photoionization detector (PID) or a non-dispersive infrared analyzer (NDIR)
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N.J.A.C. 7:27B–3.10. Procedures for the determination of volatile organic compounds in surface coating formulations
N.J.A.C. 7:27B–3.11. Procedures for the determination of volatile organic compounds emitted from transfer operations using a flame ionization detector (FID) or non-dispersive infrared analyzer (NDIR)
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N.J.A.C. 7:27B–3.13. Procedures for the determination of leak tightness of gasoline delivery vessels
N.J.A.C. 7:27B–3.14. Procedures for the direct detection of fugitive volatile organic compound leaks
N.J.A.C. 7:27B–3.15. Procedures for the direct detection of fugitive volatile organic compound leaks from gasoline tank trucks and vapor collection systems using a combustible gas detector
N.J.A.C. 7:27B–3.18. Test methods and sources incorporated by reference.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 73

[AU Docket No. 17–143; DA 18–91]

Auction of Cross-Service FM Translator Construction Permits Scheduled for May 15, 2018; Comment Sought on Competitive Bidding Procedures for Auction 99

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; proposed auction procedures.

SUMMARY: The Wireless Telecommunications and Media Bureaus (the Bureaus) announce an auction of certain cross-service FM translator construction permits. This document also seeks comment on competitive bidding procedures and proposed minimum opening bids for Auction 99.

DATES: Comments are due on or before February 13, 2018, and reply comments are due on or before February 21, 2018. Bidding for FM translator construction permits in Auction 99 is scheduled to begin on May 15, 2018.

ADDRESSES: Interested parties may submit comments in response to the Auction 99 Comment Public Notice by any of the following methods:

- *FCC's website:* Federal Communication Commission's Electronic Comment Filing System (ECFS): *http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail:* FCC Headquarters, 445 12th Street SW, Room TW–A325, Washington, DC 20554.
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, or 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).

For detailed instructions for submitting comments, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For auction legal questions, Lynne Milne in the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division at (202) 418–0660. For general auction questions, the Auctions Hotline at (717) 338–2868. For FM translator service questions, James Bradshaw, Lisa Scanlan or Tom Nessinger in the Media Bureau's Audio Division at (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of the Auction 99 Comment Public Notice in AU Docket No. 17–143, DA 18–91, released on January 31, 2018. The complete text of this document, including its attachment, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554. The Auction 99 Comment Public Notice and related documents also are available on the internet at the Commission's website: *http://wireless.fcc.gov/auctions/99/,* or by using the search function for AU Docket No. 17–143 on the Commission's ECFS web page at *http://www.fcc.gov/cgb/ecfs/.*

All filings in response to the Auction 99 Comment Public Notice must refer to AU Docket No.17–143. The Bureaus strongly encourage interested parties to file comments electronically, and request that an additional copy of all comments and reply comments be submitted electronically to the following address: *auction99@fcc.gov.*

Electronic Filers: Comments may be filed electronically using the internet by accessing ECFS: *http://apps.fcc.gov/ecfs.* Follow the instructions for submitting comments.

Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission (FCC). All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to the FCC Headquarters at 445 12th Street SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. Eastern Time (ET). All hand deliveries must be held together with rubber bands or fasteners. Any envelope or box must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

I. Introduction

1. On June 1, 2017, the Bureaus announced an auction filing window for AM broadcasters seeking new cross-service FM translator station

construction permits. By this Public Notice, the Bureaus announce an auction of certain cross-service FM translator construction permits and seek comment on the procedures to be used for this auction, designated as Auction 99. Bidding in this auction is scheduled to commence on May 15, 2018. Auction 99 will be a closed auction: Only those entities listed in Attachment A of the Auction 99 Comment Public Notice will be eligible to participate further in Auction 99.

II. Construction Permits in Auction 99

2. Auction 99 will resolve mutually exclusive (MX) applications for construction permits for commercial cross-service FM translator stations. Competitive bidding will be used to select winning bidders for up to 12 new cross-service FM translator permits. A list of the locations and channels of these proposed stations is included in Attachment A of the Auction 99 Comment Public Notice. Attachment A also listed a proposed minimum opening bid and a proposed upfront payment amount for each construction permit.

3. An applicant listed in Attachment A may become qualified to bid only if it meets the additional filing, qualification, payment and other applicable rules, policies and procedures. Each qualified bidder may become eligible to bid on only those construction permits specified for that applicant in Attachment A to the Auction 99 Comment Public Notice. Each of the engineering proposals within each MX group are directly mutually exclusive with one another; therefore, no more than one construction permit will be awarded for each MX group identified in Attachment A. Under the Commission's established precedent, because mutual exclusivity exists for auction purposes, once mutually exclusive applications are accepted, even if only one applicant for a particular construction permit becomes qualified to bid, that applicant must submit a bid in order to be eligible to obtain that construction permit.

III. Processing of Short-Form Applications (FCC FORM 175) and Minor Corrections

A. Initial Review of FCC Form 175

4. The Bureaus will process all timely submitted Forms 175 to determine which are complete, and subsequently will issue a public notice identifying those that are complete and those that are incomplete or deficient because of minor defects that may be corrected. That public notice will provide instructions for applicants to make only minor corrections to their Forms 175. The public notice will include a deadline for resubmitting corrected Forms 175.

B. Updates to Auction Applications Outside of Filing Windows

5. Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission of any substantial change that may be of decisional significance to that application. Thus, section 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. See also 47 CFR 1.2105(b)(4), (c).

6. If information needs to be submitted pursuant to sections 1.65 or 1.2105 outside of the upcoming resubmission window in Auction 99, the applicant must submit a letter briefly summarizing the changes by email to *auction99@fcc.gov.* Such email must include a subject or caption referring to Auction 99 and the name of the applicant. If any information needs to be submitted during the upcoming resubmission window pursuant to sections 1.65 or 1.2105, that information must be submitted within an applicant's Form 175.

IV. Bureau Seeks Comment on Procedures for Auction Applications

7. The Bureaus seek comment on whether our application of certain aspects of the current rules governing auctions should be modified to implement our prior decision to allow eligible AM licensees having any of the same controlling interests in common to file separate Forms 175, rather than a single Form 175, as is currently required. In recognition of the specific eligibility provisions and filing procedures for this auction window, the Bureaus waived, for Auction 99, section 1.2105(a)(3)'s prohibition on the filing of more than one Form 175 in an auction by entities with any of the same controlling interests. Thus, the Bureaus permitted entities controlled by the same individual or set of individuals to file separate Forms 175 for Auction 99.

8. The prohibition on the filing of more than one Form 175 in an auction by entities with any of the same controlling interests was adopted in 2015 in conjunction with other rule changes. Under section 1.2105(a), as revised in 2015, each auction applicant must certify that it has disclosed any arrangements or understandings of any kind relating to the licenses being auctioned to which it (or any party that controls or is controlled by it) is a party, and must certify that it (or any party that controls or is controlled by it) has not entered and will not enter any arrangement or understanding of any kind relating directly or indirectly to bidding at auction with any other applicant for the auction, among others. In 2015, the Commission also revised the rule prohibiting certain communications, section 1.2105(c), to prohibit a communication of bids or bidding strategies between any applicants in an auction, and thus the prohibition is no longer limited to a communication between applicants that had applied for construction permits to serve the same area. In addition, the revisions to that rule removed a prior exception to section 1.2105(c) under which applicants that had entered into bidding-related agreements could engage in certain communications so long as each entity had disclosed the other as a party to such an agreement on its auction application pursuant to section 1.2105(a)(2)(viii). For purposes of section 1.2105(c), an applicant is defined as including all officers and directors of the entity submitting a Form 175, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a Form 175. In applying the prohibited communication rule, the Bureaus have found that, where an individual served as an officer and director for two or more applicants subject to the rule, the bids and bidding strategies of one applicant are presumptively conveyed to the other applicant. Consequently, the Bureaus determined that, absent a disclosed bidding agreement between such applicants creating an applicable exception under the prior rule, an apparent violation of section 1.2105(c) would occur.

9. Finally, in a change related to the prohibition on joint bidding agreements and the changes to the prohibited communication rule, revised section 1.2105(a)(2)(iii) now prohibits any individual from serving as an authorized bidder of more than one applicant.

10. In the event that Auction 99 applicants under common control may have filed separate Forms 175 pursuant to the Bureaus' waiver of section 1.2105(a)(3), such applicants could be at risk of violating section 1.2105(c) because the Commission presumes that

bidding strategies are communicated between entities that share a common officer or director. Moreover, current rules bar most kinds of joint bidding agreements that may have, under the prior rule, permitted certain communications between commonly controlled entities or other auction applicants under the former rules.

11. Accordingly, the Bureaus seek comment on whether it would be appropriate to waive or modify the application of section 1.2105 provisions so that Auction 99 applicants relying on the waiver of section 1.2105(a)(3) will not thereby violate such other provisions. With respect to a communication between commonly owned applicants, this auction appears analogous to the circumstances of Auction 1001, the reverse auction portion of the broadcast incentive auction. In that case, as here, applicants to participate in the auction were limited to specified current licensees of the Commission. Consequently, it was clear that multiple applicants would be commonly controlled.

12. With respect to implementing the commonly controlled applicant exception in the broadcast incentive auction, the Commission provided that the prohibition did not apply to a communication between different applicants if they share a common controlling interest, director, officer, or governing board member as of the deadline for submitting applications to participate in the reverse auction. The Commission expressly noted that an applicant's communication would not qualify for this exception based on a new director, officer or governing board member added after the application deadline. According to the Commission, if a covered licensee were to appoint a new officer after the broadcast incentive auction application deadline, that new officer would be subject to the rule and not included within the exception.

13. In this auction, when applying the Commission's general competitive bidding rules, do the limitations on eligibility to bid on specific permits in this closed auction similarly provide good cause to waive section 1.2105(c) for communications between commonly controlled applicants consistent with the exception provided for in the broadcast incentive auction? Do other factors demonstrate good cause for such relief, or some other form of relief? Commenters are encouraged to identify circumstances of this auction that should guide us in developing application procedures under the current competitive bidding rules, including specific aspects of the auction application process and processing procedures, the nature of the permits to be awarded, or other relevant considerations.

V. Bureaus Seek Comment on Bidding Procedures

14. The Bureaus, under delegated authority, seek comment on a variety of auction-specific procedures prior to the start of bidding in Auction 99.

A. Auction Structure

15. *Simultaneous Multiple Round Auction Design.* The Bureaus propose using the Commission's standard simultaneous multiple-round auction format for Auction 99. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. Typically, bidding remains open on all construction permits until bidding stops on every construction permit. The Bureaus seek comment on this proposal.

16. *Bidding Rounds.* Auction 99 will consist of sequential bidding rounds, each followed by the release of round results. The Commission will conduct Auction 99 over the internet using the FCC auction bidding system. Bidders will also have the option of placing bids by telephone through a dedicated auction bidder line.

17. The Bureaus propose to retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Under this proposal, the Bureaus may change the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors. The Bureaus seek comment on this proposal. Commenters on this issue should address the role of the bidding schedule in managing the pace of the auction, specifically discussing the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means.

18. *Stopping Rule.* To complete the auction within a reasonable time, the Bureaus propose to employ a simultaneous stopping rule approach for Auction 99, which means all construction permits remain available for bidding until bidding stops on every construction permit. Specifically, bidding would close on all construction permits after the first round in which no bidder submits any new bids, no bidder applies a proactive waiver, or, if bid withdrawals are permitted in this auction, no bidder withdraws any provisionally winning bid which is a bid that would become a final winning bid if the auction were to close in that given round. Thus, unless the Bureaus announce alternative procedures, bidding would remain open on all construction permits until bidding stops on every construction permit. Consequently, it is not possible to determine in advance how long the bidding in this auction will last.

19. Further, the Bureaus propose to retain the discretion to exercise any of the following options during Auction 99. (1) Use a modified version of the simultaneous stopping rule that would close the auction for all construction permits after the first round in which no bidder applies a waiver, no bidder withdraws a provisionally winning bid (if withdrawals are permitted in this auction), or no bidder places any new bid on a construction permit for which it is not the provisionally winning bidder, which means that, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule. (2) Use a modified version of the simultaneous stopping rule that would close the auction for all construction permits after the first round in which no bidder applies a waiver, no bidder withdraws a provisionally winning bid (if withdrawals are permitted in this auction), or no bidder places any new bid on a construction permit that already has a provisionally winning bid, which means that, absent any other bidding activity, a bidder placing a new bid on an FCC-held construction permit (a construction permit that does not already have a provisionally winning bid) would not keep the auction open under this modified stopping rule. (3) Use a modified version of the simultaneous stopping rule that combines options (1) and (2). (4) The auction would close after a specified number of additional rounds (special stopping rule) to be announced by the Bureaus. If the Bureaus invoke this special stopping rule, they will accept bids in the specified final round(s), after which the auction will close. (5) The auction would remain open even if no bidder places any new bid, applies a waiver, or withdraws any provisionally winning bid (if withdrawals are permitted in this auction). In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

20. The Bureaus propose to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, the Bureaus are likely to attempt to change the pace of the auction. For example, the Bureaus may adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids. The Bureaus proposed to retain the discretion to exercise any of these options with or without prior announcement during the auction. The Bureaus seek comment on these proposals.

21. *Auction Delay, Suspension or Cancellation.* Pursuant to 47 CFR 1.2104(i), the Bureaus propose that they may delay, suspend, or cancel bidding in Auction 99 in the event of a natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureaus would notify participants of any such delay, suspension or cancellation by public notice and/or through the FCC auction bidding system's announcement function. If bidding is delayed or suspended, the Bureaus may, in their sole discretion, elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasized that they will exercise this authority solely at their discretion, and not as a substitute for situations in which bidders may wish to apply activity rule waivers. The Bureaus seek comment on this proposal.

B. Auction Procedures

22. *Upfront Payments and Bidding Eligibility.* The Bureaus have delegated authority and discretion to determine an appropriate upfront payment for each construction permit being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar construction permits. The upfront payment is a refundable deposit made by an applicant to establish eligibility to bid on construction permits. Upfront payments that are related to the specific construction permits being auctioned protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of bidding. With these considerations in mind, the Bureaus proposed the upfront payments set forth in Attachment A of the Auction 99 Comment Public Notice. The Bureaus seek comment on the upfront payments specified in this Attachment A.

23. The Bureaus further propose that the amount of the upfront payment submitted by a bidder will determine its initial bidding eligibility in bidding units. The Bureaus propose to assign each construction permit a specific number of bidding units, equal to one bidding unit per dollar of the upfront payment listed in Attachment A of the Auction 99 Comment Public Notice. The number of bidding units for a given construction permit is fixed and does not change during the auction as prices change. If an applicant is found to be qualified to bid on more than one permit in Auction 99, such a bidder may place bids on multiple construction permits, provided that the total number of bidding units associated with those construction permits does not exceed the bidder's current eligibility. A bidder cannot increase its eligibility during the auction; it can only maintain its eligibility or decrease its eligibility. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid (or hold provisionally winning bids) in any single round, and submit an upfront payment amount covering that total number of bidding units. The Bureaus request comment on these proposals.

24. *Activity Rule.* In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. The Bureaus propose a single stage auction with the following activity requirement: In each round of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 100 percent of its bidding eligibility. A bidder's activity in a round will be the sum of the bidding units associated with any construction permits upon which it places bids during the current round and the bidding units associated with any construction permits for which it holds provisionally winning bids. Failure to maintain the requisite activity level would result in the use of an activity rule waiver, if any, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction. The Bureaus seek comment on this proposal.

25. *Activity Rule Waivers and Reducing Eligibility.* When a bidder's activity in the current round is below the required minimum level, it may preserve its current level of eligibility through an activity rule waiver, if available. An activity rule waiver applies to an entire round of bidding, not to a particular construction permit. Activity rule waivers can be either proactive or automatic. Activity rule waivers are principally a mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round.

26. The FCC auction bidding system will assume that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity is below the minimum required unless (1) the bidder has no activity rule waivers remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, the bidder's current eligibility will be permanently reduced, possibly curtailing or eliminating the ability to place additional bids in the auction.

27. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC auction bidding system. In this case, the bidder's eligibility would be permanently reduced to bring it into compliance with the specified activity requirement. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder cannot regain its lost bidding eligibility.

28. Under the proposed simultaneous stopping rule, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively were to apply an activity rule waiver (using the proactive waiver function in the FCC auction bidding system) during a bidding round in which no bids are placed or withdrawn (if bid withdrawals are permitted in this auction), the auction would remain open and the bidder's eligibility would be preserved.

An automatic waiver applied by the FCC auction bidding system in a round in which there are no new bid, no bid withdrawal (if bid withdrawals are permitted in this auction), or no proactive waiver will not keep the auction open. The Bureaus propose that each bidder in Auction 99 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction. The Bureaus seek comment on this proposal.

29. *Reserve Price or Minimum Opening Bids.* Normally, a reserve price is an absolute minimum price below which a construction permit or license will not be sold in a given auction. The Bureaus did not propose to establish separate reserve prices for the Auction 99 construction permits.

30. A minimum opening bid is the minimum bid price set at the beginning of the auction below which no bids are accepted. Because it is an effective tool for accelerating the competitive bidding process, the Bureaus propose minimum opening bid amounts for Auction 99 determined by taking into account the type of service and class of facility offered, market size, population covered by the proposed broadcast facility, and recent broadcast transaction data. Attachment A of the Auction 99 Comment Public Notice lists a proposed minimum opening bid amount for each construction permit available in Auction 99. The Bureaus seek comment on the minimum opening bid amounts specified in Attachment A of the Auction 99 Comment Public Notice.

31. If commenters believe that these minimum opening bid amounts will result in unsold construction permits, are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so and comment on the desirability of an alternative approach. The Bureaus ask commenters to support their claims with valuation analyses and suggested amounts or formulas for reserve prices or minimum opening bids. In establishing the minimum opening bid amounts, the Bureaus particularly seek comment on factors that could reasonably have an impact on bidders' valuation of the broadcast spectrum, including the type of service offered, market size, population covered by the proposed broadcast facility, and any other relevant factors.

32. *Bid Amounts.* The Bureaus propose that, if the bidder has sufficient eligibility to place a bid on a particular construction permit in a round, an eligible bidder will be able to place a bid on that construction permit in any of up to nine different amounts. Under this proposal, the FCC auction bidding system interface will list the acceptable bid amounts for each construction permit.

33. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount will be a certain percentage higher. The percentage used for this calculation, the minimum acceptable bid increment percentage, is multiplied by the provisionally winning bid amount, and the resulting amount is added to the provisionally winning bid amount. If, for example, the minimum acceptable bid increment percentage is 10 percent, then the provisionally winning bid amount is multiplied by 10 percent. The result of that calculation is added to the provisionally winning bid amount, and that sum is rounded using the Commission's standard rounding procedure for auctions. If bid withdrawals are permitted in this auction, in the case of a construction permit for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the construction permit.

34. The FCC will calculate the eight additional bid amounts using the minimum acceptable bid amount and an additional bid increment percentage. The minimum acceptable bid amount is multiplied by the additional bid increment percentage, and that result, rounded, is the additional increment amount. The first additional acceptable bid amount equals the minimum acceptable bid amount plus the additional increment amount. The second additional acceptable bid amount equals the minimum acceptable bid amount plus two times the additional increment amount; the third additional acceptable bid amount is the minimum acceptable bid amount plus three times the additional increment amount; etc. If, for example, the additional bid increment percentage is 5 percent, then the calculation of the additional increment amount is (minimum acceptable bid amount) * (0.05), rounded. The first additional acceptable bid amount equals (minimum acceptable bid amount) + (additional increment amount); the second additional acceptable bid amount equals (minimum acceptable bid amount) + (2 * (additional increment amount)); the third additional acceptable bid amount equals (minimum acceptable bid amount) + (3 * (additional increment amount)); etc. The Bureaus will round the results using the Commission's standard rounding procedures for auctions.

35. For Auction 99, the Bureaus propose to use a minimum acceptable bid increment percentage of 10 percent. This means that the minimum acceptable bid amount for a construction permit will be approximately 10 percent greater than the provisionally winning bid amount for the construction permit. To calculate the additional acceptable bid amounts, the Bureaus propose to use an additional bid increment percentage of 5 percent. The Bureaus seek comment on these proposals.

36. The Bureaus propose to retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid increment percentage, the additional bid increment percentage, and the number of acceptable bid amounts if the Bureaus determine that circumstances so dictate. Further, the Bureaus retain the discretion to do so on a construction-permit-by-construction-permit basis. The Bureaus also propose to retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureaus could set a $1,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid increment percentage results in a minimum acceptable bid amount that is $1,200 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at $1,000 above the provisionally winning bid. The Bureaus seek comment on the circumstances under which the Bureaus should employ such a limit, factors the Bureaus should consider when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing other parameters, such as changing the minimum acceptable bid percentage, the bid increment percentage, or the number of acceptable bid amounts. If the Bureaus exercise this discretion, they will alert bidders by announcement in the FCC auction bidding system during the auction. The Bureaus seek comment on these proposals.

37. *Provisionally Winning Bids.* Provisionally winning bids are bids that would become winning bids if the auction were to close in that given round. At the end of each bidding round, the FCC auction bidding system will determine a provisionally winning bid for each construction permit based on the highest bid amount received for that permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids become the winning bid at the end of the auction.

38. The auction bidding system assigns a random number to each bid when the bid is entered. If identical high bid amounts are submitted on a construction permit in any given round (*i.e.,* tied bids), the FCC auction bidding system will use a pseudo-random number generator to select a single provisionally winning bid from among the tied bids. The tied bid with the highest random number wins the tiebreaker and becomes the provisionally winning bid. The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to close with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If the construction permit receives any bids in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

39. A provisionally winning bid will be retained until there is a higher bid on the construction permit at the close of a subsequent round, unless the provisionally winning bid is withdrawn (if bid withdrawals are permitted in this auction). As a reminder, provisionally winning bids count toward a bidder's activity level for purposes of the activity rule.

40. *Bid Removal and Bid Withdrawal.* The FCC auction bidding system allows each bidder to remove any of the bids it placed in a round before the close of that round. By removing a bid placed within a round, a bidder effectively unsubmits the bid. In contrast to the bid withdrawal provisions, a bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder is no longer permitted to remove a bid.

41. The Bureaus seek comment on whether bid withdrawals should be permitted in Auction 99. When permitted in an auction, bid withdrawals provide a bidder with the option of withdrawing bids placed in prior rounds that have become provisionally winning bids. A bidder would be able to withdraw its provisionally winning bids using the withdraw function in the FCC auction bidding system. A bidder that withdraws its provisionally winning bid(s), if permitted in this auction, is subject to the bid withdrawal payment provisions of 47 CFR 1.2104(g) and 1.2109.

42. Based on the nature of the permits available in Auction 99 and on the experience of the Bureaus with past auctions of broadcast construction permits, the Bureaus propose to prohibit bidders from withdrawing any bid after the close of the round in which the bid was placed. The Bureaus made this proposal in light of the site- and applicant-specific nature and wide geographic dispersion of the permits available in this closed auction, which suggests that potential applicants for this auction will have limited opportunity to aggregate construction permits through the auction process because of the closed MX groups previously established. Thus, the Bureaus believe that it is unlikely that bidders will have a need to withdraw bids in this auction. Also, allowing bid withdrawals may encourage insincere bidding or increase opportunities for anti-competitive bidding in certain circumstances. The Bureaus also remain mindful that bid withdrawals, particularly those made late in this auction, could result in delays in licensing new FM translator stations and attendant delays in the offering of new broadcast service to the public. The Bureaus seek comment on their proposal to prohibit bid withdrawals in Auction 99.

C. Post-Auction Payments

43. *Interim Withdrawal Payment Percentage.* A bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or a subsequent auction. However, if a construction permit for which a bid has been withdrawn does not receive a subsequent higher bid or winning bid in the same auction, the FCC cannot calculate the final withdrawal payment until that construction permit receives a higher bid or winning bid in a subsequent auction. In such cases, when that final withdrawal payment cannot yet be calculated, the FCC imposes on the bidder responsible for the withdrawn bid an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed.

44. Pursuant to 47 CFR 1.2104(g)(1), the amount of the interim bid withdrawal payment may range from 3 to 20 percent of the withdrawn bid amount. If bid withdrawals are allowed in Auction 99, the Bureaus propose that the interim bid withdrawal payment be 20 percent of the withdrawn bid. The Bureaus request comment on using 20 percent for calculating an interim bid withdrawal payment amount in Auction 99. Commenters advocating the use of bid withdrawals in Auction 99 should also address the percentage of the interim bid withdrawal payment.

45. *Additional Default Payment Percentage.* Any winning bidder that defaults or is disqualified after the close of an auction (*i.e.,* fails to remit the required down payment by the specified deadline, fails to submit a timely long-form application, fails to make full and timely final payment, or is otherwise disqualified) is liable for a default payment under 47 CFR 1.2104(g)(2). This default payment consists of a deficiency payment equal to the difference between the amount of the Auction 99 bidder's winning bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. Based on the nature of the service and the construction permits being offered, the Bureaus propose for Auction 99 an additional default payment of 20 percent of the relevant bid. The Bureaus seek comment on this proposal.

VI. Procedural Matters

A. Supplemental Initial Regulatory Flexibility Analysis

46. As required by the Regulatory Flexibility Act of 1980 as amended (RFA), 5 U.S.C. 603, the Bureaus have prepared this Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in the Public Notice to supplement the Commission's Initial and Final Regulatory Flexibility Analyses completed in the Broadcast First Report and Order and multiple other Commission rulemaking orders pursuant to which Auction 99 will be conducted. Written public comments are requested on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the same filing

deadline for comments specified on the first page of the Auction 99 Comment Public Notice. The Commission will send a copy of the Public Notice, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

47. *Need for, and Objectives of, the Proposed Rules.* The Auction 99 Comment Public Notice seeks comment on proposed procedures to govern Auction 99, an auction of up to 12 cross-service FM translator construction permits. To promote the efficient and fair administration of the competitive bidding process for all Auction 99 participants, the Bureaus seek comment on the following: (1) Application of the current rules prohibiting certain communications between auction applicants and the related prohibition on joint bidding arrangements to implement the Bureaus' prior decision to allow eligible AM licensees having any of the same controlling interest in common to file separate Forms 175, rather than a single Form 175; (2) Use of a simultaneous multiple-round auction format, consisting of sequential bidding rounds with a simultaneous stopping rule (with discretion by the Bureaus to exercise alternative stopping rules under certain circumstances); (3) A specific minimum opening bid amount for each construction permit available in Auction 99; (4) A specific upfront payment amount for each construction permit; (5) Establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each construction permit; (6) Use of an activity rule that would require bidders to bid actively during the auction rather than waiting until late in the auction before participating; (7) A single stage auction in which a bidder is required to be active on 100 percent of its bidding eligibility in each round of the auction; (8) Provision of three activity rule waivers for each bidder to allow it to preserve bidding eligibility during the course of the auction; (9) Use of minimum acceptable bid amounts and additional acceptable increments, along with a proposed methodology for calculating such amounts, with the Bureaus retaining discretion to change their methodology if circumstances dictate; (10) A procedure for breaking ties if identical high bid amounts are submitted on a permit in a given round; (11) Bid removal procedures; (12) Whether to permit bid withdrawals; (13) Establishment of an interim bid withdrawal percentage of 20 percent of the withdrawn bid in the event the Bureaus allow bid withdrawals in Auction 99; and (14) Establishment of an additional default payment of 20 percent under 47 CFR 1.2104(g)(2) in the event that a winning bidder defaults or is disqualified after the auction.

48. *Legal Basis.* The Commission's statutory obligations to small businesses under the Communications Act of 1934, as amended, are found in 47 U.S.C. 309(j)(3)(B) and 309(j)(4)(D). The statutory basis for the Commission's competitive bidding rules is found in various provisions of the Communications Act of 1934, as amended, including 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), 303(r), 304, 307, and 309(i). The Commission has established a framework of competitive bidding rules pursuant to which it has conducted auctions since the inception of the auction program in 1994 and would conduct Auction 99. The Commission has directed the Bureaus, under delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of bidding in each auction.

49. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term small entity as having the same meaning as the terms small business, small organization, and small government jurisdiction. In addition, the term small business has the same meaning as the term small business concern under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated, (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

50. *Radio Stations.* This Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has established a small business size standard for this category as firms having $38.5 million or less in annual receipts. Economic Census data for 2012 shows that 2,849 radio station firms operated during that year. Of that number, 2,806 firms operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 million and 26 with annual receipts of $50 million or more. Therefore, based on the SBA's size standard the majority of such entities are small entities.

51. According to Commission staff review of the BIA/Kelsey, LLC's Media Access Pro Radio Database as of January 30, 2018, about 11,261 (or about 99.92 percent) of 11,270 commercial radio stations had revenues of $38.5 million or less and thus qualify as small entities under the SBA definition. The Bureaus note, however, that the SBA size standard data does not enable the Bureaus to make a meaningful estimate of the number of small entities who may participate in Auction 99. There are a maximum of 26 entities that may become qualified bidders in Auction 99, in which applicant eligibility is closed. The specific procedures and minimum opening bid amounts on which comment is sought in the Auction 99 Comment Public Notice will affect directly all applicants participating in Auction 99.

52. In addition, the Bureaus note that they are unable to accurately develop an estimate of how many of these 26 entities are small businesses based on the number of small entities that applied to participate in prior broadcast auctions, because that information is not collected from applicants for broadcast auctions in which bidding credits are not based on an applicant's size (as is the case in auctions of licenses for wireless services). Potential eligible bidders in Auction 99 may include existing holders of broadcast station construction permits or licenses. In 2013, the Commission estimated that 97 percent of radio broadcasters met the SBA's prior definition of small business concern, based on annual revenues of $7 million. The SBA has since increased that revenue threshold to $38.5 million, which suggests that an even greater percentage of radio broadcasters would fall within the SBA's definition. Based on Commission data 4,635 (99.94%) of 4,638 a.m. radio stations have revenue of $38.5 million or less. Accordingly, based on this data, the Bureaus conclude that the majority of Auction 99 eligible bidders will likely meet the SBA's definition of a small business concern.

53. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The Commission designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants. In the first part of the Commission's two-phased auction application process, parties desiring to participate in an auction file streamlined, short-form applications in which they certify under penalty of

perjury as to their qualifications. Eligibility to participate in bidding is based on an applicant's short-form application and certifications, as well as its upfront payment. In the second phase of the process, winning bidders file a more comprehensive long-form application. Thus, a small business which fails to become a winning bidder does not need to file a long-form application and provide the additional showings and more detailed demonstrations required of a winning bidder.

54. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

55. The Commission has taken steps to minimize any economic impact of its auction procedures on small businesses through among other things, the many resources it provides potential auction participants. Small entities and other auction participants may seek clarification of or guidance on complying with competitive bidding rules and procedures, reporting requirements, and the FCC's auction system. An FCC Auctions Hotline provides access to Commission staff for information about the auction process and procedures. The FCC Auctions Technical Support Hotline is another resource which provides technical assistance to applicants, including small business entities, on issues such as access to or navigation within the electronic FCC Form 175 and use of the FCC's auction system. Small entities may also utilize the web-based, interactive online tutorial produced by Commission staff for each auction to familiarize themselves with auction procedures, filing requirements, bidding procedures and other matters related to an auction. The Bureaus also make various databases and other sources of information, including the Media Bureau's Consolidated Database System, the Auctions program websites, and copies of Commission decisions, available to the public without charge, providing a low-cost mechanism for small businesses to conduct research prior to and throughout the auction. Prior to and at the close of Auction 99, the Bureaus will post public notices on the Auctions website, which articulate the procedures and deadlines. The Bureaus make this information easily accessible and without charge to benefit all Auction 99 applicants, including small businesses, thereby lowering their administrative costs to comply with the Commission's competitive bidding rules.

56. Prior to the start of bidding in each auction, eligible bidders are given an opportunity to become familiar with auction procedures and the bidding system by participating in a mock auction. Further, the Commission intends to conduct Auction 99 electronically over the internet using its web-based auction system that eliminates the need for bidders to be physically present in a specific location. Qualified bidders also have the option to place bids by telephone. These mechanisms are made available to facilitate participation in Auction 99 by all eligible bidders, and may result in significant cost savings for small business entities who utilize these alternatives. Moreover, the adoption of bidding procedures in advance of the auction, consistent with statutory directive, is designed to ensure that the auction will be administered predictably and fairly for all participants, including small businesses.

57. These proposed procedures for the conduct of Auction 99 constitute the more specific implementation of the competitive bidding rules contemplated by Parts 1 and 73 of the Commission's rules and the underlying rulemaking orders, including the Broadcast First Report and Order and relevant competitive bidding orders, and are fully consistent therewith.

58. *Federal Rules that May Duplicate, Overlap or Conflict with the Proposed Rules.* None.

B. Ex Parte Rules

59. This proceeding has been designated as a permit-but-disclose proceeding in accordance with the Commission's *ex parte* rules. While additional information is provided in the Auction 99 Comment Public Notice on these reporting requirements, participants in Auction 99 should familiarize themselves with the Commission's *ex parte* rules.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2018–03025 Filed 2–12–18; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2018–0009]

Removing Regulatory Barriers for Vehicles With Automated Driving Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Request for comment; public meeting.

SUMMARY: NHTSA is announcing a public meeting as part of the Agency's effort to seek public comments to identify any regulatory barriers in the existing Federal Motor Vehicle Safety Standards (FMVSS) to the testing, compliance certification, and compliance verification of vehicles with Automated Driving Systems (ADSs) and certain unconventional interior designs. The Agency published a **Federal Register** Notice of Request for Comments (RFC) titled Removing Regulatory Barriers for Vehicles with Automated Driving Systems on January 18, 2018, that included specific questions for which the Agency seeks comment (83 FR 2607, Docket No. NHTSA–2018–0009). NHTSA is holding this public meeting to present to the public a summary of the RFC and activities underway at NHTSA and across the industry regarding the identification and removal of barriers that might impede safe deployment of ADSs. This material is intended to better inform the public as they prepare comments in response to the RFC. Public comments are welcome at this meeting, but all should be oral, and any supporting presentations or materials should be submitted to the docket for consideration.

DATES: NHTSA will hold the public meeting on March 6, 2018, in Washington, DC. The meeting will start at 10 a.m. and continue until 3:30 p.m., EST. Check-in (through security) will begin at 9 a.m. Attendees should arrive early enough to enable them to go through security by 9:50 a.m.

ADDRESSES: The meeting will be held at the U.S. Department of Transportation headquarters building located at 1200 New Jersey Avenue SE, Washington, DC 20590 (Green Line Metro Station at Navy Yard) in the Conference Center. This facility is accessible to individuals with disabilities. The meeting will also be webcast live, and a link to the actual webcast will be available on NHTSA's technical ADSs website *https://www.nhtsa.gov/manufacturers/automated-driving-systems.*

FOR FURTHER INFORMATION CONTACT: If you have questions about the public meeting, please contact us at *av_info_nhtsa@dot.gov* or Debbie Sweet at *debbie.sweet@dot.gov,* 202–366–7179.

SUPPLEMENTARY INFORMATION:

Registration is encouraged for all attendees. Attendees should register at *https://www.surveymonkey.com/r/NHTSABarriers* by March 2, 2018. Please provide name, affiliation, and email, indicate if you wish to offer remarks (speaking would be limited to 10 minutes per person), and please indicate whether you are requesting specific accommodations. Space is limited, so advanced registration is encouraged.

Although attendees will be given the opportunity to offer comments, the Agency is limiting comments to oral only. We may not be able to accommodate all attendees who wish to make oral comments and will arrange the speakers on a first-come, first-served basis. However, if time does not allow for all comments during the meeting, comments may be submitted to the docket and will carry the same weight during review and analysis.

Should it be necessary to cancel the meeting due to inclement weather or other emergency, NHTSA will take all available measures to notify registered participants.

NHTSA will conduct the public meeting informally, and technical rules of evidence will not apply. We will arrange for a written transcript of the meeting and keep the official record open for 30 days after the meeting to allow submission of supplemental information. You may make arrangements for copies of the transcripts directly with the court reporter, and the transcript will also be posted in the docket when it becomes available. The webcast will be recorded and posted to the NHTSA website as well.

Written Comments: Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public meeting. Please submit all written comments no later than April 5, 2018, by any of the following methods:

- *Federal Rulemaking Portal:* Go to *http://www.regulations.gov.* 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:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. EST, Monday through Friday, except Federal Holidays.
- *Fax:* 202–366–1767.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below.

Docket: For access to the docket go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: 202–366–9826.

Privacy Act: 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.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://www.regulations.gov/privacyNotice.*

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should submit a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512).

Background: NHTSA wants to avoid impeding progress with unnecessary or unintended regulatory barriers to motor vehicles that have Automated Driving Systems (ADSs) and unconventional designs, especially those with unconventional interior designs. To enable vehicles with ADSs and with unconventional interiors while maintaining those existing safety requirements that will be needed and appropriate for those vehicles, NHTSA is developing plans and proposals for removing or modifying existing regulatory barriers to testing and compliance certification in those areas for which existing data and knowledge are sufficient to support decision-making. In other areas, plans and proposals cannot be developed until the completion of near-term research to determine how to revise the test procedures for those vehicles.

Part of NHTSA's responsibility in carrying out its safety mission is not only to develop and set new safety standards for new motor vehicles and motor vehicle equipment, but also to modify existing standards as necessary to respond to changing circumstances such as the introduction of new technologies. Examples of previous technological transitions that triggered the need to adapt and/or replace requirements in the FMVSS include the replacing of analog dashboards by digital ones, the replacing of mechanical control systems by electronic ones, and the first production of electric vehicles in appreciable numbers. The existing FMVSS can be found in the Code of Federal Regulations at 49 CFR part 571.

Almost all of NHTSA's FMVSS were developed and established well before ADS vehicles became a practicable possibility. As a result, the minimum performance requirements and test procedures in many of the FMVSS are based on assumptions about drivers occupying and controlling the vehicle. If a vehicle is designed so that only an ADS can control it rather than the human driver, and vehicle designers modify the passenger compartment, then many of the original assumptions will likely be invalid for that vehicle, and some may be problematic from a testing perspective.

Meeting and Draft Agenda: This public meeting is being held during the open comment period. The meeting is intended to present information regarding the RFC, questions of interest, activities within NHTSA with respect to barrier removal and activities external to NHTSA regarding barrier removal. This information will in turn provide more

thorough background for those submitting comments to the RFC. Following presentations by NHTSA and various stakeholders, the public will have an opportunity to provide remarks. Individuals who register to speak at the Public Meeting will have 10 minutes to present oral remarks to NHTSA staff. Clarification questions may be asked of the presenters. Those registered to provide remarks will have the first opportunity to speak. The meeting agenda follows:

9:00–9:55 a.m.—Arrival/Check-In
9:55–10:00 a.m.—Meeting Logistics
10:00–10:05 a.m.—Welcome Remarks
10:05–10:20 a.m.—NHTSA Remark Regarding RFC
10:20–10:50 a.m.—Presentation of NHTSA/VTTI Research
10:50–11:00 a.m.—Questions for NHTSA/VTTI
11:00–11:50 a.m.—Presentation of Industry Activities
11:50 a.m.–12:00 p.m.—Questions for Industry
12:00–1:00 p.m.—Lunch
1:00–2:15 p.m.—Comments from Registered Attendees
2:15–2:30 p.m.—Break
2:30–3:30 p.m.—Comments from Registered Attendees

Specific Guiding Questions: To help guide NHTSA's research to address testing and self-certification issues, we seek comments on the topics below (the same questions as presented in the Request for Comments). The Agency urges that, where possible, comments be supported by data and analysis to increase their usefulness. Please clearly indicate the source of such data.

A. Barriers to Testing, Certification, and Compliance Verification

1. What are the different categories of barriers that the FMVSS potentially create to the testing, certification and compliance verification of a new ADS vehicle lacking manual driving controls? Examples of barrier categories include the following:

a. Test procedures that cannot be conducted for vehicles with ADSs and with innovative interior designs; and

b. performance requirements that may serve a reduced safety purpose or even no safety purpose at all for vehicles with ADSs and thus potentially impose more cost and more restrictions on design than are warranted.

The first of the above categories is the primary focus of this document. However, the Agency seeks comments on both categories of barriers. If you believe that there are still other barrier categories, please identify them.

2. NHTSA requests comments on the statement made in NHTSA's February 2016 letter of interpretation to Google: That if a FMVSS lacks a test procedure that is suitable for the Agency's use in verifying a manufacturer's certification of compliance with a provision in that FMVSS, the manufacturer cannot validly certify the compliance of its vehicles with that provision. Do commenters agree that each of the standards identified in the letter as needing to be amended before manufacturers can certify compliance with it must be amended in order to permit certification? Why or why not? If there are other solutions, please describe them.

3. Do you agree (or disagree) that the FMVSS provisions identified in the Volpe report or Google letter as posing barriers to testing and certification are, in fact, barriers? Please explain why.

4. Do commenters think there are FMVSS provisions that pose barriers to testing and certification of innovative new vehicle designs, but were *not* covered in the Volpe report or Google letter? If so, what are they, how do they pose barriers, and how do you believe NHTSA should consider addressing them?

5. Are there ways to solve the problems that may be posed by any of these FMVSS provisions without conducting additional research? If so, what are they and why do you believe that no further research is necessary? For example, can some apparent problems be solved through interpretation? If so, which ones?

6. Similarly, are there ways to solve the problems that may be posed by any of these FMVSS provisions without rulemaking? For example, can some apparent problems be solved through interpretation without either additional research or through rulemaking? If so, which ones?

7. In contrast, if a commenter believes that legislation might be necessary to enable NHTSA to remove a barrier identified by the commenter, please explain why, and please identify the specific existing law that the commenter thinks should be changed and describe how it should be changed. If there are associated regulations that the commenter believes should be changed, please identify the specific CFR citation and explain why they need to be changed.

8. Many FMVSS contain test procedures that are based on the assumed presence of a human driver and will therefore likely need to be amended to accommodate vehicles that cannot be driven by humans. Other FMVSS test procedures may seem, based on a plain reading of their language, to accommodate vehicles that cannot be driven by humans, but it may nevertheless be unclear how NHTSA (or a manufacturer attempting to self-certify to the test) would instruct the vehicle to perform the test as written.

a. Do commenters believe that these procedures should apply to a vehicle that cannot be driven by a human? If so, why? If there are data to support this position, please provide it.

b. If not, can NHTSA test in some other manner? Please identify the alternative manner and explain why it would be appropriate.

9. What research would be necessary to determine how to instruct a vehicle with an ADS, but without manual means of control, to follow a driving test procedure? Is it possible to develop a single approach to inputting these ''instructions'' in a manner applicable to all vehicle designs and all FMVSS, or will the approach need to vary? If so, why and how? If commenters believe there is a risk of gaming, what would that risk be and how could it be reduced or prevented?

10. In lieu of the approaches suggested in questions 8 and 9, is there an alternative means of demonstrating equivalent level of safety that is reliable, objective and practicable?

11. For FMVSS that include test procedures that assume a human driver is seated in a certain seating position (for example, procedures that assess whether a rearview mirror provides an image in the correct location), should NHTSA simply amend the FMVSS to require, for instance, that ''driver's seat'' requirements apply to any front seating position? If so, please explain why. If not, what research would need to be conducted to determine how NHTSA should amend those requirements?

12. A variety of FMVSS require safety-related dashboard telltales and other displays, if provided, to be visible to a human driver and controls to be within reach of that driver. Generally speaking, is there a safety need for the telltales and other displays in Table 1 and 2 of FMVSS No. 101 to be visible to any of the occupants in vehicles without manual driving controls? Commenters are requested to provide their own list of the telltales and other displays they believe are most relevant to meeting any potential safety need in those vehicles. For each item on that list, please answer the following questions:

a. Should the telltale or other display be required to be visible to one or more vehicle occupants in vehicles without manual driving controls?

b. If there is a need for continued visibility, to the occupant(s) of which seating position(s) should the telltale or other display be visible?

c. Does the answer to the question about the continued need for a telltale or other display to be visible to the occupant of a vehicle without manual driving controls change if a manufacturer equips the vehicle with a device like an ''emergency stop button''? Why or why not?

d. Would the informational safety needs of the occupants of vehicles with ADSs differ depending on whether the vehicle has a full set of manual driving controls, just an emergency stop button, or no controls whatsoever?

e. Conversely, if a vehicle is designed such that it can be driven only by an ADS, does the ADS need to be provided with some or all the same information currently required to be provided for a human driver? For example, does the ADS need to know if the tires are underinflated? Why or why not?

f. If commenters believe that it would enhance safety if a vehicle's ADS were required to receive information similar to some or all of that currently required to be provided to human drivers by telltales and other displays, what research needs to be conducted to develop the kinds of objective and practicable performance requirements or test procedures that would enable manufacturers and the Agency to evaluate whether that information was provided to and understood by the ADS?

13. If NHTSA is going to conduct research to determine whether there is any safety need for the occupants of fully self-driving vehicles to continue to have any access to any of the non-driving controls (*e.g.,* controls for windshield washer/wiper system, turn signals, and lights) in a vehicle without manual driving controls, what should that research include and how should NHTSA conduct it?

a. If there is a safety need for the occupants of fully self-driving vehicles to have access to any of the existing vehicle non-driving controls, please identify those controls and explain the safety need.

b. Do commenters believe that research should be conducted to determine whether any additional controls (such as an emergency stop button) might be necessary for safety or public acceptance if manual driving controls are removed from fully-self-driving vehicles? Why or why not, and what is the basis for your belief?

c. If NHTSA is going to conduct research to determine whether there is any safety need for the occupants of fully self-driving vehicles to continue to be able to control exterior lighting like turn signals and headlamp beam switching devices, what should that research include and how should NHTSA conduct it? Separately, if NHTSA is going to conduct research on what exterior lighting continues to be needed for safety when a human is not driving, what should that research include and how should NHTSA conduct it?

14. If NHTSA is going to conduct research to determine whether there is a safety need for the occupants of vehicles with ADSs, but without manual driving controls, to be able to see to the side and behind those vehicles using mirrors or cameras, what should that research include and how should NHTSA conduct it? Separately, if NHTSA is going to conduct research to determine how NHTSA would test the ability of a vehicle's ADS to ''see'' around and behind the vehicle as well as (or better than) a human driver would, what should that research include and how should NHTSA conduct it?

15. Do the FMVSS create testing and certification issues for vehicles with ADSs other than those discussed above? If so, which FMVSS do so and why do you believe they present such issues? For example, FMVSS No. 108, ''Lamps, reflective devices, and associated equipment,'' could potentially pose obstacles to certifying the compliance of a vehicle that uses exterior lighting and messaging, through words or symbols, to communicate to nearby pedestrians, cyclists, and motorists, such as at a 4-way stop intersection, the vehicle's awareness of their presence and the vehicle's willingness to cede priority of movement to any of those people. If research is needed to eliminate the barriers in an appropriate way, please describe the research and explain why it is needed. Are there other lighting issues that should be considered? For example, what lighting will be needed to ensure the proper functioning of the different types of vehicle sensors, especially cameras whose functions include reading traffic control signs?

16. If occupants of vehicles with ADSs, especially those without manual driving controls, are less likely to sit in what is now called the driver's seating position or are less likely to sit in seats that are facing forward, how should these factors affect existing requirements for crashworthiness safety features?

17. If vehicles with ADSs have emergency controls that can be accessed through unconventional means, such as a smart phone or multi-purpose display and have unconventional interiors, how should the Agency address those controls?

18. Are there any specific regulatory barriers related to small businesses that NHTSA should consider, specifically those that may help facilitate small business participation in this emerging technology?

B. Research Needed To Address Those Barriers and NHTSA's Role in Conducting It

19. For issues about FMVSS barriers that NHTSA needs research to resolve, do commenters believe that there are specific items that would be better addressed through research by outside stakeholders, such as industry or research organizations, instead of by NHTSA itself?

a. Which issues is industry better equipped to undertake on its own, and why? Which issues are research organizations or other stakeholders better equipped to undertake on their own, and why?

b. What research is needed to determine which types of safety performance metrics should be used to evaluate a particular safety capability and to develop a test procedure for evaluating how well a vehicle performs in terms of those metrics?

c. Which questions is NHTSA better equipped to undertake and why? For example, would NHTSA, as the regulator, be the more appropriate party to conduct research needed to determine what performance threshold to require vehicles to meet with respect to that metric? Why or why not?

d. What research has industry, research organizations, and other stakeholders done related to barriers to testing and certification? What research are they planning to do? With respect to research planned but not yet completed, please identify the research and state the expected starting and end dates for that research.

e. How can NHTSA, industry, states, research organizations, and other stakeholders work together to ensure that, if the research on these issues were eventually to lead to rulemaking, it is done with the rigor and thoroughness that NHTSA would need to meet its statutory obligations, regardless of who performs it (*e.g.,* done in a manner that enables the Agency to ensure that FMVSS are and remain objective and practicable, and continue to meet the need for safety)?

20. For the issues identified above or by commenters, which merit the most attention? How should the Agency prioritize its research and any follow-on rulemakings to remove the barriers to testing and certification?

21. Correcting barriers associated with the track testing of motor vehicles will

be particularly challenging. Examples of such barriers follow:

a. FMVSS No. 126 specifies the use of an automated steering machine that depends on a vehicle's steering wheel to steer vehicles when they are tested for compliance. NHTSA will need to determine how to amend the standard to enable the Agency to conduct stability control testing in vehicles that lack a steering wheel. Further, if NHTSA is going to conduct research to consider how to change the ''sine with dwell'' test procedure for FMVSS No. 126 so that steering wheel angle need not be measured at the steering wheel in determining compliance with the standard, what should that research include and how should NHTSA conduct it?

b. If NHTSA is going to conduct research to develop a performance test to verify how a vehicle is activating its service brakes, what should that research include and how should NHTSA conduct it? If NHTSA is going to conduct research to determine whether there continues to be a safety need to maintain a human-operable service brake, what should that research include and how should NHTSA conduct it?

22. Are there industry standards, existing or in development, that may be suitable for incorporation by reference by NHTSA in accordance with the standards provisions of the National Technology Transfer and Advancement Act of 1995 and Office of Management and Budget Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and Conformity Assessment Activities?''

Issued in Washington, DC, under authority delegated by 49 CFR 1.95.

Nathaniel Beuse,

Associate Administrator for Vehicle Safety Research.

[FR Doc. 2018–02895 Filed 2–12–18; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 180110024–8024–01]

RIN 0648–BH33

Fisheries of the Northeastern United States; Special Management Zones for 13 New Jersey Artificial Reefs

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes management measures to implement special management zones for 13 New Jersey artificial reefs under the black sea bass provisions of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. The implementing regulations for the special management zones require NMFS to publish proposed measures to provide an opportunity for public comment. The intent of these measures is to reduce user group conflicts and help maintain the intended socioeconomic benefits of the artificial reefs to the maximum extent practicable.

DATES: Comments must be received by March 15, 2018.

ADDRESSES: NMFS prepared a draft environmental assessment (EA) and an Initial Regulatory Flexibility Analysis (IRFA) for this action that describe the proposed measures and other considered alternatives and analyzes of the impacts of the proposed measures and alternatives. Copies of the the draft EA and the IRFA are available upon request from Travis Ford, NOAA/NMFS, Sustainable Fisheries Division, 55 Great Republic Drive, Gloucester, MA 01930. The special management zone measures document is also accessible via the internet at: *https://www.greateratlantic.fisheries.noaa.gov/.*

You may submit comments on this document, identified by NOAA–NMFS–2017–0150, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0150,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on New Jersey Special Management Zones Designation.''

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Policy Analyst, 978–281–9233.

SUPPLEMENTARY INFORMATION:

Background

The New Jersey Department of Environmental Protection (NJDEP) has requested and the Mid-Atlantic Fishery Management Council has recommended that NMFS designate 13 New Jersey artificial reef sites, currently permitted in Federal waters by the U.S. Army Corps of Engineers, as special management zones (SMZs) under the applicable regulations implementing the Council's Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP), 50 CFR 648.148.

The summer flounder, scup, and black sea bass fisheries are managed cooperatively under the provisions of the FMP developed by the Council and the Atlantic States Marine Fisheries Commission, in consultation with the New England and South Atlantic Fishery Management Councils. General regulations governing fisheries of the Northeastern U.S. also appear at 50 CFR part 648. States manage these three species within 3 nautical miles (4.83 km) of their coasts, under the Commission's plan for summer flounder, scup, and black sea bass. The applicable species-specific Federal regulations govern vessels and individual fishermen fishing in Federal waters of the EEZ, as well as vessels possessing a summer flounder, scup, or black sea bass Federal charter/party vessel permit, regardless of where they fish.

Special Management Zone Measures Background

On November 6, 2015, the NJDEP requested that the Council designate 13 artificial reef sites, currently permitted in Federal waters by the U.S. Corps of Engineers, as SMZs under the regulations implementing the Council's Summer Flounder, Scup, and Black Sea Bass FMP. The SMZ request noted that the NJDEP has received complaints from rod and reel anglers regarding fouling of their fishing gear in commercial pots and lines on ocean reef sites for more than 20 years. The request also noted that the U.S. Fish and Wildlife Service (FWS) Sportfish Restoration Program (SRP), which was the primary funding

source of the New Jersey Reef Program, discontinued its funding of the program and all reef construction and monitoring activities until the gear conflicts are resolved. These gear conflicts are not consistent with the objectives of the SRP program, which provides funding for the building and maintenance of the artificial reefs. In order to comply with the goals of the SRP, the FWS is requiring that state artificial reef programs be able to limit gear conflicts by state regulations in state waters or by SMZs for sites in the EEZ.

The Council process for devising SMZ management measures is to recommend measures to NMFS for rulemaking, and is described in the following section. All meetings are open to the public and the materials used during such meetings, as well as any documents created to summarize the meeting results, are public information and typically posted on the Council's website (*www.mafmc.org*) or are available from the Council by request.

The SMZ recommendations from the Council were established under the FMP's black sea bass provisions (§ 648.148). A monitoring committee, consisting of representatives from the Council, NMFS Greater Atlantic Regional Fisheries Office, and NMFS Northeast Fisheries Science Center, was formed to review the NJDEP SMZ request. The FMP's implementing regulations require the monitoring committee to review scientific and other relevant information to evaluate the SMZ requests and prepare a written report, considering the following criteria:

(1) Fairness and equity;

(2) Promotion of conservation;

(3) Avoidance of excessive shares;

(4) Consistency with the objectives of Amendment 9 to the FMP, the Magnuson-Stevens Act, and other applicable law;

(5) The natural bottom in and surrounding potential SMZs; and

(6) Impacts on historical uses.

The Council considered the Monitoring Committee's recommendations and any public comment in finalizing its recommendations. The Council forwarded its final recommendations to NMFS for review. NMFS is required to review the Council's recommendations to ensure that they are consistent with the FMP and all applicable laws and Executive Orders before ultimately implementing measures for Federal waters.

The timeline for establishing the SMZs is summarized here: The NJDEP requested SMZ status for the artificial reefs in November 2015; the Council and NMFS established a monitoring committee to review the request in February 2016; the monitoring committee provided a report to the Council evaluating the SMZ request at its October 5, 2016, meeting in Galloway, NJ.

Following this meeting, the Council held three public hearings on the proposed SMZs (Brooklyn, NY, November 16, 2016; Toms River, NJ, November 16, 2016; and Cape May, NJ, November 17, 2016), and the Council made final recommendations on the SMZs at its December 21, 2016, meeting in Baltimore, Maryland. NMFS subsequently has reviewed the Council's recommendations through the development of an EA (see **ADDRESSES** for how to obtain a copy of the EA) and this proposed rule.

Proposed SMZ Measures

NMFS is proposing the Council's recommended measures that would apply in the Federal waters of the EEZ and to all vessels: That all 13 New Jersey artificial reefs be established as year-round SMZs. Within the established areas of the SMZs, all vessels would only be allowed to conduct fishing by handline, rod and reel, or spear fishing (including the taking of fish by hand).

The boundaries of the proposed SMZs artificial reef sites encompass 19.71 nm^2 (67.6 km^2) and are in Federal waters bounded by the following coordinates connected by straight lines in the sequence specified in Tables 1–13 below.

The coordinates of the 13 SMZ reef areas proposed to be created by this rule would be codified at 50 CFR 648.148(b)(2). This requires a re-organization of the existing SMZ regulations in CFR 648.148(b); no substantive changes are proposed for those provisions.

TABLE 1—SEA GIRT REEF SITE

Point	N Latitude	W Longitude
NE Corner	40°08.22′	73°55.52′
ME Corner	40°07.30′	73°56.67′
SE Corner	40°06.13′	73°57.12′
SW Corner	40°06.17′	73°57.57′
MW Corner	40°07.48′	73°57.15′
NW Corner	40°08.63′	73°55.73′
NE Corner	40°08.22′	73°55.52′

TABLE 2—GARDEN STATE NORTH REEF SITE

Point	N Latitude	W Longitude
NE Corner	39°38.05′	74°00.70′
SE Corner	39°37.05′	74°01.00′
SW Corner	39°37.00′	74°02.50′
NW Corner	39°37.98′	74°02.20′
NE Corner	39°38.05′	74°00.70′

TABLE 3—GARDEN STATE SOUTH REEF SITE

Point	N Latitude	W Longitude
NE Corner	39°33.82′	74°05.75′
SE Corner	39°33.33′	74°05.85′
SW Corner	39°33.33′	74°07.35′
NW Corner	39°33.80′	74°07.20′
NE Corner	39°33.82′	74°05.75′

TABLE 4—LITTLE EGG REEF SITE

Point	N Latitude	W Longitude
NE Corner	39°29.00′	74°10.00′
SE Corner	39°28.00′	74°10.00′
SW Corner	39°28.00′	74°12.00′
NW Corner	39°29.00′	74°12.00′
NE Corner	39°29.00′	74°10.00′

TABLE 5—ATLANTIC CITY REEF SITE

Point	N Latitude	W Longitude
NE Corner	39°16.90′	74°15.28′
SE Corner	39°13.93′	74°11.80′
SW Corner	39°13.30′	74°12.70′
NW Corner	39°16.22′	74°16.18′
NE Corner	39°16.90′	74°15.28′

TABLE 6—GREAT EGG REEF SITE

Point	N Latitude	W Longitude
NE Corner	39°15.00′	74°21.00′
SE Corner	39°14.00′	74°21.00′
SW Corner	39°14.00′	74°22.00′
NW Corner	39°15.00′	74°22.00′
NE Corner	39°15.00′	74°21.00′

TABLE 7—OCEAN CITY REEF SITE

Point	N Latitude	W Longitude
NE Corner	39°10.75′	74°32.35′
SE Corner	39°09.40′	74°34.62′
SW Corner	39°09.82′	74°34.97′
NW Corner	39°11.10′	74°32.85′
NE Corner	39°10.75′	74°32.35′

TABLE 8—SHARK RIVER REEF SITE

Point	N Latitude	W Longitude
NE Corner	40°07.33′	73°41.08′
SE Corner	40°06.20′	73°41.08′
SW Corner	40°20.20′	73°41.80′
NW Corner	40°07.33′	73°41.80′
NE Corner	40°07.33′	73°41.08′

TABLE 9—BARNEGAT LIGHT REEF SITE

Point	N Latitude	W Longitude
NE Corner	39°45.87′	74°01.10′
SE Corner	39°44.62′	74°01.10′
SW Corner	39°44.62′	74°01.95′
NW Corner	39°45.87′	74°01.95′
NE Corner	39°45.87′	74°01.10′

TABLE 10—WILDWOOD REEF SITE

Point	N Latitude	W Longitude
NE Corner	38°57.85′	74°39.70′
SE Corner	38°56.58′	74°41.40′
SW Corner	38°57.55′	74°42.60′
NW Corner	38°58.80′	74°40.90′
NE Corner	38°57.85′	74°39.70′

TABLE 11—DEEPWATER REEF SITE

Point	N Latitude	W Longitude
NE Corner	38°59.00′	74°10.50′
SE Corner	38°58.00′	74°10.50′
SW Corner	38°58.00′	74°11.50′
NW Corner	38°59.00′	74°11.50′
NE Corner	38°59.00′	74°10.50′

TABLE 12—CAPE MAY REEF SITE

Point	N Latitude	W Longitude
NE Corner	38°53.45′	74°39.43′
SE Corner	38°50.07′	74°42.25′
SW Corner	38°50.67′	74°43.25′
NW Corner	38°53.97′	74°40.62′
NE Corner	38°53.45′	74°39.43′

TABLE 13—TOWNSEND INLET REEF SITE

Point	N Latitude	W Longitude
NE Corner	39°06.70′	74°36.00′
SE Corner	39°06.25′	74°36.00′
SW Corner	39°06.25′	74°37.50′
NW Corner	39°06.70′	74°37.50′
NE Corner	39°06.70′	74°36.00′

Figure 1. shows the location of the 13 proposed artificial reef sites off the coast of New Jersey.

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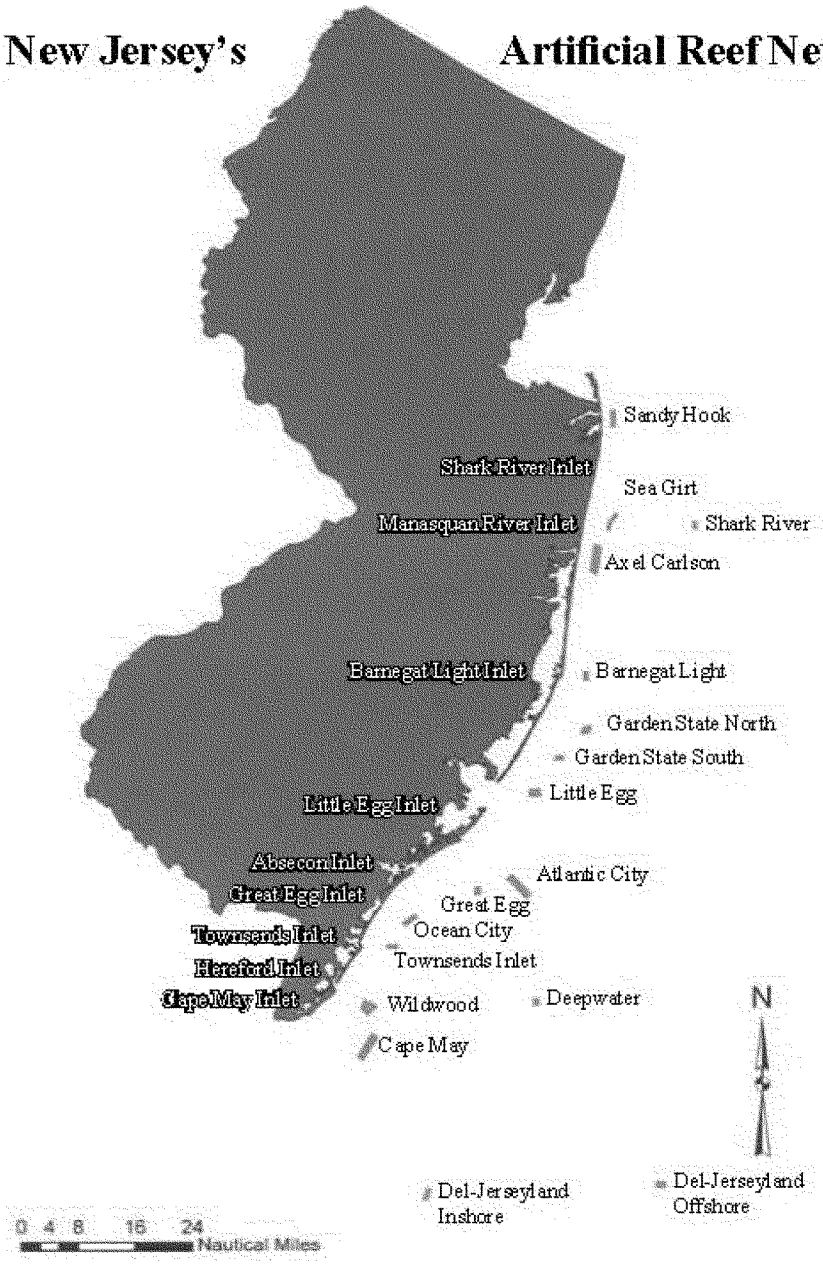
Figure 1. Location of artificial reefs in the Atlantic Ocean permitted to the State of New Jersey (includes reef sites located in NJ state waters and the EEZ). Note: Sandy Hook, Axel Carlson, and the two Del-Jerseyland sites are not included in this SMZ request.



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Regulatory Corrections Under Regional Administrator Authority

This proposed rule includes a revision to the regulatory text to address text that is unnecessary, outdated, unclear, or NMFS could otherwise improve. NMFS proposes this changes consistent with section 305(d) of the MSA which provides that the Secretary of Commerce may promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the MSA. The revision, at § 648.148(a), would clarify the Council may prohibit or restrain the use of specific types of fishing gear that are not compatible with the purpose of the artificial reef or fish attraction device or other habitat modification within the SMZ.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other

applicable law, subject to further consideration after public comment.

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

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA), which is included in the EA and supplemented by information contained in the preamble to this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the IRFA follows. A copy of this analysis is available from the Greater Atlantic Regional Fisheries Office (see **ADDRESSES**).

Description of the Reasons Why Action by the Agency Is Being Considered

NJDEP requested and the Council recommended that 13 New Jersey artificial reef sites, currently permitted by the U.S. Army Corps of Engineers in the EEZ, be designated as SMZs to limit recreational/commercial gear conflicts on the artificial reefs, and to maintain FWS SRP funding for the building, monitoring, and maintenance of the artificial reefs.

Statement of the Objectives of and the Legal Basis for This Proposed Rule

The action in this proposed rule would prohibit certain types fishing in the proposed SMZs. This would reduce current and/or future potential for recreational/commercial gear conflicts on the 13 New Jersey artificial reefs in order to maintain access to the reefs for recreational fishing. This action is proposed under the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*

Description of an Estimate of the Number of Small Entities To Which the Proposed Rule Would Apply

The Small Business Administration (SBA) defines a small commercial finfishing or shellfishing business as a firm with annual receipts (gross revenue) of up to $11.0 million. A small for-hire recreational fishing business is defined as a firm with receipts of up to $7.5 million.

This rule would apply to all Federal permit holders except recreational for-hire permit holders and commercial permit holders using hand gear or dive gear. While virtually all commercial fishing permit holders employing gear other than pot/trap gear would technically be regulated if the artificial reefs are granted SMZ status, the vast majority of the commercial fishing effort on these artificial reefs comes from the pot/trap gear sector. Therefore, only pot/trap gear vessel trips are considered in this analysis. Hand gear and dive gear activities would continue to be allowed under SMZ designation, and vessels using other mobile gears and fixed gears stay clear of the reef site areas to avoid bottom hang-ups with reef materials. Additionally, not all business entities that hold Federal fishing permits fish in the areas identified as potential SMZs. Those who actively participate (*i.e.,* catch and land fish in and from at least one of the areas) in the areas identified as potential SMZs would be the group of business entities that are directly impacted by the regulations.

During 2013, 2014, and 2015: 24 Vessels reported landings of fish caught at the reef sites in all 3 of those years; 10 vessels reported landings of fish caught at the reef sites in 2 of the 3 years; and 18 vessels reported landings of fish caught at the reef sites in only 1 of the 3 years. A total of 52 unique commercial vessels reported landings of catch estimated to be from within the coordinates of the 13 reef sites from 2013–2015.

Based on the ownership data classification process described above, the 52 directly affected participating commercial fishing vessels were owned by 45 unique fishing business entities. All revenue earned by these businesses was derived from finfishing or shellfishing, and no revenue was earned from for-hire recreational fishing. Thus, all 45 of the potentially affected businesses are classified as commercial fishing business entities.

Average annual gross revenue estimates calculated from 2013–2015 Northeast region dealer data indicate that only one of the potentially affected business entities under the preferred alternative would be considered large according to the SBA size standards. In other words, one business, classified as a commercial fishing business, averaged more than $11 million annually in gross revenues from all of its fishing activities during 2013–2015. Therefore, 44 of the 45 potentially affected business entities are considered small and one business entity is considered large.

Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of the Proposed Rule

This action does not introduce any new reporting, recordkeeping, or other compliance requirements.

Federal Rules Which May Duplicate, Overlap, or Conflict With This Proposed Rule

This proposed action will not duplicate, overlap, or conflict with any other Federal rules.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

The Council only considered the proposed action (Alternative 2) and the No Action alternative (Alternative 1). However, NMFS also considered a slightly less restrictive alternative after receiving the Council's recommendation (Alternative 3). Under the No Action alternative, vessels would still be able to fish with pot/trap gear on the 13 artificial reef sites. Alternative 3 would designate 11 of the 13 artificial reefs as SMZs (excludes Shark River and Wildwood); 41 unique fishing business entities were estimated to have landings within the coordinates of the 11 reef sites from 2013–2015. The Shark River and Wildwood reef site were excluded under this alternative because these sites had higher percentage of commercial effort when compared to the percentage of recreational effort. One of the potentially affected business entities under this alternative would be considered large (the same entity identified as large under the preferred alternative).

Table 14 compares the number of potentially affected business entities by percent of total average annual gross revenue landed within the actual latitude and longitude coordinates of the two alternatives. Under both the preferred alternative and the Alternative 3, all commercial fishing businesses categorized as small in this assessment obtained less than 5 percent of their total average annual gross revenues from landings within the coordinates of the reef sites. The only business entity defined as large for this assessment earned less than 0.5 percent of its total average annual gross revenues from landings at the reef sites.

Alternative 2 was selected as the preferred alternative because it would reduce gear conflicts on all 13 of the artificial reefs. For Alternatives 1 and 3, gear conflicts would remain on all reefs not designated as SMZs. Alternative 2 would result in slight positive economic impacts to the recreational fleet and likely have slight negative to negligible economic effects on the commercial fishery compared to the No Action alternative. Further, under Alternative 2, the program to maintain the artificial reefs would not be in jeopardy of losing its USFWS funding.

TABLE 14—NUMBER OF POTENTIAL BUSINESS ENTITIES AFFECTED BY PERCENT OF TOTAL AVERAGE ANNUAL GROSS REVENUE LANDED WITHIN THE COORDINATES OF THE REEF SITES

	Percent of total average annual gross revenue (2013–2016)			
	<0.5%	0.5% to 1.0%	1.0% to 5.0%	>5.0%
Proposed Action				
Commercial Fishing (Small)	35	2	7	0
Commercial Fishing (Large)	1	0	0	0
Alternative				
Commercial Fishing (Small)	32	2	6	0
Commercial Fishing (Large)	1	0	0	0

List of Subjects 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: February 8, 2018.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEAST UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.148, revise paragraphs (a) introductory text and (b) to read as follows:

§ 648.148 Special management zones.

(a) *General.* The recipient of a U.S. Army Corps of Engineers permit for an artificial reef, fish attraction device, or other modification of habitat for purposes of fishing may request that an area surrounding and including the site be designated by the MAFMC as a special management zone (SMZ). The MAFMC may prohibit or restrain the use of specific types of fishing gear that are not compatible with the purpose of the artificial reef or fish attraction device or other habitat modification within the SMZ. The establishment of an SMZ will be effected by a regulatory amendment, pursuant to the following procedure: An SMZ monitoring team comprised of members of staff from the MAFMC, NMFS Greater Atlantic Regional Fisheries Office, and NMFS Northeast Fisheries Science Center will evaluate the request in the form of a written report.

* * * * *

(b) *Approved/Established SMZs*—(1) *Delaware Special Management Zone Areas.* Special management zones are established for Delaware artificial reef permit areas #9, 10, 11, and 13, in the area of the U.S. Exclusive Economic Zone. From January 1 through December 31 of each year, no person may fish in the Delaware Special Management Zones except by handline, rod and reel, or spear fishing (including the taking of fish by hand). The Delaware Special Management Zones are defined by rhumb lines connecting the following coordinates in the order stated:

(i) *Delaware artificial reef #9.*

Point	Corner	N Latitude	W Longitude
1	9SE	38°39.972′	74°59.298′
2	9SW	38°40.05′	75°0.702′
3	9NW	38°40.848′	75°0.402′
4	9NE	38°40.8′	74°58.902′
5	9SE	38°39.972′	74°59.298′

(ii) *Delaware artificial reef #10.*

Point	Corner	N Latitude	W Longitude
1	10SE	38°36.198′	74°55.674′
2	10SW	38°36.294′	74°57.15′
3	10NW	38°37.098′	74°56.802′
4	10NE	38°37.002′	74°55.374′
5	10SE	38°36.198′	74°55.674′

(iii) *Delaware artificial reef #11.*

Point	Corner	N Latitude	W Longitude
1	11SE	38°39.882′	74°43.05′
2	11SW	38°40.002′	74°44.802′
3	11NW	38°40.848′	74°44.502′
4	11NE	38°40.752′	74°42.75′
5	11SE	38°39.882′	74°43.05′

(iv) *Delaware artificial reef #13.*

Point	Corner	N Latitude	W Longitude
1	13SE	38°30.138′	74°30.582′
2	13SW	38°30.222′	74°31.5′
3	13NW	38°31.614′	74°30.864′
4	13NE	38°31.734′	74°30.018′
5	13SE	38°30.138′	74°30.582′

(2) *New Jersey Special Management Zone Areas.* Special management zones are established for New Jersey artificial reef permit areas, in the area of the U.S. Exclusive Economic Zone. From January 1 through December 31 of each year, no person may fish in the New Jersey Special Management Zones except by handline, rod and reel, or spear fishing (including the taking of fish by hand). The New Jersey Special Management Zones are defined by rhumb lines connecting the following coordinates in the order stated:

(i) *Sea Girt Reef Site.*

Point	N Latitude	W Longitude
NE Corner	40°08.22′	73°55.52′
ME Corner	40°07.30′	73°56.67′
SE Corner	40°06.13′	73°57.12′
SW Corner	40°06.17′	73°57.57′
MW Corner	40°07.48′	73°57.15′
NW Corner	40°08.63′	73°55.73′
NE Corner	40°08.22′	73°55.52′

(ii) *Garden State North Reef Site.*

Point	N Latitude	W Longitude
NE Corner	39°38.05′	74°00.70′
SE Corner	39°37.05′	74°01.00′
SW Corner	39°37.00′	74°02.50′
NW Corner	39°37.98′	74°02.20′
NE Corner	39°38.05′	74°00.70′

(iii) *Garden State South Reef Site.*

Point	N Latitude	W Longitude
NE Corner	39°33.82′	74°05.75′
SE Corner	39°33.33′	74°05.85′
SW Corner	39°33.33′	74°07.35′
NW Corner	39°33.80′	74°07.20′
NE Corner	39°33.82′	74°05.75′

(iv) *Little Egg Reef Site.*

Point	N Latitude	W Longitude
NE Corner	39°29.00′	74°10.00′
SE Corner	39°28.00′	74°10.00′
SW Corner	39°28.00′	74°12.00′
NW Corner	39°29.00′	74°12.00′
NE Corner	39°29.00′	74°10.00′

(v) *Atlantic City Reef Site.*

Point	N Latitude	W Longitude
NE Corner	39°16.90′	74°15.28′
SE Corner	39°13.93′	74°11.80′
SW Corner	39°13.30′	74°12.70′
NW Corner	39°16.22′	74°16.18′
NE Corner	39°16.90′	74°15.28′

(vi) *Great Egg Reef Site.*

Point	N Latitude	W Longitude
NE Corner	39°15.00′	74°21.00′
SE Corner	39°14.00′	74°21.00′
SW Corner	39°14.00′	74°22.00′
NW Corner	39°15.00′	74°22.00′
NE Corner	39°15.00′	74°21.00′

(vii) *Ocean City Reef Site.*

Point	N Latitude	W Longitude
NE Corner	39°10.75′	74°32.35′
SE Corner	39°09.40′	74°34.62′
SW Corner	39°09.82′	74°34.97′
NW Corner	39°11.10′	74°32.85′
NE Corner	39°10.75′	74° 32.35′

(viii) *Shark River Reef Site.*

Point	N Latitude	W Longitude
NE Corner	40°07.33′	73°41.08′
SE Corner	40°06.20′	73°41.08′
SW Corner	40°20.20′	73°41.80′
NW Corner	40°07.33′	73°41.80′
NE Corner	40°07.33′	73°41.08′

(ix) *Barnegat Light Reef Site.*

Point	N Latitude	W Longitude
NE Corner	39°45.87′	74°01.10′
SE Corner	39°44.62′	74°01.10′
SW Corner	39°44.62′	74°01.95′
NW Corner	39°45.87′	74°01.95′
NE Corner	39°45.87′	74°01.10′

(x) *Wildwood Reef Site.*

Point	N Latitude	W Longitude
NE Corner	38°57.85′	74°39.70′
SE Corner	38°56.58′	74°41.40′
SW Corner	38°57.55′	74°42.60′
NW Corner	38°58.80′	74°40.90′
NE Corner	38°57.85′	74°39.70′

(xi) *Deepwater Reef Site.*

Point	N Latitude	W Longitude
NE Corner	38°59.00′	74°10.50′
SE Corner	38°58.00′	74°10.50′
SW Corner	38°58.00′	74°11.50′
NW Corner	38°59.00′	74°11.50′
NE Corner	38°59.00′	74°10.50′

(xii) *Cape May Reef Site.*

Point	N Latitude	W Longitude
NE Corner	38°53.45′	74°39.43′
SE Corner	38°50.07′	74°42.25′
SW Corner	38°50.67′	74°43.25′
NW Corner	38°53.97′	74°40.62′
NE Corner	38°53.45′	74°39.43′

(xiii) *Townsend Inlet Reef Site.*

Point	N Latitude	W Longitude
NE Corner	39°06.70′	74°36.00′
SE Corner	39°06.25′	74°36.00′
SW Corner	39°06.25′	74°37.50′
NW Corner	39°06.70′	74°37.50′
NE Corner	39°06.70′	74°36.00′

[FR Doc. 2018–02916 Filed 2–12–18; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 83, No. 30
Tuesday, February 13, 2018

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 7, 2018.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) 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; (2) the accuracy of the agency's estimate of burden 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by March 15, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Risk Management Agency

Title: Standard Reinsurance Agreement.

OMB Control Number: 0563–0069.

Summary of Collection: The Federal Crop Insurance Act, Title 7 U.S.C. Chapter 36 Sec. 1508(k), authorizes the Federal Crop Insurance Corporation (FCIC) to provide reinsurance to approved insurance providers who insure producers of any agricultural commodity under one or more plans acceptable to FCIC. The Standard Reinsurance Agreement (SRA) is a financial agreement between FCIC and the company to provide subsidy and reinsurance on eligible crop insurance. The SRA includes Regulatory Duties and Responsibilities, Plan of Operations, Policy Acceptance and Storage System and Quality Assurance and Program Integrity.

Need and Use of the Information: The Plan of Operations provides the information the insurer is required to file for the initial and each subsequent reinsurance year. FCIC uses the information as a basis for the approval of the insurer's financial and operational capability of delivering the crop insurance program and for evaluating the insurer's performance regarding implementation of procedures for training and quality control. If the information were not collected, FCIC would not be able to reinsure the crop business.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 20,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 171,500.

Ruth Brown,

Departmental Information Clearance Officer.

[FR Doc. 2018–02845 Filed 2–12–18; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF COMMERCE

Bureau of the Census

National Sunshine Week Public Event

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public event.

SUMMARY: The Bureau of the Census (Census Bureau) is announcing the following event, ''As a Matter of Open Government,'' in recognition of National Sunshine Week. The Census Bureau will hold public speaker sessions to educate and engage in open dialogue about our transparency efforts.

DATES: The public speaker sessions will be held on Wednesday, March 14 and Thursday, March 15, 2018 from 9:00 a.m. to 12:00 p.m. The Census Bureau also will co-host a kick-off event with the Department of Commerce's (DOC) Office of Privacy and Open Government on Tuesday, March 13, 2018 from 9:00 a.m. to 12:00 p.m. at the Department of Commerce Research Library, 1401 Constitution Avenue NW, Washington, DC 20230. Registration is free, but advanced registration is required for both events/sessions. (See directions below under **SUPPLEMENTARY INFORMATION** regarding how to register.)

ADDRESSES: The public speaker sessions will be held in the U.S. Census Bureau Training Room, T–5, 4600 Silver Hill Road, Suitland, MD 20746.

FOR FURTHER INFORMATION CONTACT: Jennifer Goode or Mary Kendall-Washington at the Policy Coordination Office, Open Government Program: 301–763–6440 or *census.eopengov@census.gov.* TTY callers, please call the Federal Relay Service (FRS) at 1–800–877–8339 and give them the above-listed number you would like to call. This service is free and confidential.

SUPPLEMENTARY INFORMATION: Individuals may attend the kick-off event at the DOC Research Library as seating capacity permits. The kick-off event will also be available for public observation via call-in. Individuals seeking to attend the kick-off must register at *https://www.eventbrite.com/e/sunshine-week-kick-off-event-as-a-matter-of-open-government-tickets-41456931799?aff=eac* by 12:00 p.m. (EDT) on March 12. Individuals who wish to attend the speaker sessions at the Census Bureau must register at

https://www.eventbrite.com/e/sunshine-week-speaker-sessions-as-a-matter-of-open-government-tickets-41498530221?aff=erelexpmlt by 12:00 p.m. (EDT) on March 13. Agendas and call-in instructions will be provided upon registration.

The event will be physically accessible to people with disabilities. Individuals requiring accommodation, such as sign language interpretation or other auxiliary aids, should call Mary-Kendall Washington at 301–763–6440 to request accommodations at least five business days in advance.

All registrants will be placed on a visitor list. All visitors for the event must provide a government-issued photo identification in order to enter the building. For logistical questions, call Angineh Torosiyan Hayter at 301–763–6440. Media interested in attending should call the Census Bureau's Public Information Office at 301–763–3030.

Dated: February 7, 2018.

Ron S. Jarmin,

Associate Director for Economic Programs, performing the non-exclusive functions and duties of the Director, Bureau of the Census.

[FR Doc. 2018–02879 Filed 2–12–18; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2043]

Reorganization of Foreign-Trade Zone 19 Under Alternative Site Framework; Omaha, Nebraska

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Greater Omaha Chamber of Commerce, grantee of Foreign-Trade Zone 19, submitted an application to the Board (FTZ Docket B–31–2017, docketed May 15, 2017) for authority to reorganize under the ASF with a service area of Burt, Cass, Dodge, Douglas, Sarpy, Saunders and Washington Counties, Nebraska, in and adjacent to the Omaha U.S. Customs and Border Protection port of entry, and FTZ 19's existing Sites 1 and 2 would be categorized as magnet sites;

Whereas, notice inviting public comment was given in the **Federal Register** (82 FR 26435, June 7, 2017) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, Therefore, the Board hereby orders:

The application to reorganize FTZ 19 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, and to ASF sunset provisions for magnet sites that would terminate authority for Site 1 if not activated within ten years from the month of approval and for Site 2 if not activated within five years from the month of approval.

Dated: February 7, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2018–02905 Filed 2–12–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–63–2017]

Foreign-Trade Zone (FTZ) 123—Denver, Colorado; Authorization of Production Activity; Lockheed Martin Corporation Space Systems Company (Satellites and Other Space Craft); Littleton, Colorado

On October 4, 2017, Lockheed Martin Corporation Space Systems Company submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 123G, in Littleton, Colorado.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (82 FR 48481–48481, October 18, 2017). On February 1, 2018, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: February 5, 2018.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2018–02908 Filed 2–12–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2044]

Expansion of Foreign-Trade Zone 281 Under Alternative Site Framework; Miami, Florida

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, Miami-Dade County, grantee of Foreign-Trade Zone 281, submitted an application to the Board (FTZ Docket B–29–2017, docketed May 2, 2017) for authority to expand the zone to include an additional magnet site at Miami International Airport, as described in the application, adjacent to the Miami, Florida CBP Port of Entry Customs and Border Protection port of entry;

Whereas, notice inviting public comment was given in the **Federal Register** (82 FR 26775, June 9, 2017) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to expand FTZ 281 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and to the Board's standard 2,000-acre activation limit for the zone.

Dated: February 7, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2018–02906 Filed 2–12–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–11–2018]

Foreign-Trade Zone (FTZ) 23—Buffalo, New York; Notification of Proposed Production Activity; Panasonic Eco Solutions Solar New York America Subzone 23E (Solar Panels/Modules); Buffalo, New York

Panasonic Eco Solutions Solar New York America (PESSNY) submitted a notification of proposed production activity to the FTZ Board for its facility in Buffalo, New York. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on February 5, 2018.

The PESSNY facility is located within Subzone 23E. The facility is used for the production of crystalline silicon photovoltaic (CSPV) solar panels/modules. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and 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 PESSNY from customs duty payments on the foreign-status components used in export production. On its domestic sales, for the foreign-status materials/components noted below, PESSNY would be able to choose the duty rates during customs entry procedures that apply to CSPV solar panels/modules (duty free). PESSNY would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: Silicone sealant/cement; ethylene vinyl acetate film/resin sheets; polyolefin base plastic film/resin sheets; plastic polymer rolls of film; polypropylene corner protectors; low iron glass; copper connection tabs; nickel standard conductive film; tin/silver/copper alloy soldering wire; plastic junction boxes; silver-plated copper ribbon; resin-laminated, silver-plated copper ribbon/tabs; polyester tape; silver paste; and silicon wafers. (duty rates range from duty free to 5.8%).

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 March 26, 2018.

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 website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: February 8, 2018.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2018–02909 Filed 2–12–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2045]

Approval of Subzone Status; Ackerman North America LLC/dba Amann USA; Broomfield, Colorado

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

Whereas, the City and County of Denver, Colorado, grantee of Foreign-Trade Zone 123, has made application to the Board for the establishment of a subzone at the facility of Ackerman North America LLC/dba Amann USA, located in Broomfield, Colorado (FTZ Docket B–60–2017, docketed September 26, 2017);

Whereas, notice inviting public comment has been given in the **Federal Register** (82 FR 45807, October 2, 2017) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, Therefore, the Board hereby approves subzone status at the facility of Ackerman North America LLC/dba Amann USA, located in Broomfield, Colorado (Subzone 123H), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Dated: February 7, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2018–02907 Filed 2–12–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–65–2017]

Foreign-Trade Zone (FTZ) 92—Harrison County, Mississippi; Authorization of Production Activity; Vision Technologies Marine, Inc.; (Ocean-Going Vessels); Pascagoula, Mississippi

On October 10, 2017, the Mississippi Coast Foreign-Trade Zone, Inc., grantee of FTZ 92, submitted a notification of proposed production activity to the FTZ Board on behalf of Vision Technologies Marine, Inc., within Site 6, in Pascagoula, Mississippi.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (82 FR 49177, October 24, 2017). On February 7, 2018, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time.

The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14, subject to a restriction requiring that curtains be admitted to the zone in privileged foreign status (19 CFR 146.41) or domestic status (19 CFR 146.43), and further subject to the following conditions:

(1) Any foreign steel mill products admitted to the zone for the Vision Technologies Marine, Inc., activity, including plate, angles, shapes, channels, rolled steel stock, bars, pipes and tubes, not incorporated into merchandise otherwise classified, and which is used in manufacturing, shall be subject to full customs duties in accordance with applicable law, unless the Executive Secretary determines that the same item is not then being produced by a domestic steel mill.

(2) Vision Technologies Marine, Inc., shall meet its obligation under 15 CFR 400.13(b) by annually advising the FTZ Board's Executive Secretary as to significant new contracts with appropriate information concerning foreign purchases otherwise dutiable, so that the FTZ Board may consider whether any foreign dutiable items are being imported for manufacturing in the zone primarily because of FTZ procedures and whether the FTZ Board should consider requiring customs duties to be paid on such items.

Dated: February 7, 2018.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2018–02910 Filed 2–12–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824]

Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Antidumping Duty Administrative Review; 2015–2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Jindal Poly Films Limited made sales of subject merchandise at less than normal value, but that SRF Limited did not. The period of review (POR) is July 1, 2015, through June 30, 2016.

Applicable Date: February 13, 2018.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5255.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2017, the Department of Commerce (Commerce) published the *Preliminary Results.*[1] For a history of events that have occurred since the *Preliminary Results, 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 is available to all parties in the 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://trade.gov/login.aspx.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Commerce exercised its discretion to toll deadlines affected by the closure of the Federal Government from January 20 to January 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The deadline for the final results of this administrative review is now February 6, 2018.[3]

Scope of the Order

The products covered by the AD order are all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip (PET Film), whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET Film are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the AD order is dispositive.

Analysis of Comments Received

All issues raised in the case brief and rebuttal briefs are addressed in the Issues and Decision Memorandum, which is attached to this notice as an Appendix.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we made changes to SRF's and Jindal's calculations.[4] SRF's margin is unchanged at zero percent, while the margin for Jindal is now 1.57 percent.

Final Results of Review

As a result of our review, we determine the following weighted-average dumping margins exist for the period July 1, 2015, through June 30, 2016.

Producer or exporter	Weighted-average dumping margin (percent)
Jindal Poly Films Limited of India[5]	1.57
SRF Limited	0.00

Disclosure

We intend to disclose the calculations performed to parties in this proceeding

[1] *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2015–2016,* 82 FR 36735 (August 7, 2017) (*Preliminary Results*).

[2] *See* Department Memorandum, ''Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Polyethylene Terephthalate Film from India; 2015–2016 Administrative Review'' (Issues and Decision Memorandum), dated concurrently with, and hereby adopted by, this notice.

[3] *See* Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

[4] *See* Memoranda to Thomas Gilgunn, Program Manager ''Analysis Memorandum for the Final Results of the Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from India: Jindal Poly Films Limited, and ''Analysis Memorandum for the Final Results of the Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from India: SRF Limited,'' both dated concurrently with these final results.

[5] The Initiation Notice also lists the company as Jindal Poly Films Ltd. (India). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 62720 (September 12, 2016) (*Initiation Notice*). As noted in the Preliminary Decision Memoranda, dated concurrently with the **Federal Register** notice, the Department has determined that Jindal Poly Films Limited of India is the same company as Jindal Poly Films Ltd. (India). *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2015–2016* 82 FR 36735 (August 7, 2017).

within five days after the public announcement of the final results, in accordance with section 751(a) of the Act and 19 CFR 351.224(b).

Assessment Rates

Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries in this review, in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1). Commerce intends to issue assessment instructions directly to CBP 15 days after publication of these final results of review. For Jindal, we will base the assessment rate for the corresponding entries on the margin listed above.

For entries of subject merchandise produced by Jindal or SRF for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate established in the less-than fair-value (LTFV) investigation, 5.71 percent,[6] if there is no rate for the intermediate company(ies) involved in the transaction.[7] Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries produced and exported by SRF during the POR.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of PET Film from India entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies under review will be as follows 1.57 percent for merchandise exported by Jindal and zero percent for merchandise exported by SRF; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period for that company; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established in the completed segment for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any other completed segment of this proceeding, then the cash deposit rate will be the all others rate of 5.71 percent, which is the all others rate established by Commerce in the LTFV investigation adjusted for the export subsidy rate in the countervailing duty investigation.[8] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notifications to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Commerce is issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221.

Dated: February 6, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

[FR Doc. 2018–02830 Filed 2–12–18; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip from India,* 67 FR 44175 (July 1, 2002) (*Amended Final Determination*).

[7] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Proceedings; Final Modification, 77 FR 8101, 8102 (February 14, 2012)* (*Final Modification*).

[8] *See Amended Final Determination.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–854]

Certain Steel Nails From Taiwan: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review; 2015–2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines, based on the application of adverse facts available, that Bonuts Hardware Logistic Co., Ltd. (Bonuts), PT Enterprise, Inc./Pro-Team Coil Nail Enterprise, Inc. (PT/Pro-Team), and Unicatch Industrial Co. Ltd. (Unicatch) made sales of certain steel nails (nails) from Taiwan at prices below normal value during the period of review (POR) of May 20, 2015, through June 30, 2016.

DATES: Applicable February 13, 2018.

FOR FURTHER INFORMATION CONTACT: Scott Hoefke or Victoria Cho, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4947 or (202) 482–5075, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2017, Commerce published the *Preliminary Results* of this administrative review.[1] For the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[2] These final results cover five companies.[3] Commerce exercised its discretion to toll deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a non-business day, in

[1] *See Certain Steel Nails from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review; 2015–2016,* 82 FR 36744 (August 7, 2017) (*Preliminary Results*), and accompanying Memorandum, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain Steel Nails from Taiwan; 2015–2016,'' dated July 31, 2017 (Preliminary Decision Memorandum).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2015–2016 Administrative Review of the Antidumping Duty Order on Certain Steel Nails from Taiwan'' (Issues and Decision Memorandum), dated concurrently with this notice and incorporated herein by reference.

[3] The five companies consist of three mandatory respondents and two companies not individually examined.

accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final results of this review is now February 6, 2018.[4] Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by this order is certain steel nails. The certain steel nails subject to the order are currently classifiable under HTSUS subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Certain steel nails subject to these orders also may be classified under HTSUS subheadings 7907.00.60.00, 8206.00.00.00 or other HTSUS subheadings.

While the HTSUS subheadings are provided for convenience and customs purpose, the written description is dispositive.[5]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues which parties raised, and to which we responded in the Issues and Decision Memorandum, can be found at the Appendix to this notice. 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 *https://access.trade.gov* and is available to all parties in the 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/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we made certain changes to the *Preliminary Results.* Specifically, Commerce is applying total adverse facts otherwise available for Unicatch for these final results, and, in addition, Commerce has made changes to the rate assigned to the non-examined companies. For a full discussion of these changes, *see* the Issues and Decision Memorandum.

Partial Rescission of Review

On December 12, 2016, Mid Continent Steel & Wire, Inc. (Mid Continent), a domestic producer and interested party, timely withdrew its review request for Yusen Logistics (Taiwan) Ltd.[6] Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review.[7] For a full description of the methodology and rationale underlying our conclusions, *see* the Issues and Decisions Memorandum.

Application of Facts Available and Adverse Facts Available

We continue to find that Bonuts. and PT/Pro-Team failed to cooperate to the best of their ability in responding to Commerce's requests for information. Furthermore, for these final results, we also find that Unicatch failed to cooperate to the best of its ability in responding to Commerce's requests for information. Thus, we find that the application of adverse facts available, pursuant to section 776(a)–(b) of the Act, is warranted with respect to Bonuts, PT/Pro-Team, and Unicatch. For a full description of the methodology and rationale underlying our conclusions, *see* Issues and Decision Memorandum.

Rate for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' Section 735(c)(5)(B) of the Act also provides that, where all rates are zero, *de minimis,* or based entirely on facts available, we may use ''any reasonable method'' for assigning the rate to all other respondents.

In this review, the margins for all individually examined respondents were determined entirely on the basis of facts available. As discussed in further detail in the Issues and Decision Memorandum, we have determined under ''any reasonable method'' to apply to companies not selected for individual examination in this review the rate determined for all mandatory respondents. Accordingly, we assign to the non-selected companies the dumping margin of 78.17 percent.

Final Results of Review

Commerce determines that the following margins exist for the period May 20, 2015 through June 30, 2016:

Producer/exporter	Margin (percent)
Bonuts Hardware Logistic Co., Ltd[8]	78.17
PT Enterprise, Inc./Pro-Team Coil Nail Enterprise, Inc	78.17
Unicatch Industrial Co. Ltd	78.17
Non-examined companies[9]	78.17

Assessment

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of the final

[4] *See* Memorandum, ''Deadlines Affected by the Shutdown of the Federal Government'' (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

[5] A full description of the scope of the order is contained in the Issues and Decision Memorandum.

[6] *See* Petitioner's December 12, 2016, letter entitled, ''Certain Nails from Taiwan, Withdrawal of Request for Administrative Review.''

[7] We inadvertently omitted Yusen Logistics (Taiwan) Ltd. from the list of companies for which we rescinded this administrative review in the *Preliminary Results.*

[8] Commerce initiated a review of Bonuts Hardware Logistic Co., Ltd., but has referred to the company as Bonuts Hardware Logistics Co., LLC and Bonuts Logistics LLC at different times during this segment of the proceeding, based on the company's submissions.

[9] The non-examined companies are Hor Liang Industrial Corp. and Romp Coil Nails Industries Inc.

results of this administrative review in the **Federal Register**. We will instruct CBP to apply an ad valorem assessment rate of 78.17 percent to all entries of subject merchandise during the POR which were produced and/or exported by the companies stated above.

For the companies which were not selected for individual review, we will assign an assessment rate based on the methodology described in the ''Rates for Non-Examined Companies'' section, above.

Consistent with Commerce's assessment practice, for entries of subject merchandise during the POR produced by Bonuts, PT/Pro-Team, Unicatch, or the non-examined companies for which the producer did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[10]

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed in these final results will be equal to the rates established in the final results of this review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment in which the company was reviewed; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 2.16 percent,[11] the all-others rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(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 the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: February 6, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2018–02897 Filed 2–12–18; 8:45 am]

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[10] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[11] *See Certain Steel Nails from Taiwan: Notice of Court Decision Not in Harmony with Final Determination in Less Than Fair Value Investigation and Notice of Amended Final Determination,* 82 FR 55090, 55091 (November 20, 2017).

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Financial Management Survey

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled Financial Management Survey for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments may be submitted, identified by the title of the information collection activity, by March 15, 2018.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from February 13, 2018:

(1) *By fax to:* 202–395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) *By email to: smar@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Douglas Godesky, Senior Grants Officer, at 202–606–6967 or email to *dgodesky@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions;

• Propose ways to enhance the quality, utility, and clarity of the information to be collected; and

• Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on July 19, 2017 at Vol. 82, No. 137, Page 33072. This comment period ended September 18, 2017. No public comments were received from this Notice.

Description: The Financial Management Survey collects information about the capacity of organizations to manage federal grant funds. Information from the survey is used to assess an organization's structure and capacity-building needs and identify any appropriate technical assistance and/or resources to strengthen federal grant management and compliance operations. CNCS seeks to renew the current information collection. The information collection will otherwise be used in the same manner as the existing application. CNCS also seeks to continue using the current application until the revised application is approved by OMB. The current application expired on September 30, 2017.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Financial Management Survey.

OMB Number: 3045–0102.

Agency Number: None.

Affected Public: Non-profit Organizations, State, Local and Tribal Governments that are first-time recipients of CNCS grant funds, or renewing their ability to receive CNCS grant funds.

Total Respondents: 200.

Frequency: Once.

Average Time per Response: Averages 2.00 hours.

Estimated Total Burden Hours: 400 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: February 2, 2018.

Joseph Liciardello,

Acting Chief Grants Officer.

[FR Doc. 2018–02880 Filed 2–12–18; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 17–76]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Pamela Young, (703) 697–9107, *pamela.a.young14.civ@mail.mil* or Kathy Valadez, (703) 697–9217, *kathy.a.valadez.civ@mail.mil;* DSCA/DSA–RAN.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 17–76 with attached Policy Justification and Sensitivity of Technology.

Dated: February 8, 2018.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

FEB 05 2018

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 17-76, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Finland for defense articles and services estimated to cost $622 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 17–76

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Finland

(ii) *Total Estimated Value:*

Major Defense Equipment *	$434 million
Other	$188 million
Total	$622 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

One hundred (100) RGM–84Q–4 Harpoon Block II Plus (+) Extended Range (ER) Grade B Surface-Launched Missiles

Twelve (12) RGM–84L–4 Harpoon Block II Grade B Surface-Launched Missiles

Twelve (12) RGM–84Q–4 Harpoon Block II+ ER Grade B Surface-Launched Upgrade Kits

Four (4) RTM–84L–4 Harpoon Block II Grade B Exercise Surface-Launched Missiles

Four (4) RTM–84Q–4 Harpoon Block II+ ER Grade B Exercise Surface-Launched Missiles

Non-MDE:

Also included are containers, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, technical assistance, engineering and logistics support services, and other related elements of logistical support.

(iv) *Military Department:* Navy (FI–P–LBQ)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* February 5, 2018

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Finland—RGM–84Q–4 Harpoon Block II+ ER Grade B Surface-Launched Missiles and RGM–84L–4 Harpoon Block II Grade B Surface-Launched Missiles

The Government of Finland has requested a possible sale of one hundred (100) RGM–84Q–4 Harpoon Block II Plus (+) Extended Range (ER) Grade B Surface-Launched Missiles, twelve (12) RGM–84L–4 Harpoon Block II Grade B Surface-Launched Missiles, twelve (12) RGM–84Q–4 Harpoon Block II+ ER Grade B Surface-Launched Upgrade Kits, four (4) RTM–84L–4 Harpoon Block II Grade B Exercise Surface-Launched Missiles, and four (4) RTM–84Q–4 Harpoon Block II+ ER Grade B Exercise Surface-Launched Missiles. Also included are containers, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, technical assistance, engineering and logistics support services, and other related elements of logistical support. The estimated total case value is $622 million.

This proposed sale will support the foreign policy and national security objectives of the United States by improving the security of a partner nation that has been, and continues to be, an important force for political stability and economic progress in Europe.

Finland intends to use the missiles on its Hamina class ships, Multirole Corvette ships, and Coastal Batteries. The missiles will provide enhanced capabilities in effective defense of critical sea lanes. The proposed sale of the missiles and support will increase the Finnish Navy's maritime partnership potential and increase regional security capability. Finland has not purchased Harpoon Block II+ ER previously, but will have no difficulty incorporating this capability into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be The Boeing Company, St. Louis, MO. The purchaser typically requests offsets. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will require up to 21 U.S. Government personnel to travel to Finland providing support over a period of ten years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 17–76

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The RGM–84Q Harpoon Block II+ ER Surface-Launched missile system is classified SECRET. The Harpoon missile is a non-nuclear tactical weapon system. It provides a day, night, and adverse weather, standoff air-to-surface capability and is an effective Anti-Surface Warfare missile. The RGM–84Q incorporates components, software, and technical design information that is considered sensitive. The following components being conveyed by the proposed sale that are considered sensitive include:

a. Classified CONFIDENTIAL:

(1) Radar Seeker
(2) GPS/INS System
(3) Operational Flight Program Software
(4) Missile operational characteristics and performance data

b. Classified up to SECRET:

(1) Weapon Data Link (depending on key classification)
(2) Warhead

These elements are essential to the ability of the Harpoon missile to selectively engage hostile targets under a wide range of operations, tactical and environmental conditions. The Harpoon is a Coastal Target Suppressions land attack weapon.

2. The RGM–84L Harpoon Block II Surface-Launched missile system is classified CONFIDENTIAL. The Harpoon missile is a non-nuclear tactical weapon system currently in service in the U.S. Navy and in 29 other foreign nations. It provides a day, night, and adverse weather, standoff air-to-surface capability and is an effective Anti-Surface Warfare missile. The RGM–84L incorporates components, software, and technical design information that are considered sensitive. The following components being conveyed by the proposed sale that are considered sensitive and are classified CONFIDENTIAL are:

Classified CONFIDENTIAL:

(1) Radar Seeker
(2) GPS/INS System
(3) Operational Flight Program Software
(4) Missile operational characteristics and performance data

3. The RTM–84 Exercise Harpoon Surface-Launched missile is classified up to SECRET. The RTM–84 Exercise Harpoon incorporates components, software, and technical design information that are considered sensitive. The following components being conveyed by the proposed sale that are considered sensitive include:

a. Classified CONFIDENTIAL:

(1) Radar Seeker
(2) GPS/INS System
(3) Operational Flight Program Software
(4) Missile operational characteristics and performance data

b. Classified up to SECRET:

(1) Weapon Data Link (depending on key classification)

4. If a technologically advanced adversary were to obtain knowledge of

specific hardware, the information could be used to develop countermeasures which might reduce weapons system effectiveness or be used in the development of a system with similar or advanced capabilities.

5. A determination has been made that Finland can provide substantially the same degree of protection for sensitive technology being released as the U.S. Government. This proposed sustainment program is necessary to the furtherance of the U.S. foreign policy and national security objectives outlined in the policy justification.

6. All defense articles and services listed on this transmittal are authorized for release and export to the Government of Finland.

[FR Doc. 2018–02876 Filed 2–12–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Prepare a Tiered Environmental Impact Statement for the New York New Jersey Harbor and Tributaries Coastal Storm Risk Management Feasibility Study

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers, New York District (Corps) is preparing an integrated Feasibility Report/Tiered Environmental Impact Statement (EIS) for the proposed New York New Jersey Harbor and Tributaries Coastal Storm Risk Management Feasibility Study (NYNJHAT). The study is assessing the feasibility of coastal storm risk management alternatives to be implemented within the authorized study area with a specific emphasis on the New York New Jersey Harbor, including Raritan Bay, the tidally-affected stretches of the Passaic and Hackensack Rivers, and the Hudson River to Troy, New York.

ADDRESSES: Pertinent information about the study can be found at: *http://www.nan.usace.army.mil/Missions/Civil-Works/Projects-in-New-York/New-York-New-Jersey-Harbor-Tributaries-Focus-Area-Feasibility-Study/.*

Interested parties are welcome to send written comments and suggestions concerning the scope of issues to be evaluated within the Tiered EIS to Nancy J. Brighton, Chief, Watershed Section, Environmental Analysis Branch, Planning Division, U.S. Army Corps of Engineers, New York District, 26 Federal Plaza, New York, Room 2151, NY 10279–0090; Phone: (917) 790–8703; email: *Nancy.J.Brighton@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Questions about the overall NYNJHAT study should be directed to Bryce Wisemiller, Project Manager, U.S. Army Corps of Engineers, New York District, Programs and Project Management Division, Civil Works Programs Branch, 26 Federal Plaza, Room 2127, New York, NY 10279–0090; Phone: (917) 790–8307; email: *Bryce.W.Wisemiller@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. Background

The U.S. Army Corps of Engineers (Corps), in partnership with the New York State Department of Environmental Conservation (NYSDEC) and the New Jersey Department of Environmental Protection (NJDEP) as the non-federal sponsors, are undertaking this study. In addition, the City of New York is a non-federal partner. The NYNJHAT study area, which encompasses the New York metropolitan area, is highly vulnerable to damage from coastal storm surge, wave attack, erosion, and intense rainfall-storm water runoff events that cause riverine or inland flooding, which can exacerbate coastal flooding. The NYNJHAT study is authorized under Public Law 84–71, June 15, 1955 (69 Stat. 132) to conduct an investigation into potential coastal storm risk management solutions. A Feasibility Cost Sharing Agreement (FCSA) was executed in 2016 with the NYSDEC and NJDEP.

2. Study Area

The study area encompasses approximately 2,150 square miles and includes parts of Bergen, Passaic, Morris, Essex, Hudson, Union, Somerset, Middlesex, and Monmouth Counties in New Jersey and Rensselaer, Albany, Columbia, Greene, Duchess, Ulster, Putnam, Orange, Westchester, Rockland, Bronx, New York, Queens, Kings, Richmond, and Nassau Counties in New York. The study area extends upstream of the Hudson River to the federal lock and dam at Troy, New York, the Passaic River to the Dundee Dam, and the Hackensack River to the Oradell Reservoir.

3. Public Participation

The Corps, the NYSDEC and the NJDEP hosted three agency workshop meetings in January and February 2017, with representatives from federal and state agencies, as well as representatives from local agencies and towns. The Corps, NYSDEC and NJDEP are anticipating hosting a NEPA Scoping Meetings in March and April 2018. Public notices announcing the meeting date, time, location and agenda will be published in the appropriate local newspapers, municipality web pages, and the Corps' New York District web page (see STUDY WEB PAGE and **ADDRESSES** above) and will be distributed to the local stakeholders and known interested parties.

A scoping comment period of 30 days will be established from the scheduled date of the meeting to allow agencies, organizations and individuals to submit comments, questions and/or concerns regarding the Feasibility Study. Comments, concerns and information submitted to the Corps will be evaluated and considered during the development of the Draft EIS.

Lead and Cooperating Agencies

The U.S. Army Corps of Engineers is the lead federal agency for the preparation of a Tiered Environmental Impact Statement (EIS) in order to meet the requirements of the NEPA and the NEPA Implementing Regulations of the President's Council on Environmental Quality (40 CFR 1500–1508). The Corps has invited the U.S. Coast Guard, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the National Park Service, and the Federal Emergency Management Agency to be Cooperating or Participating Agencies on this study. The preparation of a Tiered EIS will be coordinated with New York State, New Jersey State and local municipalities with discretionary authority relative to the proposed actions. The Draft integrated Feasibility Report/Tiered EIS is currently scheduled for distribution to the public Summer 2018.

Dated: February 6, 2018.

Peter M. Weppler,

Chief, Environmental Analysis Branch, Planning Division.

[FR Doc. 2018–02874 Filed 2–12–18; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12635–002]

Notice of Application Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions; Moriah Hydro Corporation

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 12635–002.

c. *Date Filed:* February 13, 2015.

d. *Applicant:* Moriah Hydro Corporation.

e. *Name of Project:* Mineville Energy Storage Project.

f. *Location:* The project would be located in an abandoned subterranean mine complex [1] in the town of Moriah, Essex County, New York. No federal lands are occupied by project works or located within the project boundary.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* James A. Besha, President, Moriah Hydro Corporation, c/o Albany Engineering Corporation, 5 Washington Square, Albany, New York 12205, (518) 456–7712.

i. *FERC Contact:* Chris Millard (202) 502–8256 or *christopher.millard@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–12635–002.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is now ready for environmental analysis.

l. *The proposed project consists of:* (1) An upper reservoir located within the upper portion of the mine between elevations 495 and 1,095 feet above mean seal level (msl), with a surface area of 4 acres and a storage capacity of 2,448 acre-feet; (2) a lower reservoir in the lower portion of the mine between elevations −1,075 and −1,555 feet msl, with a surface area of 5.1 acres and a storage capacity of 2,448 acre-feet; (3) a 14-foot-diameter and 2,955-foot-long upper reservoir shaft connecting the upper reservoir to the high-pressure penstock located below the powerhouse chamber floor; (4) a 14-foot-diameter and 2,955-foot-long lower reservoir shaft connecting the lower reservoir and the lower reservoir ventilation tunnel; (5) two 6-foot-diameter emergency evacuation shafts located between the powerhouse chamber and the electrical equipment chamber; (6) a 25-foot-diameter main shaft extending 2, 955 feet from the surface down to the powerhouse chamber; (7) 15-foot-diameter high- and low-pressure steel penstocks embedded beneath the powerhouse chamber floor; (8) a 320-foot-long by 80-foot-wide powerhouse chamber, containing 100 reversible pump-turbine units, each with a nameplate generating capacity of 2.4 megawatts; (9) a 274-foot-long by 36-foot-wide underground electrical equipment chamber adjacent to the powerhouse chamber; (10) an inclined electrical tunnel connecting the electrical equipment chamber to a new 115-kilovolt (kV) substation constructed adjacent to an existing single circuit 115-kV transmission line located about one horizontal mile from the underground powerhouse chamber; and (11) appurtenant facilities. The project would operate as a closed-loop system to meet energy demands and grid control requirements. The project would have an average annual generation of 421 gigawatt-hours (GWh). The average pumping power used by the project would be 554 GWh.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title COMMENTS, REPLY COMMENTS, RECOMMENDATIONS, TERMS AND CONDITIONS, or PRESCRIPTIONS; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

o. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

p. *Procedural Schedule:*

[1] The existing mine complex is composed of the interconnected Old Bed, Bonanza open pit, and Harmony mines.

The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of comments, recommendations, terms and conditions, and prescriptions.	April 2018.
Reply comments due	May 2018.
Commission issues Draft EA.	October 2018.
Comments on Draft EA	November 2018.
Commission issues Final EA.	March 2019.

Dated: February 5, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–02847 Filed 2–12–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14795–002]

Notice of Scoping Meetings and Environmental Site Review and Soliciting Scoping Comments; Shell Energy North America (US), L.P.

Take notice that the following hydroelectric applications have been filed with Commission and are available for public inspection:

a. *Type of Application:* Original major license.

b. *Project No.:* 14795–002.

c. *Date Filed:* November 1, 2017.

d. *Applicant:* Shell Energy North America (US), L.P.

e. *Name of Project:* Hydro Battery Pearl Hill Pumped Storage Project.

f. *Location:* On the Columbia River and Rufus Woods Lake, near Bridgeport, Douglas County, Washington. The upper reservoir and penstock would be located on state lands, while the lower reservoir and power generation and pumping equipment would be located on Rufus Woods Lake, a reservoir operated by the Army Corps of Engineers (Corps).

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Kent Watt, Shell US Hosting Company, Shell Woodcreek Office, 150 North Dairy Ashford, Houston, TX 77079, (832) 337–1160, *kent.watt@shell.com.*

i. *FERC Contact:* Ryan Hansen, 888 1st St. NE, Washington, DC 20426, (202) 502–8074, *ryan.hansen@ferc.gov.*

j. *Deadline for Filing Scoping Comments:* April 6, 2018.

The Commission strongly encourages electronic filing. Please file scoping comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–14795–002.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. The proposed project would utilize the Corps' existing Rufus Woods Lake Reservoir, and would consist of the following new facilities: (1) A 300-foot-diameter, 20-foot-tall lined corrugated steel tank upper reservoir with a storage capacity of 26.5 acre-feet; (2) a 3-foot-diameter, 3,400-foot-long above-ground carbon steel penstock transitioning to a 3-foot-diameter, 2,700-foot-long buried carbon steel penstock; (3) a 77-foot-long, 77-foot-wide structural steel power platform housing five 2,400 horsepower vertical turbine pumps, one 5 megawatt twin-jet Pelton turbine and synchronous generator, and accompanying electrical equipment; (4) five vertical turbine pump intakes, each fitted with a 27-inch-diameter by 94-inch-long T-style fish screen; (5) a 2,500-foot-long, 24.9-kilovolt transmission line. which would be partially buried and partially affixed to the penstock, interconnecting to an existing non-project transmission line; (6) approximately 3,847 feet of gravel project access road; and (7) appurtenant facilities. The average annual generation is estimated to be 24 gigawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Scoping Process

The Commission intends to prepare an environmental assessment (EA) in cooperation with the Corps [1] on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

FERC staff will conduct one agency scoping meeting and one public meeting. The agency scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns, while the public scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Agency Scoping Meeting

Date: March 7, 2018.
Time: 9:00 a.m. (PST).
Place: Howard's on the River.
Address: 245 Lakeshore Drive, Pateros, WA 98846.

Public Scoping Meeting

Date: March 7, 2018.
Time: 6:00 p.m. (PST).
Place: Howard's on the River.
Address: 245 Lakeshore Drive, Pateros, WA 98846.

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the web at *http://www.ferc.gov* using the eLibrary link (see item m above).

Environmental Site Review

The Applicant and FERC staff will conduct a project environmental site

[1] In a letter filed on January 24, 2018, the Corps requested cooperating agency status.

review beginning at 9:00 a.m. on March 8, 2018. All interested individuals, organizations, and agencies are invited to attend. All participants should meet at the Quick-E Mart parking lot at 2606 Foster Creek Ave., Bridgeport, WA 98813. All participants are responsible for their own transportation to the site. Anyone with questions about the site review should contact JT Steenkamp at (403) 384–7517 or email at *jt.steenkamp@shell.com.*

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Dated: February 5, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–02849 Filed 2–12–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Availability of the Final Supplemental Environmental Impact Statement for the Southeast Market Pipelines Project

	Docket No.
Florida Southeast Connection, LLC.	[CP14–554–002]
Transcontinental Gas Pipe Line Company, LLC.	[CP15–16–003]
Sabal Trail Transmission, LLC.	[CP15–17–002]

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final supplemental environmental impact statement (SEIS) to address the August 22, 2017 Opinion issued by the United States Court of Appeals for the District of Columbia regarding the Commission's environmental review of the Southeast Market Pipelines (SMP) Project.

The final SEIS estimates the greenhouse gas emissions generated by the SMP Project's customers' downstream facilities, describes the methodology used to determine these estimates, discusses context for understanding the magnitude of these emissions, describes the Commission's past policy on use of the Social Cost of Carbon tool, and as appropriate, addresses comments on the draft SEIS issued on September 27, 2017.

Commission staff will mail copies of the final SEIS to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. Additionally, the final SEIS is available for public viewing on the FERC's website (*www.ferc.gov*) using the eLibrary link.

Additional information about the SMP Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on General Search, and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP14–554, CP15–16, or CP15–17). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676; for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: February 5, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–02848 Filed 2–12–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: February 15, 2018, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* *NOTE*—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's website at *http://ferc.capitolconnection.org/* sing the eLibrary link, or may be examined in the Commission's Public Reference Room.

1040TH—MEETING

Item No.	Docket No.	Company
	Administrative	
A–1	AD18–1–000	Agency Administrative Matters.
A–2	AD18–2–000	Customer Matters, Reliability, Security and Market Operations.
	Electric	
E–1	RM16–23–000, AD16–20–000	Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators. Electric Storage Participation in Regions with Organized Wholesale Electric Markets.
E–2	RM16–6–000	Essential Reliability Services and the Evolving Bulk-Power System–Primary Frequency Response.
E–3	ER17–2536–000, ER17–2536–001	Pacific Gas and Electric Company.
E–4	EL16–71–000, ER17–179–000	Monongahela Power Company; Potomac Edison Company; West Penn Power Company; AEP Indiana Michigan Transmission Company, Inc.; AEP Kentucky Transmission Company, Inc.; AEP Ohio Transmission Company, Inc.; AEP West Virginia Transmission Company, Inc.; Appalachian Power Company; Indiana Michigan Power Company; Kentucky Power Company; Kingsport Power Company; Ohio Power Company; Wheeling Power Company; Commonwealth Edison Company; Commonwealth Edison Company of Indiana, Inc.; Dayton Power and Light Company; Virginia Electric and Power Company; Public Service Electric and Gas Company; PECO Energy Company; PPL Electric Utilities Corporation; Baltimore Gas and Electric Company; Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company; Potomac Electric Power Company; Atlantic City Electric Company; Delmarva Power & Light Company; UGI Utilities Inc.; Allegheny Electric Cooperative, Inc.; CED Rock Springs, LLC; Old Dominion Electric Cooperative; Rockland Electric Company; Duquesne Light Company; Neptune Regional Transmission System, LLC; Trans-Allegheny Interstate Line Company; Linden VFT, LLC; American Transmission Systems, Incorporated; City of Cleveland, Department of Public Utilities, Division of Cleveland Public Power; Duke Energy Ohio, Inc.; Duke Energy Kentucky, Inc.; City of Hamilton, Ohio; Hudson Transmission Partners, LLC; East Kentucky Power Cooperative, Inc.; City of Rochelle; ITC Interconnection LLC; PJM Interconnection, L.L.C.
E–5	ER17–706–001	GridLiance West Transco LLC.
E–6	ER16–262–001	Uniper Global Commodities North America LLC.
E–7	ER16–2186–000	Deseret Generation & Transmission Co-operative, Inc.
E–8	ER18–465–000	Public Service Company of New Hampshire.
E–9	ER18–164–000	Public Service Company of Colorado.
E–10	ER17–156–002	Midcontinent Independent System Operator, Inc.
E–11	ER13–102–009, ER13–102–010, ER13–102–011.	New York Independent System Operator, Inc.
E–12	ER15–2059–002, ER13–102–008, (Not Consolidated).	New York Independent System Operator, Inc.
E–13	EC18–21–000	Michigan Electric Transmission Company, LLC.
E–14	EL17–83–000	Piedmont Municipal Power Agency v. Duke Energy Carolinas, LLC.
E–15	EL18–50–000, QF17–581–001, QF17–582–001, QF17–583–002, QF17–584–001.	Franklin Energy Storage One, LLC; Franklin Energy Storage Two, LLC; Franklin Energy Storage Three, LLC; Franklin Energy Storage Four, LLC.
	Miscellaneous	
M–1	RM18–7–000	Withdrawal of Pleadings.
	Gas	
G–1	OR18–2–000	Permian Express Terminal LLC and Permian Express Partners LLC.
G–2	RP18–354–000	Chesapeake Energy Marketing, L.L.C. and Territory Resources LLC.
G–3	RP15–1022–010, RP16–581–004, (Consolidated),. RP16–292–004, RP16–240–003, RP16–986–001, RP16–1045–001, (Not Consolidated).	Alliance Pipeline L.P.
	Hydro	
H–1	P–5–103	Confederated Salish and Kootenai Tribes Energy Keepers, Incorporated.
H–2	P–10808–058	Boyce Hydro Power, LLC.
H–3	P–10808–056	Boyce Hydro Power, LLC.
H–4	CD18–1–001	Carson Tahoe Energy, LLC.

1040TH—MEETING—Continued

Item No.	Docket No.	Company
	Certificates	
C–1	CP08–454–000	LA Storage, LLC.
C–2	CP17–257–000	WBI Energy Transmission, Inc.
C–3	CP17–468–000	Texas Eastern Transmission, LP.
C–4	CP17–46–000	Southern Natural Gas Company, L.L.C.
C–5	CP15–499–000, CP15–499–001, CP17–26–000.	Texas Eastern Transmission, LP; Pomelo Connector, LLC.

Dated: February 8, 2018.

Kimberly D. Bose,

Secretary.

A free webcast of this event is available through *http://ferc.capitolconnection.org/.* Anyone with internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://ferc.capitolconnection.org/* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2018–03013 Filed 2–9–18; 11:15 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[9974–34–ORD]

Ambient Air Monitoring Reference and Equivalent Methods; Designation of One New Reference Method

AGENCY: Office of Research and Development; Environmental Protection Agency.

ACTION: Notice of the designation of a new reference method for monitoring ambient air quality.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated one new reference method for measuring concentrations of nitrogen dioxide (NO_2) in ambient air.

FOR FURTHER INFORMATION CONTACT: Robert Vanderpool, Exposure Methods and Measurements Division (MD–D205–03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: 919–541–7877. Email: *Vanderpool.Robert@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQS) as set forth in 40 CFR part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference or equivalent methods (as applicable), thereby permitting their use under 40 CFR part 58 by States and other agencies for determining compliance with the NAAQS. A list of all reference or equivalent methods that have been previously designated by EPA may be found at *http://www.epa.gov/ttn/amtic/criteria.html.*

The EPA hereby announces the designation of one new reference method for measuring concentrations of NO_2 in ambient air. This designation is made under the provisions of 40 CFR part 53, as amended on October 26, 2015 (80 FR 65291–65468).

The new reference method for NO_2 is an automated method (analyzer) utilizing the measurement principle based on gas phase chemiluminescence. This newly designated reference method is identified as follows:

RFNA–0118–249, ''Environnement S. A. Model AC32e and AC32e* Chemiluminescent NO, NO_X, NO_2 Analyzer,'' operated with user selectable ranges of 0–1 ppm or 0–10 ppm, at any temperature in the range of 0 °C to 40 °C, equipped with a 5-micron PTFE sample inlet filter, molybdenum NO_X converter operating at 340 °C, heated catalytic ozone scrubber, external pump, operating with a sample flow rate of 0.66 Lpm (1.00 Lpm with optional sample dryer), with an ozone flow rate of 0.06 Lpm, and operating from a 115V/60Hz, 230V/50Hz power source. Includes 7″ touch screen and USB and Ethernet outputs. Model AC32e* does not contain touch screen and communicates via user-provided computer, smartphone, or tablet. Analyzer operated and maintained in accordance with the Model AC32e Technical Manual.

This application for a reference method determination for this NO_2 method was received by the Office of Research and Development on December 6, 2017. This analyzer is commercially available from the applicant, Environment S.A., 111, bd Robespierre, 78300 Poissy, France.

A representative test analyzer was tested in accordance with the applicable test procedures specified in 40 CFR part 53, as amended on October 26, 2015. After reviewing the results of those tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as a reference method.

As a designated reference method, this method is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, this method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (*e.g.,* configuration or operational settings) specified in the designated method description (see the identification of the method above).

Use of the method also should be in general accordance with the guidance and recommendations of applicable sections of the ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I,'' EPA/600/R–94/038a and ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Ambient Air Quality Monitoring Program,'' EPA–454/B–13–003, (both

available at *http://www.epa.gov/ttn/amtic/qalist.html*). Provisions concerning modification of such methods by users are specified under Section 2.8 (Modifications of Methods by Users) of Appendix C to 40 CFR part 58.

Consistent or repeated noncompliance with any of these conditions should be reported to: Director, Exposure Methods and Measurements Division (MD–E205–01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this reference method is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of the method should be directed to the applicant.

Dated: February 5, 2018.

Timothy H. Watkins,

Acting Director, National Exposure Research Laboratory.

[FR Doc. 2018–02813 Filed 2–12–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2017–0752; FRL–9974–29–OARM]

Proposed Information Collection Request; Comment Request; Background Checks for Contractor Employees (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Background Checks for Contractor Employees (Renewal)'' (EPA ICR No. 2159.07, OMB Control No. 2030–0043) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through August 31, 2018. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before April 16, 2018.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OARM–2017–0752 online using *www.regulations.gov* (our preferred method), by email to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Thomas Valentino, Policy Training and Oversight Division, Office of Acquisition Management (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–4522; email address: *valentino.thomas@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The EPA uses contractors to perform services throughout the nation with regard to environmental emergencies involving the release, or threatened release, of oil, radioactive materials, or hazardous chemicals that may potentially affect communities and the surrounding environment. The Agency may request contractors responding to any of these types of incidents to conduct background checks and apply Government-established suitability criteria in Title 5 CFR Administrative Personnel 731.104 *Appointments Subject to Investigation,* 732.201 *Sensitivity Level Designations and Investigative Requirements,* and 736.102 *Notice to Investigative Sources* when determining whether employees are acceptable to perform on given sites or on specific projects. In addition to emergency response contractors, EPA may require background checks for contractor personnel working in sensitive sites or sensitive projects. The background checks and application of the Government's suitability criteria must be completed prior to contract employee performance. The contractor shall maintain records associated with all background checks. Background checks cover citizenship or valid visa status, criminal convictions, weapons offenses, felony convictions, and parties prohibited from receiving federal contracts.

Form numbers: None.

Respondents/affected entities: Private Contractors.

Respondent's obligation to respond: Required to obtain a benefit per Title 5 CFR Administrative Personnel 731.104 *Appointments Subject to Investigation,* 732.201 *Sensitivity Level Designations and Investigative Requirements,* and 736.102 *Notice to Investigative Sources.*

Estimated number of respondents: 1,000 (total).

Frequency of response: Annual.

Total estimated burden: 1,000 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $195,070 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in estimates: There is no change in the hours in the total estimated respondent burden compared with the ICR currently approved by OMB.

Dated: January 31, 2018,

Kimberly Y. Patrick,

Director, Office of Acquisition Management.

[FR Doc. 2018–02929 Filed 2–12–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2017–0640; FRL–9974–23–OECA]

Proposed Information Collection Request; Comment Request; Recordkeeping Requirements for Producers, Registrants and Applicants of Pesticides and Pesticide Devices Under Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); EPA ICR Number 0143.13, OMB Control Number 2070–0028

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), Recordkeeping Requirements for Producers, Registrants and Applicants of Pesticides and Pesticide Devices under Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (EPA ICR No. 0143.13, OMB Control No. 2070–0028) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through September 30, 2018. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before April 16, 2018.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OECA–2017–0640, online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Michelle Stevenson, Office of Compliance, Monitoring, Assistance, and Media Programs Division, Pesticides, Waste & Toxics Branch (2225A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–4203; fax number: (202) 564–0085; email: *stevenson.michelle@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Producers of pesticides and pesticide devices must maintain certain records with respect to their operations and make such records available for inspection and copying as specified in Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and in regulations at 40 CFR part 169. This information collection is mandatory under FIFRA Section 8. It is used by the Agency to determine compliance with FIFRA. The information is used by EPA Regional pesticide enforcement and compliance staffs, the Office of Enforcement and Compliance Assurance (OECA), and the Office of Pesticide Programs (OPP) within the Office of Chemical Safety and Pollution Prevention (OCSPP), as well as the U.S. Department of Agriculture (USDA), the Food and Drug Administration (FDA), and other Federal agencies, States under Cooperative Enforcement Agreements, and the public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Form Numbers: None.

Respondents/affected entities: Producers of pesticides and pesticide devices for sale or distribution in or exported to the United States.

Respondent's obligation to respond: Mandatory (40 CFR 169).

Estimated number of respondents: 14,447 (total).

Frequency of response: Annual.

Total estimated burden: 28,894

T*otal estimated cost:* $3,500,508. There are no annualized capital or O&M costs associated with this ICR since all equipment associated with this ICR is present as part of ordinary business practices.

Changes in estimates: There is a decrease of 5,694 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is an adjustment due to a change in the number of respondents since the last ICR.

Dated: January 11, 2018.

Edward J. Messina,

Director, Office of Compliance/MAMPD.

[FR Doc. 2018–02931 Filed 2–12–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, 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, and the Determination of

the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP); Funding Opportunity Announcement (FOA), IP18–001, Reducing Disparities in Vaccination Coverage by Poverty Status Among Young Children and IP18–003, Understanding and Addressing the Disparity in Vaccination Coverage Among U.S. Adolescents Living in Rural versus Urban Areas.

Dates: March 20, 2018 and March 21, 2018.

Time: 10:00 a.m.–5:00 p.m. (EDT)

Place: Teleconference, Centers for Disease Control and Prevention, Room 1080, 8 Corporate, Atlanta, GA 30329.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road NE, Mailstop E–60, Atlanta, Georgia 30333, (404) 718–8833, *gca5@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2018–02826 Filed 2–12–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Lead Exposure and Prevention Advisory Committee (LEPAC); Notice of Establishment

ACTION: Notice of charter establishment.

SUMMARY: Pursuant to the Section 2203 of Public Law 114–322 (Water Infrastructure Improvements for the Nation Act)(Registry for Lead Exposure and Advisory Committee), and the Federal Advisory Committee Act of October 6, 1972, the Director, Centers for Disease Control and Prevention (CDC), announces the establishment of the Lead Exposure and Prevention Advisory Committee. The Lead Exposure and Prevention Advisory Committee shall, at a minimum: (1) Review the Federal programs and services available to individuals and communities exposed to lead; (2) review current research on lead exposure to identify additional research needs; (3) review and identify best practices, or the need for best practices regarding lead screening and the prevention of lead poisoning; (4) identify effective services, including services relating to healthcare, education, and nutrition for individuals and communities affected by lead exposure and lead poisoning, including in consultation with, as appropriate, the lead exposure registry as established in Section 2203(b) of Public Law 114–322; and (5) undertake any other review or activities that the Secretary determines to be appropriate. This advisory committee will review research and Federal programs and services related to lead poisoning and to identify effective services and best practices for addressing and preventing lead exposures in communities.

FOR FURTHER INFORMATION CONTACT: Perri Ruckart, M.P.H., Epidemiologist, CDC, 4770 Buford Highway NE, Atlanta, Georgia 30341, telephone (770) 488–3808; *afp4@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2018–02823 Filed 2–12–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, 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, and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel; (SEP) DP18–001, Etiology and Outcome of Inflammatory Bowel Disease.

Date: April 11, 2018.

Time: 11:00 a.m.–6:00 p.m., EDT.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Jaya Raman Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, Mailstop F80, Atlanta, Georgia 30341, Telephone: (770) 488–6511, *kva5@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2018–02829 Filed 2–12–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, 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, and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP); DD18–001, Birth Defects Study To Evaluate Pregnancy exposureS (BD–STEPS) II.

Date: April 18, 2018.
Time: 10:00 a.m.–6:00 p.m., EDT.
Place: Teleconference.
Agenda: To review and evaluate grant applications.

For Further Information Contact: Jaya Raman, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, Mailstop F80, Atlanta, Georgia 30341, Telephone: (770) 488–6511, *kva5@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2018–02825 Filed 2–12–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation of Nominations for Appointment to the Advisory Committee on Breast Cancer in Young Women (ACBCYW)

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) is seeking nominations for membership on the ACBCYW. The ACBCYW consists of 15 experts in fields associated with breast cancer, disease prevention, early detection, diagnosis, public health, social marketing, genetic screening and counseling, treatment, rehabilitation, palliative care, and survivorship in young women, or in related disciplines with a specific focus on young women. Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the committee's objectives. Nominees will be selected based on expertise in the fields of breast health, breast cancer, disease prevention and risk reduction, survivorship (including metastatic breast cancer), hereditary breast and ovarian cancer (HBOC), or in related disciplines with a specific focus on young women. Persons with personal experience with early onset breast cancer are also eligible to apply. This includes, but may not be limited to breast cancer survivors <45 years of age and caregivers of said persons. Federal employees will not be considered for membership. Members may be invited to serve up to four-year terms. Selection of members is based on candidates' qualifications to contribute to the accomplishment of ACBCYW objectives (*http://www.cdc.gov/maso/facm/facmacbcyw.html*).

DATES: Nominations for membership on the ACBCYW must be received no later than March 26, 2018. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be mailed to Temeika L. Fairley, Ph.D. c/o ACBCYW Secretariat, Centers for Disease Control and Prevention, 3719 North Peachtree Road, Building 100 Chamblee, Georgia 30341, or emailed (recommended) to *acbcyw@cdc.gov*.

FOR FURTHER INFORMATION CONTACT: Temeika L. Fairley, Ph.D., Designated Federal Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway NE, Mailstop F–76, Atlanta, Georgia 30341; 770–488–4518; *acbcyw@cdc.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Department of Health and Human Services policy stipulates that committee membership be balanced in terms of points of view represented, and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Current participation on federal workgroups or prior experience serving on a federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees, requiring the filing of financial disclosure reports at the beginning and annually during their terms. CDC reviews potential candidates for ACBCYW membership each year, and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in December 2018, or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year.

Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Candidates should submit the following items:

- Current curriculum vitae, including complete contact information (telephone numbers, mailing address, email address);
- At least one letter of recommendation from person(s) not employed by the U.S. Department of Health and Human Services. (Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (*e.g.,* CDC, NIH, FDA, etc.).

Nominations may be submitted by the candidate him- or herself, or by the person/organization recommending the candidate.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2018–02827 Filed 2–12–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of closed meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, 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, and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP) Funding Opportunity Announcement (FOA), PAR 16–098, Cooperative Research Agreements to the World Trade Center Health Program (U01).

Dates: April 11, 2018 and April 12, 2018.

Times: 8:00 a.m.–5:00 p.m., EDT, April 11, 2018 and 8:00 a.m.–2:00 p.m. EDT, April 12, 2017.

Place: Courtyard Marriott Decatur Downtown/Emory, 130 Clairemont Avenue, Decatur, Georgia 30030, Telephone: (404)371–0204.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Nina Turner, Ph.D., Scientific Review Officer, CDC/NIOSH, 1095 Willowdale Road, Mailstop G905, Morgantown, West Virginia 26505, Telephone: (304) 285–5975.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2018–02824 Filed 2–12–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 81 FR 84583–84591, dated November 23, 2016) is amended to reflect the reorganization of the National Center for Environmental Health, Office of Noncommunicable Diseases, Injury and Environmental Health, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the titles and mission and function statements for the *National Center for Environmental Health (CUG)* and insert the following:

National Center for Environmental Health (CUG). Plans, directs, and coordinates a national program to maintain and improve the health of the American people by promoting a healthy environment and by preventing premature death and avoidable illness and disability caused by non infectious, non occupational environmental and related factors. In carrying out this mission, the Center: (1) Assists in increasing the capacity of States to prevent and control environmental public health problems through training, technology transfer, grants, cooperative agreements, contracts, and other means; (2) provides services, advice, technical assistance, and information to State and local public health officials, other Federal agencies, academic, professional, international, and private organizations, and the general public; (3) plans for and provides emergency response assistance to States, localities, other Federal agencies, and international organizations; (4) identifies, designs, develops, implements, influences, and evaluates interventions to reduce or eliminate environmental hazards, exposures to these hazards, and adverse health outcomes resulting from exposure to these hazards; (5) measures, estimates, and predicts the incidence of adverse health outcomes through surveillance, surveys, and registries; (6) measures, estimates, and predicts the incidence of exposure to substances, conditions, or forces in the environment through surveillance, surveys, and registries; (7) describes and evaluates associations between environmental exposures and adverse health outcomes by using information from surveillance systems, surveys, registries, epidemiologic and laboratory studies, and by developing and maintaining a broad base of normative and diagnostic laboratory data; (8) develops and validates advanced laboratory technology for diagnosing selected chronic diseases and for assessing exposure and health effects in persons exposed or potentially exposed to environmental toxicants or other environmental agents; (9) develops and validates new epidemiologic techniques for use in study of the effects of exposure to environmental hazards; (10) provides leadership in coordinating efforts in States and in national and international organizations concerned with standardizing selected laboratory measurement systems; (11) conducts special programs, *e.g.,* coordination and review of Environmental Impact Statements; and (12) in carrying out the above functions, collaborates, as appropriate, with other Centers/Institute/Offices of CDC.

Office of the Director (CUG1). (1) Manages, directs, coordinates, and evaluates all health-related programs of National Center for Environmental Health and Agency for Toxic Substances and Disease Registry (NCEH & ATSDR); (2) provides overall leadership in health-related activities for hazardous substances, hazardous waste sites and chemical releases; (3) provides overall coordination for the research programs and science policies of the agencies; (4) develops goals and objectives and provides leadership, policy formulation, scientific oversight, and guidance in program planning and development; (5) provides overall programmatic direction for planning and management oversight of allocated resources, human resource management and administrative support; (6) provides information, publication and distribution services to NCEH & ATSDR; (7) maintains liaison with other Federal, State, and local agencies, institutions, and organizations; (8) coordinates NCEH & ATSDR program activities with other CDC components, other Federal, State and local Government agencies, the private sector, and other nations; and (9) directs and coordinates activities in support of the Department's Equal Employment Opportunity program and employee development.

Office of Communication (CUG12). (1) Serves as the principal advisor to the center director and divisions on communication and marketing science, research, practice, and public affairs; (2) leads center strategic planning for communication and marketing science and public affairs programs and projects; (3) analyzes context, situation, and environment to inform center-wide communication and marketing programs and projects; (4) ensures use of scientifically sound research for marketing and communication programs and projects; (5) ensures accurate, accessible, timely, and effective translation of science for use by multiple audiences; (6) leads identification and implementation of information dissemination channels; (7) provides communication and marketing project management expertise; (8) collaborates with external organizations and the news, public service, and entertainment and other media to ensure that scientific findings and their implications for public health reach the intended audiences; (9) collaborates closely with divisions to produce materials tailored to meet the requirements of news and other media channels, including press releases, letters to the editor, public service announcements, television programming, video news releases, and other electronic and printed materials; (10) coordinates the development and maintenance of accessible public information through the internet, social media and other applicable channels; (11) provides training and technical assistance in the areas of health communication, risk communication, social marketing, and public affairs; (12)

manages or coordinates communication services such as internet/Intranet, application development, social media, video production, graphics, photography, CDC name/logo use and other brand management; (13) provides editorial services, including writing, editing, and technical editing; (14) facilitates internal communication to center staff and allied audiences; (15) supervises and manages Office of Communications activities, programs, and staff; (16) serves as liaison to internal and external groups to advance the center's mission; (17) collaborates with the CDC Office of the Associate Director for Communication on media relations, electronic communication, health media production, and brand management activities; (18) collaborates with the Office of Public Health Preparedness and Response and other NCEH & ATSDR entities to fulfill communication responsibilities in emergency response situations; (19) collaborates with other CDC Centers/Institute/Offices in the development of marketing communications targeted to populations that would benefit from a cross-functional approach; and (20) ensures NCEH & ATSDR materials meet CDC and Department of Health and Human Services standards.

Office of Policy, Partnerships and Planning (CUG13). (1) Coordinates, develops, recommends and implements strategic planning and tracking for NCEH & ATSDR; (2) develops and coordinates performance management to ensure achievement of goals in NCEH & ATSDR programs; (3) participates in reviewing, coordinating, and preparing legislation, briefing documents, Congressional testimony, and other legislative matters; (4) maintains liaison and coordinates with other Federal agencies for program planning and performance; (5) assists in the development of NCEH & ATSDR budget and program initiatives; (6) provides liaison with staff offices and other officials of CDC; (7) monitors and prepares reports on health-related activities to comply with provisions of relevant legislation; (8) coordinates the development, review, and approval of Federal regulations, **Federal Register** announcements, Freedom Of Information Act requests, GAO and IG reports, and related activities; (9) develops and strengthens strategic partnerships with key constituent groups; and (10) facilitates communication between NCEH & ATSDR and its partners.

Office of Management and Analytics (CUG14). (1) Plans, manages, directs, and conducts the administrative and financial management operations of NCEH & ATSDR; (2) reviews the effectiveness and efficiency of administration and operation of all NCEH & ATSDR programs; (3) develops and directs systems for human resource management, financial services, procurement requisitioning, and travel authorization; (4) provides and coordinates services for the extramural award activities of NCEH & ATSDR; (5) formulates and provides overall programmatic direction for planning and management oversight of allocated resources, human resource management and administrative support; (6) develops and directs a system for cost recovery; (7) enables and supports NCEH & ATSDR data management, systems development, and information security needs; (8) directs and coordinates activities in support of the Department's Equal Employment Opportunity program and employee development; (9) coordinates employee training programs; (10) develops and directs employee engagement programs; (11) analyzes NCEH & ATSDR workforce, systems, and resources; and (12) manages and conducts a record management program for NCEH & ATSDR in accordance with Congressional mandate.

Office of Science (CUG15). (1) Ensures NCEH & ATSDR compliance with the various statutes, regulations, and policies governing the conduct of science by the federal government, including: Human subjects research determinations, the protection of human research subjects and the use of Institutional Review Boards (IRBs), the OMB Paperwork Reduction Act (relating to the collection of information from ten or more people in a 12-month period), the OMB Information Quality Bulletin, Confidentiality Protection, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA, and its ''Privacy Rule''); and others; (2) develops and maintains the NCEH & ATSDR Clearance Policy and managing and conducting clearance for NCEH & ATSDR documents; (3) coordinates and manages document cross-clearance between NCEH & ATSDR and other parts of CDC; facilitating center reviews of external documents, coordinating and managing information quality requests concerning NCEH & ATSDR documents; (4) coordinates and manages external peer review for NCEH & ATSDR documents and intramural programs; (5) coordinates and manages the activities of the NCEH & ATSDR Board of Scientific Counselors (a Federal Advisory Committee) and its subcommittees and workgroups; (6) coordinates interagency workgroups/committees such as the President's Task Force on Environmental Health Risks and Safety Risks to Children, and the National Toxicology Program Executive Committee; (7) coordinates and manages NCEH & ATSDR involvement in the Epidemic Intelligence Service Program; (8) coordinates NCEH & ATSDR involvement in CDC public health ethics activities; (9) coordinates NCEH & ATSDR involvement in CDC science awards activities (*e.g.,* the Shepard Award, and CDC/ATSDR Honor Awards); (10) organizes and sponsors select training opportunities (*e.g.,* Human Subjects/IRB, OMB/PRA, and eClearance Training for Authors and Reviewers); (11) represents NCEH & ATSDR on various CDC/ATSDR committees, work groups, and task forces, such as the CDC/ATSDR Office of the Chief Science Officer's Excellence in Science Committee, and the CDC Surveillance Science Advisory Group; (12) coordinates NCEH & ATSDR global health activities; (13) coordinates and manages the NCEH & ATSDR Healthy People 2020; (14) prepares an annual inventory of NCEH & ATSDR publications; and (15) pursuant to the National Environmental Policy Act, reviews draft Environmental Impact Statements on behalf of HHS where the proposed federal actions impact human health.

Division of Laboratory Sciences (CUGD). (1) Provides advanced laboratory science to improve the detection, diagnosis, treatment, and prevention of environmental, tobacco-related, nutritional, newborn, selected chronic and selected infectious diseases; (2) provides advanced laboratory science to rapidly and accurately detect chemical threat agents, radiologic threat agents, and selected toxins; (3) develops, maintains, and applies unique, rapid, and high-quality measurement techniques to assess disease risk, identify harmful environmental exposures or nutrition deficiencies among Americans, and respond to public health emergencies (4) provides laboratory measurements in collaborative studies of human disease and vulnerable populations; (5) provides technical assistance, technology transfer, reference laboratory measurements, laboratory standardization programs, and external quality assurance to state and local public health laboratories and health officials; Federal agencies; international organizations; academic, international, and private laboratories; and professional organizations to continuously improve the accuracy, precision, and cost effectiveness of

laboratory tests for environmental chemicals, nutrition indicators, heart disease, stroke and newborn screening; and (6) collaborates with other CDC organizations; Federal, State, and local agencies; and private and professional organizations to investigate new or emerging health concerns.

Inorganic and Radiation Analytical Toxicology Branch (CUGDC). (1) Develops, maintains, and distributes, as appropriate, analytical methods to measure trace essential and toxic elements in human specimens; (2) applies analytical methods to assess human exposure to chemicals, including surveillance of levels in the population, epidemiologic studies, and emergency-response investigations; (3) provides training, guidance, and assistance to state and local governments, and domestic and international laboratories in the development, maintenance, and technology transfer of analytical capability for measuring trace-essential and toxic elements in specimens from people and animals; (4) develops and maintains analytical capability and expertise, and distributes, as appropriate, standards, reference materials, and protocols for measuring chemicals in response to both terrorist and non-terrorist events; (5) distributes, as appropriate, standards, reference materials, and protocols to assist state, international, and other laboratories in transferring laboratory technology for urine iodine biomonitoring, blood metals biomonitoring, and radiologic analyses; and (6) provides technical assistance and guidance to governmental agencies, academia, and professional societies regarding quality control issues related to biomonitoring for inorganic and radiologic chemicals.

Clinical Chemistry Branch (CUGDD). (1) Develops and maintains analytical methods and expertise in the measurement, interpretation and standardization of chronic disease biomarkers, chemicals known to cause disease or health concerns, and biological toxins; (2) develops, establishes and maintains laboratory standardization and improvement programs to assist state, national and international agencies and organizations to better diagnose, treat and prevent selected chronic diseases and infectious diseases; (3) applies these analytical methods and standardization procedures to: Assess chronic disease status or human exposure to environmental chemicals, toxins, and pathogens; standardize disease biomarker measurements; and improve the safety and quality of biological preparations; (4) provides laboratory science to diagnose diseases caused by selected viral and bacterial organisms, and assess the effectiveness of disease treatment and prevention efforts; and (5) provides review, expert consultation, technical assistance, training, guidance and/or original scientific publications and information to federal, state, local and international investigations, surveys, studies, and/or government inquiries on topics related to human exposure assessment, standards development, analytical instrumentation as well as prevalence, risk factors, and treatment of chronic diseases, exposure to environmental chemicals, influenza, toxins and human pathogens.

Organic Analytical Toxicology Branch (CUGDE). (1) Develops and maintains analytical methods to measure selected synthetic and naturally occurring organic chemicals, their metabolites, and reaction products (adducts) in human specimens; (2) applies these analytical methods to assess human exposures to these chemicals for many purposes, including surveillance of levels in the population, epidemiological studies, and emergency response investigations; (3) aids in transferring these methods within Division laboratories and to state, local and other public health laboratories; (4) develops and prepares various matrix-based quality control materials for use in such analyses; and (5) provides review, expert consultation, and original scientific publications/information to Federal, state, local, and international governments and health organizations on topics related to human exposure assessment, organic analytical methodology, high technology analytical instrumentation, preparation and analysis of biological specimens, quality control procedures, laboratory safety, and medical interpretation of laboratory findings.

Newborn Screening and Molecular Biology Branch (CUGDG). (1) Provides leadership, technical consultation and assistance in laboratory testing for newborn screening, genetic and other diseases of public health importance to State Public Health laboratories, Federal agencies, academic centers, professional organizations, international laboratories, and manufacturers of diagnostic products involved in performing relevant laboratory measurements; (2) provides leadership, oversight and administration of the dried-blood spot (DBS) quality assurance program that is necessary for both domestic and international laboratories that screen for newborn disorders including metabolic conditions as well as inherited genetic and other select treatable adverse conditions in newborns; (3) develops, evaluates, standardizes, and maintains laboratory methods for biochemical and genetic assays for diseases of public health significance, immune disorders, DBS assays utilized by newborn screening programs worldwide; and (4) evaluates and refines existing and emerging laboratory technologies for measurement and study of biomarkers for clinical applications and population-based screening for diseases and genetic risk factors of public health importance.

Emergency Response Branch (CUGDH). (1) Develops and maintains analytical methods to measure, in human specimens, toxic substances that are known or potential agents for use in chemical terrorism; (2) applies these measurements in response to chemical terrorism or chemical exposure emergencies and, as part of a coordinated Federal response, deploys a rapid response laboratory team to assist in obtaining human specimens for analysis; (3) transfers technology, provides training, and provides technical assistance for measurement of chemical agents in human specimens to a network of laboratories that provide additional capacity for responding to chemical terrorism; (4) provides review and expert consultation to Federal, state, local and international governments and health organizations on assessing and interpreting biomonitoring measurements of chemical agents likely to be used in terrorism; and (5) for toxic substances of public health concern but unlikely to be involved in chemical terrorism, transfers biomonitoring technology (including analytical methods), provides biomonitoring training, and provides technical assistance in biomonitoring to state laboratories.

Nutritional Biomarkers Branch (CUGDJ). (1) Develops and maintains analytical methods and expertise in the measuring and interpreting of physiologic levels of essential nutrients, nonessential nutrients, and relevant metabolites; (2) develops and maintains analytical methods to measure bioactive dietary compounds, other than those needed to meet basic human nutritional needs, that are responsible for changes in health status; (3) applies analytical methods to assess human nutritional status or exposure to bioactive dietary compounds for purposes including surveillance of levels in the population, epidemiological studies, intervention trails, and emergency-response investigations; (4) provides technical assistance, training, and guidance to national, state, international, and local investigations, surveys, food fortification and clinical studies of

nutritional status, prevalence, risk factors, and treatment of chronic diseases; and (5) develops, maintains, and distributes, as appropriate, standards, reference materials, protocols, standardization programs, and external quality assessment programs to assist state, international, and other laboratories in transferring laboratory technology and in establishing and maintaining quality control and calibration of methods for nutritional biomarkers and markers of physiologic changes.

Tobacco and Volatiles Branch (CUGDK). (1) Develops, maintains, and applies analytical methods to measure biomarkers of exposure to toxic substances and applies these analytical methods to assess human exposures to volatile organic compounds for many purposes; (2) develops and maintains analytical methods and measures addictive and toxic substances in tobacco products, in tobacco smoke and in the blood, urine and saliva of smokers and persons exposed to tobacco smoke; (3) determines how different tobacco additives and changes in product construction and design affect delivery of addictive and toxic substances from tobacco products to people; (4) for the U.S. population, regularly measures the percent of persons who are smokers and the exposure of Americans to the major toxic constituents of tobacco smoke; (5) for the U.S. population, regularly measures the exposure of Americans to secondhand smoke; and (6) collaborates in human studies of disease risk associated with direct and secondhand tobacco smoke exposure and use of other tobacco products.

Division of Environmental Health Science and Practice (CUGE). (1) Provides national and international leadership for the coordination, delivery, and evaluation of environmental health interventions and services; (2) advances environmental public health practice to better serve and protect the health of all people in the United States; (3) develops methods and conducts activities to assess risk to human populations from exposure to environmental hazards; (4) conducts and disseminates findings of surveillance, epidemiologic research, environmental assessments, and other scientific investigations of human exposure to environmental hazards; (5) develops mechanisms to disseminate information on environmental health interventions, risks, technologies, and best practices to state, tribal, local, and territorial health departments and to other agencies with related responsibilities; (6) maintains liaison with and serves as a primary federal resource for consultation and specialized technical assistance to federal, state, tribal, local, and territorial agencies; other national, international, and private organizations; and academic institutions for environmental health issues; (7) provides consultation and technical assistance on the development and implementation of environmental health programs addressing the prevention of human health problems associated with environmental hazards; (8) serves as CDC lead on safe water issues with focus on an all-hazards approach to recreational water, drinking water systems, private wells, and other private drinking water sources; (9) serves as CDC lead for control and prevention of environmental causes of Legionnaires' disease; (10) serves as CDC lead for prevention of environmental causes of foodborne illnesses and outbreaks; (11) operates a model vessel sanitation program that includes the development of standards, inspection of vessels, sanitation and disease prevention training of the cruise ship industry, conducting gastrointestinal (GI) illness surveillance and disease outbreak investigations on vessels sailing internationally; (12) provides guidance and technical assistance to the cruise ship industry on the control and prevention of GI illnesses on vessels; (13) plans, develops, implements, and evaluates training programs, workshops, technical manuals and guidance, and model standards to strengthen the technical capacity of environmental health practitioners in constituent agencies and organizations, including state, tribal, local, and territorial governments; (14) provides leadership in the development and implementation of asthma control programs and strategies to reduce the asthma exacerbations and deaths; (15) serves as CDC lead for epidemiologic research and investigations of respiratory diseases, other illnesses related to air pollutants, and outbreaks of acute respiratory diseases related to environmental hazards; (16) serves as CDC lead for climate-related public health activities; (17) provides national and international leadership and support in the development, implementation and use of environmental health surveillance through the National Environmental Public Health Tracking Program and related efforts for climate, asthma, lead, radiation, and other environmentally related conditions; (18) serves as the CDC lead for the elimination and prevention of childhood lead poisoning; (19) provides radiation health expertise and leadership in areas addressing public exposures to radiation including environmental exposures, medical exposures, and nuclear/radiological emergency preparedness and response; (20) serves as the HHS and CDC lead for public health oversight associated with chemical weapons demilitarization processes and related activities conducted by the Department of Defense and its contractors; (21) conducts emergency response and associated field studies to address natural or man-made events, disease outbreaks, and requests for epidemiologic, toxicologic, or other environmental health assistance from federal, state, local, territorial, tribal or international governments; (22) ensures the participation and involvement of the public and other stakeholders in the division's programs, as appropriate; and (23) coordinates division activities with other CDC components and HHS agencies, as appropriate.

Office of the Director (CUGE1). (1) Plans, directs and manages the activities of the division; (2) directs strategic planning and alignment with NCEH & ATSDR mission, goals, and priorities; (3) coordinates cross-cutting activities on children's health, healthy homes, tribal activities, surveillance harmonization, emergency preparedness, and workforce development; (4) serves as a conduit to intra and inter-agency entities through active collaborations, strategic planning efforts and formal exchange with emergency preparedness and response stakeholders including intelligence, legislative, & budgetary entities; (5) coordinates NCEH and ATSDR emergency management resources to support efforts to protect the public's health from environmental threats; and (6) provides incident management and coordination for complex emergency management including the development, approval, and updating of standardized processes to enable appropriate and adequate management of resources.

Water, Food, and Environmental Health Services Branch (CUGEB). (1) Advances environmental public health practice to better serve and protect the health of all people in the United States; (2) provides leadership on safe water activities from an environmental public health perspective, with particular focus on an all-hazards approach to recreational water, drinking water systems, household wells, and other private drinking water sources; (3) investigates risks for exposure to and health effects from contaminants in drinking water to identify hazardous exposures and develop recommendations for minimizing

exposure and reducing public health risks; (4) disseminates, communicates, and promotes information to protect communities from adverse health impacts from water pollutants; (5) serves as CDC lead for prevention of environmental causes of foodborne illnesses and outbreaks; (6) develops methods and conducts activities to ensure the translation of new technology and prevention research findings into prevention and control programs and activities at the state, tribal, local, and territorial levels (especially for water and food safety); (7) develops technical guidelines and model standards for environmental health program areas addressed at the state, tribal, local, and territorial levels (especially for water and food safety); (8) promotes and assists in the determination and investigation of environmental antecedents and solutions to disease problems, especially when potentially related to waterborne or foodborne agents; (9) develops, implements, and evaluates training programs and workshops, develops model performance standards, and provides decision support tools to strengthen professional competency among environmental health practitioners at the state, tribal, local, and territorial levels; (10) supports state and local environmental health programs through information exchange, direct technical assistance, and evaluation of existing programs; (11) supports the professional development of environmental health practitioners through collaboration with schools of public and environmental health, state, tribal, local, and territorial health agencies, and others; (12) serve as NCEH & ATSDR lead for vector-borne disease, in collaboration with and support of other CDC components; (13) serves as national and international model and CDC lead for comprehensive vessel sanitation operational inspections and oversight for vessels that have a foreign itinerary, call on U.S. ports, and carry 13 or more passengers, including the following responsibilities: (a) Ensures and coordinates epidemiologic investigations of GI illness outbreaks occurring aboard vessels within CDC's jurisdiction, (b) conducts syndromic surveillance for GI illness among passengers and crew for all voyages on vessels under CDC's jurisdiction, (c) plans, implements, and evaluates sanitation training for cruise ship supervisors, (d) reviews plans for vessel renovations and new vessel construction, and conducts construction inspections, (e) disseminates information on vessel sanitation inspections and other related information to the traveling public, (f) provides direct technical assistance to cruise lines, other U.S. government agencies, foreign governments, and others on the development and maintenance of vessel sanitation standards and policies; and (14) coordinates activities through the division and with other components of CDC; other federal, state, tribal, local, and territorial government agencies; and other public and private organizations, as appropriate.

Asthma and Community Health Branch (CUGEC). (1) Develops, implements, and evaluates the National Asthma Control Program to reduce asthma morbidity and mortality and to address asthma disparities; (2) conducts epidemiologic research and investigations of asthma morbidity and mortality; (3) supports surveillance activities for asthma, and other respiratory diseases as appropriate, to quantify burden and guide interventions; (4) identifies the evidence for and promotes and tracks interventions that reduce the burden of asthma, focusing on populations with a disproportionate burden of the disease; (5) develops and disseminates training, tools and other resources to strengthen and sustain asthma control activities and technical capacity among program partners at the national, state, local, territorial, and tribal level; (6) provides technical consultation to state, local, private, international, and other federal agencies on asthma control, surveillance, epidemiology, and evaluation; (7) disseminates, communicates, and promotes information from surveillance and health studies related to asthma control to diverse audiences; (8) assesses the strength of evidence on air pollution exposures and public health; (9) conducts epidemiologic research and investigations of non-occupational human exposure to air pollutants and their potential health effects; (10) develops methods for assessing exposure and risk to human health from air pollutants and, in selected circumstances, conducts exposure and risk assessments; (11) designs and evaluates behavioral, policy, technological, and community design interventions to reduce exposures to air pollution and improve health; (12) facilitates international efforts to reduce indoor air pollution from cookstoves; (13) develops and coordinates training and decision support tools to strengthen and sustain air pollution activities and technical capacity among program partners at the national, state, local, territorial, and tribal level; (14) provides consultation to federal, state, local, territorial, tribal, private, and international agencies on non-occupational environmental issues related to air pollutants; (15) disseminates, communicates, and promotes information to protect communities from adverse health impacts from air pollution; (16) conducts epidemiologic research into the potential health effects of climate change and climate variability; (17) develops methods for assessing current and projected future risk to human health from climate change and climate variability; (18) designs and evaluates public health adaptation and intervention strategies for reducing the impacts of climate change and climate variability on health; (19) develops and coordinates training and decision support tools to strengthen and sustain public health adaptation activities related to climate change and climate variability; (20) helps build technical capacity among program partners at the national, state, local, territorial, and tribal level; (21) provides consultation to state, local, private, international, and other federal agencies on human health issues related to climate change and climate variability; (22) disseminates, communicates, and promotes information about public health adaptation to climate change and climate variability to diverse audiences; (23) enhances healthy community design by helping public health, and transportation by providing convenient and safe opportunities to walk, bicycle, and use public transit; (24) develops and maintains quality partnerships with key program stakeholders; and (25) coordinates asthma, air, and climate activities through the division and with other components of CDC; other federal, state, tribal, local, and territorial government agencies; and other public and private organizations, as appropriate.

Lead Poisoning Prevention and Environmental Health Tracking Branch (CUGED). (1) Implements the National Environmental Public Health Tracking Program, establishing goals and objectives to ensure the provision of information from a nationwide network of integrated health and environmental data that drives actions to improve the health of communities; (2) establishes standards, processes, and protocols to guide scientific activities and content in the National Environmental Public Health Tracking Network and component state, local, territorial and tribal networks; (3) provides standardized and integrated health,

environmental, and hazard data from multiple information systems at the national, state, and local levels; (4) fills key environmental health data and information gaps through application of novel and nontraditional data, technologies, tools and methods; (5) coordinates development of training, workforce capacity, and infrastructure to support and sustain environmental public health tracking among program partners at the national, state, local, territorial, and tribal level; (6) develops tools and products used to synthesize environmental public health surveillance data to support public health decision making at the national, state, and local levels; (7) continually modernizes and enhances the tracking network's underlying IT and informatics technology to address stakeholder information needs; (8) develops and maintains quality partnerships with key environmental public health tracking stakeholders; (9) facilitates communication and coordination of environmental public health tracking activities across and within health and environmental agencies; (10) facilitates and conducts scientific activities for environmental public health tracking; (11) disseminates, communicates, and promotes use of environmental public health tracking information to diverse audiences; (12) conducts continuous quality improvement for environmental public health tracking activities; (13) establishes goals and objectives for a national childhood lead poisoning prevention program for CDC, which includes reduction of lead exposures from all sources, including lead-based paint and lead in water; (14) works with U.S. Department of Housing and Urban Development, U.S. Environmental Protection Agency, U.S. Department of Agriculture, U.S. Department of Energy, National Institute of Standards and Technology and other agencies to develop and implement an integrated national program to eliminate childhood lead poisoning; (15) serves as the lead agency for coordinating efforts designed to achieve national program objectives and performance standards related to the prevention of childhood lead poisoning; (16) provides consultation and assistance to federal agencies, state and local health agencies, and others in planning, developing, and implementing childhood lead poisoning prevention programs; (17) develops, conducts, and evaluates epidemiologic research on childhood lead poisoning, its causes, geographic distribution, trends and risk factors; (18) assists state and local government agencies by providing epidemiologic assistance for special studies and investigations related to childhood lead poisoning prevention; (19) develops and helps implement, in concert with other federal agencies, national organizations, and other appropriate groups, a training agenda for health professionals and workers related to childhood lead poisoning prevention activities; (20) provides support to the CDC/NCEH Federal Advisory Committee relevant to lead poisoning prevention; and (21) coordinates environmental health surveillance/tracking and childhood lead poisoning prevention activities through the division and with other components of CDC; other federal, state, tribal, local, and territorial government agencies; and other public and private organizations, as appropriate.

Emergency Management, Radiation, and Chemical Branch (CUGEE). (1) Provides scientifically based technical assistance and guidance to state, local, tribal, and territorial health departments to safeguard the American public against radiation exposures; (2) provides radiation-related education, training, and information to the public health and clinician communities and the general public; (3) collaborates with public health partners in state, tribal, local, territorial, federal, international, and nongovernment organizations on radiation-related health issues; (4) supports the ability of CDC and HHS staff to prepare for and respond to nuclear/radiological emergencies; (5) explores emerging radiation-related health threats; (6) serves as the HHS and CDC lead for activities related to chemical weapons demilitarization; (7) conducts reviews of Department of Defense (DOD) chemical demilitarization plans, calling on appropriate experts within and outside CDC and HHS; (8) reviews air monitoring and analytical plans and performance for demilitarization of chemical weapons; (9) ensures that adequate provisions are made for public health and worker safety during chemical demilitarization activities; (10) coordinates activities with DOD agencies and state and local health and environmental agencies concerning chemical demilitarization plans and operations, including the evaluation of medical readiness; (11) performs site visits before and during chemical demilitarization operations; (12) reviews and provides relevant public health information to health professionals and the public, and ensures the participation and involvement of the public and other stakeholders, as appropriate; (13) reviews and evaluates closure plans for chemical demilitarization including decontamination and waste-handling activities; (14) reviews on-site emergency response plans for chemical demilitarization activities; (15) conducts epidemiologic research and investigations of human exposure and health effects related to environmental hazards (excluding foodborne illness outbreaks and lead, air and water pollution) of the following types: (a) Physical agents, (b) chemical and metal agents, including those causing acute effects and other more long-term effects such as carcinogenesis, mutagenesis, and teratogenesis, (c) biological agents, including both technologic and natural toxins and/or allergens (except infectious disease-causing agents), (d) natural and technologic disasters, including natural events such as floods, drought, tornadoes, cyclones, earthquakes, and volcanic eruptions, and events resulting from human activities, (e) diseases and syndromes of uncertain etiology and/or potentially related to environmental hazards, (f) multipollutant or multimedia studies, (g) emerging environmental topics that may impact public health; (16) provides epidemiologic leadership, technical assistance, and guidelines related to investigation and communications of disease clusters; (17) provides epidemiologic and statistical support to other environmental health programs as appropriate; (18) develops methods and activities directed toward assessing risk to human populations from exposure to environmental hazards; (19) provides surveillance, epidemiologic emergency response for, and epidemiologic study of natural and other environmental disasters; (20) provides consultation to state, local, and other federal agencies, as well as to international and private organizations, on environmental health issues; (21) provides public health guidance and resources based on scientific evidence to state, tribal, local, territorial, and international public health departments so that they may prepare and respond to environmental public health events (such as unplanned releases and spills); (22) works in collaboration across NCEH & ATSDR and other CDC components to respond to and, where designated, provide technical assistance on HHS activities associated with emergency response to technological and environmental disasters; (23) provides technical assistance, as appropriate, on health consultations and assistance in the medical care and testing of exposed individuals to private or public health care providers in cases of public health emergencies; (24) develops, implements, and manages programs to enhance the

emergency response readiness of CDC and other national, regional, state, local, and international public health organizations; (25) develops capacity within the states to integrate new and existing epidemiological and scientific principles into operational and programmatic expertise in emergency preparedness, response, and recovery; (26) identifies and shares best practices from all academic and operational fields to develop appropriate technical assistance for state and local departments of health for all-hazards preparedness, response, and recovery; (27) provides technical assistance related to the development of contingency plans, training, and operational liaison activities with other agencies and response teams engaged in emergency responses; (28) coordinates activities through the division and with other components of CDC; other federal, state, tribal, local, and territorial government agencies; and other public and private organizations, as appropriate; (29) supports NCEH and ATSDR emergency management efforts to protect the public's health from environmental threats; (31) facilitates situational awareness, fusion, and outreach by developing and disseminating timely assessments of evolving events, courses of action, and communication to intra and inter-agency partners; (32) supports incident management and coordination for complex emergency management including the development, approval, and updating of standardized processes to enable appropriate and adequate management of resources; (33) serves as the NCEH & ATSDR subject matter experts for facilitating emergency management planning, training, and exercise; including identification of requirements, key skillsets/capabilities, capacity, and critical gaps in our preparedness posture; (34) works with the National Response Program and CDC guidelines to collaborate with stakeholders during emergency response situations; and (35) provides technical information and site-specific support in addressing the health issues presented by emergency or acute release events, and on the nature, extent, status, and implications of ongoing, emerging, and evolving threats and subsequent efforts to reduce their adverse impacts.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2018–02821 Filed 2–12–18; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–18–18LQ; Docket No. CDC–2018–0015]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled ''Assessment of Occupational Injury among Fire Fighters Using a Follow-back Survey.'' The purpose of this project is to collect follow-back telephone interview data from injured and exposed fire fighters treated in emergency departments (EDs) and produce a descriptive summary of these injuries and exposures.

DATES: CDC must receive written comments on or before April 16, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2018–0015 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all Federal comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

Assessment of Occupational Injury among Fire Fighters Using a Follow-back Survey—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Studies have reported that fire fighters have high rates of non-fatal injuries and illnesses as compared to the general worker population. As fire fighters undertake many critical public safety activities and are tasked with protecting the safety and health of the public, it follows that understanding and preventing injuries and exposures among fire fighters will have a benefit

reaching beyond the workers to the general public.

As mandated in the Occupational Safety and Health Act of 1970 (Pub. L. 91–596), the mission of NIOSH is to conduct research and investigations on occupational safety and health. Related to this mission, the purpose of this project is to conduct research that will provide a detailed description of non-fatal occupational injuries and exposures incurred by fire fighters. This information will offer detailed insight into events that lead to the largest number of nonfatal injuries and exposures among fire fighters. The project will use two related data sources. The first source is data abstracted from medical records of fire fighters treated in a nationally stratified sample of emergency departments. These data are routinely collected through the occupational supplement to the National Electronic Injury Surveillance System (Neiss–Work). The second data source, for which NIOSH is seeking OMB approval for three years, is responses to telephone interview surveys of the injured and exposed fire fighters identified within Neiss–Work.

The proposed telephone interview surveys will supplement Neiss–Work data with an extensive description of fire fighter injuries and exposures, including worker characteristics, injury types, injury circumstances, injury outcomes, and use of personal protective equipment. Previous reports describing occupational injuries and exposures to fire fighters provide limited details on specific regions or sub-segments of the population. As compared to these earlier studies, the scope of the telephone interview data will be broader as it includes sampled cases nationwide and has no limitations in regards to type of employment (*i.e.,* volunteer versus career). Results from the telephone interviews will be weighted and reported as national estimates.

The sample size for the telephone interview survey is estimated to be approximately 240 fire fighters annually for the proposed three year duration of the study. This is based on the number of fire fighters identified in previous years of Neiss–Work data and a 30 to 40% response rate that is comparable to the rate of previously conducted National Electronic Injury Surveillance System telephone interview studies. Each telephone interview will take approximately 30 minutes to complete, resulting in an annualized burden estimate of 120 hours. Using the routine Neiss–Work data, an analysis of all identified EMS workers will be performed to determine if there are differences between the telephone interview responder and non-responder groups.

The Division of Safety Research (DSR) within NIOSH is conducting this project. DSR has a strong interest in improving surveillance of fire fighter injuries and exposures to provide the information necessary for effectively targeting and implementing prevention efforts and, consequently, reducing occupational injuries and exposures to fire fighters. The Consumer Product Safety Commission (CPSC) will also contribute to this project, as they are responsible for coordinating the collection of all Neiss–Work data and for overseeing the collection of all telephone interview data.

There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Fire fighters	Follow-back survey	240	1	30/60	120
Total					120

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. 2018–02887 Filed 2–12–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation of Nominations for Appointment to the Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (BSC, NCEH/ATSDR)

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) is seeking nominations for membership on the BSC, NCEH/ATSDR. The BSC, NCEH/ATSDR consists of 16 experts in fields associated with environmental public health or in related disciplines (*e.g.,* environmental law, preventive medicine, epidemiology, occupational and environmental health, environmental toxicology, environmental justice, laboratory sciences, risk assessment, public policy, behavioral social science, and health economics). Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the Board's objectives. Nominees will be selected based on expertise in the fields of environmental public health or related disciplines (*e.g.,* environmental law, preventive medicine, epidemiology, occupational and environmental health, environmental toxicology, environmental justice, laboratory sciences, risk assessment, public policy, behavioral social science, and health economics). Federal employees will not be considered for membership. Members may be invited to serve for up to four-year terms. Selection of members is based on candidates' qualifications to contribute to the accomplishment of BSC, NCEH/ATSDR objectives *https://www.atsdr.cdc.gov/science/*.

DATES: Nominations for membership on the BSC, NCEH/ATSDR must be received no later than April 29, 2018. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be mailed to Shirley Little, Program Analyst, NCEH/ATSDR, CDC, 4770 Buford Highway (MS–F45), Atlanta, Georgia 30341, Email addresses: *slittle@cdc.gov*. Telephone and facsimile submissions cannot be accepted.

FOR FURTHER INFORMATION CONTACT: Shirley Little, NCEH/ATSDR Program Analyst, CDC, 4770 Buford Highway,

Atlanta, Georgia 30341, telephone (770) 488–0577; *slittle@cdc.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Department of Health and Human Services policy stipulates that committee membership be balanced in terms of points of view represented, and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Current participation on federal workgroups or prior experience serving on a federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees, requiring the filing of financial disclosure reports at the beginning and annually during their terms. CDC reviews potential candidates for BSC, NCEH/ATSDR membership each year, and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in June, or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year.

Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Candidates should submit the following items:

- Current curriculum vitae, including complete contact information (telephone numbers, mailing address, email address)
- At least one letter of recommendation from person(s) not employed by the U.S. Department of Health and Human Services. (Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (*e.g.,* CDC, NIH, FDA, etc.).

Nominations may be submitted by the candidate him- or herself, or by the person/organization recommending the candidate.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2018–02828 Filed 2–12–18; 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

Title: 2019 National Survey of Early Care and Education.

OMB No.: 0970–0391.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing a data collection activity as part of the 2019 National Survey of Early Care and Education (NSECE) to be conducted October 2018 through August 2019. The objective of the 2019 NSECE is to document the nation's current supply of early care and education services (that is, home-based providers, center-based providers, and the center-based provider workforce). The 2019 NSECE will collect information on child care and early education providers that serve families with children from birth to 13 years in the country, as well as the early care and education (ECE) workforce providing these services. The proposed collection will consist of three coordinated nationally representative surveys:

1. A survey of individuals providing care for children under the age of 13 in a residential setting (Home-based Provider Interview),

2. A survey of providers of care to children ages 0 through 5 years of age (not yet in kindergarten) in a non-residential setting (Center-based Provider Interview), and

3. A survey conducted with individuals employed in center-based child care programs working directly with children in classrooms (Workforce Interview).

Both the home-based and center-based provider surveys will require a screener to determine eligibility for the main survey.

The 2019 NSECE data collection efforts will provide urgently needed information about the supply of child care and early education available to families across all income levels, including providers serving low-income families of various racial, ethnic, language, and cultural backgrounds, in diverse geographic areas. The provider data will include programs that do or do not participate in the child care subsidy program, are regulated, registered, or otherwise appear in state or national lists and are home-based providers or, center-based programs (*e.g.,* private, community-based child care, Head Start, and state or local Pre-K). Accurate data on the availability and characteristics of early care and education programs are essential to assess the current and changing landscape of child care and early education programs since the 2012 NSECE data collection, and to provide insights to advance policy and initiatives in the ECE field.

Respondents: Home-based providers serving children under 13 years, center-based child care providers (including public schools) serving children ages 0 through 5 years of age (not yet in kindergarten), and selected instructional staff members from these center-based child care providers.

ANNUAL BURDEN HOURS

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Estimated annual burden hours
Home-Based Provider Interview, including Screener	4,000	1	.67	2,680
Home-based Provider Screener, no interview	2,015	1	.03	60
Center-Based Provider Interview, including Screener	7,800	1	.8	6,240
Center-based Provider Screener, no interview	7,640	1	.1	764
Workforce Provider Interview	5,600	1	.33	1,848
Estimated Total Annual Burden Hours				11,592

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, 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, Switzer Building, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@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.

Mary Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2018–02869 Filed 2–12–18; 8:45 am]

BILLING CODE 4184–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–6888]

Neurological Devices Panel of the Medical Devices Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Neurological Devices Panel of the Medical Devices Advisory Committee. This meeting was announced in the **Federal Register** of December 28, 2017. The amendment is being made to reflect a change in the *Procedure* portion of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Aden Asefa, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G642, Silver Spring, MD 20993–0002, *Aden.Asefa@fda.hhs.gov,* 301–796–0400, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area) code NE. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 28, 2017, 82 FR 61574, FDA announced that a meeting of the Neurological Devices Panel of the Medical Devices Advisory Committee would be held on March 1, 2018, from 8 a.m. to 6 p.m. On page 61574, in the 3rd column, the *Procedure* portion of the document is changed to read as follows:

Procedure: FDA will work with affected industry organizations that have an interest in intracranial aneurysm treatment devices and who wish to make a presentation separate from the general Open Public Hearing; time slots on March 1, 2018, between approximately 9:40 a.m. and 11 a.m. Representatives from industry organizations interested in making formal presentations to the committee should notify the contact person on or before February 16, 2018.

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 16, 2018. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 9, 2018. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled Open Public Hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 12, 2018.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: February 6, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–02766 Filed 2–12–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–0235]

Orthopaedic Sensing, Measuring, and Advanced Reporting Technology Devices; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the following public workshop entitled ''Orthopaedic Sensing, Measuring, and Advanced Reporting Technology (SMART) Devices.'' The purpose of the public workshop is to discuss the development of Orthopaedic SMART Devices. The workshop is intended to enhance engagement with stakeholders to facilitate device development and to discuss scientific and regulatory challenges associated with Orthopaedic SMART Devices. Public input and feedback gained through this workshop may aid in the efficient development of innovative, safe, and effective Orthopaedic SMART Devices for better patient care.

DATES: The public workshop will be held on April 30, 2018, from 8:30 a.m. to 5 p.m. Submit either electronic or written comments on this public workshop by May 29, 2018. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Bldg. 31, Rm. 1503 (The Great Room), Silver Spring, MD 20993. Entrance for the public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *https://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before May 29, 2018. The *https://*

www.regulations.gov electronic filing system will accept comments until midnight Eastern Time at the end of May 29, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

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):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, 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–2018–N–0235 for ''Orthopaedic Sensing, Measuring, and Advanced Reporting Technology Devices; Public Workshop; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff 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 Dockets Management Staff. 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: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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 Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Andrew Baumann, Food and Drug Administration, Center for Devices and Radiological Health, 10903 New Hampshire Ave., Bldg. 62, Rm. 2110, Silver Spring, MD 20993, 301–796–2508, *andrew.baumann@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is sponsoring a public workshop to discuss the engineering, clinical, regulatory, cybersecurity, and real world evidence aspects of Orthopaedic SMART Devices. The technologies of interest incorporate sensor equipped implants and instruments that generate information related to orthopaedic device performance and patient health. FDA understands that these technologies will play a role in the future of orthopaedics by providing objective data to the appropriate stakeholder that may optimize patient care. A public discussion of these topics will help the orthopaedic medical device community better understand the development of and considerations for these technologies. The workshop may help FDA and stakeholders prepare for the submittal and review of related applications.

II. Topics for Discussion at the Public Workshop

The public workshop will consist of presentations and panel discussions. Presentations will frame the topic and provide information on specific aspects of orthopaedic SMART device technology. Following the presentations, moderated discussions will ask speakers and additional panelists to provide their individual perspectives. Four rounds of presentations and panel discussions will cover the following topics:

- Engineering/Technology (morning)

This session will introduce orthopaedic sensor technologies and cover the current state of research and industry adoption. Future applications of these technologies will be explored.

- Clinical/Patient perspective (morning)

This session will cover the importance and potential utility of these technologies for clinicians and patients. Considerations for adopting these new technologies into existing health care paradigms will be discussed.

- Cybersecurity (afternoon)

This session will cover current cybersecurity issues and considerations. An overview of FDA's cybersecurity considerations and guidance documents will be presented.

- Regulatory Considerations (afternoon)

This session will discuss FDA's current and evolving thinking on Digital Health, clinical study considerations, including the role of real-world evidence, relevant guidance documents, and evidence generation related to Orthopaedic SMART Devices.

A detailed agenda will be posted on the following website in advance of the workshop: *https://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* and select this event from the list of items provided.

III. Participating in the Public Workshop

Registration: To register for the public workshop, please visit FDA's Medical

Devices News & Events—Workshops & Conferences calendar at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list.) Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public workshop must register by April 20, 2018, by 4 p.m. Eastern Time. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization. Registrants will receive confirmation when they have been accepted. If time and space permit, onsite registration on the day of the public workshop will be provided beginning at 7:30 a.m. We will let registrants know if registration closes before the day of the public workshop.

If you need special accommodations due to a disability, please contact Susan Monahan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5231, Silver Spring, MD 20993–0002, 301–796–5661, email: *Susan.Monahan@fda.hhs.gov,* no later than April 16, 2018.

Streaming Webcast of the Public Workshop: This public workshop will also be webcast. The webcast link will be available on the registration web page after April 20, 2018. Organizations are requested to register all participants, but to view using one connection per location.

If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *https://www.adobe.com/go/connectpro_overview.* FDA has verified the website addresses in this document, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

Transcripts: Please be advised that as soon as a transcript of the public workshop is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available approximately 45 days after the public workshop on the internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list).

Dated: February 8, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–02923 Filed 2–12–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–0180]

Agency Information Collection Activities; Proposed Collection; Comment Request; Generic Clearance for the Collection of Quantitative Data on Tobacco Products and Communications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on ''Generic Clearance for the Collection of Quantitative Data on Tobacco Products and Communications.''

DATES: Submit either electronic or written comments on the collection of information by April 16, 2018.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 16, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 16, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

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):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, 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–2018–N–0180 for ''Generic Clearance for the Collection of Quantitative Data on Tobacco Products and Communications.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff 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 Dockets Management Staff. 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: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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 Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Generic Clearance for the Collection of Quantitative Data on Tobacco Products and Communications

OMB Control Number 0910–0810—Extension

In order to conduct educational and public information programs relating to tobacco use as authorized by section 1003(d)(2)(D) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)(D)), FDA's Center for Tobacco Products will create and use a variety of media to inform and educate the public, tobacco retailers, and health professionals about the risks of tobacco use, how to quit using tobacco products, and FDA's role in regulating tobacco.

To ensure that these health communication messages have the highest potential to be received, understood, and accepted by those for whom they are intended, the Center for Tobacco Products will conduct research and studies relating to the control and prevention of disease. In conducting such research, FDA will employ formative pretests. Formative pretests are conducted on a small scale, and their focus is on developing and assessing the likely effectiveness of communications with specific target audiences. This type of research involves: (1) Assessing audience knowledge, attitudes, behaviors, and other characteristics for the purpose of determining the need for and developing health messages, communication strategies, and public information programs and (2) pretesting these health messages, strategies, and program components while they are in developmental form to assess audience comprehension, reactions, and perceptions.

Formative pretesting is a staple of best practices in communications research. Obtaining voluntary feedback from intended audiences during the development of messages and materials is crucial for the success of every communication program. The purpose of obtaining information from formative pretesting is that it allows FDA to improve materials and strategies while revisions are still affordable and possible. Formative pretesting can also avoid potentially expensive and dangerous unintended outcomes caused by audiences' interpreting messages in a way that was not intended by the drafters. By maximizing the effectiveness of messages and strategies for reaching targeted audiences, the frequency with which tobacco communication messages need to be modified should be greatly reduced.

The voluntary information collected will serve the primary purpose of providing FDA information about the perceived effectiveness of messages, advertisements, and materials in reaching and successfully communicating with their intended audiences. Quantitative testing messages and other materials with a sample of the target audience will allow FDA to refine messages, advertisements, and materials, including questionnaires or images, directed at consumers while the materials are still in the developmental stage.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Screener	130,500	1	130,500	0.083 (5 minutes)	10,831
Self-Administered Surveys	27,000	1	27,000	0.33 (20 minutes)	8,910
Total					19,741

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The number of respondents to be included in each new survey will vary, depending on the nature of the material or message being tested and the target audience. The burden for this information collection extension is proposed to increase by 12,613 hours since the last OMB approval. The burden increase is due to an increase in the number of respondents and the categories of respondents.

Dated: February 7, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–02852 Filed 2–12–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–0409]

Mallinkrodt Pharmaceuticals LLC; Withdrawal of Approval of an Abbreviated New Drug Application for PEMOLINE Tablets, 18.75 Milligrams, 37.5 Milligrams, and 75 Milligrams

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing the approval of abbreviated new drug application (ANDA) 075726 for PEMOLINE Tablets, 18.75 milligrams (mg), 37.5 mg, and 75 mg, held by Mallinkrodt Pharmaceuticals, LLC (Mallinkrodt). Mallinkrodt requested withdrawal of this application and has waived its opportunity for a hearing.

DATES: Approval is withdrawn as of February 13, 2018.

FOR FURTHER INFORMATION CONTACT: Kristiana Brugger, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6262, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION: FDA approved ANDA 075726 for PEMOLINE Tablets, 18.75 mg, 37.5 mg, and 75 mg, on March 30, 2001, for the conditions of use in the labeling of new drug application (NDA) 016832, the reference listed drug on which it relied. However, on October 24, 2005, FDA announced its concern that the overall liver toxicity risk of CYLERT (NDA 016832) and generic pemoline products outweighed the benefits of these products. Mallinkrodt and other holders of approved applications for PEMOLINE products ceased marketing them at that time. Indeed, Mallinkrodt stated in its May 15, 2013, request for withdrawal of approval of ANDA 075726 that it had never manufactured or distributed its product after it received approval of its application.

In the **Federal Register** of October 4, 2016 (81 FR 68427), FDA erroneously included ANDA 075726 in a list of drug applications for which approval was being withdrawn under § 314.150(c) (21 CFR 314.150(c)). In a separate notice published in this issue of the **Federal Register**, FDA corrects that notice to remove ANDA 075726 from the list of applications whose approval was withdrawn under § 314.150(c). In addition, for the reasons discussed above, and pursuant to Mallinkrodt's request, FDA is withdrawing approval of ANDA 075726, and all amendments and supplements thereto, under § 314.150(d). Distribution of PEMOLINE Tablets, 18.75 mg, 37.5 mg, and 75 mg, in interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the FD&C Act (21 U.S.C. 355(a) and 331(d)).

Dated: February 8, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–02925 Filed 2–12–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–E–0780]

Determination of Regulatory Review Period for Purposes of Patent Extension; VASCEPA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for VASCEPA 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 April 16, 2018. 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 August 13, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 16, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 16, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

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):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, 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–2013–E–0780 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; VASCEPA.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff 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 Dockets Management Staff. 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 § 10.20 (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: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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 Dockets Management Staff, 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 VASCEPA (icosapent ethyl). VASCEPA is indicated as an adjunct to diet to reduce triglyceride levels in adult patients with severe (≥500 mg/dL) hypertriglyceridemia. Subsequent to this approval, the USPTO received a patent term restoration application for VASCEPA (U.S. Patent No. 8,188,146) from Amarin Pharmaceuticals Ireland Limited, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated August 31, 2016, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of VASCEPA 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 VASCEPA is 1,133 days. Of this time, 828 days occurred during the testing phase of the regulatory review period, while 305 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:* June 21, 2009. The applicant claims June 22, 2009, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 21, 2009, which was 30 days after FDA receipt of the IND.

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 26, 2011. FDA has verified the applicant's claim that the new drug application (NDA) for VASCEPA (NDA 202057) was initially submitted on September 26, 2011.

3. *The date the application was approved:* July 26, 2012. FDA has verified the applicant's claim that NDA 202057 was approved on July 26, 2012.

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 58 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, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), 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 comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (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 Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 5, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–02851 Filed 2–12–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–0536]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Vaccines and Related Biological Products Advisory Committee (VRBPAC). The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. At least one portion of the meeting will be closed to the public.

DATES: The meeting will be held on March 1, 2018, from 8 a.m. to 5 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

For those unable to attend in person, the meeting will also be webcast and will be available at the following link: *https://collaboration.fda.gov/vrbpac030118.*

FOR FURTHER INFORMATION CONTACT: Serina Hunter-Thomas or Rosanna Harvey, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6338, Silver Spring, MD 20993–0002, 240–402–5771, *serina.hunter-thomas@fda.hhs.gov* and 240–402–8072, *rosanna.harvey@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: On March 1, 2018, under Topic I, the Center for Biologics Evaluation and Research's (CBER) VRBPAC will meet in open session to hear an overview of the research program in the Laboratory of Mucosal Pathogens and Cellular Immunology (LMPCI), Division of Bacterial, Parasitic and Allergenic Products (DBPAP), Office of Vaccines Research and Review (OVRR), CBER, FDA. Also on March 1, 2018, under Topic II, the committee will meet in open session to discuss and make recommendations on the selection of strains to be included in the influenza virus vaccines for the 2018–2019 influenza season. FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: On March 1, 2018, from 8 a.m. to 9:15 a.m., and 9:45 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 22, 2018. Oral presentations from the public will be scheduled between approximately 9 a.m. to 9:15 a.m. for the overview portion of the LMPCI Site Visit portion of the meeting, and 2:10 p.m. to 2:55 p.m. for the flu strain selection portion of the meeting. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 21, 2018. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 22, 2018.

Closed Committee Deliberations: On March 1, 2018, from 9:15 a.m. to 9:45 a.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The recommendations of the advisory committee regarding the progress of the investigator's research will, along with other information, be used in making decisions regarding pay adjustments of service fellows or promotion and permanent staff regarding individual scientists.

We believe that public discussion of these recommendations on individual scientists would constitute an unwarranted invasion of personal privacy.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Serina Hunter-Thomas at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 7, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–02853 Filed 2–12–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–0342]

Bacillus Calmette-Guérin-Unresponsive Nonmuscle Invasive Bladder Cancer: Developing Drugs and Biologics for Treatment; 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 guidance for industry entitled ''Bacillus Calmette-Guérin (BCG)-Unresponsive Nonmuscle Invasive Bladder Cancer: Developing Drugs and Biologics for Treatment.'' This guidance was developed to assist in the development of drugs and biologics for patients with a form of bladder cancer that is not amenable to currently available medical therapy and remains an unmet medical need. This guidance finalizes the draft guidance of the same name issued on November 18, 2016.

DATES: The announcement of the guidance is published in the **Federal Register** on February 13, 2018.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time 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):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, 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–2018–D–0342 for ''BCG-Unresponsive Nonmuscle Invasive Bladder Cancer: Developing Drugs and Biologics for Treatment; Guidance for Industry.'' 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 Dockets Management Staff 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 Dockets Management Staff. 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: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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 Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, or Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, 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. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: V. Ellen Maher, Center for Drug Evaluation and Research, Food and Drug Administration,10903 New Hampshire Ave., Bldg. 22, Rm. 2352, Silver Spring, MD 20993–0002, 301–796–5017; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''BCG-Unresponsive Nonmuscle Invasive Bladder Cancer: Developing Drugs and Biologics for Treatment.'' This guidance was developed to assist in the development of drugs and biologics for patients with a form of bladder cancer that is not amenable to currently available medical therapy and remains an unmet medical need. This guidance finalizes the draft guidance of the same name issued on November 18, 2016 (81 FR 81778). Changes made to the guidance took into consideration written and verbal comments received. In addition to editorial changes made primarily for clarification, noteworthy substantive changes are as follows: Clarification of the definition of BCG-unresponsive disease and detailed

information concerning the definition of complete response.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on BCG-unresponsive nonmuscle invasive bladder cancer. 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. This guidance is not subject to Executive Order 12866.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 312 and 314 have been approved under OMB control numbers 0910–0014 and 0910–0001, respectively.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm,* or *https://www.regulations.gov.*

Dated: February 7, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–02871 Filed 2–12–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–0188]

Proposal To Refuse To Approve a New Drug Application for Oxycodone Hydrochloride Immediate-Release Oral Capsules, 5 Milligrams, 15 Milligrams, and 30 Milligrams; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Director of the Center for Drug Evaluation and Research (Center Director) of the Food and Drug Administration (FDA or Agency) is proposing to refuse to approve a new drug application (NDA) submitted by Pharmaceutical Manufacturing Research Services, Inc. (PMRS) for oxycodone hydrochloride (HCl) immediate-release (IR) oral capsules, 5 milligrams (mg), 15 mg, and 30 mg in its present form. This notice summarizes the grounds for the Center Director's proposal and offers PMRS an opportunity to request a hearing on the matter.

DATES: Submit either electronic or written requests for a hearing by March 15, 2018; submit data, information, and analyses in support of the hearing and any other comments by April 16, 2018.

ADDRESSES: You may submit hearing requests, documents in support of the hearing, and any other comments as follows. Please note that late, untimely filed requests and documents will not be considered. Electronic requests for a hearing must be submitted on or before March 15, 2018; electronic documents in support of the hearing and any other comments must be submitted on or before April 16, 2018. The *https://www.regulations.gov* electronic filing system will accept hearing requests until midnight Eastern Time at the end of March 15, 2018, and will accept documents in support of the hearing and any other comments until midnight Eastern Time at the end of April 16, 2018. Documents received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before these dates.

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): Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, 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–2018–N–0188, for ''Proposal to Refuse to Approve a New Drug Application for Oxycodone Hydrochloride Immediate-Release Oral Capsules, 5 Milligrams, 15 Milligrams, and 30 Milligrams; Opportunity for a Hearing.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff 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 Dockets Management Staff. 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: *https://www.gpo.gov/*

fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.

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 Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Patrick Raulerson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6260, Silver Spring, MD, 20993, 301–796–3522, *Patrick.Raulerson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Proposal To Refuse To Approve NDA 209155

PMRS submitted NDA 209155 for oxycodone HCl IR oral capsules in 5 mg, 15 mg, and 30 mg strengths (oxycodone HCl IR capsules) under section 505(b)(2) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(b)(2)), proposing to rely in part on the Agency's previous finding of safety and effectiveness for ROXICODONE (oxycodone HCl) IR Tablets (NDA 021011). PMRS proposed that its oxycodone HCl IR capsules be indicated for the management of acute pain severe enough to require an opioid analgesic and for which alternative treatments are inadequate. PMRS also attempted to show that the product had certain abuse-deterrent properties and sought FDA approval of labeling describing those properties.

On November 16, 2017, the Division of Anesthesia, Analgesia, and Addiction Products of FDA's Center for Drug Evaluation and Research (CDER) issued a complete response letter to PMRS under § 314.110(a) (21 CFR 314.110(a)) stating that NDA 209155 could not be approved in its present form, describing the specific deficiencies, and, where possible, recommending ways PMRS might remedy these deficiencies. The deficiencies include the following:

1. The application in its present form is not approvable with the proposed labeling describing abuse-deterrent properties, for multiple reasons. In particular, (1) the oxycodone in the formulation can be readily extracted in commonly available solvents into a solution suitable for injection; (2) there were insufficient data showing the presence of excipients (including dye) in the formulation can be expected to deter abuse by injection; (3) the data submitted were insufficient to show the product was meaningfully resistant to manipulation for misuse or abuse; and (4) there were not data submitted, including data from pharmacokinetic and human abuse liability studies, fully characterizing the product's abuse potential by all relevant routes of abuse. Also, the data submitted were not sufficient to rule out the possibility that the proposed formulation could result in a greater proportion of abuse by injection of PMRS's product compared to a conventional IR oxycodone formulation. Abuse by injection carries greater risk of overdose and transmission of infectious disease than abuse by other routes.

2. The safety and purity of the excipients intended (but not shown) to confer abuse deterrent properties were not adequately characterized, either by the intended oral route of use or by expected routes of abuse, including injection.

3. An overall evaluation of elemental impurities in the final formulation and a risk assessment for each heavy metal (taking into consideration the maximum daily dose) were not provided.

4. The application did not fully comply with the patent certification requirements applicable to applications submitted under section 505(b)(2) of the FD&C Act.

5. The complete response letter describes additional deficiencies, which generally relate to chemistry, manufacturing, and controls and current good manufacturing practice requirements, that CDER determined preclude approval of the application in its present form. The complete response letter also noted that satisfactory resolution of objectionable inspection observations was required before the application could be approved. Due to applicable limitations on public disclosure of information contained in unapproved NDAs, including trade secret information, these specific deficiencies are not described in this notice.

The complete response letter stated that PMRS is required to resubmit the application, fully addressing all deficiencies listed in the letter, or take other actions available under § 314.110 (*i.e.,* withdraw the application or request an opportunity for a hearing). Applicable regulations, including § 10.75 (21 CFR 10.75), also provide a mechanism for applicants to obtain formal review of one or more decisions reflected in a complete response letter (see FDA's guidance for industry ''Formal Dispute Resolution: Sponsor Appeals Above the Division Level'' (November 2017) available at: *https://www.fda.gov/downloads/drugs/guidancecomplianceregulatoryinformation/guidances/ucm343101.pdf*).

In response to the complete response letter, on November 17, 2017, PMRS submitted a request for an opportunity for a hearing under § 314.110(b)(3) on whether there are grounds under section 505(d) of the FD&C Act for denying approval of NDA 209155.

II. Notice of Opportunity for a Hearing

For the reasons stated previously and others described in the complete response letter, notice is given to PMRS and to all other interested persons that the Center Director proposes to issue an order refusing to approve NDA 209155 on the grounds that the application fails to meet the criteria for approval under section 505(d) of the FD&C Act, including that: (1) PMRS has not provided sufficient data to show that the product would be safe (505(d)(1)); (2) PMRS has not shown that the methods used in, and the facilities and controls used for the manufacture, processing, or packing of the product are adequate to preserve its identity, strength, quality, and purity (505(d)(3)); and (3) the labeling PMRS proposed for the product is false or misleading (505(d)(7)).

PMRS may request a hearing before the Commissioner of Food and Drugs (the Commissioner) on the Center Director's proposal to refuse to approve NDA 209155. If PMRS decides to seek a hearing, it must file: (1) A written notice of participation and request for a hearing (see the **DATES** section), and (2) the studies, data, information, and analyses relied upon to justify a hearing (see the **DATES** section), as specified in § 314.200.

As stated in § 314.200(g), a request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing to resolve. We note in this regard that because CDER proposes to refuse to approve NDA 209155 for multiple reasons, any hearing request from PMRS must address all of those reasons, including reasons described in the complete response letter but not described in this notice due to applicable limitations on public disclosure of information contained in unapproved NDAs, including trade secret information. Failure to request a hearing within the time provided and in the manner required by § 314.200 constitutes a waiver of the opportunity to request a hearing. If a hearing request is not properly submitted, FDA will issue a notice refusing to approve NDA 209155.

The Commissioner will grant a hearing if there exists a genuine and substantial issue of fact or if the Commissioner concludes that a hearing would otherwise be of public interest (§ 314.200(g)(6)). If a hearing is granted, it will be conducted according to the procedures provided in 21 CFR parts 10 through 16 (21 CFR 314.201).

Paper submissions under this notice of opportunity for a hearing must be filed in two copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, submissions may be seen in the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, and on the internet at *https://www.regulations.gov.* This notice is issued under section 505(c)(1)(B) of the FD&C Act, §§ 314.110(b)(3) and 314.200.

Dated: February 8, 2018.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 2018–02903 Filed 2–12–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2015–E–2666; FDA–2015–E–2758; and FDA–2015–E–2664]

Determination of Regulatory Review Period for Purposes of Patent Extension; FARYDAK

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for FARYDAK 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 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 April 16, 2018. 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 August 13, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 16, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 16, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

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):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, 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–2666; FDA–2015–E–2758; and FDA–2015–E–2664 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; FARYDAK.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the dockets and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff 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 Dockets Management Staff. 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 § 10.20 (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: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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 Dockets Management Staff, 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 FARYDAK (panobinostat). FARYDAK, in combination with bortezomib and dexamethasone, is indicated for the treatment of patients with multiple myeloma who have received at least 2 prior regimens, including bortezomib and an immunomodulatory agent. This indication is approved under accelerated approval based on progression free survival. Continued approval for this indication may be contingent upon verification and description of clinical benefit in confirmatory trials. Subsequent to this approval, the USPTO received patent term restoration applications for FARYDAK (U.S. Patent Nos. 6,552,065; 6,833,384; and 7,067,551) from Novartis AG, and the USPTO requested FDA's assistance in determining the patents' 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 FARYDAK 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 FARYDAK is 4,334 days. Of this time, 3,997 days occurred during the testing phase of the regulatory review period, while 337 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:* April 15, 2003. The applicant claims April 15, 2002, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was April 15, 2003, 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 drug product under section 505(b) of the FD&C Act:* March 24, 2014. FDA has verified the applicant's claim that the new drug application (NDA) for FARYDAK (NDA 205353) was initially submitted on March 24, 2014.

3. *The date the application was approved:* February 23, 2015. FDA has verified the applicant's claim that NDA 205353 was approved on February 23, 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 applications for patent extension, this applicant seeks 1,751 days or 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, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), 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 comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (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 Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 6, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–02868 Filed 2–12–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–0417]

Request for Nominations on the National Mammography Quality Assurance Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting that any industry organizations interested in participating in the selection of nonvoting industry representatives to serve on the National Mammography Quality Assurance Advisory Committee in the Center for Devices and Radiological Health notify FDA in writing. FDA is also requesting nominations for a nonvoting industry representative to serve on the National Mammography Quality Assurance Advisory Committee. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for an upcoming vacancy effective with this notice.

DATES: Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests must send a letter stating that interest to FDA by March 15, 2018 (see sections I and II of this document for further details). Concurrently, nomination materials for prospective candidates should be sent to FDA by March 15, 2018.

ADDRESSES: All statements of interest from industry organizations interested in participating in the selection process of nonvoting industry representative nomination should be sent to Margaret Ames (see **FOR FURTHER INFORMATION CONTACT**). All nominations for a nonvoting industry representative should be submitted electronically by accessing the FDA Advisory Committee Membership Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm* or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002. Information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: Margaret Ames, Division of Workforce Management, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5264, Silver Spring, MD 20993, 301–796–5960, Fax: 301–847–8505, email: *margaret.ames@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency is requesting nominations for a nonvoting industry representative on the National Mammography Quality Assurance Advisory Committee:

I. General Description of the Committee Duties

The Committee shall advise FDA on: (1) Developing appropriate quality standards and regulations for mammography facilities; (2) developing appropriate standards and regulations for bodies accrediting mammography facilities under this program; (3) developing regulations with respect to sanctions; (4) developing procedures for monitoring compliance with standards; (5) establishing a mechanism to investigate consumer complaints; (6) reporting new developments concerning breast imaging that should be considered in the oversight of mammography facilities; (7) determining whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determining the effects of personnel on access to the services of such facilities in these areas; (8) determining whether there will exist a sufficient number of medical physicists after October 1, 1999; and (9) determining the costs and benefits of compliance with these requirements.

II. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). Within the subsequent 30 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations; and a list of all nominees along with their current résumés. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent industry interests for the committee. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner will select the nonvoting member to represent industry interests.

III. Nomination Procedure

Individuals may self-nominate and/or an organization may nominate one or more individuals to serve as a nonvoting industry representative. Nominations must include a current, complete résumé or curriculum vitae for each nominee and a signed copy of the Acknowledgement and Consent form available at the FDA Advisory Nomination Portal (see **ADDRESSES**). Nominations must also specify the advisory committee for which the nominee is recommended. Nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the committee. (Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process.)

FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and therefore encourages nominations of appropriately qualified candidates from these groups. Specifically, in this document, nominations for a nonvoting representative of industry interests are encouraged from the mammography manufacturing industry.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: February 7, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–02922 Filed 2–12–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0002]

Hospira, Inc. et al.; Withdrawal of Approval of 44 New Drug Applications and 158 Abbreviated New Drug Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of October 4, 2016 (81 FR 68427). The document announced the withdrawal of approval of 44 new drug applications and 158 abbreviated new drug applications (ANDAs) from multiple applicants, effective November 3, 2016. The document erroneously included abbreviated new drug application (ANDA) 075726 for Pemoline Tablets, 18.75 milligrams (mg), 37.5 mg, and 75 mg, held by Mallinkrodt Pharmaceuticals, LLC. This notice corrects that error.

FOR FURTHER INFORMATION CONTACT: Florine Purdie, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6248, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Tuesday, October 4, 2016, appearing on page 68427 in FR Doc. 2016–23893, the following correction is made:

1. On page 68430, in table 1, the entry for ANDA 075726 is removed.

In a separate notice published in this issue of the **Federal Register**, FDA is withdrawing the approval of ANDA 075726 under 21 CFR 314.150(d).

Dated: February 8, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–02926 Filed 2–12–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that a meeting is scheduled to be held on March 2, 2018, for the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria (Advisory Council). The meeting will be open to the public via teleconference; a public comment session will be held during the meeting. Pre-registration is required for members of the public who wish to attend the meeting via teleconference and who wish to participate in the public comment session. Individuals who wish to send in their public comment via email should send an email to *CARB@hhs.gov.* Registration information is available on the website *http://www.hhs.gov/ash/carb/* and must be completed by February 26, 2018. Additional information about registering for the meeting and providing public comment can be obtained at *http://www.hhs.gov/ash/carb/* on the Meetings page.

DATES: The meeting is scheduled to be held on March 2, 2018, from 9:00 a.m. to 11:00 a.m. ET (times are tentative and subject to change). The confirmed times and agenda items for the meeting will be posted on the website for the Advisory Council at *http://www.hhs.gov/ash/carb/* when this information becomes available. Pre-registration for attending the meeting is required to be completed no later than February 26, 2018.

ADDRESSES: Instructions regarding attending this meeting will be posted one week prior to the meeting at: *http://www.hhs.gov/ash/carb/.*

FOR FURTHER INFORMATION CONTACT: Jomana Musmar, Acting Designated Federal Officer, Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria, Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services, Room 715H, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201. Phone: (202) 690–5566; email: *CARB@hhs.gov.*

SUPPLEMENTARY INFORMATION: Under Executive Order 13676, dated September 18, 2014, authority was given to the Secretary of HHS to establish the Advisory Council, in consultation with the Secretaries of Defense and Agriculture. Activities of the Advisory Council are governed by the provisions of Public Law 92–463, as amended (5 U.S.C. App.), which sets forth standards for the formation and use of federal advisory committees.

The Advisory Council will provide advice, information, and recommendations to the Secretary of HHS regarding programs and policies intended to support and evaluate the implementation of Executive Order 13676, including the National Strategy for Combating Antibiotic-Resistant Bacteria and the National Action Plan for Combating Antibiotic-Resistant Bacteria. The Advisory Council shall function solely for advisory purposes.

In carrying out its mission, the Advisory Council will provide advice, information, and recommendations to the Secretary regarding programs and policies intended to preserve the effectiveness of antibiotics by optimizing their use; advance research to develop improved methods for combating antibiotic resistance and conducting antibiotic stewardship; strengthen surveillance of antibiotic-resistant bacterial infections; prevent the transmission of antibiotic-resistant bacterial infections; advance the development of rapid point-of-care and agricultural diagnostics; further research on new treatments for bacterial infections; develop alternatives to antibiotics for agricultural purposes; maximize the dissemination of up-to-date information on the appropriate and proper use of antibiotics to the general public and human and animal healthcare providers; and improve international coordination of efforts to combat antibiotic resistance.

The public meeting will be dedicated to the Advisory Council's deliberation and vote on a letter drafted by the Immediate Action Subcommittee. The meeting agenda will be posted on the Advisory Council website at *http://www.hhs.gov/ash/carb/* when it has been finalized. All agenda items are tentative and subject to change.

Instructions regarding attending this meeting will be posted one week prior to the meeting at: *http://www.hhs.gov/ash/carb/.*

Members of the public will have the opportunity to provide comments prior to the Advisory Council meeting by emailing *CARB@hhs.gov.* Public comments should be sent in by midnight February 26, 2018, and should be limited to no more than one page. All public comments received prior to February 26, 2018, will be provided to Advisory Council members; comments are limited to two minutes per speaker.

Dated: February 7, 2018.

Jomana F. Musmar,

Acting Designated Federal Officer, Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria, Committee Manager.

[FR Doc. 2018–02900 Filed 2–12–18; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Research Project Grants.

Date: March 5, 2018.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7351, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK R01–A1 Telephone SEP.

Date: March 6, 2018.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7023, 6707 Democracy Boulevard, Bethesda, MD 20892–5452 (301) 594–4719, *guox@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Research Project Grants.

Date: March 13, 2018.

Time: 10:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7351, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 7, 2018.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–02841 Filed 2–12–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of NIGMS Maximizing Investigators' Research Award for Early Stage Investigators (R35) Applications.

Date: March 8–9, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Robert Horowits, Ph.D., Scientific Review Officer, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18, Bethesda, MD 20892–6200, 301–594–6904, *horowitr@mail.nih.gov*.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of NIGMS R13 Support for Conferences and Scientific Meetings Applications.

Date: March 15, 2018.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lee Warren Slice, Scientific Review Officer, David Geffen School of Med, UCLA, Warren Hall, 11–151, 900 Veteran Ave., Los Angeles, CA 90095, 310–206–0909, *lslice@mednet.ucla.edu*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 7, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–02842 Filed 2–12–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, 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 Eye Institute Special Emphasis Panel; NEI Conference Grant (R13) Applications.

Date: March 9, 2018.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anne E. Schaffner, Ph.D., Chief, Scientific Review Branch, Division Of Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892–9300, (301) 451–2020, *aes@nei.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: February 7, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–02838 Filed 2–12–18; 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, 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; Fellowships: Risk, Prevention and Health Behavior.

Date: March 5–6, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Martha M. Faraday, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, (301) 435–3575, *faradaym@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Research Training and Career Development.

Date: March 5, 2018.
Time: 10:00 a.m. to 12:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.
Contact Person: Martha M. Faraday, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, 301–435–3575, *faradaym@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Healthcare Delivery and Methodologies.
Date: March 6, 2018.
Time: 12:00 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: Tasmeen Weik, DRPH, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, Bethesda, MD 20892, 301–827–6480, *weikts@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–16–329: Countermeasures against Chemical Threats (CounterACT), Research Centers of Excellence (U54).
Date: March 8, 2018.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Monaco, Baltimore, 2 North Charles Street, Baltimore, MD 21201.
Contact Person: Geoffrey G. Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: CounterACT—Countermeasures against Chemical Threats.
Date: March 9, 2018.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Monaco, Baltimore, 2 North Charles Street, Baltimore, MD 21201.
Contact Person: Geoffrey G. Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 7, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–02835 Filed 2–12–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, 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 on Aging Special Emphasis Panel; Aging and Central Mechanisms of Hearing Loss.
Date: March 8, 2018.
Time: 12:01 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20814, (Telephone Conference Call).
Contact Person: Maurizio Grimaldi, MD, Ph.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C218, Bethesda, MD 20892, 301–496–9374, *grimaldim2@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 7, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–02839 Filed 2–12–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, 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 materials, 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 on Minority Health and Health Disparities Special Emphasis Panel; NIH Pathway to Independence Award (Parent K99/R00).
Date: March 1, 2018.
Time: 2:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Gateway Building, 533K, 7201 Wisconsin Avenue, Bethesda, MD 20892.
Contact Person: Xinli Nan, Ph.D., Scientific Review Officer, National Institute on Minority Health, and Health Disparities, National Institutes of Health, 7201 Wisconsin Ave, Suite 525, Bethesda, MD 20814, 301–594–7784, *Xinli.Nan@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.

Dated: February 7, 2018.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–02843 Filed 2–12–18; 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, 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; NIAID Clinical Trial Planning Grant (R34).

Date: March 5, 2018.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Peter R. Jackson, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, Room #3G20, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5049, *pjackson@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: February 7, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–02840 Filed 2–12–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Intercellular Interactions Study Section, February 08, 2018, 08:00 a.m. to February 09, 2018, 05:00 p.m., Courtyard New Orleans French Quarter/Iberville, 910 Iberville Street, New Orleans, LA 70112 which was published in the **Federal Register** on January 11, 2018, 83 Pg. 1375.

The meeting will be held at New Orleans Marriott, 555 Canal St., New Orleans, LA 70130. The date and time remains the same. The meeting is closed to the public.

Dated: February 7, 2018.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–02837 Filed 2–12–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, 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 materials, 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 on Minority Health and Health Disparities Special Emphasis Panel; RCMI Research Coordinating Network RFA–MD–18–001.

Date: March 13, 2018.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gateway Building, 7201 Wisconsin Ave, Suite 533, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Maryline Laude-Sharp, Ph.D., Scientific Review Officer, National Institute on Minority Health, and Health Disparities, National Institutes of Health, 7201 Wisconsin Ave, Bethesda, MD 20814, (301) 451–9536, *mlaudesharp@nih.gov*.

Dated: February 7, 2018.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–02844 Filed 2–12–18; 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, 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; Small Business: Biological Chemistry, Biophysics and Assay Development.

Date: March 6–7, 2018.

Time: 10:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Vonda K. Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7892, Bethesda, MD 20892, 301–435–1789, *smithvo@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Macromolecular Structure and Function.

Date: March 6, 2018.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David R. Jollie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7806, Bethesda, MD 20892, (301) 435–1722, *jollieda@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Optic neuritis, optic neuropathy and retinopathy.

Date: March 6, 2018.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alessandra C. Rovescalli, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5205, MSC7846, Bethesda, MD 20892, (301) 435–1021, *rovescaa@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Non-HIV Microbial Vaccines.

Date: March 8, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Andrea Keane-Myers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, Bethesda, MD 20892, 301–435–1221, *andrea.keane-myers@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR17–199 and PAR17–200: Development of Appropriate Pediatric Formulations and Pediatric Drug Delivery Systems.

Date: March 9, 2018.
Time: 9:00 a.m. to 1:00 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: Mei Qin, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, Bethesda, MD 20892, 301–875–2215, *qinmei@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Innovative Basic Research on Adducts in Cancer Risk Identification and Prevention.
Date: March 9, 2018.
Time: 1:00 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: Jeffrey Smiley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–594–7945, *smileyja@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; Behavioral and Social Consequences of HIV/AIDS Study Section.
Date: March 12–13, 2018.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.
Contact Person: Mark P. Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–806–6596, *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM–17–008: NIH Director's Early Independence Award Review.
Date: March 12–13, 2018.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street NW, Washington, DC 20037.
Contact Person: Weijia Ni, Ph.D., Chief/Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3100, MSC 7808, Bethesda, MD 20892, 301–594–3292, *niw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Oncology.
Date: March 12–13, 2018.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.
Contact Person: Reigh-Yi Lin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–6009, *lin.reigh-yi@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; SBIR/STTR Applications in Drug Discovery and Development.
Date: March 12, 2018.
Time: 8:30 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Sergei Ruvinov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Health Services Organization and Delivery.
Date: March 12, 2018.
Time: 12:00 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Jacinta Bronte-Tinkew, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3164, MSC 7770, Bethesda, MD 20892, (301) 806–0009, *brontetinkewjm@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 7, 2018.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–02836 Filed 2–12–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2018–0044]

Merchant Marine Personnel Advisory Committee

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Merchant Marine Personnel Advisory Committee and its Working Groups will meet to discuss various issues related to the training and fitness of merchant marine personnel. The meetings will be open to the public.

DATES: The Merchant Marine Personnel Advisory Committee and its Working Groups are scheduled to meet on Tuesday, March 20, 2018 and on Wednesday March 21, 2018, from 8:00 a.m. until 5:30 p.m., and the full Committee is scheduled to meet on Thursday, March 22, 2018, from 8:00 a.m. until 5:30 p.m. Please note that these meetings may adjourn early if the Committee has completed its business.

ADDRESSES: The meetings will be held at the U.S. Coast Guard's Eighth Coast Guard District, Hale Boggs Federal Building, 500 Poydras St., New Orleans, LA 70130 in Room B106.

Pre-registration Information: Pre-registration is not required for access. All attendees will be required to provide a REAL ID Act-compliant government-issued picture identification card in order to gain admittance to the building. For more information on REAL ID and to check the compliance status of your state/territory, please see *https://www.dhs.gov/real-id* and *https://www.dhs.gov/real-id-public-faqs.*

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Alternate Designated Federal Officer as soon as possible using the contact information provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Instructions: You are free to submit comments at any time, including orally at the meetings, but if you want Committee members to review your comment before the meetings, please submit your comments no later than March 19, 2018. We are particularly interested in comments on the issues in the ''Agenda'' section below. You must include ''Department of Homeland Security'' and the docket number USCG–2018–0044. Written comments may also be submitted using the Federal eRulemaking Portal at *http://www.regulations.gov.* If you encounter technical difficulties with comments submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section below. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review the Privacy and Security Notice for the Federal Docket Management System at *https://www.regulations.gov/privacyNotice.*

Docket Search: For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov,* type USCG–2018–0044 in the ''Search'' box, press Enter, and then click on the item you wish to view.

FOR FURTHER INFORMATION CONTACT: Mr. Davis Breyer, Alternate Designated Federal Officer of the Merchant Marine Personnel Advisory Committee, 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593–7509, telephone 202–372–1445, fax 202–372–8382 or *davis.j.breyer@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the *Federal Advisory Committee Act,* Title 5 United States Code Appendix.

The Merchant Marine Personnel Advisory Committee was established under authority of section 310 of the Howard Coble Coast Guard and Maritime Transportation Act of 2014, codified at Title 46, United States Code, section 8108, and chartered under the provisions of the Federal Advisory Committee Act, (Title 5, United States Code, Appendix). The Committee acts solely in an advisory capacity to the Secretary of the Department of Homeland Security through the Commandant of the U.S. Coast Guard on matters relating to personnel in the United States merchant marine, including training, qualifications, certification, documentation, and fitness standards and other matters as assigned by the Commandant. The Committee shall also review and comment on proposed U.S. Coast Guard regulations and policies relating to personnel in the United States merchant marine, including training, qualifications, certification, documentation, and fitness standards; may be given special assignments by the Secretary and may conduct studies, inquiries, workshops, and fact finding in consultation with individuals and groups in the private sector and with State or local governments; and shall advise, consult with, and make recommendations reflecting its independent judgment to the Secretary.

Agenda

Day 1

The agenda for the March 20, 2018, meeting is as follows:

(1) The Committee will facilitate, under Task Statement 101, Provide feedback and avenues to further enhance open communication between external stakeholders and the U.S. Coast Guard's mariner credentialing program regarding all aspects of the program, the U.S. Coast Guard Authorization Act of 2015, section 315 requirement that the ''Coast Guard Performance Technology Center—

(A) prioritizes the review of examinations required for merchant mariner credentials; and

(B) not later than 3 years after the date of enactment of the U.S. Coast Guard Authorization Act of 2015, completes a formal review, including an appropriate analysis, of the topics and testing methodology employed by the National Maritime Center for merchant seamen licensing.''

This task is available for viewing at *https://homeport.uscg.mil/missions/ports-and-waterways/safety-advisory-committees/merpac.*

(2) The Performance Technology Center has been actively collecting data from the stakeholders on issues related to the examination process. The team has been working with U.S. Coast Guard personnel; U.S. Coast Guard approved training providers, and other federal agencies and private organizations that conduct examinations. As part of the data collection process the U.S. Coast Guard will be seeking active input from all facets of maritime industry in this important initiative on March 20, 2018, as follows:

(3) At 8:00 a.m. the members of the Merchant Marine Personnel Advisory Committee and the attending public will meet in an informal discussion group in order to provide insight on *maritime labor's* experience with the merchant mariner credentialing examination system and process to the Performance Technology Center. All other Committee members and members of the public are also welcome to participate.

(4) At 10:30 a.m. the members of the Merchant Marine Personnel Advisory Committee and the attending public will meet in an informal discussion group in order to provide insight on shipowners' experience with the merchant mariner credentialing examination system and process to the Performance Technology Center. All other Committee members and members of the public are also welcome to participate.

(5) At 2:00 p.m. the members of the Merchant Marine Personnel Advisory Committee and the attending public will meet in an informal discussion group in order to provide insight on maritime training providers' experience with the merchant mariner credentialing examination system and process to the Performance Technology Center. All other Committee members and members of the public are also welcome to participate.

The U.S. Coast Guard Performance Technology Center website is *http://www.forcecom.uscg.mil/Our-Organization/FORCECOM-DIVISIONS/Training/Training-Branches/FC-Tptc/.*

(6) Adjournment of meeting.

Day 2

The agenda for the March 21, 2018, meeting is as follows:

(1) The full Committee will meet briefly to discuss the Working Groups' business/task statements, which are listed under paragraph 2(a)–(h) below.

(2) Working Groups will separately address the following task statements which are available for viewing at *https://homeport.uscg.mil/missions/ports-and-waterways/safety-advisory-committees/merpac:*

(a) Task Statement 87, Review of policy documents providing guidance on the implementation of the December 24, 2013, International Convention on Standards of Training, Certification and Watchkeeping for Seafarers rulemaking;

(b) Task Statement 89, Review and update of the International Maritime Organization's Maritime Safety Committee Circular MSC/Circ.1014 Guidelines on fatigue mitigation and management

(c) Task Statement 90, Review of International Maritime Organization's Model Courses Being Validated by the International Maritime Organization's Subcommittee on Human Element, Training and Watchkeeping

(d) Task Statement 96, Review and comment on the course and program approval requirements including 46 CFR 10.402, 10.403, 10.407 and Navigation and Vessel Inspection Circular 03–14 guidelines for approval of training courses and programs;

(e) Task Statement 98, Continue the progress made by the military services towards meeting the goals on the use of Military Education, Training and Assessment for STCW and National Mariner Endorsements as identified in the Howard Coble Coast Guard and Maritime Transportation Act of 2014 and subsequent legislation;

(f) Task Statement 101, Provide feedback and avenues to further enhance open communication between external stakeholders and the U.S. Coast Guard's mariner credentialing program regarding all aspects of the program;

(g) Task Statement 102, Consider and make recommendations regarding the current requirement for a U.S. Merchant Mariner to read and write using English;

(h) Task Statement 103, Input to Support Regulatory Reform of Coast Guard Regulations—Executive Orders 13771 and 13783.

(3) Public comment period.

(4) Reports of Working Groups. At the end of the day, the Working Groups will report to the full Committee on what was accomplished in their meetings. The full Committee will not take action on these reports on this date. Any

official action taken as a result of these Working Group meetings will be taken on day three of the meeting.

(5) Adjournment of meeting.

Day 3

The agenda for the March 22, 2018, full Committee meeting is as follows:

(1) Introduction.

(2) Swearing in of newly appointed Committee members.

(3) Remarks from U.S. Coast Guard Leadership.

(4) Designated Federal Officer announcements.

(5) Roll call of Committee members and determination of a quorum.

(6) Reports from the following Working Groups:

(a) Task Statement 87, Review of policy documents providing guidance on the implementation of the December 24, 2013, International Convention on Standards of Training, Certification and Watchkeeping for Seafarers rulemaking;

(b) Task Statement 89, Review and update of the International Maritime Organization's Maritime Safety Committee Circular MSC/Circ. 1014 Guidelines on fatigue mitigation and management

(c) Task Statement 90, Review of International Maritime Organization's Model Courses Being Validated by the International Maritime Organization's Subcommittee on Human Element, Training and Watchkeeping

(d) Task Statement 96, Review and comment on the course and program approval requirements including 46 CFR 10.402, 10.403, 10.407 and Navigation and Vessel Inspection Circular 03–14 guidelines for approval of training courses and programs;

(e) Task Statement 98, Continue the progress made by the military services towards meeting the goals on the use of Military Education, Training and Assessment for STCW and National Mariner Endorsements as identified in the Howard Coble Coast Guard and Maritime Transportation Act of 2014 and subsequent legislation;

(f) Task Statement 101, Provide feedback and avenues to further enhance open communication between external stakeholders and the Coast Guard's mariner credentialing program regarding all aspects of the program;

(g) Task Statement 102, Consider and make recommendations regarding the current requirement for a U.S. Merchant Mariner to read and write using English;

(h) Task Statement 103, Input to Support Regulatory Reform of Coast Guard Regulations—Executive Orders 13771 and 13783.

(7) New Business regarding an addendum to Task Statement 101 regarding the cancellation of Medical Certificates.

(8) Other items for discussion:

(a) Report on the Mariner Credentialing Program;

(b) Report on National Maritime Center activities from the National Maritime Center Commanding Officer;

(c) Briefings about other on-going U.S. Coast Guard projects related to personnel in the U.S. merchant marine.

(9) Public comment period.

(10) Discussion of Working Group recommendations.

The Committee will review the information presented on each issue, deliberate on any recommendations presented by the Working Groups, approve/formulate recommendations and close any completed tasks. Official action on these recommendations may be taken on this date.

(11) Closing remarks/plans for next meeting.

(12) Adjournment of meeting.

A public comment period will be held during each Working Group and full Committee meeting concerning matters being discussed.

A copy of all meeting documentation will be available at *https://homeport.uscg.mil/missions/ports-and-waterways/safety-advisory-committees/merpac* no later than March 19, 2018. Alternatively, you may contact Mr. Davis Breyer as noted in the **FOR FURTHER INFORMATION** section above.

Public comments will be limited to three minutes per speaker. Please note that the public comment periods will end following the last call for comments. Please contact Mr. Davis Breyer, listed in the **FOR FURTHER INFORMATION CONTACT** section, to register as a speaker.

A public comment period will be held during each Working Group and full Committee meeting concerning matters being discussed.

Please note that the meeting may adjourn early if the work is completed.

Dated: February 8, 2018.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2018–02924 Filed 2–12–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7001–N–07]

30-Day Notice of Proposed Information Collection: Continuum of Care Homeless Assistance Grant Application-Continuum of Care Registration

AGENCY: Office of the Chief Information Officer, 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 30 days of public comment.

DATES: *Comments Due Date:* March 15, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806, Email: *OIRA Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person 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. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on July 11, 2017 at 82 FR 32008.

A. Overview of Information Collection

Title of Information Collection: Continuum of Care Homeless Assistance Grant Application-Continuum of Care Registration.

OMB Approval Number: 2506–0182.

Type of Request: Reinstatement.

Form Number: Not Applicable.

Description of the need for the information and proposed use: This submission is to request an extension of an Existing Collection in use without an OMB Control Number for the Recordkeeping for HUD's Continuum of Care Program. Continuum of Care program recipients will be expected to implement and retain the information collection for the recordkeeping requirements. The statutory provisions and implementing interim regulations govern the Continuum of Care Program recordkeeping requirements for recipient and subrecipients and the standard operating procedures for ensuring that Continuum of Care Program funds are used in accordance with the program requirements. To see the regulations for the new CoC Program and applicable supplementary documents, visit HUD's Homeless Resource Exchange at *https://www.onecpd.info/resource/2033/hearth-coc-program-interim-rule/.*

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
CoC Registration Process—Basic	410.00	1.00	410.00	2.00	820.00	$39.00	$31,980.00
CoC Registration Process—UFA	25.00	1.00	25.00	15.00	375.00	39.00	14,625.00
CoC Registration—HPC	5.00	1.00	5.00	10.00	50.00	39.00	1,950.00
Subtotal	440.00	1.00			1,245.00		
Total Grant Program Application Collection	440.00	1.00			1,245.00	39.00	48,555.00

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: February 2, 2018.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2018–02938 Filed 2–12–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7001–N–05]

30-Day Notice of Proposed Information Collection: Application for Fee or Roster Personnel (Appraisers and Inspectors) Designation and Appraisal Reports

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* March 15, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806, Email: *OIRA Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Colette.Pollard@hud.gov,* or telephone 202–402–3400. This is not a toll-free number. Person 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.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 12, 2017 at 82 FR 42831.

A. Overview of Information Collection

Title of Information Collection: Application for Fee or Roster Personnel (Appraisers and Inspectors) Designation and Appraisal Reports.

OMB Approved Number: 2502–0538.

Type of Request: Extension.

Form Number: HUD 92563A, HUD92563I, HUD 92564–CN, Fannie Mae Forms: 1004, 1004c, 1025, 1073, 1075, 2055 and 1004MC.

Description of the need for the information and proposed use: Accurate and Thorough Appraisal reporting is critical to the accuracy of underwriting for the mortgage insurance process. The need for accuracy is increased for FHA insured mortgage since buyers tend to have more limited income and lower equity in the properties. The collection of information provides a more thorough and complete appraisal of prospective HUD-insured single-family properties ensuring that mortgages are acceptable for FHA insurance and thereby protect the interest of HUD, the taxpayers, and the FHA insurance fund. The collection allows HUD to maintain an effective appraisal program with the ability to discipline appraisers and inform potential homeowners of the benefits of purchasing an independent home inspection.

Respondents: (*i.e.* affected public): Business or other for profit.

Estimated Number of Respondents: 21,315.

Estimated Number of Responses: 524,815.

Frequency of Response: On occasion.

Average Hours per Response: 0.5

Total Estimated Annual Burden and Cost: 26,240.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond: Including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: January 30, 2018.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2018–02935 Filed 2–12–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7001–N–06]

30-Day Notice of Proposed Information Collection: Public Housing Agencies Service Areas Solicitation of Comments

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* March 15, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806, Email: *OIRA Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Colette.Pollard@hud.gov,* or telephone 202–402–3400. This is not a toll-free number. Person 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.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on October 11, 2017 at 82 FR 47236.

A. Overview of Information Collection

Title of Information Collection: Public Housing Agencies Service Areas Solicitation of Comments.

OMB Approval Number: 2577-New.

Type of Request: New Collection.

Form Number: Interactive Geospatial tool currently under development and will be available upon completion.

Description of the need for the information and proposed use: HUD proposes to use the following information collection methodology to gather Public Housing Agencies (PHAs) service area boundaries. An interactive geospatial tool will be provided by HUD for PHAs to access online. Through this online tool, HUD will present PHAs with estimates of their service area boundaries based on the locations of the PHA's public housing units and Housing Choice Vouchers in relation to Units of General Local Government. PHAs will be provided an opportunity to revise HUD's initial estimates using the online tool. The online, interactive tool will provide PHAs with the ability to designate boundaries that more accurately reflect their actual service areas under state and local law. PHAs will be able to do so by identifying Units of General Local Government boundaries that more closely reflect their actual service areas.

The United States Housing Act of 1937 (1937 Act) in Section 3(b)(6) defines a Public Housing Agency, in part, as: ''Except as provided in subparagraph (b), . . . any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of public housing.'' 42 U.S.C. 1437a. The section includes additional provisions related to PHAs operating Section 8 Housing Choice Vouchers. The 1937 Act therefore includes a reference to applicable state and local laws that PHAs operate pursuant to. HUD's regulations, at 24 CFR 982.4, defines a PHA's Jurisdiction as, ''the area in which the PHA has authority under State and local law to administer the program.''

HUD is proposing an information collection regarding PHAs' applicable jurisdictions, also known as service areas, in which they are authorized to operate under state and local law. Through the online tool, HUD will present PHAs with estimates of their service area boundaries, based on the locations of the PHA's public housing unit and Housing Choice Vouchers in relation to Units of General Local Government. HUD is aware that these initial estimates may not reflect the PHA's defined service area in accordance with State and local law, therefore, PHAs will be provided an opportunity to revise HUD's initial estimates using the online tool. When revising HUD's estimates, PHAs will be instructed to include in their revisions the areas in which they are authorized to operate under state and local law, not only the areas in which they currently operate. This means including areas that the PHA may have no public housing developments or HCVs, but where the PHA could operate those programs. If the PHA believes that HUD's estimate of its service area is accurate, the PHA will be asked to validate or accept HUD's estimation within the online tool.

The information collection described in this Notice will use an online electronic methodology intended to reduce administrative costs for PHAs and the federal government. The information obtained through this information collection is intended to assist in HUD program operations and in providing data to HUD's program participants, stakeholders, and the.

Collecting PHA service area boundaries in a simple electronic format will aid in the provision of data that can be used in conducting the statement of housing needs assessments as required by the PHA Annual Plan pursuant to 24 CFR 903.7. The information will be used by HUD to provide data to PHAs for use

in completing Assessments of Fair Housing. Such information is also highly relevant for informing Housing Choice Voucher policy decisions, including those related to mobility and portability. HUD itself will utilize the information to inform operations of the public housing, Housing Choice Voucher and other programs, and for estimating the impact of changes in Fair Market Rents, including Small Area Fair Market Rents. The information may also be useful for the general public, for instance, in locating local affordable housing providers and increasing awareness of local affordable housing options.

The use of a geospatial data tool to collect this information has the advantage of simplifying and minimizing the administrative costs as well as directly linking the information to existing data resources without the need for additional cost to the federal government.

	Number of respondents	Number of responses per respondent	Frequency of response	Estimated average time for requirement (in hours)	Estimated total burden (in hours)
PHA Service Area Information.	3,942	1	Once per Assessment of Fair Housing cycle. (i.e. generally once every five years).	1	3,942
Total Burden	.....	.....	.....	.....	3,942

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond: Including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: January 30, 2018.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2018–02936 Filed 2–12–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2017–N182; FXES11130100000–189–FF01E00000]

U.S. Endangered Species; Receipt of Recovery and Interstate Commerce Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits to conduct activities intended to enhance the propagation or survival of endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits certain activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA also requires that we invite public comment before issuing these permits.

DATES: To ensure consideration, we must receive your written comments by March 15, 2018.

ADDRESSES: *Requesting Copies of Applications or Public Comments:* Copies of applications or public comments concerning any of the applications in this notice may be obtained by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication 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): 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.

Submitting Comments: You may submit comments by one of the following methods. Please specify applicant name(s) and application number(s) to which your comments pertain (*e.g.,* TE–XXXXXX).

- *Email: permitsR1ES@fws.gov.* Please refer to the respective permit number (*e.g.,* Application No. TE–XXXXXX) in the subject line of your email message.
- *U.S. Mail:* 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.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Recovery Permits Coordinator, Ecological Services, (503) 231–6131 (phone); *permitsR1ES@fws.gov* (email).

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), invite the public to comment on applications for permits to conduct activities intended to promote recovery of endangered species. With some exceptions, the ESA prohibits certain activities with endangered species unless a Federal permit allows such activity. The ESA also requires that we invite public comment before issuing these permits.

Background

The ESA prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) 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.

Permit Applications Available for Review and Comment

We invite local, State, Tribes, Federal agencies and the public to comment on the following applications.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE–003483	U.S. Geological Survey, Pacific Island Ecosystems Research Center, Hawaii National Park, Hawaii.	Add the following species: Hawaiian hawk or ʻIo (*Buteo solitarius*), Maui parrotbill or Kiwikiu (*Pseudonestor xanthophrys*), Crested honeycreeper or Akohekohe (*Palmeria dolei*), Oahu elepaio (*Chasiempis ibidis*).	Hawaii	Population surveys and ecological research.	For all species: survey, record and/or use tape-playback vocalizations, capture, handle, band, mark, measure, weigh, biosample, release, recapture, and salvage. For Hawaiian hawk: attach radio and/or satellite transmitters, survey and monitor nests. For ʻi'iwi: attach radio transmitters and monitor nests.	Amend.
TE–056557	U.S. Bureau of Reclamation, Boise, Idaho.	Snake River physa snail (*Physa natricina*).	Idaho	Population surveys and ecological research.	Survey, capture, mark, transport, release, and sacrifice.	Renew.
TE–060179	San Diego Zoo Global, San Diego, California.	Add the following species: Hawaiian hawk or ʻIo (*Buteo solitarius*).	Hawaii	Population surveys and ecological research.	Survey, capture, handle, biosample, attach GPS biologgers, release, recapture, and salvage.	Amend.
TE–068803	Jerry Lynn Kinser, Conroe, Texas.	Hawaiian goose or Nene (*Branta sandvicensis*).	Texas	Captive propagation	Purchase, in interstate commerce, two male and two female captive bred goslings.	New.
TE–25955C	Melissa Price, University of Hawaii—Manoa, Honolulu, Hawaii.	Band-rumped storm petrel (*Oceanodroma castro*), Hawaiian stilt or Aeo (*Himantopus mexicanus knudseni*).	Hawaii	Population, predation, mortality, and genetic studies.	For both species: survey, capture, handle, measure, weigh, release, recapture, and salvage. For petrels: biosample For stilts: band, attach radio-transmitters, and monitor nests.	Amend.
TE–62696C	Assured Bio Labs, LLC, Oak Ridge, Tennessee.	*Bidens amplectens* (Koʻokoʻolau).	Hawaii	Hybridization study	Remove/reduce to possession from lands under Federal jurisdiction—collect leaves, flowering portions, stems, and herbarium specimens.	New.
TE–64600C	University of Guam, Center for Island Sustainability, Mangilqo, Guam.	*Serianthes nelsonii* (Hayun lagu, Tronkon guafi), *Eugenia bryanii* (No Common Name (NCN)), *Hedyotis megalantha* (Paudedo), *Heritiera longipetiolata* (Ufahalomtano), *Phyllanthus saffordii* (NCN), *Psychotria malaspinae* (Aplokating-palaoan), *Tinospora homosepala* (NCN).	Guam, Rota	Population surveys, captive propagation, genetic studies, and recovery actions.	Remove/reduce to possession from lands under Federal jurisdiction—collect seeds and leaves; survey, propagate, outplant, genetic analysis, and salvage.	New.

Public Availability of Comments

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. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review; however, we cannot guarantee that we will be able to do so.

Contents of Public Comments

Please make your comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain

the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations.

Next Steps

If the Service decides to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Eric Hein,

Acting Assistant Regional Director—Ecological Services, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2018–02878 Filed 2–12–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–10331; AA–10335, AA–10338; AA–10339; AA–10277; AA–10340; 18X.LLAK9440000.L14100000.HY0000.P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) hereby provides constructive notice that it will issue an appealable decision approving conveyance of the surface and subsurface estates in certain lands to Calista Corporation, an Alaska Native regional corporation, pursuant to the Alaska Native Claims Settlement Act of 1971, as amended (ANCSA).

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the time limits set out in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You may obtain a copy of the decision from the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: Bettie J. Shelby, BLM Alaska State Office, 907–271–5596 or *bshelby@blm.gov.* The BLM Alaska State Office may also be contacted via Telecommunications Device for the Deaf (TDD) through the Federal Relay Service at 1–800–877–8339. The relay service is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

SUPPLEMENTARY INFORMATION: As required by 43 CFR 2650.7(d), notice is hereby given that the BLM will issue an appealable decision to Calista Corporation. The decision approves conveyance of the surface and subsurface estates in certain lands pursuant to ANCSA (43 U.S.C. 1601, *et seq.*), as amended. The lands are located within the Yukon Delta National Wildlife Refuge, and aggregate 21.03 acres. The BLM will also publish the notice of the decision once a week for four consecutive weeks in *The Delta Discovery* newspaper.

Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until March 15, 2018 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by facsimile will not be accepted as timely filed.

Bettie J. Shelby,

Land Law Examiner, Division of Lands and Cadastral.

[FR Doc. 2018–02912 Filed 2–12–18; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–9732; AA–9827, AA–9829; 18X.LLAK9440000.L14100000.HY0000.P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) hereby provides constructive notice that it will issue an appealable decision approving conveyance of the surface estate in certain lands to Calista Corporation, an Alaska Native regional corporation, pursuant to the Alaska Native Claims Settlement Act of 1971, as amended (ANCSA). Ownership of the subsurface estate will be retained by the United States.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the time limits set out in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You may obtain a copy of the decision from the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, AK 99513–7504.

FOR FURTHER INFORMATION CONTACT: Bettie J. Shelby, BLM Alaska State Office, 907–271–5596 or *bshelby@blm.gov.* The BLM Alaska State Office may also be contacted via Telecommunications Device for the Deaf (TDD) through the Federal Relay Service at 1–800–877–8339. The relay service is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

SUPPLEMENTARY INFORMATION: As required by 43 CFR 2650.7(d), notice is hereby given that the BLM will issue an appealable decision to Calista Corporation. The decision approves conveyance of the surface estate in certain lands pursuant to ANCSA (43 U.S.C. 1601, *et seq.*), as amended. Ownership of the subsurface estate will be retained by the United States. The lands are located within the Yukon Delta National Wildlife Refuge, and aggregate 32.78 acres. The BLM will also publish the notice of the decision once a week for four consecutive weeks in *The Delta Discovery* newspaper. Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until March 15, 2018 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30

days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by facsimile will not be accepted as timely filed.

Bettie J. Shelby,

Land Law Examiner, Division of Lands and Cadastral.

[FR Doc. 2018–02913 Filed 2–12–18; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–9389, AA–9390, AA–9391, AA–9392, AA–9407, AA–9416, AA–9701, AA–9719, AA–10007, AA–11270; 18X.LLAK9440000.L14100000.HY0000.P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) hereby provides constructive notice that it will issue an appealable decision approving conveyance of the surface estate in certain lands to Calista Corporation, an Alaska Native regional corporation, pursuant to the Alaska Native Claims Settlement Act of 1971, as amended (ANCSA). Ownership of the subsurface estate will be retained by the United States.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the time limits set out in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You may obtain a copy of the decision from the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, AK 99513–7504.

FOR FURTHER INFORMATION CONTACT: Matthew R. Lux, BLM Alaska State Office, 907–271–3176 or *mlux@blm.gov.* The BLM Alaska State Office may also be contacted via Telecommunications Device for the Deaf (TDD) through the Federal Relay Service at 1–800–877–8339. The relay service is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

SUPPLEMENTARY INFORMATION: As required by 43 CFR 2650.7(d), notice is hereby given that the BLM will issue an appealable decision to Calista Corporation. The decision approves conveyance of the surface estate in certain lands pursuant to ANCSA (43 U.S.C. 1601, *et seq.*), as amended. Ownership of the subsurface estate will be retained by the United States. The lands are located within the Yukon Delta National Wildlife Refuge, and aggregate 433.80 acres. The BLM will also publish the Notice of the decision once a week for four consecutive weeks in *The Delta Discovery* newspaper.

Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until March 15, 2018 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by facsimile will not be accepted as timely filed.

Matthew R. Lux,

Land Law Examiner, Division of Lands and Cadastral.

[FR Doc. 2018–02911 Filed 2–12–18; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1032]

Certain Single-Molecule Nucleic Acid Sequencing Systems and Reagents, Consumables, and Software for Use With Same Commission's Final Determination Finding No Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found no violation of section 337 of the Tariff Act of 1930, as amended, in this investigation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Lucy Grace D. Noyola, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–3438. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 8, 2016, based on a complaint filed by Pacific Biosciences of California, Inc. of Menlo Park, California (''PacBio''). 81 FR 88703, 88703–04 (Dec. 8, 2016). The complaint, as amended, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain single-molecule nucleic acid sequencing systems and reagents, consumables, and software for use with same by reason of infringement of certain claims of U.S. Patent Nos. 9,404,146 (''the '146 patent'') and 9,542,527 (''the '527 patent''). *Id.* at 88704; 82 FR 15236 (Mar. 27, 2017). The notice of investigation named as respondents Oxford Nanopore Technologies Ltd. of Oxford, United Kingdom; Oxford Nanopore Technologies, Inc. of Cambridge, Massachusetts; and Metrichor, Ltd. of Oxford, United Kingdom (collectively, ''Oxford''). 81 FR at 88704. The Office of Unfair Import Investigations (''OUII'') also was named as a party to the investigation. *Id.*

On May 23, 2017, the presiding administrative law judge (''ALJ'') issued Order No. 10 (''*Markman* Order''), construing the limitations ''single-molecule sequencing process,'' which is recited in claims 1, 5–7, 14, and 16–17 of the '146 patent and claims 1 and 3–4 of the '527 patent, and ''single-molecule sequencing,'' which is recited in claims 20–21 of the '146 patent (collectively, ''single-molecule sequencing'' limitations).

On June 8, 2017, PacBio filed a motion for summary determination that the domestic industry requirement is satisfied. On June 9, 2017, Oxford filed a motion for summary determination of (1) noninfringement as to all accused products because they do not satisfy the ''single-molecule sequencing'' limitations; (2) noninfringement as to a subset of the accused products (directed solely to Oxford's 1D or 1D^2 sequencing processes) because they do not satisfy the ''linker'' limitations; and (3) noninfringement as to a subset of the accused products (not directed solely to Oxford's 1D or 1D^2 sequencing processes) because they are capable of substantial noninfringing uses.

On July 19, 2017, the ALJ issued an ID (Order No. 12), granting in part Oxford's summary determination motion. Specifically, the ID incorporated the *Markman* Order by reference and found no infringement of claims 1, 5–7, 10, 14, 16–21, and 23–25 of the '146 patent and claims 1 and 3–11 of the '527 patent based on the *Markman* Order's construction of the ''single-molecule sequencing'' limitations. The ID denied as moot Oxford's second and third requests for summary determination of noninfringement, as well as PacBio's motion for summary determination on the economic prong of the domestic industry requirement. The ID found no violation of section 337.

On July 31, 2017, PacBio filed a petition for review of the *Markman* Order's construction of ''single-molecule sequencing'' and the ID's finding of noninfringement. On August 7, 2017, Oxford and OUII filed responses to PacBio's petition. On August 16, 2017, PacBio filed a motion for leave to file a reply in support of its petition for review. On August 28, 2017, Oxford filed an opposition to PacBio's motion.

On September 5, 2017, the Commission determined to review the ID in its entirety and to deny PacBio's motion for leave to file a reply. Notice (Sept. 5, 2017). The Commission also requested additional briefing from the parties on certain issues.

On September 15, 2017, Oxford and OUII filed initial written submissions addressing the Commission's questions. On September 18, 2017, PacBio filed its initial written submission. On September 22, 2017, Oxford and OUII filed response briefs. On September 22, 2017, and September 29, 2017, PacBio filed its response briefs.

Having examined the record of this investigation, including the ID and the parties' submissions, the Commission has determined to adopt, on modified grounds described in the concurrently-issued opinion, the *Markman* Order's construction of the ''single-molecule sequencing'' limitations. The Commission has also determined to affirm the ID's finding of noninfringement of claims 1, 5–7, 10, 14, 16–21, and 23–25 of the '146 patent and asserted claims 1 and 3–11 of the '527 patent and the ID's finding of no violation of section 337. The Commission denies PacBio's request for oral argument.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: February 7, 2018.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2018–02854 Filed 2–12–18; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Second Amendment to Consent Decree Under the Clean Air Act

On February 7, 2018, the Department of Justice lodged a proposed Second Amendment to Consent Decree (''Second Amendment'') with the United States District Court for the Southern District of Illinois in the lawsuit entitled *United States, et al.* v. *Gateway Energy & Coke Company, et al.,* Civil Action No. 3:13–cv–00616–DRH–SCW.

The United States, on behalf of the U.S. Environmental Protection Agency, filed a complaint under the Clean Air Act asserting claims relating to two Midwestern heat recovery coking facilities, one of which is located in Granite City, Illinois (the ''Gateway Facility''), and the other of which is located in Franklin Furnace, Ohio (the ''Haverhill Facility''). The United States sought civil penalties and injunctive relief against the owners and operators of the Gateway and Haverhill Facilities, the Haverhill Coke Company, LLC, SunCoke Energy, Inc., and the Gateway Energy & Coke Company, LLC. The States of Illinois and Ohio are co-plaintiffs in this action, and sought injunctive relief and civil penalties under corresponding state laws as to the Gateway Facility and Haverhill Facility, respectively.

On November 10, 2014, the Court entered a Consent Decree that, *inter alia,* required (1) installation of heat recovery steam generators (''HRSGs'') to provide redundancy that will allow hot coking gases to be routed to a pollution control device instead of vented directly to the atmosphere in the event of equipment downtime, and (2) installation of continuous emissions monitors for sulfur dioxide at one bypass vent per process unit (two at the Haverhill Facility and one at the Gateway Facility).

The Consent Decree allows Defendants 720 hours of ''tie-in'' time to complete installation of the Redundant HRSGs. Defendants have represented that installation and operation of the Redundant HRSGs have exacerbated corrosion-related issues at the spray dryer absorbers (''SDAs''); therefore, Defendants need to replate the SDAs to upgrade their metallurgy and to make them more corrosion-resistant, as well as assist in effective operation of the SDAs. To that end, the Second Amendment would allow Defendants to use tie-in hours to address the corrosion at the SDAs, while at the same time requiring Defendants to mitigate the excess emissions associated with the replating project.

As to mitigation, the Second Amendment requires Defendants to: (1) Meet lower bypass venting emissions limits relating to sulfur dioxide at both the Gateway and Haverhill Facilities than were required by the Consent Decree, and seek to incorporate such lower limits into construction permit(s) and Title V operating permits; and (2) continue to operate the flue gas desulfurization units at the two facilities to over-control sulfur dioxide, particulate matter, lead, and, as to the Haverhill Facility, hydrochloric acid emissions from the main stacks by, among other things, injecting excess lime slurry into the SDAs. The proposed Second Amendment would also streamline reporting obligations under the Consent Decree, and add reporting requirements relating to mitigation of excess emissions resulting from the SDA replating project.

The publication of this notice opens a period for public comment on the Second Amendment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States et al.* v. *Gateway Energy & Coke Company, et al.,* D.J. Ref. No. 90–5–2–1–10065. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	pubcomment-ees.enrd@usdoj.gov
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Second Amendment may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Second Amendment upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $4.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2018–02914 Filed 2–12–18; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OMB Number 1121–New]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection

AGENCY: Office of Justice Programs, Department of Justice.

ACTION: 30 Day notice.

SUMMARY: The Department of Justice, National Institute of Justice, is submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The Department of Justice encourages public comment and will accept input until March 15, 2018.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jack Harne, Physical Scientist, National Institute of Justice, 810 Seventh Street NW, Washington, DC 20531 (phone 202–598–9412). Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the National Institute of Justice, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* New Collection.

2. *The Title of the Form/Collection:* National Survey on Correctional Contraband (NCSS).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* ''There is no agency form number for this collection.'' The applicable component within the Department of Justice is the Office of Justice Programs, National Institute of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* The current project aims to develop national statistics on correctional contraband and interdiction modalities to fill these significant knowledge gaps in the field. NIJ, in collaboration with the Urban Institute, will collect the data from the department of corrections in all 50 states and a nationally representative sample of jails (n = 408).

In correctional facilities, contraband items such as drugs, alcohol, cell phones, tobacco products, and makeshift weapons can be used by inmates to spread violence, engage in criminal activity, create underground economies, and perpetuate existing addictions. Contraband in correctional facilities is therefore a cause of serious concern for the safety and security of inmates and correctional staff. However, little is known about what types of contraband interdiction modalities are exercised across jurisdictions and have proven successful, let alone how much and what type of contraband is found in correctional facilities in the U.S. and how it is brought in.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated range of burden for respondents completing the survey is 60 minutes. The department of corrections in all 50 states, responding for 1,821 prison facilities, and a nationally representative sample of jails (n = 408) will be recruited to complete the survey.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 2,221 hours. It is estimated that 1,821 state participants and 408 jail participants will take one hour to complete the survey.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: February 8, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–02919 Filed 2–12–18; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will be submitting 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, on or after the date of publication of this notice.

DATES: Comments should be received on or before March 15, 2018 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) NCUA PRA Clearance Officer, 1775 Duke Street, Suite 5060, Alexandria, VA 22314, or email at *PRAComments@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by contacting Dawn Wolfgang at (703) 548–2279, emailing *PRAComments@ncua.gov,* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0180.

Title: Liquidity and Contingency Funding Plans.

Abstract: Section 741.12 establishes a three tier framework for federally insured credit unions (FICUs), based on asset size. FICUs with assets under $50 million must maintain a basic policy, those with assets of $50 million and over must maintain a contingency funding plan, and those with assets over $250 million must maintain a contingency funding plan and establish a federal liquidity contingency source. The reviews will conclude if federally insured credit unions are maintaining appropriate liquidity levels for the amount of balance sheet risk exposure. As part of the routine examination process, these reviews help prevent losses to credit unions and the NCUSIF.

Type of Review: Extension of a currently approved collection.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 4,425.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on February 8, 2018.

Dated: February 8, 2018.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2018–02889 Filed 2–12–18; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice of meetings.

SUMMARY: The National Endowment for the Humanities will hold seventeen meetings of the Humanities Panel, a federal advisory committee, during March, 2018. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** for meeting dates. The meetings will open at 8:30 a.m. and will adjourn by 5:00 p.m. on the dates specified below.

ADDRESSES: The meetings will be held at Constitution Center at 400 7th Street SW, Washington, DC 20506, unless otherwise indicated.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given of the following meetings:

1. *Date:* March 1, 2018. This meeting will discuss applications on the subjects of Archaeology and the Ancient World for the Collaborative Research grant program, submitted to the Division of Research Programs.

2. *Date:* March 12, 2018. This meeting will discuss applications on the subject of Social Sciences for the Collaborative Research grant program, submitted to the Division of Research Programs.

3. *Date:* March 13, 2018. This meeting will discuss applications on the subjects of Philosophy and Religion for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

4. *Date:* March 14, 2018. This meeting will discuss applications on the subject of the Arts for the Collaborative Research grant program, submitted to the Division of Research Programs.

5. *Date:* March 15, 2018. This meeting will discuss applications on the subject of American History for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

6. *Date:* March 15, 2018. This meeting will discuss applications on the subject of Museums for the Sustaining Cultural Heritage Collections grant program, submitted to the Division of Preservation and Access.

7. *Date:* March 16, 2018. This meeting will discuss applications on the subjects of Historical Societies and Local History for the Sustaining Cultural Heritage Collections grant program, submitted to the Division of Preservation and Access.

8. *Date:* March 19, 2018. This meeting will discuss applications on the subject of World Literature for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

9. *Date:* March 19, 2018. This meeting will discuss applications on the subject of Art History for the Public Humanities Projects—Exhibitions grant program (implementation grants), submitted to the Division of Public Programs.

10. *Date:* March 20, 2018. This meeting will discuss applications on the subjects of History and Literature for the Collaborative Research grant program, submitted to the Division of Research Programs.

11. *Date:* March 20, 2018. This meeting will discuss applications on the subject of History for Media Projects: Production Grants, submitted to the Division of Public Programs.

12. *Date:* March 21, 2018. This meeting will discuss applications on the subjects of World History and Literature for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

13. *Date:* March 22, 2018. This meeting will discuss applications on the subjects of U.S. History and Culture for the Public Humanities Projects—Exhibitions grant program (implementation grants), submitted to the Division of Public Programs.

14. *Date:* March 22, 2018. This meeting will discuss applications on the subjects of Libraries and Archives for the Sustaining Cultural Heritage Collections grant program, submitted to the Division of Preservation and Access.

15. *Date:* March 23, 2018. This meeting will discuss applications on the subjects of New World and Asian Archaeology for the Collaborative Research grant program, submitted to the Division of Research Programs.

16. *Date:* March 23, 2018. This meeting will discuss applications on the subjects of Historic Houses and Small Museums for the Sustaining Cultural Heritage Collections grant program, submitted to the Division of Preservation and Access.

17. *Date:* March 26, 2018. This meeting will discuss applications on the subjects of American and British Literature for the Scholarly Editions and

Translations grant program, submitted to the Division of Research Programs.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: February 7, 2018.

Elizabeth Voyatzis,

Committee Management Officer.

[FR Doc. 2018–02855 Filed 2–12–18; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Large Scale Networking (LSN)—Middleware and Grid Interagency Coordination (MAGIC) Team

AGENCY: The Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO), National Science Foundation.

ACTION: Notice of meetings; correction.

SUMMARY: The National Science Foundation (NSF) published a document in the **Federal Register** of February 2, 2018, concerning meeting notices for the Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO), National Science Foundation. There was a broken link in the notice.

Correction

In the **Federal Register** of February 2, 2018, in FR Doc. 2018–02100, on page 4931, in the first column, please correct the web link to read: *https://www.nitrd.gov/nitrdgroups/index.php?title=Middleware_And_Grid_Interagency_Coordination_(MAGIC)*

FOR FURTHER INFORMATION CONTACT: Ms. Joyce Lee at *joyce.lee@nitrd.gov* or (202) 459–9674.

Dated: February 8, 2018.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–02921 Filed 2–12–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Faster Administration of Science and Technology Education and Research (FASTER) Community of Practice (CoP)

AGENCY: The Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO), National Science Foundation.

ACTION: Notice of meetings.

SUMMARY: The goal of the FASTER CoP is to enhance collaboration and accelerate agencies' adoption of advanced IT capabilities developed by Government-sponsored IT research. FASTER, seeks to accelerate deployment of promising research technologies; share protocol information, standards, and best practices; and coordinate and disseminate technology assessment and testbed results. The agendas, minutes, and other meeting materials and information can be found on the FASTER website at: *https://www.nitrd.gov/nitrdgroups/index.php?title=FASTER.*

DATES: The FASTER CoP meetings will be held over the course of the year (February 2018—December 2018) at the NITRD National Coordination Office, 490 L'Enfant Plaza SW, Suite 8001, Washington, DC 20024. Please note that public seating for these meetings is limited and is available on a first-come, first-served basis. WebEx and/or Teleconference participation is available for each meeting. Please reference the FASTER CoP website for meeting dates, times, and location changes. Further information about the NITRD may be found at: *https://www.nitrd.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Alex Thai at *thai@nitrd.gov* or (202) 459–9674.

PUBLIC COMMENTS: The government seeks individual input; attendees/participants may provide individual advice only. Members of the public are welcome to submit their comments to *magic-comments@nitrd.gov.* Please note that under the provisions of the Federal Advisory Committee Act (FACA), all public comments and/or presentations will be treated as public documents and may be made available to the public via the MAGIC Team website.

Submitted by the National Science Foundation in support of the Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO) on February 6, 2018.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–02927 Filed 2–12–18; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 3 and 4; Inspections, Tests, Analyses, and Acceptance Criteria

AGENCY: Nuclear Regulatory Commission.

ACTION: Determination of the successful completion of inspections, tests, and analyses.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff has determined that the inspections, tests, and analyses have been successfully completed, and that the specified acceptance criteria are met for the Vogtle Electric Generating Plant (VEGP), Units 3 and 4.

DATES: The determination of the successful completion of inspections, tests, and analyses for VEGP Units 3 and 4 is effective February 13, 2018.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each

document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Chandu Patel, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3025; email: Chandu.*Patel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Licensee Notification of Completion of ITAAC

Southern Nuclear Operating Company, Inc. (SNC), Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC., MEAG Power SPVJ, LLC., MEAG Power SPVP, LLC., and the City of Dalton, Georgia, (hereafter called the licensee) have submitted inspections, tests, analyses, and acceptance criteria (ITAAC) closure notifications (ICNs) under title 10 of the *Code of Federal Regulations* (10 CFR) 52.99(c)(1), informing the NRC that the licensee has successfully performed the required inspections, tests, and analyses, and that the acceptance criteria are met for:

VEGP Unit 3 ITAAC

2.1.01.07.i (8), 2.1.01.07.iv (11), 2.1.02.08d.vii (38), 2.5.02.07c (536), 3.1.00.05 (737), 3.7.00.01 (841), and E.3.9.05.01.01 (849)

VEGP Unit 4 ITAAC

2.1.01.07.i (8), 2.1.01.07.iv (11), 2.1.02.08d.vii (38), 2.5.02.07c (536), 3.1.00.05 (737), and 3.7.00.01 (841)

The ITAAC for VEGP Unit 3 are in Appendix C of the VEGP Unit 3 combined license (ADAMS Accession No. ML14100A106). The ITAAC for VEGP Unit 4 are in Appendix C of VEGP Unit 4 combined license (ADAMS Accession No. ML14100A135).

II. NRC Staff Determination of Completion of ITAAC

The NRC staff has determined that the specified inspections, tests, and analyses have been successfully completed, and that the specified acceptance criteria are met. The documentation of the NRC staff's determination is in the ITAAC Closure Verification Evaluation Form (VEF) for each ITAAC. The VEF is a form that represents the NRC staff's structured process for reviewing ICNs. Each ICN presents a narrative description of how the ITAAC was completed. The NRC's ICN review process involves a determination on whether, among other things: (1) Each ICN provides sufficient information, including a summary of the methodology used to perform the ITAAC, to demonstrate that the inspections, tests, and analyses have been successfully completed; (2) each ICN provides sufficient information to demonstrate that the acceptance criteria of the ITAAC are met; and (3) any NRC inspections for the ITAAC have been completed and any ITAAC findings associated with that ITAAC have been closed.

The NRC staff's determination of the successful completion of these ITAAC is based on information available at this time and is subject to the licensee's ability to maintain the condition that the acceptance criteria are met. If the staff receives new information that suggests the staff's determination on any of these ITAAC is incorrect, then the staff will determine whether to reopen that ITAAC (including withdrawing the staff's determination on that ITAAC). The NRC staff's determination will be used to support a subsequent finding, pursuant to 10 CFR 52.103(g), at the end of construction that all acceptance criteria in the combined license are met. The ITAAC closure process is not finalized for these ITAAC until the NRC makes an affirmative finding under 10 CFR 52.103(g). Any future updates to the status of these ITAAC will be reflected on the NRC's website at *http://www.nrc.gov/reactors/new-reactors/oversight/itaac.html.*

This notice fulfills the staff's obligations under 10 CFR 52.99(e)(1) to publish a notice in the **Federal Register** of the NRC staff's determination of the successful completion of inspections, tests and analyses.

Vogtle Electric Generating Plant Unit 3, Docket No. 5200025

A complete list of the review status for VEGP Unit 3 ITAAC, including the submission date and ADAMS Accession Number for each ICN received, the ADAMS Accession Number for each VEF, and the ADAMS Accession Numbers for the inspection reports associated with these specific ITAAC, can be found on the NRC's website at *http://www.nrc.gov/reactors/new-reactors/new-licensing-files/vog3-icnsr.pdf.*

Vogtle Electric Generating Plant Unit 4, Docket No. 5200026

A complete list of the review status for VEGP Unit 4 ITAAC, including the submission date and ADAMS Accession Number for each ICN received, the ADAMS Accession Number for each VEF, and the ADAMS Accession Numbers for the inspection reports associated with these specific ITAAC, can be found on the NRC's website at *http://www.nrc.gov/reactors/new-reactors/new-licensing-files/vog4-icnsr.pdf.*

Dated at Rockville, Maryland, this 7th day of February 2018.

For the Nuclear Regulatory Commission.

Jennifer L. Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2018–02872 Filed 2–12–18; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2018–0021]

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 January 13, 2018, to January 29, 2018. The last biweekly notice was published on January 30, 2018.

DATES: Comments must be filed by March 15, 2018. A request for a hearing must be filed by April 16, 2018.

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 website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0021. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For

technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* May Ma, Office of Administration, Mail Stop: TWFN–3–D1, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Shirley Rohrer, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5411, email: *Shirley.Rohrer@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0021, 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 website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0021.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2018–0021, 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 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 petition for leave 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. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (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.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in 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 must 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 the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must 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 the requirements at 10 CFR 2.309(f) 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. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the 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). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

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 establish 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 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 the 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 no later than 60 days from the date of publication of this notice. 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. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at 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 his or her 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 and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate 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. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html.* 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 (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (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 website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is 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 document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must

apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website 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 6 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 adjudicatory documents 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 *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. 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.

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.

Duke Energy Progress, LLC, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant (BSEP), Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: November 15, 2017. A publicly available version is in ADAMS under Accession No. ML17331A484.

Description of amendment request: The amendments would revise fire protection license condition 2.B.(6) to allow, as a performance-based method, certain currently-installed thermal insulation materials to be retained and allow future use of these insulation materials in limited applications subject to appropriate engineering reviews and controls, as a deviation from the National Fire Protection Association Standard 805, Chapter 3, Section 3.3, Prevention.

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.

A fire hazards evaluation was performed for the areas of the plant where the identified insulation materials are installed. The fire hazards evaluation demonstrates that these materials do not contribute appreciably to the spread of fire, nor represent a secondary combustible beyond those currently analyzed in the Fire Probabilistic Risk Analysis (FPRA) due to the limited applications where these materials are installed. Therefore, it is concluded that this 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 identified installations of the insulation materials were evaluated against the fire scenarios supporting the FPRA. In all instances, the supporting analyses and existing fire scenarios were found to be bounding. Expanded zones of fire influence would not fail additional FPRA targets, or there were no FPRA credited targets in the area. Therefore, it is concluded that this 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.

The limited installations of the insulation materials do not compromise post-fire safe shutdown capability as previously designed, reviewed, and considered. Essential fire protection safety functions are maintained and are capable of being performed. Because the insulation materials do not compromise post-fire safe shutdown capability as previously designed, reviewed, and considered, it is concluded that 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, Deputy General Counsel, 550 South Tryon Street, M/C DEC45A, Charlotte, NC 28202.

NRC Branch Chief: Undine Shoop.

Duke Energy Progress, LLC, Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1 (HNP), Wake County, North Carolina

Date of amendment request: October 19, 2017, as supplemented by letter dated January 11, 2018. Publicly-available versions are in ADAMS under Accession Nos. ML17292B648 and ML18011A911, respectively.

Description of amendment request: The amendment would revise the HNP Updated Final Safety Analysis Report (UFSAR) to incorporate the Tornado Missile Risk Evaluator (TMRE) Methodology contained in Nuclear Energy Institute (NEI) 17–02, Revision 1, ''Tornado Missile Risk (TMRE) Industry Guidance Document,'' September 2017 (ADAMS Accession No. ML17268A036).

This methodology can only be applied to discovered conditions where tornado missile protection is not currently provided, and cannot be used to avoid providing tornado missile protection in the plant modification process.

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 Nuclear Regulatory Commission (NRC) staff edits in square brackets:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment does not involve an increase in the probability of an accident previously evaluated. The relevant accident previously evaluated is a Design Basis Tornado impacting the HNP site. The probability of a Design Basis Tornado is driven by external factors and is not affected by the proposed amendment. There are no changes required to any of the previously evaluated accidents in the UFSAR.

The proposed amendment does not involve a significant increase in the consequences of a Design Basis Tornado. [The methodology as proposed does not alter any input assumptions or results of the accident analyses. Instead, it reflects a methodology to more realistically evaluate the probability of unacceptable consequences of a Design Basis Tornado. As such, there is no significant increase in the consequence of an accident previously evaluated. A similar consideration would apply in the event additional non-conforming conditions are discovered in the future.]

Therefore, the proposed amendment, for both the conditions described herein and any future application of the methodology, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment, including any future use of the methodology, will involve no physical changes to the existing plant, so no new malfunctions could create the possibility of a new or different kind of accident. The proposed amendment makes no changes to conditions external to the plant that could create the possibility of a new or different kind of accident. The proposed change will not create the possibility of a new or different kind of accident due to new accident precursors, failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing bases. The existing UFSAR accident analysis will continue to meet requirements for the scope and type of accidents that require analysis.

Therefore, the proposed amendment, for both the conditions described herein and any future application of the methodology, does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment does not exceed or alter any controlling numerical value for a parameter established in the UFSAR or elsewhere in the HNP licensing basis related to design basis or safety limits. The change does not impact any UFSAR Chapter 6 or 15 Safety Analyses, and those analyses remain valid. The change maintains diversity and redundancy as required by regulation or credited in the UFSAR. The change does not reduce defense-in-depth as described in the UFSAR.

Therefore, the proposed amendment, for both the conditions described herein and any future application of the methodology, does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's modified 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: Lara Nichols, Deputy General Counsel, Duke Energy Corporation, 550 South Tyron Street, Mail Code DEC45A, Charlotte, NC 28202.

NRC Branch Chief: Douglas A. Broaddus.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 6, 2017. A publicly-available version is in ADAMS under Accession No. ML17340B321.

Description of amendment request: The amendment would revise Technical Specification 3/4.3.2 Table 4.3–2, ''Engineered Safety Features Actuation System [ESFAS] Instrumentation Surveillance Requirements.'' The amendment would remove from Note 3 of the table the exemption from testing ESFAS relays K114, K305, and K313 at power.

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 will remove the Technical Specification Table 4.3–2 Note 3 exemption for testing relays K305, K313, and K114 at power. The Technical Specification Table 4.3–2 Note 3 exemption allowed the K305, K313, and K114 to not be tested during power operation. The K305 and K313 relays are associated with the Main Steam Isolation Signal (MSIS). The K114 relays are associated with the Containment Spray Actuation Signal (CSAS). The removal of the exemption from testing during power operation means the impacted relays will be tested more frequently improving the ability to identify failed components.

The removal of the Technical Specification Table 4.3–2 Note 3 exemption for testing relays K305, K313, and K114 means these relays will be tested more frequently. This testing frequency will be consistent with the other Technical Specification Table 4.3–2 subgroup relays that do not have an exemption. The probability of an operator choosing the wrong subgroup relay during testing is no different for this change as it is for the existing Technical Specification Table 4.3–2 subgroup relays that are already tested on this same frequency. Thus, there will be no significant increase in the probability of an operator error causing an accident.

The change will also eliminate a potential single failure vulnerability associated with MSIS (relays K305 and K313) and CSAS (relay K114). The elimination of the single failure potential will lower the probability of an accident due to the spurious actuation of the MSIS or CSAS.

The change uses a parallel 2 out of 2 with second 2 out of 2 to ensure no single failure of one actuation path would prevent the other actuation path from completing its function. This ensures no additional failure mode would prevent required equipment from actuating and increasing accident consequences.

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 will remove the Technical Specification Table 4.3–2 Note 3 exemption for testing relays K305, K313, and K114. The K305, K313, and K114 relays are part of the Engineered Safety Features Actuation System (ESFAS). The ESFAS is used for accident mitigation but an inadvertent actuation could cause an accident. The K305 and K313 relays are associated with the MSIS. The K114 relays are associated with the CSAS. The potential failures of the main steam isolation and containment spray systems have been evaluated in the Waterford 3 Updated Final Safety Analysis Report (UFSAR). The potential accidents are as follows:

- Loss of External Load which could be caused by closure of the Main Steam Isolation Valves (MSIVs) (UFSAR Section 15.2, Decrease in Heat Removal by the Secondary System).
- Loss of normal Feedwater Flow which could be caused by the closure of the Main Feedwater Isolation Valves (UFSAR Section 15.2, Decrease in Heat Removal by the Secondary System).

• Asymmetric Steam Generator Transient which could be caused by the closure of one MSIV (UFSAR Section 15.9.1.1, Asymmetric Steam Generator Transient).

• Loss of component cooling to Reactor Coolant Pumps (RCPs) which could be caused by the closure of the RCP Component Coolant Water valve. This could lead to RCP seal assembly damage and the possibility for a loss of coolant accident (UFSAR Section 15.6, Decrease In Reactor Coolant System Inventory).

• Inadvertent containment spray which could be caused by actuation of one train of containment spray (UFSAR Section 6.2.1.1.3, Design Evaluation—Containment Pressure—Temperature Analysis).

The removal of the exemption from testing during power operation means the impacted relays will be tested more frequently thereby improving the ability to identify failed components; however, they will be tested at power. The ESFAS K305, K313, and K114 relay test logic is designed to test the relays at power and not actuate the end devices which could adversely impact the plant. Any failures that could actuate plant equipment would continue to be bounded by the existing UFSAR accidents; therefore, no new accident is being created.

The ESFAS is used for accident mitigation. The removal of the exemption from testing during power operation means the impacted relays will be tested more frequently thereby improving the ability to identify failed components. This lowers the possibility of the ESFAS equipment not being available when needed. This also means that with the ESFAS equipment available, this change does not create the possibility of a different kind of accident.

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.

The proposed change will remove the Technical Specification Table 4.3–2 Note 3 exemption for testing relays K305, K313, and K114. The removal of the exemption from testing during power operation means the impacted relays will be tested more frequently thereby improving the ability to identify failed components. The more frequent testing will improve the margin of safety.

The change will also eliminate a potential single failure vulnerability associated with MSIS (relays K305 and K313) and CSAS (relay K114). The elimination of the single failure potential will improve the margin of safety by reducing the potential of an accident due to the spurious actuation of the MSIS or CSAS.

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. Anna Vinson Jones, Senior Counsel, Entergy Services, Inc., 101 Constitution Avenue NW, Suite 200 East, Washington, DC 20001.

NRC Branch Chief: Robert J. Pascarelli.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station (LSCS), Units 1 and 2, LaSalle County, Illinois

Date of amendment request: December 13, 2017. A publicly-available version is in ADAMS under Accession No. ML17360A159.

Description of amendment request: The amendments would revise technical specifications (TSs) to adopt Technical Specification Task Force (TSTF)-542, Reactor Pressure Vessel Water Inventory Control (RPV WIC).

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 replaces existing TS requirements related to OPDRVs [operations with a potential for draining the reactor vessel] with new requirements on RPV WIC water inventory control] that will protect Safety Limit 2.1.1.3. Draining of RPV water inventory in Mode 4 (*i.e.,* cold shutdown) and Mode 5 (*i.e.,* refueling) is not an accident previously evaluated and, therefore, replacing the existing TS controls to prevent or mitigate such an event with a new set of controls has no effect on any accident previously evaluated. RPV water inventory control in Mode 4 or Mode 5 is not an initiator of any accident previously evaluated. The existing OPDRV controls or the proposed RPV WIC controls are not mitigating actions assumed in any accident previously evaluated.

The proposed change reduces the probability of an unexpected draining event (which is not a previously evaluated accident) by imposing new requirements on the limiting time in which an unexpected draining event could result in the reactor vessel water level dropping to the top of the active fuel (TAF). These controls require cognizance of the plant configuration and control of configurations with unacceptably short drain times. These requirements reduce the probability of an unexpected draining event. The current TS requirements are only mitigating actions and impose no requirements that reduce the probability of an unexpected draining event.

The proposed change reduces the consequences of an unexpected draining event (which is not a previously evaluated accident) by requiring an Emergency Core Cooling System (ECCS) subsystem to be operable at all times in Modes 4 and 5. The current TS requirements do not require any water injection systems, ECCS or otherwise, to be operable in certain conditions in Mode 5. The change in requirement from two ECCS subsystems to one ECCS subsystem in Modes 4 and 5 does not significantly affect the consequences of an unexpected draining event because the proposed Actions ensure equipment is available within the limiting drain time that is as capable of mitigating the event as the current requirements. The proposed controls provide escalating compensatory measures to be established as calculated drain times decrease, such as verification of a second method of water injection and additional confirmations that secondary containment and/or filtration would be available if needed.

The proposed change reduces or eliminates some requirements that were determined to be unnecessary to manage the consequences of an unexpected draining event, such as automatic initiation of an ECCS subsystem and control room ventilation. These changes do not affect the consequences of any accident previously evaluated since a draining event in Modes 4 and 5 is not a previously evaluated accident and the requirements are not needed to adequately respond to a draining event.

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 previously evaluated?

Response: No.

The proposed change replaces existing TS [technical specification] requirements related to OPDRVs with new requirements on RPV WIC that will protect Safety Limit 2.1.1.3. The proposed change will not alter the design function of the equipment involved. Under the proposed change, some systems that are currently required to be operable during OPDRVs would be required to be available within the limiting drain time or to be in service depending on the limiting drain time. Should those systems be unable to be placed into service, the consequences are no different than if those systems were unable to perform their function under the current TS requirements.

The event of concern under the current requirements and the proposed change is an unexpected draining event. The proposed change does not create new failure mechanisms, malfunctions, or accident initiators that would cause a draining event or a new or different kind of accident not previously evaluated or included in the design and licensing bases.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change replaces existing TS requirements related to OPDRVs with new requirements on RPV WIC. The current requirements do not have a stated safety basis

and no margin of safety is established in the licensing basis. The safety basis for the new requirements is to protect Safety Limit 2.1.1.3. New requirements are added to determine the limiting time in which the RPV water inventory could drain to the top of the fuel in the reactor vessel should an unexpected draining event occur. Plant configurations that could result in lowering the RPV water level to the TAF within one hour are now prohibited. New escalating compensatory measures based on the limiting drain time replace the current controls. The proposed TS establish a safety margin by providing defense-in-depth to ensure that the Safety Limit is protected and to protect the public health and safety. While some less restrictive requirements are proposed for plant configurations with long calculated drain times, the overall effect of the change is to improve plant safety and to add safety margin.

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: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: David J. Wrona.

Exelon Generation Company, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit 1, Oswego County, New York

Date of amendment request: December 15, 2017. A publicly available version is in ADAMS under Accession No. ML17349A027.

Description of amendment request: The amendment would revise the Nine Mile Point Nuclear Station, Unit 1, Technical Specifications (TSs) by replacing existing requirements related to ''operations with a potential for draining the reactor vessel'' (OPDRVs) with new requirements on reactor pressure vessel water (RPV) inventory control (WIC). The proposed changes are based on Technical Specifications Task Force (TSTF) Improved Standard Technical Specifications Change Traveler TSTF–542, Revision 2, ''Reactor Pressure Vessel Water Inventory Control'' (ADAMS Accession No. ML16074A448).

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 replace existing TS requirements related to OPDRVs with new requirements on RPV WIC that will ensure RPV water level remains above −10 inches indicator scale. Draining of RPV water inventory in the cold shutdown and refueling conditions is not an accident previously evaluated; therefore, replacing the existing TS controls to prevent or mitigate such an event with a new set of controls has no effect on any accident previously evaluated. RPV water inventory control in the cold shutdown or refueling condition is not an initiator of any accident previously evaluated. The existing OPDRV controls or the proposed RPV WIC controls are not mitigating actions assumed in any accident previously evaluated.

The proposed changes reduce the probability of an unexpected draining event (which is not a previously evaluated accident) by imposing new requirements on the limiting time in which an unexpected draining event could result in the reactor vessel water level dropping to −10 inches indicator scale. These controls require cognizance of the plant configuration and control of configurations with unacceptably short drain times. These requirements reduce the probability of an unexpected draining event. The current TS requirements are only mitigating actions and impose no requirements that reduce the probability of an unexpected draining event.

The proposed changes reduce the consequences of an unexpected draining event (which is not a previously evaluated accident) by requiring a Core Spray subsystem to be operable at all times in the cold shutdown and refueling conditions. The change in requirement from two Core Spray subsystems to one Core Spray subsystem in the cold shutdown or refueling conditions does not significantly affect the consequences of an unexpected draining event because the proposed Actions ensure equipment is available within the limiting drain time that is as capable of mitigating the event as the current requirements. The proposed controls provide escalating compensatory measures to be established as calculated drain times decrease, such as verification of a second method of water injection and additional confirmations that containment and/or filtration would be available if needed.

The proposed changes reduce or eliminate some requirements that were determined to be unnecessary to manage the consequences of an unexpected draining event, such as automatic initiation of a Core Spray subsystem and control room ventilation. These changes do not affect the consequences of any accident previously evaluated since a draining event in the cold shutdown or refueling condition is not a previously evaluated accident and the requirements are not needed to adequately respond to a draining event.

Therefore, the proposed changes do 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 changes replace existing TS requirements related to OPDRVs with new requirements on RPV WIC that will maintain RPV water level above −10 inches indicator scale. The proposed changes will not alter the design function of the equipment involved. Under the proposed changes, some systems that are currently required to be operable during OPDRVs would be required to be available within the limiting drain time or to be in service depending on the limiting drain time. Should those systems be unable to be placed into service, the consequences are no different than if those systems were unable to perform their function under the current TS requirements.

The event of concern under the current requirements and the proposed change is an unexpected draining event. The proposed changes do not create new failure mechanisms, malfunctions, or accident initiators that would cause a draining event or a new or different kind of accident not previously evaluated or included in the design and licensing bases.

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 replace existing TS requirements related to OPDRVs with new requirements on RPV WIC. The current requirements do not have a stated safety basis and no margin of safety is established in the licensing basis. The safety basis for the new requirements is to maintain RPV water level above −10 inches indicator scale. New requirements are added to determine the limiting time in which the RPV water inventory could drain to the top of the fuel in the reactor vessel should an unexpected draining event occur. Plant configurations that could result in lowering the RPV water level to −10 inches indicator scale within one hour are now prohibited. New escalating compensatory measures based on the limiting drain time replace the current controls. The proposed TS establish a safety margin by providing defense-in-depth to maintain RPV water level above −10 inches indicator scale to protect the public health and safety. While some less restrictive requirements are proposed for plant configurations with long calculated drain times, the overall effect of the change is to improve plant safety and to add safety margin.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: James G. Danna.

Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: November 10, 2017. A publicly-available version is in ADAMS under Accession No. ML17314A024.

Description of amendment request: The amendment would make changes to the organization, staffing, and training requirements contained in Section 6.0, ''Administrative Controls,'' of the Three Mile Island Nuclear Station, Unit 1 (TMI–1), Technical Specifications (TSs) and define two new positions for Certified Fuel Handler and Non-Certified Operator in Section 1.0, ''Definitions,'' to reflect the permanently defueled condition.

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 TMI–1 has permanently ceased operation and certified a permanently defueled condition. The proposed changes would revise the TMI–1 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. Additionally, the ''Certified Fuel Handler'' and ''Non-Certified Operator'' would be added to Section 1.0 of the TS to define these positions that are applicable to permanently shutdown and defueled facility. These changes are administrative in nature.

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 changes 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.

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 the TS definitions and administrative controls have no impact on facility plant Structures, Systems, and Components (SSCs) affecting the safe storage of spent irradiated fuel, or on the methods of operation of such SSCs, or on the actual handling and storage of spent irradiated fuel. The proposed changes do not result in different or more adverse failure modes or accidents than previously evaluated because the reactor will be permanently shutdown and defueled and TMI–1 will no longer be authorized to operate the reactor.

The proposed changes do not affect systems credited in the accident analyses at TMI–1. 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 TS administrative controls once the TMI–1 facility has been permanently shutdown and defueled. As specified in 10 CFR 50.82(a)(2), the 10 CFR 50 license for TMI–1 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 proposed changes are limited to those portions of the administrative TSs that are related to the safe storage and maintenance of spent irradiated fuel. The proposed TS changes do not affect plant design, hardware, system operation, or procedures for accident mitigation systems. There is no change in the established safety margins for these systems. The requirements that are proposed to be added, revised and/or deleted from the TMI–1 TS are not credited in the existing accident analysis for the applicable postulated accidents; therefore, they do not contribute to the margin of safety associated with the accident analysis. Certain postulated design basis accidents (DBAs) involving the reactor are no longer possible because the reactor will be permanently shutdown and defueled and TMI–1 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.

NRC Branch Chief: James G. Danna.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: December 20, 2017. A publicly-available version is in ADAMS under Accession No. ML17355A019.

Description of amendment request: The amendment would revise technical specification (TS) requirements related to direct current (DC) electrical systems, specifically limiting conditions for operation 3.8.4, 3.8.5, and 3.8.6. The proposed amendment would also add a new Battery and Monitoring Maintenance Program to TS Section 5.5, ''Programs and Manuals.'' The proposed changes are consistent with Technical Specifications Task Force (TSTF) Traveler TSTF–500, Revision 2, ''DC Electrical Rewrite—Update to TSTF–360.''

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 restructure the Technical Specifications (TS) for the direct current (DC) electrical power system and are consistent with TSTF–500, Revision 2, ''DC Electrical Rewrite—Update to TSTF–360.'' The proposed changes modify TS Actions relating to battery and battery charger

inoperability. The DC electrical power system, including associated battery chargers, is not an initiator of any accident sequence analyzed in the Updated Safety Analysis Report (USAR). Rather, the DC electrical power system supports equipment used to mitigate accidents. The proposed changes to restructure TS and change surveillances for batteries and chargers to incorporate the updates included in TSTF–500, Revision 2, will maintain the same level of equipment performance required for mitigating accidents assumed in the USAR. Operation in accordance with the proposed TS would ensure that the DC electrical power system is capable of performing its specified safety function as described in the USAR. Therefore, the mitigating functions supported by the DC electrical power system will continue to provide the protection assumed by the analysis. The relocation of preventive maintenance surveillances, and certain operating limits and actions, to a licensee-controlled battery monitoring and maintenance program will not challenge the ability of the DC electrical power system to perform its design function. Appropriate monitoring and maintenance that are consistent with industry standards will continue to be performed. In addition, the DC electrical power system is within the scope of 10 CFR 50.65, ''Requirements for monitoring the effectiveness of maintenance at nuclear power plants,'' which will ensure the control of maintenance activities associated with the DC electrical power system.

The integrity of fission product barriers, plant configuration, and operating procedures as described in the USAR will not be affected by the proposed changes. Therefore, the consequences of previously analyzed accidents will not increase by implementing these changes. Therefore, the proposed changes do 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 changes involve restructuring the TS for the DC electrical power system. The DC electrical power system, including associated battery chargers, is not an initiator to any accident sequence analyzed in the USAR. Rather, the DC electrical power system supports equipment used to mitigate accidents. The proposed changes to restructure the TS and change surveillances for batteries and chargers to incorporate the updates included in TSTF–500, Revision 2, ''DC Electrical Rewrite—Update to TSTF–360,'' will maintain the same level of equipment performance required for mitigating accidents assumed in the USAR. Administrative and mechanical controls are in place to ensure the design and operation of the DC systems continues to meet the plant design basis described in the USAR. Therefore, operation of the facility in accordance with this proposed change will 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 margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The equipment margins will be maintained in accordance with the plant-specific design bases as a result of the proposed changes. The proposed changes will not adversely affect operation of plant equipment. These changes will not result in a change to the setpoints at which protective actions are initiated. Sufficient DC capacity to support operation of mitigation equipment is ensured. The changes associated with the new battery maintenance and monitoring program will ensure that the station batteries are maintained in a highly reliable manner. The equipment fed by the DC electrical sources will continue to provide adequate power to safety-related loads in accordance with analysis assumptions.

TS changes made in accordance with TSTF–500, Revision 2, ''DC Electrical Rewrite—Update to TSTF–360,'' maintain the same level of equipment performance stated in the USAR and the current TSs. Therefore, the proposed changes do not involve a significant reduction 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: David W. Jenkins, Attorney, FirstEnergy Corporation, Mail Stop A–GO–15, 76 South Main Street, Akron, OH 44308.

NRC Branch Chief: David J. Wrona.

NextEra Energy Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Manitowoc County, Wisconsin

Date of amendment request: August 31, 2017. A publicly-available version is in ADAMS under Accession No. ML17243A201.

Description of amendment request: The proposed amendment would modify the licensing basis, by the addition of a License Condition, to allow for the implementation of the provisions of 10 CFR part 50.69, ''Risk-Informed Categorization and Treatment of Structures, Systems, and Components (SSCs) for Nuclear Power Plants.'' The provisions of 10 CFR 50.69 allow adjustment of the scope of equipment subject to special treatment controls (*e.g.,* quality assurance, testing, inspection, condition monitoring, assessment, and evaluation). For equipment determined to be of low safety significance, alternative treatment requirements can be implemented in accordance with this regulation. For equipment determined to be of high safety significance, requirements will not be changed or will be enhanced.

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 will permit the use of a risk-informed categorization process to modify the scope of SSCs subject to NRC special treatment requirements and to implement alternative treatments per the regulations. The process used to evaluate SSCs for changes to NRC special treatment requirements and the use of alternative requirements ensures the ability of the SSCs to perform their design function. The potential change to special treatment requirements does not change the design and operation of the SSCs. As a result, the proposed change does not significantly affect any initiators to accidents previously evaluated or the ability to mitigate any accidents previously evaluated. The consequences of the accidents previously evaluated are not affected because the mitigation functions performed by the SSCs assumed in the safety analysis are not being modified. The SSCs required to safely shut down the reactor and maintain it in a safe shutdown condition following an accident will continue to perform their design functions.

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 will permit the use of a risk-informed categorization process to modify the scope of SSCs subject to NRC special treatment requirements and to implement alternative treatments per the regulations. The proposed change does not change the functional requirements, configuration, or method of operation of any SSC. Under the proposed change, no additional plant equipment will be installed.

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.

The proposed change will permit the use of a risk-informed categorization process to modify the scope of SSCs subject to NRC special treatment requirements and to implement alternative treatments per the regulations. The proposed change does not affect any Safety Limits or operating parameters used to establish the safety

margin. The safety margins included in analyses of accidents are not affected by the proposed change. The regulation requires that there be no significant effect on plant risk due to any change to the special treatment requirements for SSCs and that the SSCs continue to be capable of performing their design basis functions, as well as to perform any beyond design basis functions consistent with the categorization process and results.

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: Steven Hamrick, Managing Attorney—Nuclear Florida Power & Light Company, LAW/WAS, 801 Pennsylvania Ave. NW #220, Washington, DC 20004.

NRC Branch Chief: David J. Wrona.

NextEra Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: December 1, 2017. A publicly-available version is in ADAMS under Accession No. ML17339A428.

Description of amendment request: The amendment would revise certain 18-month surveillance requirements previously performed while shut down to be performed during power operations. The amendment would also revise the administrative controls portion of the technical specifications (TSs) to replace plant-specific titles with generic titles and modify TSs 6.1.2, 6.2.2, 6.2.4, and Table 6.2–1 to be consistent with NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants.''

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 technical specification (TS) surveillance requirements and administrative controls associated with the proposed changes to the TS are not initiators of any accidents previously evaluated, so the probability of accidents previously evaluated is unaffected by the proposed changes. The proposed change does not alter the design, function, or operation of any plant structure, system, or component (SSC). The capability of any operable TS-required SSC to perform its specified safety function is not impacted by the proposed change. As a result, the outcomes of accidents previously evaluated are unaffected. Therefore, the proposed changes do not result in 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 previously evaluated?

Response: No.

The proposed change does not challenge the integrity or performance of any safety-related systems. No plant equipment is installed or removed, and the changes do not alter the design, physical configuration, or method of operation of any plant SSC.

No physical changes are made to the plant, so no new causal mechanisms are introduced. Therefore, the proposed changes to the TS do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not challenge the integrity or performance of any safety-related systems. No plant equipment is installed or removed, and the changes do not alter the design, physical configuration, or method of operation of any plant SSC. No physical changes are made to the plant, so no new causal mechanisms are introduced. Therefore, the proposed changes to the TS do 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 the margin of safety?

Response: No.

The ability of any operable SSC to perform its designated safety function is unaffected by the proposed changes. The proposed changes do not alter any safety analyses assumptions, safety limits, limiting safety system settings, or method of operating the plant. The changes do not adversely affect plant operating margins or the reliability of equipment credited in the safety analyses. With the proposed change, each DC electrical train remains fully capable of performing its safety function. 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: Steve Hamrick, Acting Managing Attorney, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: James G. Danna.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP), Units 3 and 4, Burke County, Georgia

Date of amendment request: July 28, 2017, as supplemented by January 23, 2108, letter. Publicly-available versions are in ADAMS under Accession No. ML17209A755, and ML18023A440, respectively.

Description of amendment request: The requested amendment proposes changes to combined license Appendix A, plant-specific Technical Specifications (TS) to make them consistent with the remainder of the design, licensing basis, and the TS. The U.S. Nuclear Regulatory Commission (NRC) staff previously noticed this amendment request in the **Federal Register** on December 5, 2017 (82 FR 57473). However, due to administrative errors that were inadvertently introduced, the NRC staff is noticing this amendment request again.

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:

An evaluation to determine whether or not a significant hazards consideration is involved with the proposed amendment was completed by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below. However, to provide for ease of review, similar changes have been grouped into categories to facilitate the significant hazards evaluations required by 10 CFR 50.92. Generic significant hazards evaluations are provided for the More Restrictive Changes and a specific significant hazards evaluation for each Clarification or Less Restrictive change. In regards to obvious editorial or administrative changes (*e.g.,* formatting, page rolls, punctuation, etc.), an explicit discussion was not always provided, but is considered to be addressed by the applicable generic significant hazards evaluation.

Valuation for More Restrictive Changes

This generic category include changes that impose additional requirements, decrease allowed outage times, increase the Frequency of Surveillances, impose additional Surveillances, increase the scope of Specifications to include additional plant equipment, broaden the Applicability of Specifications, or provide additional actions. These changes have been evaluated to not be detrimental to plant safety.

More restrictive changes are proposed only when such changes are consistent with the current Vogtle Electric Generating Plant, Units 3 and 4 (VEGP) licensing basis; the applicable VEGP safety analyses; and good engineering practice such that the availability and reliability of the affected equipment is not reduced.

Changes to the Technical Specifications (TS) requirements categorized as More Restrictive are annotated with an ''MR'' in Section 2 Discussion of Change (DOC). This affects TS changes L05 and L08.

Southern Nuclear Operating Company (SNC) proposes to amend the VEGP TS. SNC

has evaluated each of the proposed TS changes identified as More Restrictive in accordance with the criteria set forth in 10 CFR 50.92, ''Issuance of amendment,'' and has determined that the proposed changes do not involve a significant hazards consideration. This significant hazards consideration is applicable to each More Restrictive change identified in Section 2.

The basis for the determination that the proposed changes do not involve a significant hazards consideration is an evaluation of these changes against each of the criteria in 10 CFR 50.92(c). The criteria and conclusions of the evaluation are 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 changes provide more stringent TS requirements. These more stringent requirements impose greater operational control and conservatism, and as a result, do not result in operations that significantly increase the probability of initiating an analyzed event, and do not alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements continue to ensure process variables, structures, systems, and components are maintained consistent with the safety analyses and licensing basis. Therefore, the proposed 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 changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed changes do impose different Technical Specification requirements. However, these changes are consistent with the assumptions in the safety analyses and licensing basis. 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 change involve a significant reduction in a margin of safety?

Response: No.

The imposition of more restrictive requirements either has no effect on or increases a margin of plant safety. As provided in the discussion of change, each change in this category is, by definition, providing additional restrictions to enhance plant safety. The changes maintain requirements within the safety analyses and licensing basis. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Evaluation for Clarification Changes

This category consists of technical changes which revise existing requirements such that the design and operation of a system correctly reflects how the LCO is applied and how the Action or Surveillance Requirement (SR) is carried out. This adds detail and clarity to the Technical Specifications (TS) in operating the applicable portions of the as designed and licensed plant.

Technical changes to the TS requirements categorized as ''Clarification'' are identified with an ''CL'' and an individual number in Section 2 Discussion of Change (DOC).

Southern Nuclear Operating Company (SNC) proposes to amend the Vogtle Electric Generating Plant, Units 3 and 4 (VEGP), Technical Specifications. SNC has evaluated each of the proposed technical changes identified as ''Clarification'' individually in accordance with the criteria set forth in 10 CFR 50.92 and has determined that the proposed changes do not involve a significant hazards consideration.

The basis for the determination that the proposed changes do not involve a significant hazards consideration is an evaluation of these changes against each of the criteria in 10 CFR 50.92(c). The criteria and conclusions of the evaluation are presented below.

L09 SNC proposes to amend TS 3.3.19 Diverse Actuation System Manual Controls, Note (c) in Table 3.3.19–1 to ''With upper internals in place.''

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed 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 does not involve a physical alteration of the plant or a change in the methods governing normal plant operations. The change applies to a Diverse Actuation System (DAS) Manual Controls Mode 6 note for operability of the Automatic Depressurization System (ADS) Stage 4 valves that involves revising the note from reactor internals in place to upper internals in place. In accordance with Limiting Condition for Operation (LCO) 3.4.13 ADS—Shutdown, Reactor Coolant System (RCS) Open Applicability and TS 3.3.9, Engineered Safeguards Actuation System Instrumentation, Function 7, the ADS Stage 4 valves are not required to be operable in MODE 6 with the upper internals removed. However, the reactor internals would still be present. The change involves clarification of the note (with no change in required system or device function), such that the appropriate configuration in Mode 6 would be in place and would not conflict with TS 3.4.13 or TS 3.3.9. The revised note is not an initiator to any accident previously evaluated. As a result, the probability of an accident previously evaluated is not affected.

The consequences of an accident as a result of the revised note and associated requirements and actions are no different than the consequences of the same accident during the existing ones. As a result, the consequences of an accident previously evaluated are not affected by this change.

The proposed change does not alter or prevent the ability of structures, systems, and components from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Therefore, this 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 clarifies TS requirements for the DAS manual control ADS Stage 4 valves such that they would be in agreement with the requirements set forth for the ADS in RCS Shutdown Mode 6. However, the proposed change does not involve a physical alteration of the plant as described in the [Updated Final Safety Analysis Report (UFSAR)]. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the UFSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis. Therefore, this 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.

The proposed change will not reduce a margin of safety because it has no effect on any assumption of the safety analyses. While the condition for the manual control of ADS Stage 4 actuation switches in Mode 6 has changed, no action is made less restrictive than currently approved for any associated actuated device inoperability. As such, there is no significant reduction in a margin of safety.

L10 SNC proposes to amend current TS 3.5.4, ''Passive Residual Heat Removal Heat Exchanger PRHR HX—Operating,'' Surveillance Requirement (SR) 3.5.4.6 to: Verify both PRHR HX air operated outlet valves stroke open and both IRWST gutter isolation valves stroke closed.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant or a change in the methods governing normal plant operations. The change involves correcting an existing surveillance requirement (with no change in required system or device

function), such that the surveillance requirement complies with the In-Containment Refueling Water Storage Tank (IRWST) Gutter Isolation valve design and the Passive Residual Heat Removal (PRHR) Heat Exchanger (HX) outlet isolation valve design. Revised surveillance requirement presentation and compliance with TS actions are not an initiator to any accident previously evaluated. As a result, the probability of an accident previously evaluated is not affected.

The consequences of an accident as a result of the revised surveillance requirement are no different than the consequences of the same accident during the existing one. As a result, the consequences of an accident previously evaluated are not affected by this change.

The proposed change does not alter or prevent the ability of structures, systems, and components from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Therefore, this 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 clarifies the surveillance requirement such that it agrees with the IRWST and PRHR HX isolation valve design. However, the proposed change does not involve a physical alteration of the plant as described in the UFSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the UFSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis. Therefore, this 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.

The proposed change will not reduce a margin of safety because it has no effect on any assumption of the safety analyses. While the surveillance requirement has changed for the IRWST and PRHR HX isolation valves, no action is made less restrictive than currently approved for any associated actuated device inoperability. As such, there is no significant reduction in a margin of safety.

10 CFR 50.92 Evaluations for Less Restrictive Changes

This category consists of technical changes which revise existing requirements such that more restoration time is provided, fewer compensatory measures are needed, unnecessary Surveillance Requirements (SR) are deleted, or less restrictive surveillance requirements are required. This would also include unnecessary requirements which are deleted from the Technical Specifications (TS) and other technical changes that do not fit a generic category. These changes are evaluated individually.

Technical changes to the TS requirements categorized as ''Less Restrictive'' are identified with an ''LR'' and an individual number in Section 2 Discussion of Change (DOC).

Southern Nuclear Operating Company (SNC) proposes to amend the Vogtle Electric Generating Plant, Units 3 and 4 (VEGP), Technical Specifications. SNC has evaluated each of the proposed technical changes identified as ''Less Restrictive'' individually in accordance with the criteria set forth in 10 CFR 50.92 and has determined that the proposed changes do not involve a significant hazards consideration.

The basis for the determination that the proposed changes do not involve a significant hazards consideration is an evaluation of these changes against each of the criteria in 10 CFR 50.92(c). The criteria and conclusions of the evaluation are presented below.

L01 SNC proposes to amend TS 1.1 Definitions—Shutdown Margin by:

Changing Shutdown Margin (SDM) definition c. ''In MODE 2 with keff<1.0 and MODES 3, 4, and 5, the worth of fully inserted Gray Rod Cluster Assemblies (GRCAs) will be included in the SDM calculation.'' to ''In MODE 2 with keff<1.0 and in MODES 3, 4, and 5, the worth of the verified fully inserted Gray Rod Cluster Assemblies (GRCAs) which have passed the acceptance criteria for GRCA bank worth measurements performed during startup physics testing may be included in the SDM calculation.''

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed 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 does not involve a physical alteration of the plant or a change in the methods governing normal plant operations. The change proposed involves re-defining whether the worth of the Gray Rod Cluster Assemblies (GRCAs) should be included in MODE 2 with keff<1.0 and Modes 3, 4, and 5 when calculating the appropriate Shutdown Margin (SDM). The worth of the GRCAs for MODE 2 with keff<1.0 and Modes 3, 4, and 5 is not credited in the safety analyses as stated in the NRC Safety Evaluation Report (SER) ''Westinghouse Electric Company's Final Topical Report Safety Evaluation For WCAP–16943, ''Enhanced Gray Rod Cluster Assembly Rodlet Design,'' Section 3.0 for ensuring adequate SDM exists.

The change involves revising the existing SDM definition (with no change in required system or device function), such that a more appropriate, albeit less restrictive, definition would be applied when calculating SDM. The revised SDM definition is not an initiator of any accident previously evaluated. As a result, the probability of an accident previously evaluated is not affected.

The consequences of an accident as a result of the revised definition requirements are no different than the consequences of the same accident during the existing one. As a result, the consequences of an accident previously evaluated are not affected by this change.

The proposed change does not alter or prevent the ability of structures, systems, and components from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a physical alteration of the plant as described in the UFSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change.

This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the UFSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis. Therefore, this 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 removes the requirement to include the worth of the GRCAs when calculating the SDM because they are not credited for SDM in MODE 2 with keff<1.0 and in MODES 3, 4, and 5. The proposed change does not involve a physical alteration of the plant as described in the UFSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is

being made to the procedures relied upon to respond to an off-normal event as described in the UFSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis. Therefore, this 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.

The proposed change will not reduce a margin of safety because it has no effect on any assumption of the safety analyses. While the SDM calculation defined is made less restrictive by eliminating the worth of the GRCAs in MODE 2 with keff<1.0 and in MODES 3, 4, and 5, no credit is taken in the safety analyses for including their worth as discussed in the NRC Safety Evaluation Report (SER) ''Westinghouse Electric Company's Final Topical Report Safety Evaluation For WCAP–16943, ''Enhanced Gray Rod Cluster Assembly Rodlet Design,'' Section 3.0. As such, there is no significant reduction in a margin of safety.

L02 SNC proposes to amend TS 3.1.4 Rod Group Alignment Limits by:

L02A. Change Limiting Condition of Operation (LCO) from ''All shutdown and control rods shall be OPERABLE.'' to ''Each rod cluster control assembly (RCCA) shall be OPERABLE.''

L02B. Change LCO AND statement from ''Individual indicated rod positions shall be within 12 steps of their group step counter demand position.'' to ''Individual indicated rod positions of each RCCA and Gray Rod Cluster Assembly shall be within their 12 steps of their group step counter demand position.''

L02C. Delete LCO 3.1.4 note.

L02D. Change Action Condition A from ''one or more rod(s) inoperable.'' to where it now applies to ''One or more RCCA(s) inoperable.''

L02E. Acronym defined in change to Required Action B.1 Completion Time from ''1 hour with the OPDMS not monitoring parameters'' to ''1 hour with the On-Line Power Distribution Monitoring System not monitoring parameters.''

L02F. Add Required Action B.2.3.1 where the Required Action will be to ''Perform SR 3.2.5.1'' with a Completion Time of ''Once per 12 hours,'' OR perform B.2.3, which is renumbered as B.2.3.2.1.

L02G. Delete Required Action B.2.4 Note, and renumber the Required Action to B.2.3.2.2.

L02H. Delete Required Action B.2.5 Note, and renumber the Required Action to B.2.3.2.3.

L02I. Renumber Required Action B.2.6 to B.2.4.

L02J. Change SR 3.1.4.2 Note from ''Not applicable to GRCAs'' to ''Not applicable to Axial Offset (AO) Control Bank RCCAs.''

L02K. Change SR 3.1.4.2 from ''Verify rod freedom of movement (trippability) by moving each rod not fully inserted in the core ≥10 steps in either direction.'' to ''Verify rod freedom of movement (trippability) by moving each RCCA not fully inserted in the core ≥10 steps in either direction.''

L02L. Delete the Note to SR 3.1.4.3

L02M. Change SR 3.1.4.3 from ''Verify rod drop time of each rod . . .'' to ''Verify rod drop time of each RCCA . . .''.

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed 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 does not involve a physical alteration of the plant or a change in the methods governing normal plant operations. The proposed changes involve revising the existing LCO 3.1.4 operability to be applicable to RCCAs with accompanying changes in actions and surveillance requirements (with no change in required system or device function), such that more appropriate, albeit less restrictive, actions would be applied. The proposed changes involve excluding the Gray Rod Cluster Assemblies (GRCAs) in the LCO 3.1.4 Rod Group Alignments LCO since their trip reactivity worth is not credited in the shutdown margin assessments in MODES 1 and 2, nor required by the design basis to be operable. Only the rod cluster control assemblies (RCCAs) are required to be operable. The maximum rod misalignment is an initial assumption in the safety analyses that directly affects core power distributions and assumption of available shutdown margin (SDM). Since the GRCAs do not have a function to maintain the reactor sub-critical unless they are fully inserted, and the reactor is shut down, operability does not apply to GRCAs like it does for RCCAs in MODES 1 and 2. The design basis function of the GRCAs when the reactor is critical does not include a provision of trip reactivity.

The revised LCO, associated actions and surveillance requirements are not an initiator to any accident previously evaluated. As a result, the probability of an accident previously evaluated is not affected.

The consequences of an accident as a result of the revised LCO requirements, associated actions, and surveillance requirements are no different than the consequences of the same accident during the existing ones. As a result, the consequences of an accident previously evaluated are not affected by this change.

The proposed change does not alter or prevent the ability of structures, systems, and components from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change does not involve a physical alteration of the plant as described in the UFSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change.

This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the UFSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis. Therefore, this 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 involves revising the existing LCO 3.1.4 operability to be applicable to RCCAs with accompanying changes in actions and surveillance requirements (with no change in required system or device function), such that more appropriate, albeit less restrictive, actions would be applied. The proposed change does not involve a physical alteration of the plant as described in the UFSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the UFSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis. Therefore, this 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.

The proposed change will not reduce a margin of safety because it has no effect on any assumption of the safety analyses. While the LCO 3.1.4 for Rod Group Alignment Limits is made less restrictive by eliminating the worth of the GRCAs in MODES 1 and 2 with keff ≥1, no credit is taken in the current design basis for including their trip reactivity worth. As such, there is no significant reduction in a margin of safety.

L03 SNC proposes to amend TS 3.1.6 Control Bank Insertion Limits by changing Note 2. from ''This LCO is not applicable to Gray Rod Cluster Assembly (GRCA) banks during GRCA bank sequence exchange with On-Line Power Distribution Monitoring System monitoring parameters'' to ''This LCO is not applicable to Gray Rod Cluster Assembly (GRCA) banks for up to one hour during GRCA bank sequence exchange.''

SNC has evaluated whether or not a significant hazards consideration is involved

with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed 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 does not involve a physical alteration of the plant or a change in the methods governing normal plant operations. The proposed change to TS 3.1.6 Control Bank Insertion Limits Note 2 is to not require On Line Power Distribution System (OPDMS) during GRCA bank sequence exchange and limit the LCO applicability exception for one hour after the insertion or sequence or overlap limits are violated due to the short duration of the sequence exchange. The final mechanical shim (MSHIM) design established that the GRCA bank sequence exchange will best be accomplished by moving both banks at the same time. The entire exchange sequence will only take a few minutes from the time banks begin moving. During this short duration, OPDMS is not suited for real time monitoring relative to the time constant for the vanadium fixed incore detector system. The exchange transient may be completed before the OPDMS detects a significant change in the core radial power distribution. In addition, it is unlikely there would be significant time to take corrective action in response to an OPDMS alarm if one occurred during the exchange.

The revised LCO note exception is not an initiator of any accident previously evaluated. As a result, the probability of an accident previously evaluated is not affected.

The consequences of an accident as a result of the revised LCO note exception is no different than the consequences of the same accident during the existing one. As a result, the consequences of an accident previously evaluated are not affected by this change.

The proposed change does not alter or prevent the ability of structures, systems, and components from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change does not involve a physical alteration of the plant as described in the UFSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change.

This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the UFSAR as a result of this change. As such, no new failure modes are being introduced.

The change does not alter assumptions made in the safety analysis and licensing basis. Therefore, this 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 involve a physical alteration of the plant as described in the UFSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the UFSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis. Therefore, this 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.

The proposed change will not reduce a margin of safety because it has no effect on any assumption of the safety analyses. While the proposed change to TS 3.1.6, Note 2 would not require OPDMS be functional during GRCA bank sequence exchange for up to one hour, OPDMS operability is still required by TS 3.2.5 On-Line Power Distribution Monitoring System (OPDMS)—Monitored Parameters. As such, there is no significant reduction in a margin of safety.

L04 SNC proposes to amend TS 3.1.7 Rod Position Indication by deleting Required Action B.2 and renumbering the remaining Condition B Required Actions.

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed 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 does not involve a physical alteration of the plant or a change in the methods governing normal plant operations. The proposed change is to remove Required Action B.2 for monitoring and recording Reactor Coolant System (RCS) Tavg (with no change in required system or device function), such that more appropriate, albeit less restrictive, actions would be applied. There are no safety benefits, no acceptance criteria or no actions associated with any trends for recording Tavg. Monitoring Tavg provides no power distribution information for unmonitored rods that isn't already provided by complying with the existing requirements of Condition A, and average coolant temperature provides no indication of changes in shutdown margin.

The revised actions are not an initiator of any accident previously evaluated. As a result, the probability of an accident previously evaluated is not affected.

The consequences of an accident as a result of the revised LCO requirements and actions are no different than the consequences of the same accident during the existing ones. As a result, the consequences of an accident previously evaluated are not affected by this change.

The proposed change does not alter or prevent the ability of structures, systems, and components from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change does not involve a physical alteration of the plant as described in the UFSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change.

This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the UFSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis. Therefore, this 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 involve a physical alteration of the plant as described in the UFSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the UFSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis. Therefore, this 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.

The proposed change will not reduce a margin of safety because it has no effect on any assumption of the safety analyses. While the required actions of LCO 3.1.7 for Rod Position Indication are made less restrictive by deletion of Action B.2 for monitoring Tavg, monitoring Tavg provides no power distribution information for unmonitored rods that aren't already provided by complying with the existing requirements of Condition A. As such, there is no significant reduction in a margin of safety.

L06 SNC proposes to amend TS 3.3.1 ''Reactor Trip System Instrumentation,'' Table 3.3.1–1 FUNCTION 12, (page 2 of 2), Passive Residual Heat Removal Actuation by deleting SR 3.3.1.9.

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed 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 is to delete the Surveillance Requirement (SR) 3.3.1.9 Channel Calibration for the passive residual heat removal (PRHR) reactor trip system actuation. The PRHR reactor trip actuation initiates a reactor trip in the event either of the parallel PRHR discharge valves is not fully closed. The proper adjustment of the valve position indication contact inputs to the breaker position are verified by performance of SR 3.3.1.10 Trip Actuating Device Operational Test (TADOT). The revised surveillance requirements are not an initiator to any accident previously evaluated. The reactor trip from PRHR actuation has not changed, and the proper adjustment of the valve position indication contact inputs continues to be addressed by current SR 3.3.1.10. As a result, the probability of an accident previously evaluated is not affected.

The consequences of an accident as a result of the revised surveillance requirements are no different than the consequences of the same accident during the existing ones. As a result, the consequences of an accident previously evaluated are not affected by this change.

The proposed change does not alter or prevent the ability of structures, systems, and components from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits.

The proposed change does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a physical alteration of the plant as described in the UFSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change.

This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the UFSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis. Therefore, this 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 involve a physical alteration of the plant as described in the UFSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the UFSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis. Therefore, this 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.

The proposed change will not reduce a margin of safety because it has no effect on any assumption of the safety analyses. While the surveillance requirements have been made less restrictive, the intent of the deleted surveillance requirement remains covered by an existing surveillance requirement. As such, there is no significant reduction in a margin of safety.

L07 SNC proposes to amend TS, Section 3.3.5, ''Reactor Trip System Manual Actuation,'' Table 3.3.5–1 ''Reactor Trip System Manual Actuation,'' Functions 1. Manual Reactor Trip, 2. Safeguards Actuation Input from Engineered Safety Feature Actuation System—Manual and 4. Core Makeup Tank Actuation Input from Engineered Safety Feature Actuation System—Manual for Required Channels to 2 switches.

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes define the required channels operable for manual reactor trip based upon the existing design. Required channels operable are not an initiator to any accident previously evaluated. As a result, the probability of an accident previously evaluated is not affected. The consequences of an accident with defined number of switches operable for manual reactor trip are no different than the consequences of the same accident using the existing required channels operable. As a result, the consequences of an accident previously evaluated are not affected by this change.

The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits.

The proposed change does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated.

Further, the proposed change does not increase the types or amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. The proposed change is consistent with the safety analysis assumptions and resultant consequences.

Therefore, this 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 involve a physical alteration of the plant as described in the UFSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the UFSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis. Therefore, this 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.

The proposed change to define the required channels operable consistent with the plant design does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this

change. The proposed change will not result in plant operation in a configuration outside of the design basis. Therefore, there is no significant reduction in a margin of safety.

L11 SNC proposes to amend current TS 3.8.3, ''Inverters—Operating,'' by changing:

1. Action Condition A. from ''One inverter inoperable.'' to ''One or two inverter(s) within one division inoperable.''

2. Second Note in Required Action A.1 from ''Restore inverter to OPERABLE status.'' to ''Restore inverter(s) to OPERABLE status.''

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed 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 does not involve a physical alteration of the plant or a change in the methods governing normal plant operations. The proposed changes to action conditions to explicitly define an inverter division that contains two inoperable inverters is not an accident initiator nor do they impact mitigation of the consequences of any accident. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a physical alteration of the plant as described in the UFSAR and does not alter the method of operation or control of equipment as described in the UFSAR. The current assumptions in the safety analysis regarding accident initiators and mitigation of accidents are unaffected by this change. Plant equipment remains capable of performing mitigative functions assumed by the accident analysis. No additional failure modes or mechanisms are being introduced and the likelihood of previously analyzed failures remains unchanged.

The integrity of fission product barriers, plant configuration, and operating procedures as described in the UFSAR will not be affected by this change. Therefore, the consequences of previously analyzed accidents will not increase because of this change. Therefore, this 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 changes to action conditions to explicitly define an inverter division that contains two inoperable inverters does not involve a physical alteration of the plant as described in the UFSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, that are affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the UFSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis. Therefore, this 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 established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed change will not reduce a margin of safety because it has no such effect on any assumption of the safety analyses.

Operation in accordance with the proposed TS operability ensures that the plant response to analyzed events continues to provide the margins of safety assumed by the analysis. Appropriate monitoring and maintenance, consistent with industry standards, will continue to be performed. Therefore, there is no 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: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Date of amendment request: November 17, 2017. A publicly-available version is in ADAMS under Accession No. ML17321B080.

Description of amendment request: The amendment request proposes changes to combined license (COL) License Condition and changes to the Updated Final Safety Analysis Report (UFSAR) in the form of departures from the incorporated plant-specific Design Control Document Tier 2* and associated Tier 2 information. Specifically, this amendment request involves a change to COL License Condition requirements regarding the Natural Circulation (first plant test) using the steam generators and the Passive Residual Heat Removal Heat Exchanger (first plant test). A COL License Condition is proposed to be revised to include an exception that would allow the requirements of a Technical Specification to be suspended during performance of the Natural Circulation (first plant test) using the steam generators. In addition, a revised Passive Residual Heat Removal Heat Exchanger (first plant test) is proposed to be performed as part of the Power Ascension Testing requirements instead of as part of the Initial Criticality and Low-Power Testing requirements as currently specified in a COL License Condition.

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 do not adversely affect the operation of any systems or equipment that initiate an analyzed accident or alter any structures, systems, and components (SSC) accident initiator or initiating sequence of events. The proposed changes do not adversely affect the ability of the steam generators, applicable reactor trip functions, and the passive residual heat removal heat exchanger to perform the required safety function to remove core decay heat during forced and natural circulation when necessary to prevent exceeding the reactor core and the reactor coolant system design limits, and do not adversely affect the probability of inadvertent operation or failure of the passive residual heat removal heat exchanger. The proposed changes do not result in any increase in probability of an analyzed accident occurring, and maintain the initial conditions and operating limits required by the accident analysis, and the analyses of normal operation and anticipated operational occurrences, so that the reactor core and the reactor coolant system design limits are not exceeded for events requiring emergency core decay heat removal.

Therefore, the requested 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 changes do not affect the operation of any systems or equipment that may initiate a new or different kind of accident, or alter any SSC such that a new accident initiator or initiating sequence of events is created. The proposed changes do not adversely affect the ability of the steam generators, applicable reactor trip functions, and the passive residual heat removal heat exchanger to perform the required safety function to remove core decay heat during forced and natural circulation when necessary to prevent exceeding the reactor

core and the reactor coolant system design limits, and do not adversely affect the probability of inadvertent operation or failure of the passive residual heat removal heat exchanger. The proposed changes do not result in the possibility of an accident occurring, and maintain the initial conditions and operating limits required by the accident analysis, and the analyses of normal operation and anticipated operational occurrences, so that the reactor core and the reactor coolant system design limits are not exceeded for events requiring emergency core decay heat removal.

These proposed changes do not adversely affect any other SSC design functions or methods of operation in a manner that results in a new failure mode, malfunction, or sequence of events that affect safety related or nonsafety related equipment. Therefore, this activity does not allow for a new fission product release path, result in a new fission product barrier failure mode, or create a new sequence of events that results in significant fuel cladding failures.

Therefore, the requested amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes maintain existing safety margins through continued application of the existing requirements of the UFSAR. The proposed changes maintain the initial conditions and operating limits required by the accident analysis, and the analyses of normal operation and anticipated operational occurrences, so that the reactor core and the reactor coolant system design limits are not exceeded for events requiring emergency core decay heat removal. Therefore, the proposed changes satisfy the same safety functions in accordance with the same requirements as stated in the UFSAR. These changes do not adversely affect any design code, function, design analysis, safety analysis input or result, or design/safety margin.

No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes, and no margin of safety is reduced. Therefore, the requested 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: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Date of amendment request: December 21, 2017. A publicly-available version is in ADAMS under Accession No. ML17355A416.

Description of amendment request: The requested amendment proposes changes to combined license License Condition 2.D by adding a new condition to address the Tier 2* change process. The proposal also requests exemptions from the requirements of 10 CFR part 52, Appendix D, Paragraphs II.F, VIII.B.6.b, and VIII.B.6.c.

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 add a license condition that would allow use of the Tier 2 departure evaluation process for Tier 2* departures, where such departures would not have more than a minimal impact to safety. Changing the criteria by which departures from Tier 2* information are evaluated to determine if NRC approval is required does not affect the plant itself. Changing these criteria does not affect prevention and mitigation of abnormal events, *e.g.,* accidents, anticipated operational occurrences, earthquakes, floods and turbine missiles, or their safety or design analyses. No safety-related structure, system, component (SSC) or function is adversely affected. The changes neither involve nor interface with any SSC accident initiator or initiating sequence of events, and thus, the probabilities of the accidents evaluated in the Updated Final Safety Analysis Report (UFSAR) are not affected. Because the changes do not involve any safety related SSC or function used to mitigate an accident, the consequences of the accidents evaluated in the UFSAR 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 changes would add a license condition that would allow use of the Tier 2 departure evaluation process for Tier 2* departures, where such departures would not have more than a minimal impact to safety. The changes do not affect the safety-related equipment itself, nor do they affect equipment which, if it failed, could initiate an accident or a failure of a fission product barrier. No analysis is adversely affected. No system or design function or equipment qualification is adversely affected by the changes. This activity does not allow for a new fission product release path, result in a new fission product barrier failure mode, or create a new sequence of events that would result in significant fuel cladding failures. In addition, the changes do not result in a new failure mode, malfunction or sequence of events that could affect safety or safety-related equipment.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes would add a license condition that would allow use of the Tier 2 departure evaluation process for Tier 2* departures, where such departures would not have more than a minimal impact to safety.

The proposed change is not a modification, addition to, or removal of any plant SSCs. Furthermore, the proposed amendment is not a change to procedures or method of control of the nuclear plant or any plant SSCs. The only impact of this activity is the application of the current Tier 2 departure evaluation process to Tier 2* departures.

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: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: December 21, 2017. A publicly-available version is in ADAMS under Accession No. ML17355A177.

Description of amendment request: The proposed amendment establishes Conditions, Required Actions, and Completion Times in the Technical Specification (TS) 3.75 for the Condition where one steam supply to the turbine driven Auxiliary Feedwater (AFW) pump is inoperable concurrent with an inoperable motor driven AFW train. In addition, this amendment establishes changes to the TS, that establish specific Actions: (1) For when two motor driven AFW trains are inoperable at the same time and; (2) for when the turbine

driven AFW train is inoperable either (a) due solely to one inoperable steam supply, or (b) due to reasons other than one inoperable steam supply. The licensee stated that the change is consistent with NRC-approved Technical Specification Task Force (TSTF) Traveler, TSTF–412, Revision 3, ''Provide Actions for One Steam Supply to Turbine Driven AFW/EFW Pump Inoperable.'' (ADAMS Accession No. ML070100363).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 10.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, by referencing the environmental evaluation included in the model safety evaluation published in the **Federal Register** on July 17, 2007 (72 FR 39089), which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The Auxiliary/Emergency Feedwater (AFW/EFW) System is not an initiator of any design basis accident or event, and therefore the proposed changes do not increase the probability of any accident previously evaluated. The proposed changes to address the condition of one or two motor driven AFW/EFW trains inoperable and the turbine driven AFW/EFW train inoperable due to one steam supply inoperable do not change the response of the plant to any accidents.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not adversely affect the ability of structures, systems, and components (SSCs) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of any accident previously evaluated. Further, the proposed changes do not increase the types and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures.

Therefore, the changes do not involve a significant increase in the probability or consequences of any 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 changes do not result in a change in the manner in which the AFW/EFW System provides plant protection. The AFW/EFW System will continue to supply water to the steam generators to remove decay heat and other residual heat by delivering at least the minimum required flow rate to the steam generators. There are no design changes associated with the proposed changes. The changes to the Conditions and Required Actions do not change any existing accident scenarios, nor create any new or different accident scenarios.

The changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the changes do 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.

The proposed changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not impacted by these changes. The proposed changes will not result in plant operation in a configuration outside the design basis.

Therefore, it is concluded that 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: Jennifer M. Buettner, Associate General Counsel, Southern Nuclear Operating Company, Inc., 40 Inverness Center Parkway, Birmingham, AL 35242.

NRC Branch Chief: Michael T. Markley.

U.S. Department of Transportation, Maritime Administration, Docket No. 50–238, Nuclear Ship Savannah, Baltimore, Maryland

Date of amendment request: October 31, 2017. A publicly-available version is in ADAMS under Accession No. ML17307A036.

Description of amendment request: The amendment would revise the license to remove a condition that prevents dismantling and disposing of the facility without prior approval of the Commission.

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 are administrative and do not involve modification of any plant equipment or affect basic plant operation.

The NSS's reactor is not operational and the level of radioactivity in the NSS has significantly decreased from the levels that existed when the 1976 Possession-only License was issued. No aspect of any of the proposed changes is an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased.

Therefore, the proposed changes do 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.

Both of the proposed changes are administrative and do not involve physical alteration of plant equipment that was not previously allowed by Technical Specifications. These proposed changes do not change the method by which any safety-related system performs its function. As such, no new or different types of equipment will be installed, and the basic operation of installed equipment is unchanged. The methods governing plant operation and testing remain consistent with current safety analysis assumptions.

Therefore, the proposed changes do 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.

Both of the proposed changes are administrative in nature. No margins of safety exist that are relevant to the ship's defueled and partially dismantled reactor. As such, there are no changes being made to safety analysis assumptions, safety limits or safety system settings that would adversely affect plant safety as a result of the proposed changes. The proposed changes involve revising the language of the license to clearly state previously approved changes, and to delete archaic requirements.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Advisor for licensee: Erhard W. Koehler, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Ave. SE, Washington, DC 20590.

NRC Branch Chief: Bruce A. Watson, CHP.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: November 7, 2017. A publicly-available version is in ADAMS under Accession No. ML17317A464.

Description of amendment request: The amendments would revise the Surry Power Station (Surry), Units 1 and 2, Facility Operating License Numbers DPR–32 and DPR–37, respectively, in the form of new License Conditions, and Technical Specification (TS) 3.16, ''Emergency Power System,'' to allow a one-time extension of the Allowed Outage Time (AOT) in TS 3.16 Action B.2 from 7 days to 21 days. The requested temporary 21-day AOT is needed to replace Reserve Station Service Transformer C (RSST–C) and associated cabling during the Surry Unit 2 fall 2018 refueling outage. The existing RSST–C is original plant equipment and is reaching the end of its dependable service life.

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 license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change adds a footnote to TS 3.16, ''Emergency Power System,'' to allow a one-time extension of the AOT in TS 3.16 Action B.2 from 7 days to 21 days to facilitate the replacement of RSST–C and associated cabling.

During the temporary 21-day AOT, the station emergency buses will continue to be fed from redundant, separate, reliable offsite sources that are capable of supporting the emergency loads under worst-case conditions considering a single failure.

There are two (2) emergency buses for each unit: Buses 1H and 1J (Unit 1), and Buses 2H and 2J (Unit 2). While RSST–C is being replaced during the temporary 21-day AOT, Buses 1J and 2H will continue to be energized from a designated primary offsite source, System (Switchyard) Reserve Transformer (SRT) 4. Buses 1H and 2J will be energized from Main Step-up Transformer 2, which is the Unit 2 designated dependable alternate source.

In both configurations Transfer Bus F is fed through two, in series, transformers.

- The normal configuration feeds Transfer Bus F from the 230 kV switchyard via two (2) transformers (SRT–2 and RSST–C) and two (2) breakers. The 230 kV switchyard is connected to ten (10) offsite circuits.
- The temporary 21-day AOT configuration feeds Transfer Bus F from the 500 kV switch yard via two (2) transformers (Main Step-up Transformer 2 and Station Service Transformer 2C) and three (3) breakers. The 500 kV switchyard is connected to 3 offsite circuits.

A risk assessment has been performed for the temporary 21-day AOT configuration. The assessment concluded that the probability of a loss of offsite power for the proposed configuration is very low. Thus, the proposed change does not significantly increase the probability of an accident previously evaluated because: (a) The emergency buses continue to be feed from redundant, separate, reliable offsite sources and (b) the effect of the proposed configuration on the probability of a loss of offsite power is very low.

There is no increase in the consequences of an accident because the emergency buses continue to be fed from redundant, separate, reliable offsite circuits and the onsite power sources (*i.e.,* the Emergency Diesel Generators) are unaffected.

The consequences of both a Loss of Offsite Power (LOOP) and a Station Blackout (SBO) have been evaluated in the UFSAR. There is no change in the station responses to a LOOP or an SBO as a result of the extended AOT because RSST–C is not included in designated equipment used in the LOOP and SBO coping strategies.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed configuration does not result in a change in the manner in which the electrical distribution subsystems downstream of RSST–C provide plant protection. During the temporary AOT (21 days total), the only change is to substitute the reliable Unit 2 designated dependable alternate source for a primary offsite power source for Emergency Buses 1H and 2J. Other sources of offsite and onsite power are unaffected, and other aspects of the offsite and onsite power supplies are unchanged and unaffected.

There are no changes to the other RSSTs or to the supporting systems operating characteristics or conditions.

There is no change in the station responses to a LOOP or an SBO because RSST–C is not included in the designated equipment used in the LOOP and SSO coping strategies.

Therefore, the proposed change does 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 TS change does not affect the acceptance criteria for any analyzed event, nor is there a change to any safety limit. The proposed TS change does not affect any structures, systems or components or their capability to perform their intended functions. The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. Neither the safety analyses nor the safety analysis acceptance criteria are affected by this change. The proposed change will not result in plant operation in a configuration outside the current design basis as the design basis includes use of the Unit 2 dependable alternate source. The proposed TS change allows use of the Unit 2 dependable alternate power source as the primary source for buses 1H and 2J for a period of up to 21 days. The margin of safety is maintained by maintaining the capability to supply Emergency Buses 1H and 2J with a redundant, separate, reliable offsite power source, and maintaining the onsite power sources in their design basis configuration. Therefore, the proposed change does not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar St., RS–2, Richmond, VA 23219.

NRC Branch Chief: Michael T. Markley.

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.

Arizona Public Service Company, et al. (APS), Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2, and 3, Maricopa County, Arizona

Date of amendment: July 1, 2016, as supplemented by letters dated June 2 and December 15, 2017.

Description of amendment request: The amendments revised the Technical Specifications for PVNGS, Units 1, 2, and 3, to support the implementation of next generation fuel (NGF). In addition to the license amendment request, APS requested an exemption from certain requirements of 10 CFR 50.46, ''Acceptance criteria for emergency core cooling systems [ECCS] for light-water nuclear power reactors,'' and 10 CFR part 50, Appendix K, ''ECCS Evaluation Models,'' to allow the use of Optimized ZIRLO™ as a fuel rod cladding material.

The proposed change would allow for the implementation of NGF including the use of Optimized ZIRLO™ fuel rod cladding material. The NGF assemblies contain advanced features to enhance fuel reliability, thermal performance, and fuel cycle economics.

Date of issuance: January 23, 2018.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 205 (Unit 1), 205 (Unit 2), and 205 (Unit 3). A publicly-available version is in ADAMS under Accession No. ML17319A107; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** October 4, 2016 (81 FR 68469). The supplemental letters dated June 2 and December 15, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 23, 2018.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station (CPS), Unit No. 1, DeWitt County, Illinois

Date of amendment request: May 4, 2017.

Brief description of amendment: The amendment deletes a Surveillance Requirement Note associated with TS 3.5.1, ''ECCS [Emergency Core Cooling System]—Operating,'' TS 3.5.2, ''ECCS—Shutdown,'' and TS 3.6.1.7, ''Residual Heat Removal (RHR) Containment Spray System,'' to more appropriately reflect the RHR system design, and ensure the RHR system operation is consistent with the technical specification (TS) Limiting Condition for Operation (LCO) requirements. The amendment also adds a Note in the LCO for TS 3.5.1, TS 3.5.2, TS 3.6.1.7, TS 3.6.1.9, ''Feedwater Leakage Control System,'' and TS 3.6.2.3, ''Residual Heat Removal (RHR) Suppression Pool Cooling,'' to clarify that one of the required subsystems in each of the affected TS sections listed above may be inoperable during alignment and operation of the RHR system for Shutdown Cooling (*i.e.,* decay heat removal) with the reactor steam dome pressure less than the RHR cut in permissive value.

Date of issuance: January 22, 2018.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No(s): 215. A publicly-available version is in ADAMS under Accession No. ML17324A354; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–62: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** July 5, 2017 (82 FR 31095).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 22, 2018.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Beaver County, Pennsylvania

Date of amendment request: December 23, 2013, as supplemented by letters dated February 14, 2017; April 27, May 27, June 26, November 6, and December 21, 2015; February 24 and May 12, 2016; and January 30, April 21, June 23, August 22, October 25, and November 29, 2017.

Brief description of amendments: The amendments revised the Beaver Valley, Unit Nos. 1 and 2, Renewed Facility Operating Licenses (RFOLs) to establish and maintain a risk-informed, performance-based fire protection program in accordance with the requirements of 10 CFR 50.48(c).

Date of issuance: January 22, 2018.

Effective date: As of the date of issuance and shall be implemented consistent with paragraph 2.C.(5) for Unit No. 1, and paragraph 2.F for Unit No. 2, of the RFOLs.

Amendment Nos.: 301 (Unit No. 1) and 190 (Unit No. 2). A publicly-available version is in ADAMS under Accession No. ML17291A081; documents related to these amendments are listed in the safety evaluation enclosed with the amendments.

RFOL Nos. DPR–66 and NPF–73: Amendments revised the RFOLs.

Date of initial notice in ***Federal Register:*** September 9, 2014 (79 FR 53458). The supplemental letters dated April 27, May 27, June 26, November 6, and December 21, 2015; February 24 and May 12, 2016; and January 30, April 21, June 23, August 22, October 25, and November 29, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a safety evaluation dated January 22, 2018.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: June 20, 2017.

Brief description of amendment: The amendment revised technical specifications (TSs) to delete the list of diesel generator critical trips from TS Surveillance Requirement (SR) 3.8.1.13 and clarify that the purpose of the SR is to verify that the non-critical automatic trips are bypassed.

Date of issuance: January 18, 2018.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 179. A publicly-available version is in ADAMS under Accession No. ML17325B690; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–58: Amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** August 15, 2017 (82 FR 38718).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 18, 2018.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit 1 (FCS), Washington County, Nebraska

Date of amendment request: June 9, 2017, as supplemented by letter dated September 21, 2017.

Brief description of amendment: The amendment deleted Technical Specification (TS) 2.8.3(6), ''Spent Fuel Cask Loading,'' and associated Figure 2–11, ''Limiting Burnup Criteria for Acceptable Storage in Spent Fuel Cask''; TS 3.2, Table 3–5, item 24, ''Spent Fuel Cask Loading''; TS 4.3.1.3, Design Features associated with spent fuel casks; and portions of TS 3.2, Table 3–4, item 5, footnote (4) on boron concentration associated with cask loading.

Date of issuance: January 19, 2018.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 296. A publicly-available version is in ADAMS under Accession No. ML17338A172; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–40: The amendment revised the renewed facility operating license and TSs.

Date of initial notice in ***Federal Register:*** August 15, 2017 (82 FR 38718).

The supplemental letter dated September 21, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff 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 January 19, 2018.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC and Exelon Generation Company, 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: March 6, 2017, as supplemented by letters dated May 4, 2017, and September 14, 2017.

Brief description of amendments: The amendments revised Technical Specification 3.6.2.3, ''Containment Cooling System,'' to extend the containment fan coil unit allowed outage time from 7 days to 14 days for one or two inoperable containment fan coil units.

Date of issuance: January 18, 2018.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 321 (Unit 1) and 302 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML17349A108; 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 Technical Specifications.

Date of initial notice in ***Federal Register:*** June 6, 2017 (82 FR 26136). The supplemental letter dated September 14, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 18, 2018.

No significant hazards consideration comment received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, Appling County, Georgia

Date of amendment request: April 7, 2017.

Brief description of amendments: The amendment revises the requirements of Technical Specification (TS) 3.6.4.1, ''Secondary Containment,'' associated with Surveillance Requirement (SR) 3.6.4.1.2. Specifically, SR 3.6.4.1.2 verifies that one secondary containment access door in each access opening is closed. The amendments would allow for brief, inadvertent, simultaneous opening of redundant secondary containment access doors during normal entry and exit conditions.

Date of issuance: January 22, 2018.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: Unit 1–289, Unit 2–234. A publicly-available version is in ADAMS under Accession No. ML17355A440; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** August 29, 2017 (82 FR 41070).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 22, 2018.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP), Units 3 and 4, Burke County, Georgia

Date of amendment request: May 31, 2017, and supplemented by letter dated November 16, 2017.

Description of amendment: The amendment authorizes changes to the VEGP Units 3 and 4 Updated Final Safety Analysis Report in the form of departures from the plant-specific Design Control Document Tier 2 information and involves changes to the administrative controls for unborated water flow paths to the reactor coolant

system to support chemical additions during periods when the reactor coolant pumps are not in operation. These proposed changes are reflected in Appendix A, Technical Specifications.

Date of issuance: January 9, 2018.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos.: 105 (Unit 3) and 104 (Unit 4). A publicly-available version is in ADAMS under Accession No. ML17297A349; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Combined Licenses Nos. NPF–91 and NPF–92: Amendment revised the Facility Combined License.

Date of initial notice in ***Federal Register:*** September 12, 2017 (82 FR 42853). The supplemental letter dated November 16, 2017, provided additional information that clarified the application, did not expand the scope of the application request 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 the Safety Evaluation dated January 9, 2018.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–206, 50–361, and 50–362, San Onofre Nuclear Generating Station (SONGS), Units 1, 2, and 3, San Diego County, California

Date of amendment request: December 15, 2016.

Brief description of amendments: The amendments replace the SONGS, Units 1, 2, and 3 Permanently Defueled Technical Specifications (TS) with Independent Spent Fuel Storage Installation (ISFSI) Only TS. These changes reflect the removal of all spent nuclear fuel from the SONGS, Units 2 and 3, spent fuel pools and its transfer to dry cask storage within the onsite ISFSI. The changes also make conforming revisions to the SONGS, Unit 1, TS and combine them with the SONGS, Units 2 and 3, TS. These changes will more fully reflect the permanently shutdown status of the decommissioning facility, as well as the reduced scope of structures, systems, and components necessary to ensure plant safety once all spent fuel has been permanently moved to the SONGS ISFSI, an activity which is currently scheduled for completion in 2019.

Date of issuance: January 9, 2017.

Effective date: As of the date Southern California Edison submits a written notification to the NRC that all spent nuclear fuel assemblies have been transferred out of the SONGS spent fuel pools and placed in storage within the onsite independent spent fuel storage installation, and shall be implemented within 60 days.

Amendment Nos.: Unit 1–169, Unit 2–237, and Unit 3–230: A publicly-available version is in ADAMS under Accession No. ML17345A657; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. DPR–13, NPF–10, and NPF–15: The amendments revise the Facility Operating Licenses.

Date of initial notice in ***Federal Register:*** February 14, 2017 (82 FR 10600).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 9, 2017.

No significant hazards consideration comments received: No.

Susquehanna Nuclear, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: January 25, 2017, as supplemented by letters dated March 21, 2017; August 4, 2017; and December 4, 2017.

Brief description of amendments: The amendments revised certain surveillance requirements in Technical Specification 3.8.1, ''AC [Alternating Current] Sources—Operating.'' The changes are in the use of steady-state voltage and frequency acceptance criteria for onsite standby power source of the diesel generators, allowing for the use of new and more conservative design analysis.

Date of issuance: January 22, 2018.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 269 (Unit 1) and 251 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML17352A711; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** June 6, 2017 (82 FR 26139). The supplemental letters dated August 4, 2017, and December 4, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 22, 2018.

No significant hazards consideration comments received: No.

IV. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

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 for the amendment 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.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual notice of consideration of issuance of amendment, proposed no significant hazards consideration determination, and opportunity for a hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the

plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective 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 51.12(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 application for amendment, (2) the amendment to Facility Operating License or Combined License, as applicable, 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.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. 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 petition for leave 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. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (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.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in 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 must 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 the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must 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 the requirements at 10 CFR 2.309(f) 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. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the 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). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

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 establish 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 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 the 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 no later than 60 days from the date of publication of this notice. 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. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at 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 his or her 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 and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate 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. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html.* 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 (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (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 website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is 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 document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website 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 6 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 adjudicatory documents 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 *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. 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.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of amendment request: December 28, 2017.

Description of amendment: The amendment revised a note to Technical Specification Surveillance Requirement (SR) 4.1.3.1.2, such that Control Element Assembly (CEA) 4 may be excluded from the remaining quarterly performances of the SR in Cycle 26. The amendment allows the licensee to delay exercising CEA 4 until after repairs can be made during the next outage.

Date of issuance: January 18, 2018.

Effective date: As of the date of issuance and shall be implemented as soon as practicable and prior to the time in which SR 4.1.3.1.2 must be completed.

Amendment No.: 308. A publicly-available version is in ADAMS under Accession No. ML18011A064; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–6: Amendment revised the Renewed Facility Operating License and Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. Public notice of the proposed amendment was published in the *Arkansas Democrat-Gazette,* located in Little Rock, Arkansas, from January 6 through January 7, 2018. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments were received.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated January 18, 2018.

Attorney for licensee: Ms. Anna Vinson Jones, Senior Counsel, Entergy Services, Inc., 101 Constitution Avenue NW, Suite 200 East, Washington, DC 20001.

NRC Branch Chief: Robert J. Pascarelli.

Tennessee Valley Authority, Docket No. 50–391, Watts Bar Nuclear Plant (WBN), Unit 2, Rhea County, Tennessee

Date of amendment request: January 10, 2018, as supplemented by letter dated January 17, 2018.

Description of amendment: The amendment revised Technical Specification (TS) 3.3.4, ''Remote Shutdown Instrumentation,'' to make a one-time change to TS Table 3.3.4–1, Function 4a, ''RCS Hot Leg Temperature Indication,'' to permit the temperature indicator for the Reactor Coolant System Loop 3 hot leg to be inoperable for the remainder of WBN Unit 2 Operating Cycle 2, the refueling outage for which is scheduled to start in spring 2019. The amendment also added a condition to the operating license to require implementation of compensatory measures described in the application that will remain in effect until the temperature indicator is returned to an operable condition.

Date of issuance: January 25, 2018.

Effective date: As of date of issuance.

Amendment No.: 19. A publicly-available version is in ADAMS under Accession No. ML18022B106; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–96: Amendment revised the technical specifications and operating license.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. *The Rhea County Herald-News* and *The Advocate & Democrat* on January 21, 2018, and *The Daily Post-Athenian* on January 22 and January 23, 2018. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. The supplemental letter dated January 17, 2018, 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 notice.

No comments have been received.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a Safety Evaluation dated January 25, 2018.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, TN 37902.

NRC Branch Chief: Undine Shoop.

Dated at Rockville, Maryland, this 6th day of February 2018.

For the Nuclear Regulatory Commission.

Greg A. Casto,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–02636 Filed 2–12–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–16; NRC–2016–0177]

Virginia Electric and Power Company, Old Dominion Electric Cooperative, North Anna Power Station Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued a renewed license to Virginia Electric and Power Company (Dominion Energy Virginia) and the Old Dominion Electric Cooperative (together ''licensee'') for Special Nuclear Materials (SNM) License No. SNM–2507 for the receipt, possession, transfer, and storage of spent fuel from North Anna Power Station, Units 1 and 2, in the North Anna Independent Spent Fuel Storage Installation (ISFSI), located in Louisa County, Virginia. The renewed license authorizes operation of the North Anna ISFSI in accordance with the provisions of the renewed license and its technical specifications. The renewed license expires on June 30, 2058.

DATES: February 13, 2018.

ADDRESSES: Please refer to Docket ID NRC–2016–0177 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0177. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. In

addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Kristina L. Banovac, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7116, email: *Kristina.Banovac@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Discussion

Based upon the application dated May 25, 2016, as supplemented January 20, 2017, February 28, 2017, June 5, 2017, July 10, 2017, and August 16, 2017, the NRC has issued a renewed license to the licensee for the North Anna ISFSI, located in Louisa County, Virginia. The renewed license SNM–2507 authorizes and requires operation of the North Anna ISFSI in accordance with the provisions of the renewed license and its technical specifications. The renewed license will expire on June 30, 2058.

The licensee's application for a renewed license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the NRC's rules and regulations. The NRC has made appropriate findings as required by the Act and the NRC's regulations in chapter 1 of title 10 of the *Code of Federal Regulations* (10 CFR), and sets forth those findings in the renewed license. The agency afforded an opportunity for a hearing in the Notice of Opportunity for a Hearing published in the **Federal Register** on August 23, 2016 (81 FR 57629). The NRC received no request for a hearing or petition for leave to intervene following the notice.

The NRC staff prepared a safety evaluation report for the renewal of the ISFSI license and concluded, based on that evaluation, the ISFSI will continue to meet the regulations in 10 CFR part 72. The NRC staff also prepared an environmental assessment and finding of no significant impact for the renewal of this license, which were published on February 2, 2018 (83 FR 4932). The NRC staff's consideration of the impacts of continued storage of spent nuclear fuel (as documented in NUREG–2157, ''Generic Environmental Impact Statement for Continued Storage of Spent Fuel'') was included in the environmental assessment. The NRC staff concluded that renewal of this ISFSI license will not have a significant impact on the quality of the human environment.

II. Availability of Documents

The following table includes the ADAMS accession numbers for the documents referenced in this notice. For additional information on accessing ADAMS, see the **ADDRESSES** section of this document.

Document	ADAMS accession No.
Licensee's application, dated May 25, 2016	ML16153A140
Response to First Request for Additional Information, dated January 20, 2017	ML17025A128
Response to Request for Referenced Information, dated February 28, 2017	ML17065A248
Decommissioning Cost Estimate Information, dated June 5, 2017	ML17160A300
Response to Second Request for Additional Information, dated July 10, 2017	ML17198A023
Response to Second Request for Additional Information, Response to RAI 3–15, dated August 16, 2017	ML17233A170
Special Nuclear Materials License No. SNM–2507	ML18031A225
SNM–2507 Technical Specifications	ML18031A227
NRC Safety Evaluation Report	ML18031A228
NRC Environmental Assessment	ML17311A450
NUREG–2157, ''Generic Environmental Impact Statement for Continued Storage of Spent Fuel'' Vols. 1 and 2	ML14196A105, ML14196A107

Dated at Rockville, Maryland, this 8th day of February, 2018.

For the Nuclear Regulatory Commission.

Hipolito J. Gonzalez,

Acting Chief, Renewals and Materials Branch, Division of Spent Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2018–02904 Filed 2–12–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0024]

Fire Protection for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; revision.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 3 to Regulatory Guide (RG) 1.189, ''Fire Protection for Nuclear Power Plants.'' Revision 3 of RG 1.189 includes administrative changes involving editorial corrections that make the document consistent with existing policy. None of the revisions involve changes to the staff regulatory positions. This guide describes a method that the NRC staff considers acceptable to meet regulatory requirements for fire protection in nuclear power plants.

ADDRESSES: Please refer to Docket ID NRC–2018–0024 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

• *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0024. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov*. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. RG 1.189 is available at ADAMS Accession No. ML17340A875.

• *NRC's Public Document Room:* You may examine and purchase copies of public documents at the NRC's Public Document Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Daniel Frumkin, Office of Nuclear Reactor Regulations, telephone: 301–415–2280, email: *Daniel.Frumkin@nrc.gov;* or Stanley Gardocki, Office of Nuclear Regulatory Research, telephone: 301–415–1067, email: *Stanley.Gardocki@nrc.gov.* Both are staff members of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a revision to an existing guide in the NRC ''Regulatory Guide'' series. Regulatory guides were developed to describe and make available to the public information methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The NRC is issuing Revision 3 of RG 1.189 directly as a final RG, because the changes between Revision 2 and Revision 3 are administrative and non-substantive. Revision 3 of RG 1.189 also updated the guide to the current program guidance for RGs. The NRC added language to Section 1, ''Fire Protection Program,'' to clarify the primary objectives of fire protection plans.

Since the issuance of Revision 2 of RG 1.189 in 2009, the NRC issued a Regulatory Issuance Summary to inform licensees that Inspection Manual Part 9900, Technical Guidance (TG 9900), ''Operability Determinations & Functionality Assessments for Resolution of Degraded and Nonconforming Conditions Adverse to Quality and Safety,'' was reissued as Inspection Manual Chapter (IMC) 0326, ''Operability Determinations and Functionality Assessments for Conditions to Quality or Safety,'' dated January 31, 2014. Revision 3 of RG 1.189 now includes a reference to IMC 0326 (see Section 1.5, ''Compensatory Measures'').

Revision 3 of RG 1.189 also corrects typographic errors that previously appeared in Section 1.7.7, ''Nonconforming Items,'' Section 1.7.4, ''Inspection,'' Section 2.1.1, ''Transient Fire Hazards,'' Section 3.2.1, ''Fire Protection Water Supply,'' and Section 3.2.3, ''Fire Mains.'' Previously, these errors occurred during publishing of the final regulatory guide, when several paragraphs were incorrectly indented, resulting in incorrect sub-bullet numbering. These changes are intended to improve clarity and do not substantially alter the staff's regulatory guidance.

II. Backfitting and Issue Finality

Issuance of this final RG does not constitute backfitting as defined in section 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), (the Backfit Rule), and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. The changes in Revision 3 of RG 1.189 are limited to editorial changes to improve clarity and correct errors. These changes do not fall within the kinds of agency actions that constitute backfitting or are subject to limitations in the issue finality provisions of 10 CFR part 52. Accordingly, the NRC did not address the Backfit Rule or issue finality provisions of 10 CFR part 52.

III. Congressional Review Act

Revision 3 of Regulatory Guide 1.189 is not a rule as defined in the Congressional Review Act (5 U.S.C. 801–808).

IV. Submitting Suggestions for Improvement of Regulatory Guides

Revision 3 of RG 1.189 is being issued without public comment. However, a member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs to address new issues. Suggestions can be submitted on the NRC's public website at *http://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html.* Suggestions will be considered in future updates and enhancements to the ''Regulatory Guide'' series.

Dated at Rockville, Maryland, this 7th day of February 2018.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2018–02870 Filed 2–12–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 72–1014, 72–59, and 50–271; NRC–2018–0020]

Entergy Nuclear Operations, Inc.; Vermont Yankee Nuclear Power Station; Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a request submitted by Entergy Nuclear Operations, Inc. (ENO) on May 16, 2017, and supplemented on September 7, 2017 and December 7, 2017, for its general license to operate an independent spent fuel storage installation (ISFSI) at the Vermont Yankee Nuclear Power Station (VYNPS). This exemption would permit the VYNPS to use a new regionalized loading pattern, load fuel cooled for at least 2 years, and establish a per-cell maximum average burnup limit at 65,000 megawatt days per metric ton of uranium (MWD/MTU) in HI–STORM 100 multi-purpose canister (MPC)-68M using Certificate of Compliance (CoC) No. 1014, Amendment No. 10.

DATES: February 13, 2018.

ADDRESSES: Please refer to Docket ID NRC–2018–0020 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

• *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0020. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–9127; email: *Jennifer.Broges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS Accession No. for each

document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Yen-Ju Chen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–1018; email: *yen-ju.chen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The VYNPS began operation in 1972. The reactor was permanently shut down on December 29, 2014. The VYNPS has stored spent boiling-water reactor (BWR) fuel assemblies at its ISFSI in thirteen (13) HI–STORM 100 casks under CoC No. 1014, Amendment No. 2. The remaining spent fuel assemblies were removed from the reactor and transferred to the spent fuel pool. ENO, which owns the facility, submitted the VYNPS Post-Shutdown Decommissioning Activities Report (PSDAR) (ADAMS Accession No. ML14357A110) to the NRC on December 19, 2014, and supplemented with a schedule change in a letter dated on April 12, 2017 (ADAMS Accession No. ML17104A050). In the PSDAR, as supplemented, ENO stated its intention to move all of the spent nuclear fuel assemblies into dry cask storage in late 2018, and put the plant into SAFSTOR [1] until it is ready to fully decommission the facility.

Consistent with subpart K of part 72 of title 10 of the *Code of Federal Regulations* (10 CFR), a general license is issued for the storage of spent fuel in an ISFSI at power reactor sites to persons authorized to possess or operate nuclear power reactors under 10 CFR part 50. ENO is currently authorized to store spent fuel at the VYNPS ISFSI under the 10 CFR part 72 general license provisions. ENO plans to use Holtec HI–STORM 100 storage casks, as approved by the NRC under CoC No. 1014, Amendment No. 10, at the VYNPS for dry storage of spent nuclear fuel in MPC–68M canisters.

II. Request/Action

By application dated May 16, 2017 (ADAMS Accession No. ML17142A354), as supplemented on September 7, 2017 (ADAMS Accession No. ML17255A236) and December 7, 2017 (ADAMS Accession No. ML17346A685), ENO submitted a request for an exemption from those provisions of 10 CFR 72.212(a)(2), 72.212(b)(3), 72.212(b)(5)(i), 72.212(b)(11), and 72.214 that require compliance with the terms, conditions, and specifications of CoC No. 1014, Amendment No. 10 (ADAMS Accession No. ML16172A294), for the VYNPS to use a new regionalized loading pattern, load fuel cooled for at least 2 years, and establish a per-cell maximum average burnup limit at 65,000 MWD/MTU in Holtec HI–STORM 100 MPC–68M canister.

III. Discussion

Pursuant to 10 CFR 72.7, the Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations of 10 CFR part 72 as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

The NRC staff prepared a safety evaluation report (SER) (ADAMS Accession No. ML17298A135) to document the evaluation of the proposed actions (*i.e.,* using a new regionalized loading pattern, loading fuel cooled for at least 2 years, and establishing a per-cell maximum average burnup limit at 65,000 MWD/MTU in MPC–68M), to assure continued protection of public health and safety, common defense and security, and the environment. As summarized below, the NRC's safety review concludes that the requested exemption does not affect the ability of the cask system to meet the requirements of 10 CFR part 72.

A. The Exemption Is Authorized by Law

This exemption would permit the VYNPS to use a new regionalized loading pattern, load fuel cooled for at least 2 years, and establish a per-cell maximum average burnup limit at 65,000 MWD/MTU in MPC–68M using CoC No. 1014, Amendment No. 10.

Section 72.7 allows the Commission to grant exemptions from the requirements of 10 CFR part 72 if the exemption is authorized by law and will not endanger life or property nor the common defense and security. Issuance of this exemption is consistent with the Atomic Energy Act of 1954, as amended, and not otherwise inconsistent with NRC's regulations or other applicable laws. Therefore, issuance of the exemption is authorized by law.

B. The Exemption Presents No Undue Risk to Public Health and Safety and Will Not Endanger Life or Property or the Common Defense and Security

Approval of this exemption request will allow VYNPS to use a new regionalized loading pattern, load fuel cooled for at least 2 years, and establish a per-cell maximum average burnup limit at 65,000 MWD/MTU in MPC–68M using CoC No. 1014, Amendment No. 10. As discussed in the SER and summarized in the following sections, the NRC staff has found that ENO's proposed action is acceptable and will not endanger life or property or the common defense and security.

Review of the Requested Exemption

ENO requested this exemption to maintain its decommissioning schedule through its optimized loading campaigns. The exemption will allow VYNPS to use a more optimized regionalized loading pattern for MPC–68M, so that VYNPS could store hotter fuel from its final operating cycle, as well as store damaged fuel or fuel debris in a DFC, with cooler fuel in the same cask. The exemption will also allow VYNPS to load fuel that has been cooled for at least 2 years into the MPC–68M. In addition, the exemption will allow VYNPS to establish a per-cell maximum average burnup limit at 65,000 MWD/MTU in MPC–68M rather than using an equation to calculate the maximum burnup.

The NRC staff reviewed the requested exemption and determined that it does not change the fundamental design, components, or safety features of the storage system. The NRC staff evaluated the applicable potential safety impacts of granting the exemption to assess the potential for any danger to life or property or the common defense and security. Specifically, the NRC staff reviewed the applicant's structural, thermal, shielding, radiation protection, and material evaluations for the proposed exemption.

Structural Review for the Requested Exemption: The NRC staff evaluated the exemption request to ensure that the cask system will maintain confinement, subcriticality, radiation shielding, and retrievability or recovery of the fuel, as applicable, under all credible loads for normal and off-normal conditions accidents, and natural phenomenon events. Since the maximum projected MPC–68M heat load for fuels to be loaded at VYNPS will be 24.5 kW, well below the maximum heat load limit of 36.9 kW for MPC–68M approved in CoC No. 1014, Amendment No. 10, the proposed exemption is bounded by

[1] A method of decommissioning in which a nuclear facility is placed and maintained in a condition that allows the facility to be safely stored and subsequently decontaminated (deferred decontamination) to levels that permit release for unrestricted use.

NRC's previous evaluation and would not alter the structural integrity of the dry storage system.

Thermal Review for the Requested Exemption: The NRC staff evaluated the exemption request to ensure that the cask and fuel material temperatures of the dry storage system will remain within the allowable values or criteria for normal, off-normal, and accident conditions. The staff verified that the calculated fuel cladding temperatures and other cask component temperatures are below the allowable design temperature limits for normal, off-normal, and accident conditions of storage at VYNPS ISFSI. The staff also confirmed that the heat removal capability of the MPC–68M, using the new regionalized loading pattern and actual total aggregated cask heat load of 36.9 kW, loaded with all undamaged fuel assemblies or loaded with damaged fuel and/or fuel debris at VYNPS ISFSI remains acceptable and continues to meet the requirements of 10 CFR 72.122(h)(1) and 72.236(f).

Shielding Review for the Requested Exemption: The NRC staff evaluated the exemption request to ensure that the design of the HI–STORM 100 cask system continues to provide adequate protection against direct radiation to the onsite operating workers and members of the public, and that the ISFSI continues to satisfy the regulatory requirements during normal operating, off-normal, and design-basis accident conditions. The staff determined the new regionalized loading pattern is bounded by the design basis loading pattern previously approved by the NRC and will allow the MPC–68M to maintain the dose rates below the applicable regulatory limits in 10 CFR 72.104 and 72.106. In addition, the staff found that the use of the maximum average burnup limit of 65,000 MWD/MTU is acceptable as it provides sufficient conservatism in comparison with the actual site-specific maximum.

Radiation Protection Review for the Requested Exemption: The NRC staff evaluated the exemption request to determine whether the design features and operations meet the regulatory requirements. The staff evaluated the source terms and the calculated dose rates for normal, off-normal, and accident conditions, and found that the dose rates and annual dose are in compliance with the dose limits specified in 10 CFR 72.104 and 72.106.

Material Review for the Requested Exemption: The NRC staff evaluated the exemption request to ensure adequate material performance of components important to safety of the spent fuel storage system under normal, off-normal, and accident conditions. The staff found that the material properties of structures, systems, and components important to safety will be maintained during normal, off-normal, and accident conditions so that the spent nuclear fuel can be safely stored for the minimum required years and maintenance can be conducted as required.

Review of Common Defense and Security: The NRC staff also considered potential impacts of granting the exemption on the common defense and security. The requested exemption for the VYNPS ISFSI does not relate to security or the common defense, and therefore, granting the exemption would not result in any potential impacts to common defense and security.

Based on its review, the NRC staff has determined that under the requested exemption, the storage system will continue to meet the safety requirements of 10 CFR part 72 and the offsite dose limits of 10 CFR part 20 and, therefore, will not endanger life or property. The NRC staff also found that the exemption would not endanger common defense and security.

D. Otherwise in the Public Interest

In determining whether the exemption is in the public interest, the staff considered the no-action alternative of denying the exemption request. Denial of the exemption request would require ENO to load and store spent fuel in accordance with the current conditions of Amendment No. 10 of CoC No. 1014, which uses the regionalized loading pattern shown in CoC Appendix B, Figure 2.1–4; requires fuel to be cooled for at least 3 years; and use the equation in Appendix B, Section 2.4.3, to calculate maximum allowable fuel assembly average burnup based on fuel decay heat, enrichment, and cooling time.

ENO's proposed exemption would allow VYNPS to use a new regionalized loading pattern, load fuel that has been cooled for at least 2 years in MPC–68M, and use a per-cell maximum average burnup limit at 65,000 MWD/MTU. With this exemption, VYNPS stated that it would be able to use a more optimized loading pattern for MPC–68M, so that VYNPS could store hotter fuel from its final operating cycle, as well as for storing damaged fuel or fuel debris in a DFC, with cooler fuel in the same cask.

ENO also noted that by loading higher-burned, shorter-cooled assemblies into the inner regions of the cask and low-burned, longer-cooled assemblies on the periphery of the cask, the longer-cooled assemblies on the periphery of the cask acts as shielding and blocks the radiation from the shorter-cooled fuel assemblies stored in the inner region of the cask, and thus reduces dose rates to the onsite workers and at the site boundary. This exemption request will also allow VYNPS to maintain continuous loading campaign without interruption to wait for the fuel to meet the heat loading requirement. ENO noted that this could avoid potential higher personal exposure and human errors due to loss of experienced workers.

ENO indicated that by using this exemption, VYNPS would be able to complete the transfer of irradiated fuel to the ISFSI within a shorter time period. It would permit the spent fuel pool related structures, systems, and components to be removed from service earlier, and allow for staffing reductions to a level commensurate with dry fuel storage only operations. The staff determined if the transfer of irradiated fuel to the ISFSI is completed in a shorter time, that there would be a savings to the Decommissioning Trust Fund. The staff also determined, based on Entergy Nuclear Vermont Yankee, LLC. Master Decommissioning Trust Agreement for Vermont Yankee Nuclear Power Station, Exhibit D (ADAMS Accession No. ML15111A086), that savings to the Decommission Trust Fund could financially benefit the electric consumers.

The staff has reviewed the information provided by ENO and concluded that granting the requested exemption continues to provide adequate protection of public health and safety and is otherwise in the public interest.

E. Environmental Considerations

The NRC staff also considered whether there would be any significant environmental impacts associated with the exemption. For this proposed action, the NRC staff performed an environmental assessment pursuant to 10 CFR 51.30. The environmental assessment concluded that the proposed action would not significantly impact the quality of the human environment. The NRC staff concluded that the proposed action would not result in any changes in the types or amounts of any radiological or non-radiological effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure because of the proposed action. The Environmental Assessment and the Finding of No Significant Impact was published on January 23, 2018 (83 FR 3192).

IV. Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 72.7, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants ENO an exemption from those provisions of 10 CFR 72.212(a)(2), 10 CFR 72.212(b)(3), 10 CFR 72.212(b)(5)(i), 10 CFR 72.214, and the portion of 10 CFR 72.212(b)(11) that require compliance with terms, conditions, and specifications of the CoC No. 1014, Amendment No. 10, for the VYNPS to use a new regionalized loading pattern, load fuel cooled for at least 2 years, and establish a per-cell maximum average burnup limit at 65,000 MWD/MTU in MPC–68M using CoC No. 1014, Amendment No. 10.

The exemption is effective upon issuance.

Dated at Rockville, Maryland, this 8th day of February 2018.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Acting Chief, Spent Fuel Licensing Branch, Division of Spent Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2018–02930 Filed 2–12–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting

March 27, 2018—The U.S. Nuclear Waste Technical Review Board will meet in Washington, DC to discuss performance confirmation monitoring and retrievability of emplaced high-level radioactive waste and spent nuclear fuel.

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act (NWPAA) of 1987, the U.S. Nuclear Waste Technical Review Board will hold a public meeting in Washington, DC on Tuesday, March 27, 2018, to review information related to operational and performance confirmation monitoring of a geologic repository and retrievability of emplaced high-level radioactive waste (HLW) and spent nuclear fuel (SNF).

The Board meeting will be held at the Embassy Suites DC Convention Center, 900 10th Street NW, Washington, DC 20001. A block of rooms has been reserved for meeting attendees at a rate of $253.00 per night. Reservations may be made by phone (1–202–739–2001, refer to NWTRB meeting). Reservations must be made by March 5, 2018, to ensure receiving the meeting rate for available rooms.

The meeting will begin at 8:00 a.m. on Tuesday, March 27, 2018, and is scheduled to adjourn at 5:00 p.m. Representatives from several countries will discuss national policies and approaches to monitoring and retrievability. Technical specialists will discuss sensors and technologies for monitoring subsurface seepage, in-drift environmental conditions, and corrosion of waste packages for HLW and SNF emplaced in a geologic repository. A detailed meeting agenda will be available on the Board's website at *www.nwtrb.gov* approximately one week before the meeting.

The meeting will be open to the public, and opportunities for public comment will be provided before the lunch break and at the end of the day. Those wanting to speak are encouraged to sign the ''Public Comment Register'' at the check-in table. Depending on the number of people who sign up to speak, it may be necessary to set a time limit on individual remarks. However, written comments of any length may be submitted, and all comments received in writing will be included in the record of the meeting, which will be posted on the Board's website after the meeting. The meeting will be webcast, and the link to the webcast will be available on the Board's website (*www.nwtrb.gov*) a few days before the meeting. The meeting presentations and an archived version of the webcast will be available on the Board's website following the meeting. The transcript of the meeting will be available on the Board's website no later than May 25, 2018.

The Board was established in the NWPPA of 1987 as an independent federal agency in the Executive Branch to evaluate the technical and scientific validity of DOE activities related to the management and disposal of SNF and HLW and to provide objective expert advice to Congress and the Secretary of Energy on these issues. Board members are experts in their fields and are appointed to the Board by the President from a list of candidates submitted by the National Academy of Sciences. The Board reports its findings, conclusions, and recommendations to Congress and the Secretary of Energy. All Board reports, correspondence, congressional testimony, and meeting transcripts and related materials are posted on the Board's website.

For information on the meeting agenda, contact Daniel Metlay: *metlay@nwtrb.gov* or Karyn Severson: *severson@nwtrb.gov.* For information on lodging and logistics, or to request copies of the meeting agenda or transcript, contact Davonya Barnes: *barnes@nwtrb.gov.* All three can be reached by mail at 2300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201–3367; by telephone at 703–235–4473; or by fax at 703–235–4495.

Dated: February 6, 2018.

Nigel Mote,

Executive Director, U.S. Nuclear Waste Technical Review Board.

[FR Doc. 2018–02883 Filed 2–12–18; 8:45 am]

BILLING CODE 6820–AM–P

PENSION BENEFIT GUARANTY CORPORATION

Privacy Act of 1974; Systems of Records

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of modified systems of records; notice of a rescinded system of records; notice of a new system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, the Pension Benefit Guaranty Corporation (PBGC) proposes the following changes to its system of records notices to: Amend a general routine use, rescind a duplicative system of records, establish a new system of records for collection of data from the agency website, add or amend routine uses in ten systems of records, make clarifying changes to all nineteen systems of records notices, and republish all existing systems of records notices. The PBGC determined that the proposed changes were necessary after conducting the biennial review of its systems of records notices.

DATES: Comments are due by March 15, 2018. The revised and additional systems of records described herein will become effective 30 days after the date of publication, without further notice, unless comments results in a contrary determination and a notice is published to that effect.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the website instructions for submitting comments.
- *Email: reg.comments@pbgc.gov.*
- *Mail or Hand Delivery:*

Communications Outreach and Legislative Affairs Department, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005.

With appropriate redactions of personally identifiable information,

comments received through these methods will be posted to PBGC's website, *http://www.pbgc.gov.* Copies of comments may also be obtained by writing to the Pension Benefit Guaranty Corporation, Disclosure Division, Office of the General Counsel, 1200 K Street NW, Washington, DC 20005, or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Margaret Drake, Chief Privacy Officer, Pension Benefit Guaranty Corporation, Office of the General Counsel, 1200 K Street NW, Washington, DC 20005, 202–326–4400, extension 6435, or Nicole Moore, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, 1200 K Street NW, Washington, DC 20005, 202–326–4000, extension 3170. For access to any of the PBGC's systems of records, contact D. Camilla Perry, Disclosure Officer, Office of the General Counsel, Disclosure Division, 1200 K Street NW, Washington DC 20005, or by calling 202–326–4040 directly.

SUPPLEMENTARY INFORMATION:

(1) PBGC Is Proposing To Amend One General Routine Use in Its Prefatory Statement of General Routine Uses

PBGC is proposing to amend one general routine use in its Prefatory Statement of General Routine Uses. During a routine review of the General Routine Uses, PBGC determined that the language contained in General Routine Use 1—Law Enforcement should be clarified to reflect that information maintained in a PBGC system of records may be disclosed to law enforcement investigating the potential or actual violation of a statute, regulation, rule or particular program. The language will be further amended to clarify that law enforcement includes tribal entities charged with law enforcement. The amended General Routine Use will read: ''G1. Routine Use—Law Enforcement: A record from this system may be disclosed to law enforcement in the event the record is connected to a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, regulation, rule, or order issued pursuant thereto. Such disclosure may be made to the appropriate agency, whether Federal, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if PBGC determines that the records are both relevant and necessary to any enforcement, regulatory, investigative or prospective responsibility of the receiving entity.''

(2) PBGC Is Proposing To Rescind PBGC–24, Participant Debt Collection

Pursuant the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its ongoing improvement, integration and management efforts, PBGC is proposing to rescind the following system of records notice: PBGC–24, Participant Debt Collection (last published at 81 FR 63321 (September 14, 2016)).

With regard to PBGC–24, the Agency will continue to collect and maintain records about individuals who may owe a debt to the Agency and will rely upon an existing PBGC system of records titled PBGC–13, Debt Collection—PBGC (last published at 81 FR 63311 (September 14, 2016)), which is also written for the purpose of collecting any and all debts that be owed to the PBGC. The primary difference between the two systems of records being that PBGC–13 and PBGC–24 have different system managers.

Eliminating this notice will have no adverse impact on individuals; rather, its removal will promote the overall streamlining and management of PBGC Privacy Act system of records and reduce the likelihood of any public misunderstanding rooted in the existence of two similar notices. PBGC–13 will be clarified and amended to reflect both the existing system manager and the former system manager of PBGC–24.

(3) PBGC Is Proposing To Establish a New System of Records: PBGC–25, *PBGC.GOV* Comment Management System

PBGC is proposing to establish a new system of records titled, ''PBGC–25, *PBGC.GOV* Comment Management System—PBGC.'' The proposed system of records furthers the Agency's commitment to the E-Government Act of 2002 by promoting the use of electronic services, specifically, providing the public with access to proposed rulemaking and the ability to directly comment on those rules or any other area of concern directly to the Agency via comment field(s) on the *PBGC.gov* website. The public may also submit supporting materials related to their comments or other area of concern. This system of records may contain records of data points supplied by the user of the comment field, which may include names, addresses, phone numbers, email addresses, social security numbers, customer identification numbers, user names, internet protocol (IP) addresses or any other information entered in the comment field. In addition, this system will contain comments individuals have submitted through *Regulations.gov* about PBGC. While this will be a new system of records, PBGC will continue to respect the privacy of individuals using the website and comment field by encouraging users to provide the least amount of information necessary to respond to rulemaking or initiate contact with the Agency.

The collection and maintenance of these records is new. Prior to *PBGC.gov*, PBGC did not solicit, receive or collect rulemaking comments through its public website.

(4) PBGC Is Proposing To Add Two Routine Uses to PBGC–2, Disbursements

PBGC is proposing to add two routine uses to PBGC–2, Disbursements (last published at 81 FR 63301 (September 14, 2016)).

PBGC is proposing the addition of routine use 3, which permits the disclosure of information in this system to the Office of Personnel Management, the Office of Management and Budget, or the Government Accountability Office. This addition will facilitate oversight of payments made from PBGC to various entities, as well as promote transparency and accountability during the payment process. Routine use 3 will read: ''To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.''

PBGC is proposing the addition of routine use 4, which permits disclosure of information to consumer reporting agencies in order to facilitate and collect claims for money or property due to PBGC. New routine use 4 will read, ''A record from this system may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(e).''

(5) PBGC Is Proposing To Add a Routine Use to PBGC–3, Employee Payroll, Leave, and Attendance Records

PBGC is proposing to add a routine use to PBGC–3: Employee Payroll, Leave, and Attendance Records (last published at 81 FR 63301 (September 14, 2016)). This routine use is necessary as it allows PBGC to collect claims for money or property. The new routine use will read, ''A record from this system may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(e).''

(6) PBGC Is Proposing To Clarify the Types of Plan Information Contained in the System, Amend Two Routine Uses and Add a Routine Use to PBGC–6, Plan Participant and Beneficiary Data

PBGC is proposing the following revisions to PBGC–6, Plan Participant and Beneficiary Data (last published at 81 FR 63303 (September 14, 2016)): Clarification of the types of plan information contained in the system; amendment of two routine uses; and, addition of one new routine use.

PBGC is proposing the clarification of the name of the type of plans records contained in the system of records. Currently, plan information is described as ''pension plans.'' PBGC would clarify the name of the type of plans to ''retirement plans'' in order to reflect the inclusion of plans that do not meet the definition of ''pension plans.''

PBGC is proposing the amendment of routine use 13, which currently permits disclosure to government agencies in order to verify payment eligibility. After review of the routine use and agency practices, we have determined that information needed to verify eligibility to receive payment may be held by third parties with whom PBGC has a contractual relationship. The amended portion of routine use 13 will permit disclosure and read, ''a third party with whom PBGC has a contractual relationship.'' This amendment will further the purpose of the Agency by ensuring payments are made only to individuals eligible to receive such payments.

PBGC is proposing the amendment of routine use 16, which currently permits the disclosure of a beneficiary's name and date of birth to the participant. PBGC wishes to disclose additional types of beneficiary information to the participant. Amended routine use 16 will read, ''With the exception of third party social security numbers, all beneficiary information contained in the participant file (such as: Names, addresses, phone numbers, email addresses and dates of birth) provided by the subject of the record may be disclosed to the subject of the record, upon written request to the Disclosure Officer in accordance with the Record Access Procedure outlined below.'' Under the existing routine use, PBGC withholds all information except the name and date of birth of a beneficiary that is contained in participant's file, even though it was often the participant who provided the beneficiary's personal information (as this information is required from the participant when naming their beneficiary). By allowing PBGC to disclose all information regarding the beneficiary to the participant, except their social security number, the amended routine use will ensure that a participant can readily confirm or amend information about their beneficiary, while still protecting the beneficiary's social security number. In addition, this routine use will improve customer service without sacrificing any individuals' privacy interests.

PBGC is proposing the addition of a routine use to PBGC–6. New routine use 18 will read, ''A record from this system may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(e).'' This routine use is necessary as it allows the disclosure of information to consumer reporting agencies in order to facilitate and collect claims for money or property due to PBGC.

(7) PBGC Is Proposing To Add One Routine Use to PBGC–8, Employee Relations Files

PBGC's review of its system of records notices revealed the need to be able to disclose certain records from the PBGC system of records documenting employee grievances to union representatives. Accordingly, PBGC is proposing to add one additional routine use to PBGC–8; Employee Relations Files (last published at 81 FR 63304 (September 14, 2016), in furtherance of resolving a grievant's complaint and limiting such disclosure to the extent that it is relevant to the subject matter involved in the union issue or proceeding and if disclosure would be in the interest of the subject individual. New routine use 3 will read: ''A record from this system may be disclosed to a union representative, Hearing Examiner or Arbitrator for the purpose of representation or in order to conduct a hearing in connection with an employee's grievance or appeal.''

(8) PBGC Is Proposing To Amend the Name of the System of Record, Amend One Routine Use, Correct the Numbering of Published Routine Uses, and Add Two Routine Uses to PBGC–9, Unclaimed Pensions

PBGC's review of its system of records notices revealed the need to limit the disclosure of certain information and permit the disclosure of other information from the PBGC system of records containing information on unclaimed retirement funds. PBGC is proposing to amend the name of the system, amend one routine use, correct the numbering of published routine uses and add two routine uses to PBGC–9: Unclaimed Pensions (last published at 81 FR 63306 (September 14, 2016)). These changes are designed to ensure that the system name adequately reflects the information contained therein and to ensure that the Agency may fulfill its mission of paying benefits to participants or their beneficiaries while still protecting individual privacy rights. The new name of the system of record will be PBGC–9: Unclaimed Retirement Funds.

In the last published version of this records notice, there were two routine uses number 7. PBGC is proposing to amend the first routine use 7 by removing language permitting the disclosure of the last known address of participants and beneficiaries. PBGC believes that not disclosing this information to the public protects the privacy rights of these individuals. Further, the information that will continue to be disclosed pursuant to routine use 7 is more than sufficient to make the public aware and potentially identify and locate individuals who may be owed a benefit payment.

PBGC also proposes the correction of numbering by revising the latter routine use to 8. There are no further changes to this routine use and will be republished to read: *8.* Names, social security numbers, last known addresses, dates of birth and death, employment history, and pay status of individuals covered by legal settlement agreements involving PBGC may be disclosed to entities covered by or created under those agreements.

New routine use 9 will read: ''Names, social security numbers, last known addresses, dates of birth, and benefit amounts owed may be disclosed to other government agencies under a Memorandum of Understanding or Interagency Agreement in order to locate missing participants.''

New routine use 10 will read: ''Names, social security numbers, dates of birth and death, name of plan sponsors, plan sponsor EIN/PN may be periodically disclosed to insurance companies where annuities have been purchased by a terminated plan.''

(9) PBGC Is Proposing To Update and Add Ten Routine Uses to PBGC–12, Personnel Security Investigation Records

PBGC's review of its system of records notices revealed the need to disclose certain information from the PBGC system of records documenting personnel information to other branches and agencies of the Federal Government. PBGC is proposing to update and add ten routine uses to PBGC–12: Personnel Security Investigation Records (last published at 81 FR 63309 (September 14, 2016)), to

ensure consistency with the Federal Investigative Standards and to promote the efficiency of governmental hiring and investigations associated with hiring. The records in this system may be used to provide investigatory information for determinations concerning whether an individual is, or continues to be, suitable or fit for Government employment or military service; eligible for logical and physical access to federally controlled facilities and information systems; eligible to hold a sensitive position (including, but not limited to, eligibility for access to classified information); fit to perform work for or on behalf of the Government as an employee of a contractor; qualified for Government service; qualified to perform contractual services for the Government; and, loyal to the United States. The system is also used to document such determinations. In conducting a review of the system of records, it was determined that information regarding PBGC vendors may be included in the system. The category of vendor has been added to the category of individuals covered by the system and are included in the system of records' purpose.

PBGC proposes the clarification of the name of an office within a federal agency used as an example in routine use 2. The office charged with investigating the suitability of individuals in this system would be the National Background Investigations Bureau (NBIB), a component of the Office of Personnel Management. The clarified example in the routine use example will now include, ''National Background Investigations Bureau (NBIB).''

New routine use 4 will read: ''To designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, having a need to evaluate qualifications, suitability, and loyalty to the United States Government and/or a security clearance or access determination.''

New routine use 5 will read: ''To designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, when such agency, office, or establishment investigates an individual for purposes of granting a security clearance, or for the purpose of making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas.''

New routine use 6 will read: ''To designated officers and employees of agencies, offices, and other establishments in the executive, judicial, or legislative branches of the Federal Government, having the responsibility to grant clearances to make a determination regarding access to classified information or restricted areas, or to evaluate qualifications, suitability, or loyalty to the United States Government, in connection with performance of a service to the Federal Government under a contract or other agreement.''

New routine use 7 will read: ''To U.S. intelligence agencies for use in intelligence activities.''

New routine use 8 will read: ''To the appropriate Federal, State, local, tribal, or other public authority responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where OPM becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.''

New routine use 9 will read: ''To an agency, office, or other establishment in the executive, legislative, or judicial branches of the Federal Government, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.''

New routine use 10 will read: ''To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. However, to the extent these records may reveal the identity of an individual who has provided information pertaining to the investigation, the investigative file, or the parts thereof, are exempt from release. Further, requests for OPM records contained in this system will be referred to OPM.''

New routine use 11 will read: ''To disclose information to contractors, experts, consultants, or students performing or working on a contract, service, or job for the PBGC.''

New routine use 12 will read: ''To disclose results of investigations or individuals records to agencies, such as the Department of Labor, providing adjudicative support services to PBGC.''

And, new routine use 13 will read: ''To provide criminal history record information to the FBI, to help ensure the accuracy and completeness of FBI and PBGC records.''

(10) PBGC Is Proposing To Amend the System Manager and Add One Routine Use to PBGC–13, Debt Collection

PBGC is proposing to amend the system manager and add a routine use to PBGC–13: Debt Collection (last published at 81 FR 63311 (September 14, 2016)). PBGC is proposing the addition of a second system manager due to the proposed rescission of PBGC–24: Participant Debt Collection. The consolidation of the two systems streamlines PBGC processes and eliminates redundancy. Adding the system manager for PBGC–24 ensures that the public has access to the individuals responsible for the collection and maintenance of records in that system.

The section of the system of records notice entitled ''System Manager(s) and Address'' will be amended to included: Chief of Benefits Administration, Office of Benefits Administration, PBGC, 1200 K Street NW, Washington DC 20005.

PBGC is proposing the addition of one routine for disclosure to a consumer reporting agency. This routine use is necessary as it allows PBGC to collect claims for money or property. New routine use 5 will read, ''A record from this system may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(e).''

(11) PBGC Is Proposing To Add One Routine Use to PBGC–14, My Plan Administration Account Records

PBGC is proposing to add a routine use to PBGC–14: My Plan Administration Account Records (last published at 81 FR 63312 (September 14, 2016)). PBGC is proposing the addition to ensure that the Agency may fulfill its mission of locating and paying benefits to participants or their beneficiaries. New routine use 2 will read: ''Names, addresses and phone numbers of plan sponsors, plan administrators, pension practitioners, actuaries and pension benefit professionals who submit plan information to My PAA may be disclosed to the public in order to ensure the public has access to contact information for those individuals submitting information regarding pension plans and those responsible for the administration of pension plans covered by the Employee Retirement Income Security Act of 1974 (ERISA).''

(12) PBGC Is Proposing To Add Seven Routine Uses to PBGC–17, Office of Inspector General Investigative File System

PBGC is proposing to add seven additional routine uses to PBGC–17: Office of Inspector General Investigative File System (last published at 81 FR 63315 (September 14, 2016)). During the review of the systems' routine uses, it was determined that additional routine uses were necessary in order to ensure that the Office of Inspector General (OIG) continues to operate with efficiency and transparency. In addition, these new routine uses will facilitate the sharing of information between agencies in order to fulfill the mission of the OIG.

New routine use 10 will read: ''A record may be disclosed where there is an indication of a violation or a potential violation of law, rule, regulation or order whether civil, criminal, administrative or regulatory in nature, to the appropriate agency, whether federal, state, tribal or local, or to a securities self-regulatory organization, charged with enforcing or implementing the statute, or rule, regulation or order.''

New routine use 11 will read: ''A record may be disclosed to federal, state, tribal or local authorities in order to obtain information or records relevant to an Office of Inspector General investigation or inquiry.''

New routine use 12 will read: ''A record may be disclosed to a bar association, state accountancy board, or other federal, state, tribal, or local licensing or oversight authority; or professional association or self-regulatory authority to the extent that it performs similar functions (including the Public Company Accounting Oversight Board) for investigations or possible disciplinary action.''

New routine use 13 will read: ''A record may be disclosed to inform complainants, victims, and witnesses of the results of an investigation or inquiry.''

New routine use 14 will read: ''To the Department of Justice for the purpose of obtaining advice on investigatory matters or in order to refer information for the purpose of prosecution.''

New routine use 15 will read: ''To contractors, interns and experts who have been engaged to assist in an OIG investigation or in the performance of a service related to this system of records and require access to these records for the purpose of assisting the OIG in the efficient administration of its duties. All recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended.''

New routine use 16 will read: ''To the public when the matter under investigation has become public knowledge, or when the Inspector General determines that such disclosure is necessary to preserve confidence in the integrity of the OIG investigative process, to demonstrate the accountability of PBGC employees, or other individuals covered by this system, or when there exists a legitimate public interest, unless the Inspector General has determined that disclosure of specific information would constitute an unwarranted invasion of personal privacy.''

And, new routine use 17 will read: ''A record from this system may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(e).''

(13) PBGC Is Proposing To Amend the Category of Records and Add a Routine Use to PBGC–19, Office of General Counsel Case Management System

PBGC is proposing to amend the category of records contained in the system and add an additional routine use to PBGC–19: Office of General Counsel Case Management System (last published at 81 FR 63316 (September 14, 2016)). During the review of the system of records, it was determined that additional categories of records exist in this system. PBGC proposes the amendment of the categories of records to include the following records: Draft and final versions of notes, disclosures and determinations made in accordance with the Freedom of Information Act and the Privacy Act of 1974; records and information obtained from other federal, state, local and tribal agencies and departments, including, but not limited to: Office of Personnel Management, Social Security Administration, Department of Treasury and Department of Justice; ethics inquiries; personnel records; financial records; and, individual tax returns.

PBGC proposes the addition of a new routine use permitting the disclosure of information to a consumer reporting agency in order to collect a claim due to the agency. New routine use 11 will read, ''A record from this system may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(e).''

(14) PBGC Is Proposing To Make Clarifying Changes to Existing Systems of Records

PBGC is proposing to correct and update the following sections in existing system of records notices: Security Classification; System Location; Categories of Individuals Covered by the System; Categories of Records in the System; Authority for Maintenance of the System; Purpose(s); Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses; Storage; Retrievability; Safeguards; Retention and Disposal; System Manager(s) and Address; Notification Procedure; Record Access Procedures; Contesting Record Procedures; Record Source Categories; and, Exemptions Claimed for the System.

PBGC is proposing these updates to PBGC–1, Congressional Correspondence (last published at 81 FR 63300 (September 14, 2016)); PBGC–2, Disbursements; PBGC–3, Employee Payroll, Leave, and Attendance Records; PBGC–6, Plan Participant and Beneficiary Data; PBGC–8, Employee Relations Files; PBGC–9, Unclaimed Pensions (amended to Unclaimed Retirement Funds); PBGC–10, Administrative Appeals File (last published at 81 FR 63307 (September 14, 2016)); PBGC–11, Call Detail Records (last published at 81 FR 63308 (September 14, 2016)); PBGC–12, Personnel Security Investigation Records; PBGC–13, Debt Collection (last published at 81 FR 63311 (September 14, 2016)); PBGC–14, My Plan Administration Account Records; PBGC–15, Emergency Notification Records (last published at 81 FR 63313 (September 14, 2016)); PBGC–16, Employee Online Directory (last published at 81 FR 63314 (September 14, 2016)); PBGC–17, Inspector General Investigative File System; PBGC–19, Office of General Counsel Case Management System; PBGC–21, Reasonable Accommodation Records (last published at 81 FR 63317 (September 14, 2016)); PBGC–22, Telework and Alternative Worksite Records (last published at 81 FR 63319 (September 14, 2016)); and, PBGC–23, Internal Investigations of Allegations of Harassing Conduct (last published at 81 FR 63320 (September 14, 2016)). These corrections and amendments will make the system of records notices more accurate and easier to understand individually, and collectively.

(15) PBGC Is Proposing To Republish All Existing System of Records Notices

PBGC annually reviews all system of records notices. There have been minor corrections, changes in system owners due to internal agency realignments, and administrative changes for consistency in the existing system of records notices. As such, PBGC proposes to republish all existing

system of records notices in order to clarify and correct information since the last publication.

PBGC proposes to clarify references to law enforcement entities throughout the document to include tribal law enforcement agencies or departments.

Concerning security classification, all systems have been labeled as unclassified. Concerning the safeguarding and disposal of all systems of records, PBGC follows Federal Law and Regulations, the National Institute of Science and Technology (NIST) guidelines and best practices, as appropriate and current notices reflect those guidelines. Concerning the system location, the name of the agency was previously abbreviated, and the corrected location reflects a more accurate location of PBGC systems. Concerning authority for maintenance, all citations have been corrected and reflect the laws that govern the systems and collection of information for those systems. Concerning the routine uses for the systems, the numbering of the routine uses was corrected to reflect the proper numbering of all routine uses. Concerning the policies and practices for storing, retrieving, accessing, retaining and disposing of records, the notices reflect the current practices of the agency in keeping with the E-Government Act of 2002 and current practices of the agency in regard to these systems. Concerning storage, the notice has been clarified to reflect that PBGC records may be maintained on back-up tapes, or on the PBGC or a contractor-hosted network. Concerning retrievability, all methods of retrieval have been updated and verified. Concerning safeguards, minor grammatical corrections were made, and the entry was updated to reflect current agency policies regarding protection and security of these systems. Concerning retention and disposal, the entry was clarified to reflect that agency practices were in line with guidelines issued by the National Archives and Record Administration. Concerning notification, access and contesting or amending records, administrative changes reflect the current regulations governing the agency. Concerning record source categories, minor administrative changes were made to reflect the correct name of the offices providing records for these systems.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written comments on the proposal of these systems of records. A report on the proposed systems has been sent to Congress and the Office of Management and Budget for their evaluation.

For the convenience of the public, PBGC's Prefatory Statement of General Routine Uses, the amended systems of records, and the new systems of records are published in full below with changes italicized.

Issued in Washington, DC.

W. Thomas Reeder,

Director, Pension Benefit Guaranty Corporation.

Prefatory Statement of General Routine Uses

The following routine uses are incorporated by reference into various systems of records, as set forth below.

G1. Routine Use—Law Enforcement: *A record from this system may be disclosed to law enforcement in the event the record is connected to a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, regulation, rule, or order issued pursuant thereto. Such disclosure may be made to the appropriate agency, whether federal, state, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if PBGC determines that the records are both relevant and necessary to any enforcement, regulatory, investigative or prospective responsibility of the receiving entity.*

G2. Routine Use—Disclosure When Requesting Information: A record from this system of records may be disclosed to a federal, state, *tribal* or local agency or to another public or private source maintaining civil, criminal, or other relevant enforcement information or other pertinent information if, and to the extent necessary, to obtain information relevant to a PBGC decision concerning the hiring or retention of an employee, the retention of a security clearance, or the letting of a contract.

G3. Routine Use—Disclosure of Existence of Record Information: With the approval of the Director, Human Resources Department (or his or her designee), the fact that this system of records includes information relevant to a federal agency's decision in connection with the hiring or retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit may be disclosed to that federal agency.

G4. Routine Use—Disclosure in Litigation: A record from this system of records may be disclosed in a proceeding before a court or other adjudicative body in which PBGC, an employee of PBGC in his or her official capacity, an employee of PBGC in his or her individual capacity whom PBGC (or the Department of Justice (DOJ)) has agreed to represent is a party, or the United States or any other federal agency is a party and PBGC determines that it has an interest in the proceeding, and if PBGC determines that the record is relevant to the proceeding and that the use is compatible with the purpose for which PBGC collected the information.

G5. Routine Use—Disclosure to DOJ in Litigation: When PBGC, an employee of PBGC in his or her official capacity, or an employee of PBGC in his or her individual capacity whom PBGC (or DOJ) has agreed to represent is a party to a proceeding before a court or other adjudicative body, or the United States or any other federal agency is a party and PBGC determines that it has an interest in the proceeding, a record from this system of records may be disclosed to DOJ if PBGC is consulting with DOJ regarding the proceeding or has decided that DOJ will represent PBGC, or its interest, in the proceeding and PBGC determines that the record is relevant to the proceeding and that the use is compatible with the purpose for which PBGC collected the information.

G6. Routine Use—Disclosure to the Office of Management and Budget (OMB): A record from this system of records may be disclosed to OMB in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

G7. Routine Use—Congressional Inquiries: A record from this system of records may be disclosed to a congressional office in response to an inquiry from the congressional office made at the request of the individual.

G8. Routine Use—Disclosure to Labor Organizations: A record from this system of records may be disclosed to an official of a labor organization recognized under 5 U.S.C. ch. 71 when necessary for the labor organization to properly perform its duties as the collective bargaining representative of PBGC employees in the bargaining unit.

G9. Routine Use—Disclosure in Response to a Breach: A record from this system of records may be disclosed to appropriate agencies, entities, and persons when (1) PBGC suspects or has confirmed that there has been a breach of the system of records; (2) PBGC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the agency (including its information systems, programs and operations), the Federal

Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with PBGC's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

G10. Routine Use—Contractors, Experts, and Consultants: To contractors, experts, consultants, and the agents thereof, and others performing or working on a contract, service, cooperative agreement, or other assignment for PBGC when necessary to accomplish an agency function. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to PBGC employees.

G11. Routine Use—Records Management: To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

G12. Routine Use—Gathering Information: To any source from which information is requested in the course of processing a grievance, investigation, arbitration, or other litigation, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

G13. Routine Use—Disclosure to a Federal Agency: To disclose information to a federal agency, in response to its request, in connection with hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, or classifying jobs, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

G14. Routine Use—Disclosure to Another Federal Agency or Federal Entity in Response to a Breach: To another federal agency or federal entity, when information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the agency (including its information systems, programs, and operations), the Federal Government, or national security.

SYSTEM NAME AND NUMBER

PBGC–1: Congressional Correspondence—PBGC.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation (PBGC), 1200 K Street NW, Washington, DC 20005 (Records may be kept at an additional location as backup for continuity of operations.)

SYSTEM MANAGER(S) AND ADDRESS:

Director, Communications Outreach and Legislative Affairs, PBGC, 1200 K Street NW, Washington, DC 20005.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; and 5 U.S.C. 301.

PURPOSE(S) OF THE SYSTEM:

This system of records is maintained to catalog and respond to correspondence received from members of Congress and their staff on behalf of their constituents, and to respond to correspondence directed to the Office of the Director of the PBGC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the United States Congress and staff, Congressional constituents and individuals who have corresponded with PBGC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names of members of Congress, congressional staff and constituents; addresses; phone numbers; social security numbers; customer identification numbers; email addresses; copies of correspondence received; replies to such correspondence.

RECORD SOURCE CATEGORIES:

Members of Congress and their staff; correspondents; agency employees preparing responses to incoming correspondence or who generate original correspondence in their official capacities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 522a(b), and:

1. General Routine Uses G1 through G11, G13 and G14 apply to this system of records (see Prefatory Statement of General Routine Uses).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained manually in paper and/or electronic form (including computer databases or discs). Records may also be maintained on back-up tapes, or on a PBGC or a contractor-hosted network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and destroyed in accordance with the National Archives and Record Administration's (NARA) Basic Laws and Authorities (44 U.S.C. 3301, *et seq.*) or a PBGC records disposition schedule approved by NARA.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

PBGC has established security and privacy protocols that meet the required security and privacy standards issued by the National Institute of Standards and Technology (NIST). Records are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the confidentiality, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Electronic records are stored on computer networks, which may include cloud-based systems, and protected by controlled access with Personal Identity Verification (PIV) cards, assigning user accounts to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RECORD ACCESS PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to request access to their records in accordance with 29 CFR 4902.4, should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

CONTESTING RECORD PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to amend their records must submit a written request identifying the information they wish to correct in their file, in addition to following the requirements of the Record Access Procedure above.

NOTIFICATION PROCEDURES:

Individuals, or third parties with written authorization from the

individual, wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

PBGC–1, Congressional Correspondence (last published at 81 FR 63300 (September 14, 2016)).

SYSTEM NAME AND NUMBER

PBGC–2: Disbursements—PBGC.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation (PBGC), 1200 K Street NW, Washington, DC 20005, PBGC Field Offices (Field Benefit Administration), and/or paying agent worksites. (Records may be kept at an additional location as backup for continuity of operations.)

SYSTEM MANAGER:

Director, Financial Operations Department, PBGC, K Street NW, Washington, DC 20005.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; 5 U.S.C. 301; 31 U.S.C. 6101; 31 U.S.C. 9101, *et seq.*; 31 U.S.C. 3716.

PURPOSE(S) OF THE SYSTEM:

This system of records is maintained for use in determining amounts to be paid and in effecting payments by the Department of the Treasury on behalf of PBGC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

PBGC Employees; consultants; contractors; vendors; and any other individuals who receive payments from PBGC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Acquisition data for the procurement of goods and services; invoices; payment vouchers; financial information of commercial vendors and government contractors; Electronic Funds Transfer (EFT) information; IP information; cookies (session and persistent); name; address; taxpayer identification number; financial information; bank information; Social Security number; and other information related to the disbursement of funds.

RECORD SOURCE CATEGORIES:

Subject individuals and PBGC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 522a(b), and 5 U.S.C. 552a(b)(3) and:

1. General Routine Uses Gl through G7 and G9 through G14 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record from this system of records may be transmitted to the United States Department of the Treasury and/or financial institutions, including entities contracted by PBGC, to effect payments to consultants and vendors, to verify consultants' and vendors' eligibility to receive payments, or to fulfill PBGC's requirement pursuant to the Digital Accountability and Transparency Act of 2014.

3. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

4. A record from this system may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained manually in paper and/or electronic form (including computer databases or discs). Records may also be maintained on back-up tapes, or on a PBGC or a contractor-hosted network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by any one or more of the following: Name, social security number, and tax payer identification number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and destroyed in accordance with the National Archives and Record Administration's (NARA) Basic Laws and Authorities (44 U.S.C. 3301, *et seq.*) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Transactional records may be temporary in nature and deleted once payment has been accepted, any action has been completed, superseded, obsolete, or no longer needed. The retention of other records may be discontinued at the completion of the contract, a requisition requiring payment, or upon receipt of the payment itself.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

PBGC has established security and privacy protocols that meet the required security and privacy standards issued by the National Institute of Standards and Technology (NIST). Records are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the confidentiality, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Electronic records are stored on computer networks, which may include cloud-based systems, and protected by controlled access with Personal Identity Verification (PIV) cards, assigning user accounts to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RECORD ACCESS PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to request access to their records in accordance with 29 CFR 4902.4, should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

CONTESTING RECORD PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to amend their records must submit a written request identifying the information they wish to correct in their file, in addition to following the requirements of the Record Access Procedure above.

NOTIFICATION PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

PBGC–2, Disbursements (last published at 81 FR 63301 (September 14, 2016)).

SYSTEM NAME AND NUMBER:

PBGC–3: Employee Payroll, Leave, and Attendance Records—PBGC.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation (PBGC), 1200 K Street NW, Washington, DC 20005 (Records may be kept at an additional location as backup for continuity of operations.)

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Operations Division, PBGC, 1200 K Street NW, Washington, DC 20005.

Director, Human Resources Department, PBGC, 1200 K Street NW, Washington, DC 20005.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; 5 U.S.C. 301; 5 U.S.C. 5501–5584.

PURPOSE(S):

This system of records is maintained to perform agency functions involving employee, student, and intern leave, attendance, and payments, including determinations relating to the amounts to be paid to employees, the distribution of pay according to employee, student, and intern directions (for allotments to financial institutions, and for other authorized purposes), tax withholdings and other authorized deductions, and for statistical purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former PBGC employees, students and interns.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel information, such as: Names, addresses, phone numbers, social security numbers, employee numbers, dates of birth, notifications of personnel actions; payroll information, such as: Allotments and requests, marital status and number of dependents, beneficiary data, child support enforcement order information (which may include the social security numbers of custodian and minor children), debts owed to PBGC, debts owed to the federal government, garnishments, personal bank account information, direct deposit information, union dues, tax information, other deductions, time and attendance records; emergency contact information; co-owner and/or beneficiary of bonds; Thrift Savings Plan information; Flexible Spending Account information; Long Term Care Insurance; awards; retirement information; salary data including pay rate, grade, length of service; health information.

RECORD SOURCE CATEGORIES:

Subject individuals; subject individuals' supervisors; timekeepers; Department of the Interior, Interior Business Center; and, the Office of Personnel Management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 522a(b), and:

1. General Routine Uses G1 through G14 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record from this system may be disclosed to the United States Department of the Interior, the United States Department of Labor, Social Security Administration, and the United States Department of the Treasury in order to effect payments to current or former PBGC employees, students, and interns.

3. Information regarding current payments due or delinquent repayments owed to PBGC through current and former employees, students, and interns may be shared with the Department of the Treasury for the purposes of offset.

4. Information from this system of records may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for the evaluation and oversight of federal personnel management.

5. A record from this system may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained manually in paper and/or electronic form (including computer databases or discs). Records may also be maintained on back-up tapes, or on a PBGC or a contractor-hosted network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by any one or more of the following: Name; employee number; or social security number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and destroyed in accordance with the National Archives and Record Administration's (NARA) Basic Laws and Authorities (44 U.S.C. 3301, *et seq.*) or a PBGC records disposition schedule approved by NARA.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

PBGC has established security and privacy protocols that meet the required security and privacy standards issued by the National Institute of Standards and Technology (NIST). Records are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the confidentiality, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Electronic records are stored on computer networks, which may include cloud-based systems, and protected by controlled access with Personal Identity Verification (PIV) cards, assigning user accounts to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RECORD ACCESS PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to request access to their records in accordance with 29 CFR 4902.4, should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

CONTESTING RECORD PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to amend their records must submit a written request identifying the information they wish to correct in their file, in addition to following the requirements of the Record Access Procedure above.

NOTIFICATION PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer,

PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

PBGC–3, Employee Payroll, Leave, and Attendance Records (last published at 81 FR 63301 (September 14, 2016)).

SYSTEM NAME AND NUMBER

PBGC–6: Plan Participant and Beneficiary Data—PBGC.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation (PBGC), 1200 K Street NW, Washington, DC 20005, and/or PBGC Field Offices (Field Benefit Administration), plan administrator worksites, and paying agent worksites. (Records may be kept at an additional location as backup for continuity of operations.)

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Benefits Administration, Office of Benefits Administration, PBGC, 1200 K Street NW, Washington, DC 20005.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1055, 1056(d)(3), 1302, 1321, 1341, 1342, and 1350; 26 U.S.C. 6103; 44 U.S.C. 3101; 5 U.S.C. 301.

PURPOSE(S) OF THE SYSTEM:

This system of records is maintained for use in determining whether participants, alternate payees, beneficiaries, spouses and domestic partners are eligible for benefits under plans covered by ERISA, determining supplemental payments to be paid to those persons by a party other than PBGC, determining the amounts of benefits to be paid, making benefit payments, collecting benefit overpayments, and complying with statutory and regulatory mandates.

Names, addresses, and telephone numbers are used to survey customers to measure their satisfaction with PBGC's benefit payment services and to track (for follow-up) those who do not respond to surveys.

Information from this system may be used for research into, and statistical information about, benefit determinations for actuaries and publications.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants, alternate payees, beneficiaries, spouses and domestic partners in terminated and non-terminated retirement plans covered by the Employee Retirement Income Security Act (ERISA), and other individuals who contact PBGC regarding benefits they may be owed from PBGC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names; addresses; telephone numbers; email addresses; gender; social security numbers and other Social Security Administration information; dates of birth and death; dates of hire, termination, and retirement; salary; employment history; marital status; domestic relations orders; time of plan participation; eligibility status; pay status; benefit data, including records of benefit payments made to participants, alternate payees, and beneficiaries in terminating and terminated retirement plans; powers of attorney; insurance information where plan benefits are provided by private insurers; medical records; disability information; retirement plan names and numbers; correspondence; initial and final PBGC determinations (see, 29 CFR 4003.21 and 4003.59); and, other records relating to debts owed to PBGC.

RECORD SOURCE CATEGORIES:

Plan administrators; participants, spouses, alternate payees, beneficiaries, and other individuals who contact PBGC regarding benefits they may be owed from PBGC; agents listed on power of attorneys; agents listed on release forms, PBGC field office; the SSA; the FAA; and the IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 522a(b), and:

1. General Routine Uses G1, G2, G4 through G7, G9 through and G14 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record from this system of records may be disclosed to third parties, such as banks, insurance companies, or trustees:

a. To enable these third parties to make or determine benefit payments, or

b. To report to the Internal Revenue Service (IRS) the amounts of benefits paid (or required to be paid) and taxes withheld.

3. A record from this system may be disclosed, in furtherance of proceedings under Title IV of ERISA, to a contributing sponsor (or other employer who maintained the plan), including any predecessor or successor, and any member of the same control group.

4. A record from this system may be disclosed, upon request, for a purpose authorized under ERISA, to an official of a labor organization recognized as the current or former collective bargaining representative of the individual about whom a request is made.

5. Payees' names, addresses, telephone numbers, and information related to how PBGC determined that a debt was owed by such payees to PBGC may be disclosed to the Department of the Treasury or a debt collection agency or to collect a claim. Disclosure to a debt collection agency shall be made only under a contract issued by the federal government that binds any such contractor or employee of such contractor to the penalties of the Privacy Act. The information so disclosed shall be used exclusively pursuant to the terms and conditions of such contract and shall be used solely for the purposes prescribed therein. The contract shall provide that the information so disclosed shall be returned at the conclusion of the debt collection effort.

6. The name and social security number of a participant employed or formerly employed as a pilot by a commercial airline may be disclosed to the Federal Aviation Administration to obtain information relevant to the participant's eligibility or continued eligibility for disability benefits.

7. The name of a participant's plan, the actual or estimated amount of a participant's benefit under ERISA, the form(s) in which the benefit is payable, and whether the participant is currently receiving benefit payments under the plan or (if not) the earliest date(s) such payments could commence may be disclosed to the participant's spouse, domestic partner, former spouse, former domestic partner, child, or other dependent solely to obtain a qualified domestic relations order under 29 U.S.C. 1056(d) and 26 U.S.C. 414(p). PBGC will disclose the information only upon the receipt of a written request by a prospective alternate payee, or the alternate payee's representative, that describes the requester's relationship to the participant and states that the information will be used solely to obtain a qualified domestic relations order under state domestic relations law. PBGC will notify the participant of any information disclosed to a prospective alternate payee or their representative under this routine use.

8. Information from an initial benefit determination under 29 CFR 4003 (excluding the participant's address, telephone number, social security number, and any sensitive medical information) may be disclosed to an alternate payee, or their representative, under a qualified domestic relations order issued pursuant to 29 U.S.C. 1056(d) and 26 U.S.C. 414, *et seq.,* to explain how PBGC determined the benefit due the alternate payee so that the alternate payee can pursue an administrative appeal of the benefit determination under 29 CFR 4003, *et seq.* PBGC shall notify the participant of the information disclosed to an alternate payee or their representative under this routine use.

9. Information from an alternate payee's initial benefit determination under 29 CFR 4003.1 (excluding the alternate payee's address, telephone number, social security number, and any sensitive medical information) may be disclosed to a participant, or their representative, under a qualified domestic relations order issued pursuant to 29 U.S.C. 1056(d) and 26 U.S.C. 414(p) to explain how PBGC determined the benefit due to the alternate payee so that the participant may pursue an administrative appeal of the benefit determination under 29 CFR 4003, *et seq.* PBGC shall notify the alternate payee of the information disclosed to a participant or their representative under this routine use.

10. Information used in calculating the benefit, or share of the benefit, of a participant or alternate payee (excluding the participant's or alternate payee's address, telephone number, social security number, and any sensitive medical information) may be disclosed to a participant or an alternate payee, or their representative, when (a) a qualified domestic relations order issued pursuant to 29 U.S.C. and 26 U.S.C. affects the calculation of the benefit, or share of the benefit, of the participant or alternate payee; and (b) the information is needed to explain to the participant or alternate payee how PBGC calculated the benefit, or share of the benefit, of the participant or alternate payee. PBGC shall notify the participant or the alternate payee, or their representative, as appropriate, of the information disclosed to the participant or the alternate payee, or their representative, under this routine use.

11. The names, addresses, social security numbers, dates of birth, and the pension plan name and number of eligible PBGC pension recipients may be disclosed to the Department of the Treasury and the Department of Labor to implement the income tax credit for health insurance costs under 26 U.S.C. 35 and the program for advance payment of the tax credit under 26 U.S.C. 7527.

12. Names, addresses, social security numbers, and dates of birth of eligible PBGC pension recipients residing in a particular state may be disclosed to the state's workforce agency if the agency received a National Dislocated Worker Grant from the Department of Labor under the Workforce Innovation and Opportunity Act of 2014 to provide assistance and support services for state residents under 29 U.S.C. ch. 32.

13. Payees' names, social security numbers, and dates of birth may be provided to the Department of the Treasury's Bureau of the Fiscal Service, the Social Security Administration, the Internal Revenue Service, or a third party with whom PBGC has a contractual relationship, to verify payees' eligibility to receive payments.

14. Names and social security numbers of participants and beneficiaries may be provided to the Department of the Treasury, the Department of the Treasury's financial agent, and the Federal Reserve Bank for the purpose of learning which of PBGC's check payees have electronic debit card accounts used for the electronic deposit of federal benefit payments, for establishing electronic debit card accounts for eligible participants and beneficiaries, and for administering payments to participants and beneficiaries who have selected this method of payment.

15. Information relating to revocation of a power of attorney may be disclosed to the former agent that was named in the revoked power of attorney.

16. With the exception of third party social security numbers, all beneficiary information contained in the participant file (such as: Names, addresses, phone numbers, email addresses and dates of birth) provided by the subject of the record may be disclosed to the subject of the record, upon written request to the Disclosure Officer in accordance with the Record Access Procedure outlined below.

17. Names, social security numbers, last known addresses, dates of birth and death, amount of benefit, plan name, plan EIN/PIN number, name of plan sponsor, and the city and state of the plan sponsor of plan participants and beneficiaries may be disclosed to third parties, with whom PBGC has a contractual relationship, that provide locator services (including credit reporting agencies and debt collection firms or agencies) to locate participants and beneficiaries. Such information will be disclosed only if PBGC has no address for an individual, if mail sent to the individual at the last known address is returned as undeliverable, or if PBGC has been otherwise unsuccessful at contacting the individual. Disclosure shall be made only under a contract that subjects the firm or agency providing the service and its employees to the criminal penalties of the Privacy Act. The information so disclosed shall be used exclusively pursuant to the terms and conditions of such contract and shall be used solely for the purposes prescribed therein. The contract shall provide that the information so disclosed shall be returned or destroyed at the conclusion of the locating effort.

18. Names, social security numbers, last known addresses, dates of birth and death, employment history, and pay status of individuals covered by legal settlement agreements involving PBGC may be disclosed to entities covered by or created under those agreements.

19. A record from this system may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained manually in paper and/or electronic form (including computer databases or discs). Records may also be maintained on back-up tapes, or on a PBGC or a contractor-hosted network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by any one or more of the following: Name; social security number; customer identification number; address; date of birth; or, date of death.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and destroyed in accordance with the National Archives and Record Administration's (NARA) Basic Laws and Authorities (44 U.S.C. 3301, *et seq.*) or a PBGC records disposition schedule approved by NARA.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

PBGC has established security and privacy protocols that meet the required security and privacy standards issued by the National Institute of Standards and Technology (NIST). Records are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. PBGC has adopted appropriate administrative, technical,

and physical controls in accordance with PBGC's security program to protect the confidentiality, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Electronic records are stored on computer networks, which may include cloud-based systems, and protected by controlled access with Personal Identity Verification (PIV) cards, assigning user accounts to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

Paper and electronic records that contain federal tax information are stored under procedures that meet IRS safeguarding standards, as reflected in IRS Publication 1075. Other records that do not contain federal tax information are kept in file folders in areas of restricted access that are locked after office hours.

RECORD ACCESS PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to request access to their records in accordance with 29 CFR 4902.4 or to amend records pertaining to themselves in accordance with 29 CFR 4902.5, should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

CONTESTING RECORD PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to amend their records must submit a written request identifying the information they wish to correct in their file, in addition to following the requirements of the Record Access Procedure above.

NOTIFICATION PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

PBGC–6, Plan Participant and Beneficiary Data (last published at 81 FR 63303 (September 14, 2016)).

SYSTEM NAME AND NUMBER

PBGC–8: Employee Relations Files—PBGC

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation (PBGC), 1200 K Street NW, Washington, DC 20005 (Records may be kept at an additional location as backup for continuity of operations.)

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Department, PBGC, 1200 K Street NW, Washington, DC 20005.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; 5 U.S.C. 301; 5 U.S.C. 7101; 42 U.S.C. 2000e *et seq.*

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to catalog, investigate, and appropriately and timely respond to administrative and union grievances and appeals filed by PBGC employees or the Union on behalf of an employee pursuant to PBGC's Administrative Grievance Procedure and the Collective Bargaining Agreement.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former PBGC employees who have initiated grievances under an administrative grievance procedure or under an applicable collective bargaining agreement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Administrative and union grievances submitted by PBGC employees or the Union; agency responses to employees and Union grievances; employees' appeals of responses to grievances; agency responses to such appeals and related correspondence; investigative notes; records of proceedings; appeal decisions; last chance, last rights, and settlement agreements, and related information.

RECORD SOURCE CATEGORIES:

Subject individuals; subject individuals' supervisors, managers, representatives or colleagues; PBGC Office of the General Counsel; PBGC Human Resources Department staff; Department of Labor; Office of Personnel Management; United States Office of Special Counsel; Federal Labor Relations Authority; the Equal Employment Opportunity Commission; the Merit Systems Protection Board; and, other individuals with relevant information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 522a(b), and:

1. General Routine Uses G1 through G11, G13, and G14 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record from this system of records may be disclosed to the Office of Personnel Management, the Merit Systems Protection Board, the Federal Labor Relations Authority, Office of Special Counsel, or the Equal Employment Opportunity Commission to carry out their authorized functions (under 5 U.S.C. 1103, 1204, 7105, and 42 U.S.C. 2000e–4, in that order).

3. A record from this system may be disclosed to a union representative, Hearing Examiner or Arbitrator for the purpose of representation or in order to conduct a hearing in connection with an employee's grievance or appeal.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained manually in paper and/or electronic form (including computer databases or discs). Records may also be maintained on back-up tapes, or on a PBGC or a contractor-hosted network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by employee name or social security number.

RETENTION AND DISPOSAL:

Records are maintained and destroyed in accordance with the National Archives and Record Administration's (NARA) Basic Laws and Authorities (44 U.S.C. 3301, *et seq.*) or a PBGC records disposition schedule approved by NARA.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

PBGC has established security and privacy protocols that meet the required security and privacy standards issued by the National Institute of Standards and Technology (NIST). Records are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the confidentiality, integrity, and availability of the information, and to ensure that records are not disclosed to

or accessed by unauthorized individuals.

Electronic records are stored on computer networks, which may include cloud-based systems, and protected by controlled access with Personal Identity Verification (PIV) cards, assigning user accounts to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RECORD ACCESS PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to request access to their records in accordance with 29 CFR 4902.4, should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

CONTESTING RECORD PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to amend their records must submit a written request identifying the information they wish to correct in their file, following the requirements of Record Access Procedure above.

NOTIFICATION PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(2), records in this system are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and of 5 U.S.C. 552a, provided, however, that if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of these records, such material shall be provided to the individual, except to the extent that the disclosure of the material would reveal the identity of a source who furnished information to the Government with an express promise that the identity of the source would be held in confidence.

HISTORY:

PBGC–8, Employee Relations Files (last published at 81 FR 63305 (September 14, 2016)).

SYSTEM NAME AND NUMBER

PBGC–9: Unclaimed Pensions—PBGC.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation (PBGC), 1200 K Street NW, Washington, DC 20005 and/or PBGC Field Offices (Field Benefit Administration), and paying agent worksites. (Records may be kept at an additional location as backup for continuity of operations.)

SYSTEM MANAGER(S) AND ADDRESS:

Director—Participant Services Department, Office of Benefits Administration, PBGC, 1200 K Street NW, Washington, DC 20005.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1055, 1056(d)(3), 1302, 1321, 1322, 1322a, 1341, 1342, and 1350; 29 U.S.C. 1203; 44 U.S.C. 3101; 5 U.S.C. 301.

PURPOSE(S) OF THE SYSTEM:

This system of records is maintained to locate participants, alternate payees, and beneficiaries of defined benefit and defined contribution plan funds who may be owed benefits as the result of a terminated plan or defined contribution plan whose funds are held under the control or authority of the PBGC, and to provide information on insurance companies to individuals who may have had annuities purchased for them by a terminated plan.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants, alternate payees, and beneficiaries in defined benefit plans, and defined contribution plans covered by the Employee Retirement Income Security Act of 1974 (ERISA).

CATEGORIES OF RECORDS IN THE SYSTEM:

Names; dates of birth and death; social security numbers; addresses; email addresses; telephone numbers; names of plan sponsor; names of defined benefit and defined contribution plans; plan numbers for defined benefit and defined contribution plans; employment history; pay status; amount of benefit owed; last known address of the plan sponsor and plan sponsor EIN/PN.

RECORD SOURCE CATEGORIES:

PBGC–6; the SSA; the IRS; labor organization officials; firms or agencies providing locator services; USPS licensees; and, PBGC Field Offices (Field Benefit Administration) and any other individual that provides PBGC with information regarding a missing participant, beneficiary, or alternate payee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 522a(b), and:

1. General Routine Uses G1, G4 through G7, G9 through G11, G13 and G14 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. Names and social security numbers of plan participants, beneficiaries, and alternate payees may be disclosed to the Internal Revenue Service (IRS) to obtain current addresses from tax return information and to the Social Security Administration (SSA) to obtain current addresses. Such information will be disclosed only if PBGC has no address for an individual or if mail sent to the individual at the last known address is returned as undeliverable.

3. Names and last known addresses may be disclosed to an official of a labor organization recognized as the collective bargaining representative of participants for posting in union halls or for other means of publication to obtain current addresses of participants and beneficiaries. Such information will be disclosed only if PBGC has no address for an individual or if mail sent to the individual at the last known address is returned as undeliverable.

4. Names, social security numbers, last known addresses, dates of birth and death, amount of benefit, retirement plan name, plan EIN/PN number, name of plan sponsor, and the city and state of the plan sponsor may be disclosed to private firms and agencies that provide locator services, including credit reporting agencies and debt collection firms or agencies, to locate participants, beneficiaries, and alternate payees. Such information will be disclosed only if PBGC has no address for an individual, if mail sent to the individual at the last known address is returned as undeliverable or if PBGC has been otherwise unsuccessful at contacting the individual. Disclosure shall be made only under a contract that subjects the firm or agency providing the service and its employees and contractors to the criminal penalties of the Privacy Act. The information so disclosed shall be used exclusively pursuant to the terms and conditions of such contract and

shall be used solely for the purposes prescribed therein. The contract shall provide that the information so disclosed shall be returned or destroyed at the conclusion of the locating effort.

5. Names and addresses may be disclosed to licensees of the United States Postal Service (USPS) to obtain current addresses under the USPS's National Change of Address Linkage System (NCOA). Disclosure shall be made only under a contract that binds the licensee of the Postal Service and its employees to the criminal penalties of the Privacy Act. The contract shall provide that the records disclosed by PBGC shall be used exclusively for updating addresses under NCOA and must be returned to PBGC or destroyed when the process is completed. The records will be exchanged electronically in an encrypted format.

6. Names and last known addresses may be disclosed to other participants in, and beneficiaries under, a retirement plan to obtain the current addresses of individuals. Such information will be disclosed only if PBGC has no address for an individual or if mail sent to the individual at the last known address is returned as undeliverable.

7. Names of participants and beneficiaries, names and addresses of participants' former employers, and the plan name may be disclosed to the public to obtain the current addresses for participants, beneficiaries, and alternate payees. Such information will be disclosed to the public when PBGC is unable to make benefit payments to those participants, beneficiaries, and alternate payees because the address on file is unable to be confirmed as current or correct.

8. Names, social security numbers, last known addresses, dates of birth and death, employment history, and pay status of individuals covered by legal settlement agreements involving PBGC may be disclosed to entities covered by or created under those agreements.

9. Names, social security numbers, last known addresses, dates of birth, and benefit amounts owed may be disclosed to other government agencies under a Memorandum of Understanding or an Interagency Agreement in order to locate missing participants.

10. Names, social security numbers, dates of birth and death, name of plan sponsors, plan sponsor EIN/PN may be periodically disclosed to insurance companies where annuities have been purchased by a terminated plan.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained manually in paper and/or electronic form (including computer databases or discs). Records may also be maintained on back-up tapes, or on a PBGC or a contractor-hosted network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by employee name, social security number and/or date of birth.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and destroyed in accordance with the National Archives and Record Administration's (NARA) Basic Laws and Authorities (44 U.S.C. 3301, *et seq.*) or a PBGC records disposition schedule approved by NARA.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

PBGC has established security and privacy protocols that meet the required security and privacy standards issued by the National Institute of Standards and Technology (NIST). Records are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the confidentiality, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Electronic records are stored on computer networks, which may include cloud-based systems, and protected by controlled access with Personal Identity Verification (PIV) cards, assigning user accounts to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RECORD ACCESS PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to request access to their records in accordance with 29 CFR 4902.4, should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

CONTESTING RECORD PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to amend their records must submit a written request identifying the information they wish to correct in their file, in addition to following the requirements of the Record Access Procedure above.

NOTIFICATION PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

PBGC–9, Unclaimed Pensions (amended to Unclaimed Retirement Funds) (last published at 81 FR 63306 (September 14, 2016)).

SYSTEM NAME AND NUMBER

PBGC–10: Administrative Appeals Files—PBGC.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation (PBGC), 1200 K Street NW, Washington, DC 20005. (Records may be kept at an additional location as backup for continuity of operations.)

SYSTEM MANAGER(S) AND ADDRESS:

Manager of the Appeals Division, Office of the General Counsel, PBGC, 1200 K Street NW, Washington, DC 20005.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; 5 U.S.C. 301; 29 U.S.C. ch. 18; 29 CFR 4003.1; 29 CFR 4003.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to catalog, review, and respond to administrative appeals by plan participants, beneficiaries and employers of PBGC determinations (such as plan, benefit, qualified domestic relations order, payment, and liability determinations).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who file administrative appeals with PBGC' s Appeals Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal information (such as names, addresses, social security numbers, gender, dates of birth, dates of hire and termination, salary, marital status,

marriage certificates, birth certificates, domestic relations orders, medical records); employment and pension plan information (such as the name of the pension plan, plan number, dates of commencement of plan participation or employment, statements regarding employment, dates of termination of plan participation or retirement, benefit payment data, benefit election forms and data on beneficiaries, pay status, calculations of benefit amounts, calculations of amounts subject to recoupment and/or recovery, and worker's compensation awards); Social Security Administration (SSA) information; insurance claims and awards; correspondence; and, other information relating to appeals and initial and final PBGC determinations.

RECORD SOURCE CATEGORIES:

Subject individuals; participants, beneficiaries, or alternate payees; plan administrators, plan actuaries, paying agents, purchased annuity providers, contributing sponsors (or other employer who maintained the plan, which may include any predecessor, successor, or member of the same control group); the labor organization recognized as the collective bargaining representative of a participant; SSA; and, any third party affected by the decision.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 522a(b), and:

1. General Routine Uses G1 and G4 through G14 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record from this system may be disclosed to third parties who may be aggrieved by the decision of the Appeals Board under 29 CFR 4003.57.

3. A record from this system may be disclosed, upon request, to an attorney representative or a non-attorney representative who has a power of attorney for the subject individuals, under 29 CFR 4003.6.

4. A record from this system may be disclosed to third parties, such as banks, insurance companies, and trustees, to effectuate benefit payments to plan participants, beneficiaries, and/or alternate payees.

5. A record from this system may be disclosed to third parties, such as contractors and expert witnesses, to obtain expert analysis of an issue necessary to resolve an appeal.

6. A record from this system, specifically, the name and social security number of a participant, may be disclosed to an official of a labor organization recognized as the collective bargaining representative of the participant to obtain information relevant to the resolution of an appeal.

7. A record from this system may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained manually in paper and/or electronic form (including computer databases or discs). Records may also be maintained on back-up tapes, or on a PBGC or a contractor-hosted network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by any one or more of the following: participant, beneficiary, and/or alternate payee's name, social security number, or PBGC customer identification number; plan name; appeal number; or extension request number.

Electronic records are stored on computer networks, which may include cloud-based systems, and protected by controlled access with Personal Identity Verification (PIV) cards, assigning user accounts to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and destroyed in accordance with the National Archives and Record Administration's (NARA) Basic Laws and Authorities (44 U.S.C. 3301, *et seq.*) or a PBGC records disposition schedule approved by NARA.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

PBGC has established security and privacy protocols that meet the required security and privacy standards issued by the National Institute of Standards and Technology (NIST). Records are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the confidentiality, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

RECORD ACCESS PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to request access to their records in accordance with 29 CFR 4902.4, should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

CONTESTING RECORD PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to amend their records must submit a written request identifying the information they wish to correct in their file, in addition to following the requirements of the Record Access Procedure above.

NOTIFICATION PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

PBGC–10, Administrative Appeals File (last published at 81 FR 63307 (September 14, 2016)).

SYSTEM NAME AND NUMBER

PBGC–11: Call Detail Records—PBGC.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation (PBGC), 1200 K Street NW, Washington, DC 20005. (Records may be kept at an additional location as backup for continuity of operations.)

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of Information Technology, PBGC, 1200 K Street NW, Washington, DC 20005.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; 5 U.S.C. 301.

PURPOSE(S) OF THE SYSTEM:

This system of records is used for Office of the Inspector General investigations and other special investigation requests.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

PBGC employees, contractors, students and interns.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the use of PBGC telephones and PBGC-issued portable electronic devices to place calls outside of PBGC and receive calls from outside of PBGC, and records indicating the assignment of telephone extension numbers and PBGC-issued portable electronic devices to PBGC employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 522a(b), and:

1. General Routine Uses G1, G3, G4, G5, and G7 through G14 apply to this system of records (see Prefatory Statement of General Routine Uses).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained manually in paper and/or electronic form (including computer databases or discs). Records may also be maintained on back-up tapes, or on a PBGC or a contractor-hosted network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by any one or more of the following: name of employee or contractor; telephone extension number; PBGC-issued portable electronic device number; or telephone number called.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and destroyed in accordance with the National Archives and Record Administration's (NARA) Basic Laws and Authorities (44 U.S.C. 3301, *et seq.*) or a PBGC records disposition schedule approved by NARA.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

PBGC has established security and privacy protocols that meet the required security and privacy standards issued by the National Institute of Standards and Technology (NIST). Records are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the confidentiality, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Electronic records are stored on computer networks, which may include cloud-based systems, and protected by controlled access with Personal Identity Verification (PIV) cards, assigning user accounts to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RECORD ACCESS PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to request access to their records in accordance with 29 CFR 4902.4, should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

CONTESTING RECORD PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to amend their records must submit a written request identifying the information they wish to correct in their file, in addition to following the requirements of the Record Access Procedure above.

NOTIFICATION PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

RECORD SOURCE CATEGORIES:

Telephone and PBGC-issued portable electronic device assignment records.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

PBGC–11, Call Detail Records (last published at 81 FR 63308 (September 14, 2016)).

SYSTEM NAME AND NUMBER

PBGC–12: Personnel Security Investigation Records—PBGC.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation (PBGC), 1200 K Street NW, Washington, DC 20005 (Records may be kept at an additional location as backup for continuity of operations.)

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Department, PBGC, 1200 K Street NW, Washington, DC 20005.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 5 U.S.C. 3301; 44 U.S.C. 3101; Executive Order 10450; Executive Order 10577; Executive Order 12968; Executive Order 13467; Executive Order 13488; 5 CFR 5.2; 5 CFR 731, 732 and 736; 5 CFR 1400; OMB Circular No. A–130 Revised, Appendix III, 61 FR 6428; Federal Information Processing Standard 201; Homeland Security Presidential Directive 12.

PURPOSE(S) OF THE SYSTEM:

The records in this system of records are used to document and support decisions as to the suitability, eligibility, and fitness for service of applicants for federal employment and contract positions, and may include students, interns, or vendors to the extent their duties require access to federal facilities, information, information systems, or applications.

The records may also be used to help streamline and make the background suitability investigations and adjudications processes more efficient.

The records additionally may be used to document security violations and supervisory actions taken in response to such violations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former applicants, employees, students, interns, government contractors, experts, instructors, vendors, and consultants to federal programs who undergo a personnel background investigation to determining suitability for employment, contractor employee fitness, credentialing for Homeland Security Presidential Directive 12, and/or access to PBGG facilities or information technology system. Individuals who have corresponded with PBGC regarding personnel security investigations. This system also includes individuals accused of or found in violation of PBGC's security rules and regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; former names; date and place of birth; home address; email address; phone numbers; employment history; residential history; education and

degrees citizenship; passport information; name, date and place of birth, social security number, and citizenship information for spouse or cohabitant; the name and marriage information for current and former spouse(s) or domestic partner, names of associates and references and their contact information; names, dates and places of birth, citizenship, and addresses of relatives; names of relatives who work for the federal government; information on foreign contacts and activities; association records; information on loyalty to the United States; criminal history; mental health history; drug use; financial information; photographs; personal identity verification (PIV) card information; information from the Internal Revenue Service (IRS) pertaining to income tax returns; credit reports; information pertaining to security clearances; other agency reports furnished to PBGC in connection with the background investigation process; summaries of personal and third party interviews conducted during the background investigation; results of suitability decisions; and additional records developed from above.

Records pertaining to security violations may contain information pertaining to circumstances of the violation; witness statements; investigator's notes; and documentation of agency action taken in response to security violations.

RECORD SOURCE CATEGORIES:

Applications and other personnel and security forms, including, but not limited to, SF–85, SF–85P, SF–86, SF–87; information from personal interviews with the applicant and various individuals, such as former employers, references, neighbors, and other associates who may have information about the subject of the investigation; investigative records and notices of personnel actions furnished by other federal agencies; public records such as court filings; publications such as newspapers, magazines, and periodicals; tax records; educational institutions; police departments; credit bureaus; probation officials; prison officials; and, medical professionals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 522a(b), and:

1. General Routine Uses G1 through G14 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record, from which information is requested during an investigation from this system, may be disclosed to an authorized source (*i.e.,* someone who has the legal authority to request such information, such as an investigator from the Office of Personnel Management National Background Investigations Bureau (NBIB), or the Office of the Inspector General) to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, or identify the type of information requested.

3. A record from this system of records may be disclosed to the Office of Personnel Management, the Merit Systems Protection Board, the Federal Labor Relations Authority, or the Equal Employment Opportunity Commission to carry out its respective authorized functions (under 5 U.S.C. 1204, and 7105, and 42 U.S.C. 2000e–4).

4. To designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, having a need to evaluate qualifications, suitability, and loyalty to the United States Government and/or a security clearance or access determination.

5. To designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, when such agency, office, or establishment investigates an individual for purposes of granting a security clearance, or for the purpose of making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas.

6. To designated officers and employees of agencies, offices, and other establishments in the executive, judicial, or legislative branches of the Federal Government, having the responsibility to grant clearances to make a determination regarding access to classified information or restricted areas, or to evaluate qualifications, suitability, or loyalty to the United States Government, in connection with performance of a service to the Federal Government under a contract or other agreement.

7. To U.S. intelligence agencies for use in intelligence activities.

8. To the appropriate federal, state, tribal, local, or other public authority responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where OPM becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

9. To an agency, office, or other establishment in the executive, legislative, or judicial branches of the Federal Government, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

10. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. However, to the extent these records may reveal the identity of an individual who has provided information pertaining to the investigation, the investigative file, or the parts thereof, are exempt from release. Further, requests for OPM records contained in this system will be referred to OPM.

11. To disclose information to contractors, experts, consultants, or students performing or working on a contract, service, or job for the PBGC.

12. To disclose results of investigations or individuals records to agencies, such as the Department of Labor, providing adjudicative support services to PBGC.

13. To provide criminal history record information to the FBI, to help ensure the accuracy and completeness of FBI and PBGC records.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained manually in paper and/or electronic form (including computer databases or discs). Records may also be maintained on back-up tapes, or on a PBGC or a contractor-hosted network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by any one or more of the following: name; social security number; unique case serial number; or other unique identifier.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and destroyed in accordance with the National Archives and Record Administration's (NARA) Basic Laws and Authorities (44 U.S.C. 3301, *et seq.*) or a PBGC records

disposition schedule approved by NARA.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

PBGC has established security and privacy protocols that meet the required security and privacy standards issued by the National Institute of Standards and Technology (NIST). Records are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the confidentiality, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Electronic records are stored on computer networks, which may include cloud-based systems, and protected by controlled access with Personal Identity Verification (PIV) cards, assigning user accounts to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RECORD ACCESS PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to request access to their records in accordance with 29 CFR 4902.4, should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

CONTESTING RECORD PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to amend their records must submit a written request identifying the information they wish to correct in their file, in addition to following the requirements of the Record Access Procedure above.

NOTIFICATION PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(2), records in this system are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), (I), and (f) of 5 U.S.C. 552a, provided, however, that if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of these records, such material shall be provided to the individual, except to the extent that the disclosure of the material would reveal the identity of a source who furnished information to the Government with an express promise that the identity of the source would be held in confidence.

HISTORY:

PBGC–12, Personnel Security Investigation Records (last published at 81 FR 63309 (September 14, 2016)).

SYSTEM NAME AND NUMBER

PBGC–13: Debt Collection—PBGC.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation (PBGC), 1200 K Street NW, Washington, DC 20005 and/or PBGC Field Offices (Field Benefit Administration), plan administrator, and paying agents worksites. (Records may be kept at an additional location as backup for continuity of operations.)

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Operations Department, PBGC, 1200 K Street NW, Washington, DC 20005.

Chief of Benefits Administration, Office of Benefits Administration, PBGC, 1200 K Street NW, Washington, DC 20005.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 31 U.S.C. 3711(a); 44 U.S.C. 3101; 5 U.S.C. 301; Executive Order 13019.

PURPOSE(S) OF THE SYSTEM:

This system of records is maintained for the purpose of collecting debts owed to PBGC by various individuals, including, but not limited to, pension plans and/or sponsors owing insurance premiums, interest and penalties; PBGC employees and former employees; consultants and vendors; participants, alternate payees, and beneficiaries in retirement plans coming under the control or authority of the PBGC; and individuals who received payments from PBGC to which they are not entitled. This system facilitates PBGC's compliance with the Debt Collection Improvement Act of 1996.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who may owe a debt to PBGC, including but not limited to: pension plans and/or sponsors owing insurance premiums, interest, and penalties; employees and former employees of PBGC; individuals who are consultants and vendors to PBGC; participants, alternate payees, and beneficiaries in terminating and terminated defined benefit or defined contribution plans coming under the control or authority of the PBGC; and any individual who received payments to which they are not entitled.

CATEGORIES OF RECORDS IN THE SYSTEM:

Plan filings; names; addresses; social security numbers; taxpayer identification numbers; employee numbers; pay records; travel vouchers and related documents filed by PBGC employees; invoices filed by consultants and vendors to PBGC; records of benefit payments made to participants, alternate payees, and beneficiaries in plans covered by ERISA; and other relevant records relating to a debt including financial information, bank account numbers, the amount, status, and history of the debt, and the program under which the debt arose.

RECORD SOURCE CATEGORIES:

Subject individuals; plan administrators; labor organization officials; debt collection agencies or firms; firms or agencies providing locator services; PBGC Field Offices (Field Benefit Administration); and, other federal agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 522a(b), and:

1. General Routine Uses G1 through G14 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record from this system of records may be disclosed to the United States Department of the Treasury for cross-servicing to effect debt collection in accordance with 31 U.S.C. 3711(e).

3. Names, addresses, and telephone numbers of employees, participants, beneficiaries, alternate payees and any other individual owing a debt to PBGC, and information pertaining to debts owed by such individuals to PBGC may be disclosed to a debt collection agency to collect a claim. Disclosure to a debt

collection agency or firm shall be made only under a contract that binds any such contractor or employee of such contractor to the criminal penalties of the Privacy Act. The information so disclosed shall be used exclusively pursuant to the terms and conditions of such contract and shall be used solely for the purposes prescribed therein. The contract shall provide that the information so disclosed shall be returned at the conclusion of the debt collection effort.

4. These records may be used to disclose information to any federal agency, state or local agency, tribal governments, U.S. territory or commonwealth, or the District of Columbia, or their agents or contractors, including private collection agencies (consumer and commercial):

a. To facilitate the collection of debts through the use of any combination of various debt collection methods required or authorized by law, including, but not limited to:

i. Request for repayment by telephone or in writing;

ii. Negotiation of voluntary repayment or compromise agreements;

iii. Offset of federal payments, which may include the disclosure of information contained in the records for the purpose of providing the debtor with appropriate pre-offset notice and to otherwise comply with offset prerequisites, to facilitate voluntary repayment in lieu of offset, and to otherwise effectuate the offset process;

iv. Referral of debts to private collection agencies, to Treasury designated debt collection centers, or for litigation;

v. Administrative and court-ordered wage garnishment;

vi. Debt sales;

vii. Publication of names and identities of delinquent debtors in the media or other appropriate news or websites; and

viii. Any other debt collection method authorized by law;

b. To collect a debt owed to the United States through the offset of payments made by states, territories, commonwealths, tribal governments, or the District of Columbia;

c. To account or report on the status of debts for which such entity has a financial or other legitimate need for the information in the performance of official duties; or,

d. For any other appropriate debt collection purpose.

5. A record from this system may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained manually in paper and/or electronic form (including computer databases or discs). Records may also be maintained on back-up tapes, or on a PBGC or a contractor-hosted network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by any one or more of the following: employer identification number; social security number; customer identification number; plan number; recovery tracking number; name of debtor, plan, plan sponsor, plan administrator, participant, alternate payee, or beneficiary.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and destroyed in accordance with the National Archives and Record Administration's (NARA) Basic Laws and Authorities (44 U.S.C. 3301, *et seq.*) or a PBGC records disposition schedule approved by NARA.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

PBGC has established security and privacy protocols that meet the required security and privacy standards issued by the National Institute of Standards and Technology (NIST). Records are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the confidentiality, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Electronic records are stored on computer networks, which may include cloud-based systems, and protected by controlled access with Personal Identity Verification (PIV) cards, assigning user accounts to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RECORD ACCESS PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to request access to their records in accordance with 29 CFR 4902.4, should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

CONTESTING RECORD PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to amend their records must submit a written request identifying the information they wish to correct in their file, in addition to following the requirements of the Record Access Procedure above.

NOTIFICATION PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None

HISTORY:

PBGC–13, Debt Collection (last published at 81 FR 63311 (September 14, 2016)).

SYSTEM NAME

PBGC–14: My Plan Administration Account Records—PBGC.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation (PBGC), 1200 K Street NW, Washington, DC 20005. (Records may be kept at an additional location as backup for continuity of operations.)

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Operations Department, PBGC, 1200 K Street NW, Washington, DC 20005.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302, 1306, and 1343; 44 U.S.C. 3101; 5 U.S.C. 301;44 U.S.C. 3601, *et seq.*

PURPOSE(S) OF THE SYSTEM:

This system of records is maintained for use in verifying the identity of individuals who register to use the My PAA application to make PBGC filings, and receiving, authenticating, processing, and keeping a history of filings and premium payments submitted to PBGC by registered users. Information from this system is used to provide the public with contact information for plan sponsors, plan

administrators, pension practitioners, actuaries and pension benefit professionals who submit plan information through My PAA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who use the My Plan Administration Account (My PAA) application to make PBGC filings and payments electronically via PBGC's website (*www.pbgc.gov*), including individuals acting for plan sponsors, plan administrators, pension practitioners, actuaries, pension benefit professionals.

CATEGORIES OF RECORDS IN THE SYSTEM:

User name; work telephone number; work email address; other contact information; a temporary PBGC-issued user ID and password; a user-selected user ID and password; a secret question/secret answer combination for authentication; IP addresses; cookies (session and persistent); financial information; taxpayer identification number; bank information; for each pension plan for which the user intends to participate in making filings with PBGC: the plan name; employer identification number; plan number; the plan administrator's name, address, phone number, email address, and other contact information; and the role that the user will play in the filing process, *e.g.,* creating and editing filings, signing filings electronically as the plan administrator, signing filings electronically as the enrolled actuary, or authorizing payments to PBGC.

RECORD SOURCE CATEGORIES:

Registered users.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 522a(b), and:

1. General Routine Uses G1, G4 through G7, G9, G10, and G12 through G14 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. Names, addresses and phone numbers of plan sponsors, plan administrators, pension practitioners, actuaries and pension benefit professionals who submit plan information to My PAA may be disclosed to the public in order to ensure the public has access to contact information for those individuals submitting information regarding pension plans and those responsible for the administration of pension plans covered by the Employee Retirement Income Security Act of 1974 (ERISA).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained manually in paper and/or electronic form (including computer databases or discs). Records may also be maintained on back-up tapes, or on a PBGC or a contractor-hosted network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by any one or more of the following: Name; user ID; email address; telephone number; plan name; EIN; or plan number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and destroyed in accordance with the National Archives and Record Administration's (NARA) Basic Laws and Authorities (44 U.S.C. 3301, *et seq.*) or a PBGC records disposition schedule approved by NARA.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

PBGC has established security and privacy protocols that meet the required security and privacy standards issued by the National Institute of Standards and Technology (NIST). Records are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the confidentiality, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Electronic records are stored on computer networks, which may include cloud-based systems, and protected by controlled access with Personal Identity Verification (PIV) cards, assigning user accounts to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RECORD ACCESS PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to request access to their records in accordance with 29 CFR 4902.4, should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

CONTESTING RECORD PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to amend their records must submit a written request identifying the information they wish to correct in their file, in addition to following the requirements of the Record Access Procedure above.

NOTIFICATION PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None

HISTORY:

PBGC–14, My Plan Administration Account Records (last published at 81 FR 63312 (September 14, 2016)).

SYSTEM NAME AND NUMBER

PBGC–15: Emergency Notification Records—PBGC.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation (PBGC), 1200 K Street NW, Washington, DC 20005. (Records may be kept at an additional location as backup for continuity of operations.)

SYSTEM MANAGER(S) AND ADDRESS:

Director, Workplace Solutions Department, PBGC, 1200 K Street NW, Washington, DC 20005.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; 5 U.S.C. 301; Executive Order 12656.

PURPOSE(S) OF THE SYSTEM:

This system of records is maintained for notifying PBGC employees, students, interns, and contractors of PBGC's operating status in the event of an emergency, natural disaster or other event affecting PBGC operations; and for contacting employees, students, interns, and contractors who are out of the office on leave or after regular duty hours to obtain information necessary for official business.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

PBGC employees, students, interns, and individuals who work for PBGC as

contractors or as employees of contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; title; organizational component; employer; PBGC and personal telephone numbers; PBGC and personal email addresses; other contact information; user ID; a temporary PBGC-issued password; and a user-selected password.

RECORD SOURCE CATEGORIES:

Subject individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 522a(b), and:

1. General Routine Uses G1, G4, G5, G7, G9 through G11, G13, and G14 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record in this system of records may be disclosed to family members, emergency medical personnel, or to law enforcement officials in case of a medical or other emergency involving the subject individual (without the subsequent notification prescribed in 5 U.S.C. 552a(b)(8)).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained manually in paper and/or electronic form (including computer databases or discs). Records may also be maintained on back-up tapes, or on a PBGC or a contractor-hosted network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by any one or more of the following: Name; organizational component; or user ID and password.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and destroyed in accordance with the National Archives and Record Administration's (NARA) Basic Laws and Authorities (44 U.S.C. 3301, *et seq.*) or a PBGC records disposition schedule approved by NARA.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

PBGC has established security and privacy protocols that meet the required security and privacy standards issued by the National Institute of Standards and Technology (NIST). Records are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the confidentiality, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Electronic records are stored on computer networks, which may include cloud-based systems, and protected by controlled access with Personal Identity Verification (PIV) cards, assigning user accounts to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RECORD ACCESS PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to request access to their records in accordance with 29 CFR 4902.4, should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

CONTESTING RECORD PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to amend their records must submit a written request identifying the information they wish to correct in their file, in addition to following the requirements of the Record Access Procedure above.

NOTIFICATION PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

PBGC–15, Emergency Notification Records (last published at 81 FR 63313 (September 14, 2016)).

SYSTEM NAME AND NUMBER

PBGC–16: PBGC Connect Search Center—PBGC.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation (PBGC), 1200 K Street NW, Washington, DC 20005. (Records may be kept at an additional location as backup for continuity of operations.)

SYSTEM MANAGER(S) AND ADDRESS:

Division Manager, Information Technology Customer and Operations Service Division, PBGC, 1200 K Street NW, Washington, DC 20005.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; 5 U.S.C. 301.

PURPOSE(S) OF THE SYSTEM:

This system of records is used by PBGC employees, interns and contractors to identify other PBGC employees, interns and contractors; and, to access contact information for PBGC employees, interns and contractors.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

PBGC employees and contractors with PBGC network access.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; photograph; personal description; skills; interests; schools; birthday; mobile phone number; home phone number; organizational component and title; supervisor's name; PBGC street address; room or workstation number; PBGC network ID; work email address; and work telephone number and extension.

RECORD SOURCE CATEGORIES:

Subject individuals and PBGC personnel records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 522a(b), and:

1. General Routine Uses G1 through G14 apply to this system of records (see Prefatory Statement of General Routine Uses).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained manually in paper and/or electronic form (including computer databases or discs). Records may also be maintained on back-up tapes, or on a PBGC or a contractor-hosted network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by any one or more of the following: name; username; organizational component; job title;

work phone number; office number; supervisor; work email; skills; interests; birth date; education; peers; and employee type (federal or contractor).

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and destroyed in accordance with the National Archives and Record Administration's (NARA) Basic Laws and Authorities (44 U.S.C. 3301, *et seq.*) or a PBGC records disposition schedule approved by NARA.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

PBGC has established security and privacy protocols that meet the required security and privacy standards issued by the National Institute of Standards and Technology (NIST). Records are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the confidentiality, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Electronic records are stored on computer networks, which may include cloud-based systems, and protected by controlled access with Personal Identity Verification (PIV) cards, assigning user accounts to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RECORD ACCESS ROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to request access to their records in accordance with 29 CFR 4902.4, should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

CONTESTING RECORD PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to amend their records must submit a written request identifying the information they wish to correct in their file, in addition to following the requirements of the Record Access Procedure above.

NOTIFICATION PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

PBGC–16, Employee Online Directory (last published at 81 FR 63314 (September 14, 2016)).

SYSTEM NAME AND NUMBER

PBGC–17: Office of Inspector General Investigative File System—PBGC.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Inspector General, Pension Benefit Guaranty Corporation (PBGC), 1200 K Street NW, Washington, DC 20005. (Records may be kept at an additional location as backup for continuity of operations.)

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Inspector General, PBGC, 1200 K Street NW, Washington, DC 20005.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. 3.

PURPOSE(S) OF THE SYSTEM:

This system of records is used to supervise and conduct investigations relating to programs and operations of PBGC by the Inspector General.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals named in investigations conducted by the Office of Inspector General (OIG); complainants and subjects of complaints collected through the operation of the OIG Hotline; other individuals, including witnesses, sources, and members of the general public who are named individuals in connection with investigations conducted by OIG.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information within this system relates to OIG investigations carried out under applicable statutes, regulations, policies, and procedures. The investigations may relate to criminal, civil, or administrative matters. These OIG files may contain investigative reports; transcripts; internal staff memoranda; working drafts of papers to PBGC employees; investigative plans; litigation strategies; copies of personnel, financial, contractual, and property management records maintained by PBGC; information submitted by or about pension plan sponsors or plan participants; background data including arrest records, statements of informants and witnesses, and laboratory reports of evidence analysis; information and documentation received from other government agencies; search warrants, summonses and subpoenas; and other information related to investigations. Personal data in the system may consist of names, social security numbers, addresses, dates of birth and death, fingerprints, handwriting samples, reports of confidential informants, physical identifying data, voiceprints, polygraph tests, photographs, and individual personnel and payroll information.

RECORD SOURCE CATEGORIES:

Subject individuals; individual complainants; witnesses; interviews conducted during investigations; federal, state, tribal, and local government records; individual or company records; claim and payment files; employer medical records; insurance records; court records; articles from publications; financial data; bank information; telephone data; service providers; other law enforcement organizations; grantees and sub-grantees; contractors and subcontractors; pension plan sponsors and participants; and other sources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b) and:

1. General Routine Uses G1, G2, G4, G5, G7, and G9 through G14 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record relating to a person held in custody pending or during arraignment, trial, sentence, or extradition proceedings or after conviction may be disclosed to a federal, state, local, tribal or foreign prison; probation, parole, or pardon authority; or any other agency or individual involved with the maintenance, transportation, or release of such a person.

3. A record relating to a case or matter may be disclosed to an actual or potential party or his or her attorney for

the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings.

4. A record may be disclosed to any source, either private or governmental, when reasonably necessary to elicit information or obtain the cooperation of a witness or informant when conducting any official investigation or during a trial or hearing or when preparing for a trial or hearing.

5. A record relating to a case or matter may be disclosed to a foreign country, through the United States Department of State or directly to the representative of such country, under an international treaty, convention, or executive agreement; or to the extent necessary to assist such country in apprehending or returning a fugitive to a jurisdiction that seeks that individual's return.

6. A record originating exclusively within this system of records may be disclosed to other federal offices of inspectors general and councils comprising officials from other federal offices of inspectors general, as required by the Inspector General Act of 1978, as amended. The purpose is to ensure that OIG investigative operations can be subject to integrity and efficiency peer reviews, and to permit other offices of inspectors general to investigate and report on allegations of misconduct by senior OIG officials as directed by a council, the President, or Congress. Records originating from any other PBGC systems of records, which may be duplicated in or incorporated into this system, also may be disclosed with all identifiable information redacted.

7. A record may be disclosed to the Department of the Treasury and the Department of Justice when the OIG seeks an ex parte court order to obtain taxpayer information from the Internal Revenue Service.

8. A record may be disclosed to any governmental, professional or licensing authority when such record reflects on qualifications, either moral, educational or vocational, of an individual seeking to be licensed or to maintain a license.

9. A record may be disclosed to any direct or indirect recipient of federal funds, *e.g.,* a contractor, where such record reflects problems with the personnel working for a recipient, and disclosure of the record is made to permit a recipient to take corrective action beneficial to the Government.

10. A record may be disclosed where there is an indication of a violation or a potential violation of law, rule, regulation or order whether civil, criminal, administrative or regulatory in nature, to the appropriate agency, whether federal, state, tribal or local, or to a securities self-regulatory organization, charged with enforcing or implementing the statute, or rule, regulation or order.

11. A record may be disclosed to federal, state, tribal or local authorities in order to obtain information or records relevant to an Office of Inspector General investigation or inquiry.

12. A record may be disclosed to a bar association, state accountancy board, or other federal, state, tribal, local, or foreign licensing or oversight authority; or professional association or self-regulatory authority to the extent that it performs similar functions (including the Public Company Accounting Oversight Board) for investigations or possible disciplinary action.

13. A record may be disclosed to inform complainants, victims, and witnesses of the results of an investigation or inquiry.

14. To the Department of Justice for the purpose of obtaining advice on investigatory matters or in order to refer information for the purpose of prosecution.

15. To contractors, interns and experts who have been engaged to assist in an OIG investigation or in the performance of a service related to this system of records and require access to these records for the purpose of assisting the OIG in the efficient administration of its duties. All recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended.

16. To the public when the matter under investigation has become public knowledge, or when the Inspector General determines that such disclosure is necessary to preserve confidence in the integrity of the OIG investigative process, to demonstrate the accountability of PBGC employees, or other individuals covered by this system, or when there exists a legitimate public interest, unless the Inspector General has determined that disclosure of specific information would constitute an unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained manually in paper and/or electronic form (including computer databases or discs). Records may also be maintained on back-up tapes, or on a PBGC or a contractor-hosted network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by any one or more of the following: name; social security number; subject category; or assigned case number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and destroyed in accordance with the National Archives and Record Administration's (NARA) Basic Laws and Authorities (44 U.S.C. 3301, *et seq.*) or a PBGC records disposition schedule approved by NARA.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

PBGC has established security and privacy protocols that meet the required security and privacy standards issued by the National Institute of Standards and Technology (NIST). Records are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the confidentiality, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Electronic records are stored on computer networks, which may include cloud-based systems, and protected by controlled access with Personal Identity Verification (PIV) cards, assigning user accounts to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RECORD ACCESS PROCEDURES:

This system is exempt from the notification and record access requirements. However, consideration will be given to requests made in compliance with 29 CFR 4902.3 and 4902.4.

CONTESTING RECORD PROCEDURES:

This system is exempt from amendment requirements. However, consideration will be given requests made in compliance with 29 CFR 4902.3 and 4902.5.

NOTIFICATION PROCEDURES:

This system is exempt from the notification requirements. However, consideration will be given to inquiries made in compliance with 29 CFR 4902.3.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(j) and (k), PBGC has established regulations at 29 CFR 4902.11 that exempt records in this system depending on their purpose.

HISTORY:

PBGC–17, Inspector General Investigative File System (last published at 81 FR 63315 (September 14, 2016)).

SYSTEM NAME AND NUMBER

PBGC–19: Office of General Counsel Case Management System — PBGC

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation (PBGC), 1200 and 1275 K Street NW, Washington, DC 20005. (Records may be kept at an additional location as backup for continuity of operations.)

SYSTEM MANAGER(S) AND ADDRESS:

Office of the General Counsel, PBGC, 1200 K Street NW, Washington, DC 20005.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1055, 1056(d)(3), 1302, 1303, 1310, 1321, 1322a, 1341, 1342, 1343 and 1350; 5 U.S.C. app. 105; 5 U.S.C. 301, 552(a), 552a(d), 7101; 42 U.S.C. 2000e, *et seq.*; 44 U.S.C. 3101.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of records is to catalog, litigate, review or otherwise resolve any case or matter handled by the OGC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are participants, beneficiaries, and alternate payees in pension plans covered by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1301, *et seq.*; pension plan sponsors, administrators, control group members and third parties, who are responsible for, manage, or have control over ERISA pension plans; other individuals who are identified in connection with investigations conducted pursuant to 29 U.S.C. 1303 or litigation conducted with regard to ERISA pension plans; individuals (including PBGC employees) who are parties or witnesses in civil litigation or administrative proceedings involving or concerning PBGC or its officers or employees; individuals who are the subject of a breach of personally identifiable information; individuals who are potential contractors or contractors with PBGC or are otherwise personally associated with a contract or procurement matter; individuals who receive legal advice from the Office of General Counsel (OGC); and other individuals (including current, former, and potential PBGC employees, contract employees, interns, and externs) who are the subject of or are otherwise connected to an inquiry, investigation, other matter handled by the OGC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Draft and final versions of notes, reports, memoranda; settlements; legal opinions; agreements; correspondence; contracts; contract proposals and other procurement documents; plan documents; participant, alternate payee, and beneficiary files; initial and final PBGC determinations of ERISA matters; Freedom of Information Act (FOIA) and the Privacy Act of 1974 disclosures, determinations, appeals and decisions of those appeals; records and information obtained from other federal, state, tribal, and local agencies and departments, including, but not limited to: Office of Personnel Management, Social Security Administration, Department of Treasury and Department of Justice; drafts and legal reviews of proposed personnel actions; ethics inquiries; personnel records; financial records; individual tax returns; litigation files; labor relations files; information provided by labor unions or other organizations; witness statements; summonses, subpoenas, discovery requests and responses; and, breach reports and supporting documentation.

RECORD SOURCE CATEGORIES:

Subject individuals; pension plan participants, sponsors, administrators and third-parties; federal government records; current and former employees, contractors, interns, and externs; PBGC debt and disbursement records; insurers; the Social Security Administration; labor organizations; court records; articles from publications; and other individuals, organizations, and corporate entities with relevant knowledge/information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 522a(b), and:

1. General Routine Uses G1 through G14 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record from this system of records may be disclosed, in furtherance of proceedings under Title IV of ERISA, to a contributing sponsor (or other employer who maintained the plan), including any predecessor or successor, and any member of the same control group.

3. Names, addresses, and telephone numbers of employees, former employees, participants, and beneficiaries and information pertaining to debts to PBGC may be disclosed to the Department of Treasury, the Department of Justice, a credit agency, and a debt collection to collect the debt. Disclosure to a debt collection shall be made only under a contract that binds any such contractor or employee of such contractor to criminal penalties of the Privacy Act.

4. Information may be disclosed to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations in response to a court order or in connection with criminal law proceedings.

5. Information may be provided to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

6. Information may be provided to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

7. Relevant and necessary information may be disclosed to a former employee of PBGC for the purposes of: (1) Responding to an official inquiry by federal, state, tribal or local government entity or professional licensing authority; or, (2) facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where PBGC requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

8. A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement.

9. A record may be disseminated to a foreign country, through the United States Department of State or directly to the representative of such country, to the extent necessary to assist such country in civil or criminal proceedings in which the United States or one of its officers or agencies has an interest.

10. A record from this system of records may be disclosed to the National Archives and Records Administration (NARA), Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures and compliance with the FOIA, and to facilitate use of OGIS' mediation services.

11. A record from this system may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained manually in paper and/or electronic form (including computer databases or discs). Records may also be maintained on back-up tapes, or on a PBGC or a contractor-hosted network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are indexed by assigned case number and sequential record identifier. Records are full-text indexed and information from this system may be retrieved using any free-form key, which may include names, social security number, address, representative or any other personal identifiers. For certain systems, only individuals assigned to the particular matter may retrieve associated records.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and destroyed in accordance with the National Archives and Record Administration's (NARA) Basic Laws and Authorities (44 U.S.C. 3301, *et seq.*) or a PBGC records disposition schedule approved by NARA.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

PBGC has established security and privacy protocols that meet the required security and privacy standards issued by the National Institute of Standards and Technology (NIST). Records are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the confidentiality, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals. Paper records are kept in file folders in areas of restricted access that are locked after office hours.

Electronic records are stored on computer networks, which may include cloud-based systems, and protected by controlled access with Personal Identity Verification (PIV) cards, assigning user accounts to individuals needing access to the records and by passwords set by authorized users that must be changed periodically. Further, for certain systems covered by this notice, heightened security access is required. Such access is granted by the specific permissions group assigned to monitor that particular system and only authorized employees of the agency may retrieve, review or modify those records.

RECORD ACCESS PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to request access to their records in accordance with 29 CFR 4902.4, should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

CONTESTING RECORD PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to amend their records must submit a written request identifying the information they wish to correct in their file, in addition to following the requirements of the Record Access Procedure above.

NOTIFICATION PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(2), records in this system are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), (I), and (f) of 5 U.S.C. 552a, provided, however, that if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of these records, such material shall be provided to the individual, except to the extent that the disclosure of the material would reveal the identity of a source who furnished information to the Government with an express promise that the identity of the source would be held in confidence.

HISTORY:

PBGC–19, Office of General Counsel Case Management System (last published at 81 FR 63316 (September 14, 2016)).

SYSTEM NAME AND NUMBER

PBGC–21: Reasonable Accommodation Records—PBGC System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005. (Records may be kept at an additional location as backup for continuity of operations.)

SYSTEM MANAGER(S) AND ADDRESS:

Reasonable Accommodations Coordinator, Human Resources Department, PBGC, 1200 K Street NW, Washington, DC 20005.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; 5 U.S.C. 301; 29 U.S.C. 701 *et seq.*; 29 U.S.C. 791; 42 U.S.C. 12101 *et seq.*; 42 U.S.C. Ch. 126; 29 CFR part 1630; Executive Order 13164 (July 26, 2000); and Executive Order 13548 (July 26, 2010).

PURPOSE(S) OF THE SYSTEM:

The purposes of this system are: (1) To allow PBGC to collect and maintain records on prospective, current, and former employees with disabilities who requested or received reasonable accommodation by PBGC; (2) to track and report the processing of requests for reasonable accommodation PBGC-wide to comply with applicable law and regulations; and (3) to and maintain the confidentiality of medical information submitted by or on behalf of applicants or employees requesting reasonable accommodation.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prospective, current, and former employees of PBGC who request and/or receive a reasonable accommodation for a disability; and, authorized individuals or representatives (*e.g.,* family members, union representatives, or attorneys) who submit a request for a reasonable accommodation on behalf of a prospective, current, or former employee.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and employment information of current or prospective employee needing an accommodation; requester's name and contact information (if different than the employee who needs an accommodation); date request was initiated; information concerning the nature of the disability and the need for accommodation, including appropriate medical documentation; occupational

series; pay grade; essential duties of the position; details of the accommodation request, such as: Type of accommodation requested, how the requested accommodation would assist in job performance, the sources of technical assistance consulted in trying to identify alternative reasonable accommodation, any additional information provided by the requester relating to the processing of the request, whether the request was approved or denied, whether the accommodation was approved for a trial period; and, documentation between the employee and his/her supervisor(s) regarding the accommodation.

RECORD SOURCE CATEGORIES:

Subject individuals; individual making the request (if different than the subject individuals); medical professionals; and the subject individuals' supervisor(s).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 522a(b), and:

1. General Routine Uses G1 through G14 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record from this system may be disclosed to physicians or other medical professionals to provide them with or obtain from them the necessary medical documentation and/or certification for reasonable accommodation.

3. A record from this system may be disclosed to another federal agency or commission with responsibility for labor or employment relations or other issues, including equal employment opportunity and reasonable accommodation issues, when that agency or commission has jurisdiction over reasonable accommodation issues.

4. A record from this system may be disclosed to the Office of Management and Budget (OMB), Department of Labor (DOL), Office of Personnel Management (OPM), Equal Employment Opportunity Commission (EEOC), or Office of Special Counsel (OSC) to obtain advice regarding statutory, regulatory, policy, and other requirements related to reasonable accommodation.

5. A record from this system may be disclosed to appropriate third-parties contracted by the Agency to facilitate mediation or other dispute resolution procedures or programs.

6. A record from this system may be disclosed to the Department of Defense (DOD) for purposes of procuring assistive technologies and services through the Computer/Electronic Accommodation Program in response to a request for reasonable accommodation.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained manually in paper and/or electronic form (including computer databases or discs). Records may also be maintained on back-up tapes, or on a PBGC or a contractor-hosted network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by any one or more of the following: Employee name or assigned case number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and destroyed in accordance with the National Archives and Record Administration's (NARA) Basic Laws and Authorities (44 U.S.C. 3301, *et seq.*) or a PBGC records disposition schedule approved by NARA. Records existing on paper are destroyed beyond recognition.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

PBGC has established security and privacy protocols that meet the required security and privacy standards issued by the National Institute of Standards and Technology (NIST). Records are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the confidentiality, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Electronic records are stored on computer networks, which may include cloud-based systems, and protected by controlled access with Personal Identity Verification (PIV) cards, assigning user accounts to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RECORD ACCESS PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to request access to their records in accordance with 29 CFR 4902.4 or to amend records pertaining to themselves in accordance with 29 CRF 4902.5, should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

CONTESTING RECORD PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to amend their records must submit a written request identifying the information they wish to correct in their file, in addition to following the requirements of the Record Access Procedure above.

NOTIFICATION PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

PBGC–21, Reasonable Accommodation Records (last published at 81 FR 63317 (September 14, 2016)).

SYSTEM NAME AND NUMBER

PBGC–22: Telework and Alternative Worksite Records—PBGC.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation (PBGC), 1200 K Street NW, Washington, DC 20005. (Records may be kept at an additional location as backup for continuity of operations.)

SYSTEM MANAGER(S) AND ADDRESS:

Telework Managing Officer, Human Resources Department, PBGC, 1200 K Street NW, Washington, DC 20005.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; 5 U.S.C. 301; 5 U.S.C. 6120.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of records is to collect and maintain records on current and former employees who have participated in, presently participate in, or have sought to participate in PBGC's Telework Program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of PBGC who have requested to participate in PBGC's Telework Program in order to work at an alternative worksite other than their official PBGC duty station.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, position title, grade, series, and department name; official PBGC duty station address and telephone number; alternative worksite address and telephone number(s); date telework agreement received and approved/denied; telework request and approval form; telework agreement, self-certification home safety checklist, and supervisor-employee checklist; type of telework requested (*e.g.,* episodic or regular); regular work schedule; telework schedule; approvals/disapprovals; description and list of government-owned equipment and software provided to the teleworker; mass transit benefits received through PBGC's mass transit subsidy program; parking subsidies received through PBGC's subsidized parking program; license plate information; driver's license; and any other miscellaneous documents supporting telework.

RECORD SOURCE CATEGORIES:

Subject individuals; subject individuals' supervisors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 522a(b), and:

1. General Routine Uses G1 through G14 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record from this system may be disclosed to federal, state, tribal or local governments during actual emergencies, exercises, or continuity of operations tests for the purposes of emergency preparedness and responding to emergency situations.

3. A record from this system may be disclosed to the Department of Labor when an employee is injured when working at home while in the performance of normal duties.

4. A record from this system may be disclosed to the Office of Personnel Management (OPM) for use in its Telework Survey to provide consolidated data on participation in PBGC's Telework Program.

5. A record from this system of records may be disclosed to appropriate third-parties contracted by the Agency to facilitate mediation or other dispute resolution procedures or programs.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained manually in paper and/or electronic form (including computer databases). Records may also be maintained on back-up tapes, or on a PBGC or a contractor-hosted network. Also, each of PBGC's departments has a Telework Liaison who may maintain copies of the records pertaining to employees working in his or her department.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by any one or more of the following: Employee name, and the department in which the employee works, will work, or previously worked.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and destroyed in accordance with the National Archives and Record Administration's (NARA) Basic Laws and Authorities (44 U.S.C. 3301, *et seq.*) or a PBGC records disposition schedule approved by NARA.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

PBGC has established security and privacy protocols that meet the required security and privacy standards issued by the National Institute of Standards and Technology (NIST). Records are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the confidentiality, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Electronic records are stored on computer networks, which may include cloud-based systems, and protected by controlled access with Personal Identity Verification (PIV) cards, assigning user accounts to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RECORD ACCESS PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to request access to their records in accordance with 29 CFR 4902.4, should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

CONTESTING RECORD PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to amend their records must submit a written request identifying the information they wish to correct in their file, in addition to following the requirements of the Record Access Procedure above.

NOTIFICATION PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

PBGC–22, Telework and Alternative Worksite Records (last published at 81 FR 63319 (September 14, 2016)).

SYSTEM NAME AND NUMBER

PBGC–23: Internal Investigations of Allegations of Harassing Conduct—PBGC.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation (PBGC), 1200 K Street NW, Washington, DC 20005. (Records may be kept at an additional location as backup for continuity of operations.)

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Department, PBGC, 1200 K Street NW, Washington, DC 20005.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; 5 U.S.C. 301; 42 U.S.C. 2000e, *et seq.*

PURPOSE(S) OF THE SYSTEM:

This system of records is maintained for the purpose of upholding PBGC's policy to prevent and eradicate harassing conduct in the workplace, including conducting and resolving internal investigations of allegations of harassing conduct brought by or against PBGC employees, contractors or interns.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former PBGC employees, contractors, and interns who have filed a complaint, made a report of harassment, or have been accused of harassing conduct.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains all documents related to a complaint or report of harassment, which may include the name, position, grade, and supervisor(s) of the complainant and the accused; the complaint; statements of witnesses; reports of interviews; medical records; final decisions and corrective actions taken; and related correspondence and exhibits.

RECORD SOURCE CATEGORIES:

Subject individuals; PBGC supervisors, employees, contractors, and others with knowledge; outside counsel retained by subject individuals; and medical professionals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 522a(b), and:

1. General Routine Uses G1 through G14 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. Disclosure of information from this system of records regarding the status of any investigation that may have been conducted may be made to the complaining party and to the individual against whom the complaint was made when the purpose of the disclosure is both relevant and necessary and is compatible with the purpose for which the information was collected.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained manually in paper and/or electronic form (including computer databases or discs). Records may also be maintained on back-up tapes, or on a PBGC or a contractor-hosted network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by any one or more of the following: Name; department; or unique identifier assigned to each incident reported.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and destroyed in accordance with the National Archives and Record Administration's (NARA) Basic Laws and Authorities (44 U.S.C. 3301, *et seq.*) or a PBGC records disposition schedule approved by NARA.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

PBGC has established security and privacy protocols that meet the required security and privacy standards issued by the National Institute of Standards and Technology (NIST). Records are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the confidentiality, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are kept in cabinets in areas of restricted access that are locked after office hours. Electronic records are stored on computer networks, which may include cloud-based systems, and protected by controlled access with Personal Identity Verification (PIV) cards, assigning user accounts to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RECORD ACCESS PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to request access to their records in accordance with 29 CFR 4902.4, should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

CONTESTING RECORD PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to amend their records must submit a written request identifying the information they wish to correct in their file, in addition to following the requirements of the Record Access Procedure above.

NOTIFICATION PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(2), records in this system are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of 5 U.S.C. 552a, provided, however, that if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of these records, such material shall be provided to the individual, except to the extent that the disclosure of the material would reveal the identity of a source who furnished information to the Government with an express promise that the identity of the source would be held in confidence.

HISTORY:

PBGC–23, Internal Investigations of Allegations of Harassing Conduct (last published at 81 FR 63320 (September 14, 2016)).

SYSTEM NAME AND NUMBER

PBGC–24: Participant Debt Collection—PBGC

[RESCINDED]

SYSTEM NAME AND NUMBER

PBGC–25: PBGC.GOV Comment Management System—PBGC.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation (PBGC), 1200 K Street NW, Washington, DC 20005. (Records may be kept at an additional location as backup for continuity of operations.)

SYSTEM MANAGER(S) AND ADDRESS:

Division Manager, Communications Outreach and Legislative Affairs Department, PBGC, 1200 K Street NW, Washington, DC 20005.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; 44 U.S.C. Ch 36; 5 U.S.C. 301; 40 U.S.C. Subchapter II.

PURPOSE(S) OF THE SYSTEM:

The information in this system is maintained to: provide a central location to search, view, download and comment on federal rulemaking documents; respond to the public's comments; track regulatory feedback; and, retain commenter information in order to respond to the public.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual commenting on PBGC's rulemaking activities or submitting supporting materials; any individual initiating contact with the PBGC through use of the agency website.

CATEGORIES OF RECORDS IN THE SYSTEM:

Comments and supporting documentation from the public (may include name, email address, physical address, phone numbers, PBGC customer identification numbers, Social Security numbers, dates of birth, dates of hire, dates of termination, marital status, pay status); agency rulemaking materials; **Federal Register** publications; scientific and financial studies; IP information; cookies (session and persistent); and, internet protocol (IP) addresses.

RECORD SOURCE CATEGORIES:

Individuals commenting on agency rulemaking; individuals contacting PBGC via the agency website.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 522a(b), and:

1. General Routine Uses G1 through G14 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. Information, including personally identifiable information (PII), contained in comments about agency rulemaking, whether submitted through *pbgc.gov* or *regulations.gov*, may be published to the PBGC website.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in electronic form (including computer databases or discs). Records may also be maintained on back-up tapes, or on a PBGC or a contractor-hosted network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information from this system may be retrieved by numerous data elements and key word searches, including, but not limited to name, dates, subject, and other information retrievable with full-text searching capability.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and destroyed in accordance with the National Archives and Record Administration's (NARA) Basic Laws and Authorities (44 U.S.C. 3301, (*et seq.*) or a PBGC records disposition schedule approved by NARA.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

PBGC has established security and privacy protocols that meet the required security and privacy standards issued by the National Institute of Standards and Technology (NIST). Records are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the confidentiality, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Electronic records are stored on computer networks, which may include cloud-based systems, and protected by controlled access with Personal Identity Verification (PIV) cards, assigning user accounts to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RECORD ACCESS PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to request access to their records in accordance with 29 CFR 4902.4, should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

CONTESTING RECORD PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to amend their records must submit a written request identifying the information they wish to correct in their file, in addition to following the requirements of the Record Access Procedure above.

NOTIFICATION PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

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BILLING CODE 7709–02–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82647; File No. SR–C2–2018–002]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Market Data Fees

February 7, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 2018, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Cboe Data Services (''CDS'') fee schedule to increase the fees for the BBO, Book Depth, and Complex Order Book (''COB'') data feeds.

The text of the proposed rule change is also available on the Exchange's website (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the CDS fee schedule to increase the fees for the BBO, Book Depth, and COB data feeds.

BBO and Book Depth Data Feed

The BBO Data Feed is a real-time data feed that includes the following information: (i) Outstanding quotes and standing orders at the best available price level on each side of the market; (ii) executed trades time, size, and price; (iii) totals of customer versus non-customer contracts at the best bid and offer (''BBO''); (iv) all-or-none contingency orders priced better than or equal to the BBO; (v) expected opening price and expected opening size; (vi) end-of-day summaries by product, including open, high, low, and closing price during the trading session; (vi) recap messages any time there is a change in the open, high, low or last sale price of a listed option; (vii) COB information; and (viii) product IDs and codes for all listed options contracts. The quote and last sale data contained in the BBO data feed is identical to the data sent to the Options Price Reporting Authority (''OPRA'') for redistribution to the public.

The Book Depth Data Feed is a real-time, low latency data feed that includes all data contained in the BBO Data Feed described above plus outstanding quotes and standing orders up to the first four price levels on each side of the market, with aggregate size (''Book Depth'').

CDS currently charges a Data Fee, payable by a Customer, of $1,500 per month for internal use and external redistribution of the BBO and/or Book Depth data feeds.[3] The Data Fee entitles a Customer to provide the BBO and/or the Book Depth data feed to an unlimited number of internal users and Devices[4] within the Customer. A Customer receiving the BBO and/or Book Depth data feeds from another Customer is assessed the Data Fee by CDS pursuant to its own market data agreement with CDS, and is entitled to use the Data internally and/or distribute it externally.[5] All Customers have the same rights to utilize the data internally and/or distribute it externally as long as the Customer has entered into a written agreement with CDS for the data and pays the Data Fee.

The Exchange proposes to increase the Data Fee for both the BBO and Book Depth data feeds from $1,500 per month to $2,500 per month.[6] The Exchange is not proposing to amend the User Fee for either the BBO or Book Depth data feeds. The Data Fee for the Book Depth data feed will continue to be waived for Customers who also purchase the companion BBO data feed.[7]

COB Data Feed

The COB Data Feed is a real-time data feed that includes data regarding the Exchange's Complex Order Book and related complex order information. The COB Data Feed contains the following information for all Exchange-traded complex order strategies (multi-leg strategies such as spreads, straddles and buy-writes): (i) Outstanding quotes and standing orders on each side of the market with aggregate size, (ii) data with respect to executed trades (''last sale data''), and (iii) totals of customer versus non-customer contracts.

CDS currently charges Customers[8] of the COB Data Feed a Data Fee of $100 per month plus applicable User Fees. The Exchange now proposes to increase the Data Fee for the COB data feed from $100 to $1,000 per month.[9] The Exchange proposes to increase the fee for the COB data feed to bring the cost of the data feed in line with, but still lower than, that of similar data feeds offered by other exchanges. The Exchange is not proposing to amend the User Fee for either the COB data feed. The Data Fee for the COB Data Feed would continue to be waived for Customers of the BBO and/or Book Depth data feeds.[10]

Implementation Date

The Exchange intends to implement the proposed fees on February 1, 2018.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[11] in general, and furthers the objectives of Section 6(b)(4),[12] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all recipients of Exchange data. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to recipients.

The Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act[13] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[14] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination

[3] A BBO Data Feed ''Customer'' is any person, company or other entity that, pursuant to a market data agreement with CDS, is entitled to receive data, either directly from CDS or through an authorized redistributor (*i.e.,* a Customer or an extranet service provider), whether that data is distributed externally or used internally. The CDS fee schedule for Exchange data is located at *https://www.cboe.org/general-info/pdfframed?content=/publish/mdxfees/cboe-cds-fees-schedule-for-cboe-datafeeds.pdf&section=SEC_MDX_CSM&title=Cboe%20CDS%20Fees%20Schedule.*

[4] A ''Device'' means any computer, workstation or other item of equipment, fixed or portable, that receives, accesses and/or displays data in visual, audible or other form.

[5] A Customer may choose to receive the data from another Customer rather than directly from CDS's system because it does not want to or is not equipped to manage the technology necessary to establish a direct connection to CDS.

[6] The Exchange also proposes to remove reference in the BBO and Depth Book fees to the existing fees becoming effective on January 1, 2017.

[7] Such COB Data Feed Customers are still subject to User Fees.

[8] A Customer is any person, company or other entity that, pursuant to a market data agreement with CDS, is entitled to receive data, either directly from CDS or through an authorized redistributor (*i.e.,* a Customer or an extranet service provider), whether that data is distributed externally or used internally. The CDS fee schedule for Exchange data is located at *https://www.cboe.org/general-info/pdfframed?content=/publish/mdxfees/cboe-cds-fees-schedule-for-cboe-datafeeds.pdf&section=SEC_MDX_CSM&title=Cboe%20CDS%20Fees%20Schedule.*

[9] The Exchange also proposes to remove references to the existing fee becoming effective on January 1, 2017.

[10] Such COB Data Feed Customers are still subject to User Fees.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78k–1.

[14] 17 CFR 242.603.

because all of the Exchange's customers and market data vendors who subscribe to the above data feeds will be subject to the proposed fees. The above data feeds are distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation purchase this data or to make this data available. Accordingly, distributors and users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to the above data feeds further ensure that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. For example, the above data feeds provide investors with alternative market data and competes with similar market data product currently offered by other exchanges. If another exchange (or its affiliate) were to charge less to distribute its similar product than the Exchange charges for the above data feeds, prospective users likely would not subscribe to, or would cease subscribing to either market data product.

The Exchange notes that the Commission is not required to undertake a cost-of-service or rate-making approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.[15]

BBO Data Feed

The Exchange believes the proposed increase in the Data Fee for BBO data is equitable and not unfairly discriminatory because it would apply equally to all Customers. The Exchange believes the proposed Data Fee is reasonable because it is lower than fees that other markets charge for similar products. For example, Nasdaq PHLX LLC (''PHLX'') charges Internal Distributors a monthly fee of $4,500 per organization and External Distributors a monthly fee of $5,000 per organization for its ''TOPO Plus Orders'' data feed, which like the BBO Data Feed includes top-of-book data (including orders, quotes and trades) and other market data.[16] Nasdaq ISE, LLC (''ISE'') offers a ''Top Quote Feed'', which includes top-of-book data, and a separate ''Spread Feed'', which like the BBO Data Feed includes order and quote data for complex strategies. ISE charges distributors of its Top Quote Feed a base monthly fee of $3,000 and distributors of its Spread Feed a base monthly fee of $3,000 [17] (totally $6,000 in the aggregate to receive the same data as offered by the BBO feed). The Exchange believes the proposed rate is reasonable based on the value of the market data included in the BBO feed and the market share that the data represents. The Exchange also notes that Customers who receive the BBO feed may also receive the Book Depth and COB data feeds at no extra charge.

Book Depth Data Feed

The Exchange believes the proposed Data Fee for the Book Depth Data Feed is equitable and not unfairly discriminatory because it would apply equally to all Customers. The Exchange believes the proposed Data Fee is reasonable because it is lower than fees that other markets charge for similar products. For example, PHLX charges Internal Distributors a monthly fee of $4,000 and External Distributors a monthly fee of a $4,500 for its Depth data feed that includes full depth of quotes and orders and last sale data for options listed on PHLX.[18] In addition, ISE charges a $5,000 per month distributor fee for its Real-time Depth of Market data feed.[19] The Exchange also notes that Customers who receive the Book Depth feed may also receive the BBO and COB data feeds at no extra charge. The Exchange believes the proposed rate is reasonable based on the value of the market data included in the BBO feed and the market share that the data represents.

COB Data Feed

The Exchange believes the proposed Data Fee for the COB Data Feed is equitable, reasonable, and not unfairly discriminatory because they would apply equally to all Customers of the COB Data Feed. The Exchange proposes to increase the fee for the COB data feed to bring the cost of the data feed in line with, but still lower than, that of similar data feeds offered by other exchanges. For example, ISE charges distributors of its Spread Feed a base monthly fee of $3,000,[20] equal to what the Exchange proposes to charge for the COB data feed. The Exchange also notes that Customers who receive the BBO and Book Depth feeds may also receive the COB data feed at no extra charge. The Exchange believes the proposed rate is reasonable based on the value of the market data included in the COB feed and the market share that the data represents.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange's ability to price the BBO, Book Depth, ad COB data feeds is constrained by: (i) Competition among exchanges that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data.

[15] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's website at *http://www.sec.gov/rules/concept/s72899/buck1.htm. See also* Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR–NYSE–2014–64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

[16] *See* Section IX of the PHLX Pricing Schedule (setting forth the fees for proprietary market data).

[17] *See* Sections VIII(h) and (I) of the Nasdaq ISE Schedule of Fees.

[18] *See supra* note 16.

[19] *See* Section VIII(f) of the Nasdaq ISE Schedule of Fees.

[20] *See* Sections VIII(I) of the Nasdaq ISE Schedule of Fees.

An exchange's ability to price its proprietary data feed products is constrained by (1) the existence of actual competition for the sale of such data, (2) the joint product nature of exchange platforms, and (3) the existence of alternatives to proprietary data.

The Existence of Actual Competition. The Exchange believes competition provides an effective constraint on the market data fees that the Exchange, through CDS, has the ability and the incentive to charge. The Exchange has a compelling need to attract order flow from market participants in order to maintain its share of trading volume. This compelling need to attract order flow imposes significant pressure on the Exchange to act reasonably in setting its fees for market data, particularly given that the market participants that will pay such fees often will be the same market participants from whom the Exchange must attract order flow. These market participants include broker-dealers that control the handling of a large volume of customer and proprietary order flow. Given the portability of order flow from one exchange to another, any exchange that sought to charge unreasonably high data fees would risk alienating many of the same customers on whose orders it depends for competitive survival. The Exchange currently competes with fourteen options exchanges (including its affiliate, C2) for order flow.[21]

In addition, in the case of products that are distributed through market data vendors, the market data vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Internet portals, such as Google, impose price discipline by providing only data that they believe will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Similarly, Customers will not offer the BBO, Book Depth or COB Data Feeds unless these products will help them maintain current users or attract new ones. For example, a broker-dealer will not choose to offer the BBO, Book Depth or COB Data Feeds to its retail customers unless the broker-dealer believes that the retail customers will use and value the data and the provision of such data will help the broker-dealer maintain the customer relationship, which allows the broker-dealer to generate profits for itself. Professional users will not request any of these feeds from Customers unless they can use the data for profit-generating purposes in their businesses. All of these operate as constraints on pricing proprietary data products.

Joint Product Nature of Exchange Platform. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade executions are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platforms where the order can be posted, including the execution fees, data quality, and price and distribution of their data products. The more trade executions a platform does, the more valuable its market data products become. The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's broker-dealer customers view the costs of transaction executions and market data as a unified cost of doing business with the exchange.

Analyzing the cost of market data product production and distribution in isolation from the cost of all of the inputs supporting the creation of market data and market data products will inevitably underestimate the cost of the data and data products. Thus, because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of both obtaining the market data itself and creating and distributing market data products. It would be equally misleading, however, to attribute all of an exchange's costs to the market data portion of an exchange's joint products. Rather, all of an exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 15 options self-regulatory organization (''SRO'') markets, as well as internalizing broker-dealers (''BDs'') and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Competition among trading platforms can be expected to constrain the aggregate return that each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market data products (or provide market data products free of charge), and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market data products, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

The Existence of Alternatives. The Exchange is constrained in pricing the BBO, Book Depth and COB Data Feeds by the availability to market participants of alternatives to purchasing these products. The Exchange must consider the extent to which market participants would choose one or more alternatives instead of purchasing the exchange's data. Other options exchanges can and have produced their own top-of-book, book depth and complex strategies market data products, and thus are sources of potential competition for CDS. For example, as noted above, ISE and PHLX offer market data products that compete with the BBO, Book Depth and COB Data Feeds. The large number of SROs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and BD is currently permitted to produce proprietary data products, and many currently do. In addition, the OPRA data feed is a significant competitive alternative to the BBO and

[21] The Commission has previously made a finding that the options industry is subject to significant competitive forces. *See e.g.,* Securities Exchange Act Release No. 59949 (May 20, 2009), 74 FR 25593 (May 28, 2009) (SR–ISE–2009–97) (order approving ISE's proposal to establish fees for a real-time depth of market data offering).

last sale data included in the BBO and Book Depth Data Feeds.

The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [22] and paragraph (f) of Rule 19b–4 [23] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2018–002 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–C2–2018–002. 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2018–002 and should be submitted on or before March 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–02858 Filed 2–12–18; 8:45 am]

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[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–10456; 34–82656; 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, March 8, 2018 from 9:30 a.m. until 4:15 p.m. (ET). Written statements should be received on or before March 8, 2018.

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 website 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Room 1503, 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Marc Oorloff Sharma, Chief 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 of regulatory approaches to combat retail investor fraud; a discussion regarding cybersecurity risk disclosures (which may include a recommendation of the Investor as Owner Subcommittee); a discussion regarding financial support for law school clinics that support investors (which may include a recommendation of the Committee as a whole); a discussion regarding dual-class share structures (which may include a recommendation of the Investor as Owner Subcommittee); a discussion regarding efforts to combat the financial exploitation of vulnerable adults; subcommittee reports; and a nonpublic administrative work session during lunch.

Dated: February 7, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–02850 Filed 2–12–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82648; File No. SR–CBOE–2018–015]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule Concerning the Floor Broker SPX Surcharge

February 7, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2018, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its monthly fee of $3,000 per month for any Floor Broker Trading Permit Holder (''TPH'') that executes more than 20,000 SPX (including SPXW) contracts during the month (''FB SPX Surcharge''). Particularly, the Exchange proposes to adopt an exclusion for Multi-Class Broad-Based Index Option Spread Orders (''Multi-Class Spread Orders'').

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its monthly fee of $3,000 per month for any Floor Broker Trading Permit Holder (''TPH'') that executes more than 20,000 SPX (including SPXW) contracts during the month (''FB SPX Surcharge''). Particularly, the Exchange proposes to adopt an exclusion for Multi-Class Broad-Based Index Option Spread Orders (''Multi-Class Spread Orders'').

By way of background, Cboe Options Rule 24.19 permits the execution of Multi-Class Spread Orders, which are generally defined as orders to buy a stated number of contracts of a broad-based index option or exchange-traded fund (''ETF'')/exchange-traded note (''ETN'') option derived from a broad-based index and to sell an equal number, or an equivalent number of contracts of a different broad-based index option or ETF/ETN option derived from a broad-based index. These orders may be represented at the trading station of either option involved, subject to the conditions in Rule 24.19.[3]

The FB SPX Surcharge was not enacted with the intention of assessing it to Floor Brokers to whom it would only apply due to their execution of Multi-Class Spread Orders that included an SPX component. Rather, the surcharge was intended to be assessed on Floor Brokers that regularly execute SPX trades in the SPX trading crowd. In order to avoid being assessed the FB SPX Surcharge as a result of the execution of Multi-Class Spread Orders with an SPX component, the Exchange proposes to provide that Floor Brokers to which the FB SPX Surcharge is not otherwise applicable will not be assessed the FB SPX Surcharge if they only execute SPX open outcry transactions as part of a Multi-Class Spread Order. In order to identify those instances, the Exchange is proposing to require that Floor Brokers submit the Floor Broker SPX Surcharge Exclusion for Multi-Class Broad-Based Index Spread Transactions Form (the ''Form'') within three business days of execution of the applicable spread transaction(s).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[6] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes the proposed rule change is reasonable because it allows Floor Brokers to whom the FB SPX Surcharge would apply only due to their execution of Multi-Class Spread Orders with an SPX component to avoid having to pay the surcharge. The proposed rule change is equitable and not unfairly discriminatory because the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Cboe Options Rule 24.19.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(4).

FB SPX Surcharge is intended to be assessed on those Floor Brokers who regularly conduct open outcry transactions in SPX or SPX Weeklys (*i.e.,* Floor Brokers who are engaging in regular SPX trades), since those Floor Brokers are engaging in transactions for which executing SPX trades is the primary purpose of such transactions (or are signing up to do so). Floor Brokers who only engage in SPX transactions through the execution of Multi-Class Spread Orders with an SPX component are not engaging in such transactions with primary purpose of executing an SPX order, but instead are just executing an SPX order as part of a larger Multi-Class Spread Order. Additionally, all Floor Brokers who only engage in SPX transactions through the execution of Multi-Class Spread Orders with an SPX component will have the opportunity to be excluded from the FB SPX Surcharge.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the proposed rule change provides Floor Brokers not engaged in regular SPX trades with an opportunity to be excluded from the FB SPX Surcharge, which is intended to be assessed on those Floor Brokers who engage in transactions for which executing SPX trades is the primary purpose of such transactions (or are signing up to do so). The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change only affects trading on the Exchange's trading floor. To the extent that the proposed changes make Cboe Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and paragraph (f) of Rule 19b–4[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2018–015 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–CBOE–2018–015. 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2018–015 and should be submitted on or before March 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–02859 Filed 2–12–18; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82655; File No. SR–BOX–2018–03]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule To Amend the BOX Volume Rebate

February 7, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2018, BOX Options Exchange LLC (the ''Exchange'') 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 by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on February 1, 2018. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule for trading on BOX. Specifically, the Exchange proposes to amend the BOX Volume Rebate (''BVR'') in Section I.B.2 of the Fee Schedule (Electronic Transaction Fees).

Under the current BVR, the Exchange offers a tiered per contract rebate for all Public Customer PIP Orders and COPIP orders of 100 contracts and under that do not trade solely with their contra order. Percentage thresholds are calculated on a monthly basis by totaling the Participant's PIP and COPIP volume submitted to BOX, relative to the total national Customer volume in multiply-listed options classes. Further, Public Customer PIP Orders of 100 and under contracts that trade solely with their contra order receive a $0.03 per contract rebate, regardless of tier.

The Exchange now proposes to increase the BVR contract threshold necessary to qualify for the tiered contract rebate for all Public Customer PIP Orders and COPIP Orders to 250 contracts and under that do not trade solely with their contra order. The calculation of the percentage threshold will remain based on a Participant's PIP and COPIP volume submitted to BOX, relative to the total national Customer volume in multiply-listed options classes. The Exchange also proposes to increase the BVR contract threshold for Public Customer PIP Orders that trade solely with their contra order to 250 contracts and under. These orders will continue to receive a $0.03 per contract rebate, regardless of tier.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5)of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes the proposed amendments to the BVR in Section I.B.2 are reasonable, equitable and not unfairly discriminatory. The BVR was adopted to attract Public Customer order flow to the Exchange by offering these Participants incentives to submit their PIP and COPIP Orders to the Exchange. Other Exchanges employ similar incentive programs.[6] The Exchange believes it is reasonable and appropriate to provide incentives for Public Customers, which will result in greater liquidity and ultimately benefit all Participants trading on the Exchange. Further, the Exchange continues to believe that exempting Non-Public Customer PIP and COPIP Orders from the BVR is reasonable as specific incentives for Public Customer volume is common within the options industry.[7]

As mentioned above, the BVR is intended to incentivize Public Customers to direct order flow to the Exchange. As such, the Exchange believes it is reasonable to increase the threshold eligibility for Public Customer PIP and COPIP Orders to 250 contracts and under. Increasing the BVR will result in greater liquidity and ultimately benefit all Participants trading on the Exchange. Further, the Exchange believes that the proposed change is equitable and not unfairly discriminatory as it will apply to all Public Customers uniformly.

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 Exchange does not believe that the proposed change burdens competition and will instead help promote competition by continuing to providing incentives for market participants to submit customer order flow to BOX and thus, create a greater opportunity for price improvement.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act[8] and Rule 19b–4(f)(2) thereunder,[9] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2018–03 on the subject line.

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] *See* Section B of the Phlx Pricing Schedule entitled ''Customer Rebate Program'' and CBOE's Volume Incentive Program (VIP). CBOE's Volume Incentive Program (''VIP'') pays certain tiered rebates to Trading Permit Holders for electronically executed multiply-listed option orders which include AIM orders.

[7] *Id.*

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

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–BOX–2018–03. 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2018–03, and should be submitted on or before March 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–02865 Filed 2–12–18; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82649; File No. SR–Phlx–2018–15]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete Cross-Reference to Rule 124(d) From Rule 1092

February 7, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 5, 2018, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 1092, Nullification and Adjustment of Options Transactions including Obvious Errors, by deleting a cross-reference to Rule 124(d).

The text of the proposed rule change is available on the Exchange's website 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

Exchange Rule 1092 provides rules and procedures with respect to the nullification and adjustment of options transactions including obvious errors. Rule 1092(l) governs appeals to the Exchange Review Council of nullification and adjustment decisions by Options Exchange Officials.[3] It provides that a party affected by a determination made under Rule 1092 may request the Exchange Review Council to review that determination ''in accordance with Exchange Rule 124(d).'' However, Rule 124, Disputes-Options, section (d) applies by its terms *only* to appeals to the Exchange Review Council of Options Exchange Official decisions regarding trading disputes occurring on, and relating to, the trading floor. In fact, Rule 124(a) specifically states that Rule 124 shall not apply to options transactions that are the result of an obvious error or catastrophic error as defined in Rule 1092, and that options transactions that are the result of an obvious error or catastrophic error shall be subject to the provisions and procedures set forth in Rule 1092.

The cross-reference to Rule 124(d) in Rule 1092 is therefore incorrect and inappropriate, and needlessly confusing. Moreover, it is unnecessary as Rule 1092 itself provides the necessary process for requesting and obtaining an appeal by the Exchange Review Council of nullification and adjustment decisions. The Exchange therefore proposes to remove the cross-reference.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market

[3] An Options Exchange Official is an Exchange staff member or contract employee designated as such by the Chief Regulatory Officer. A list of individual Options Exchange Officials is displayed on the Exchange website. The Chief Regulatory Officer maintains the list of Options Exchange Officials and updates the website each time a name is added to, or deleted from, the list of Options Exchange Officials. In the event no Options Exchange Official is available to rule on a particular matter, the Chief Regulatory Officer or his/her designee rules on the matter.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

system, and, in general to protect investors and the public interest, by removing an inappropriate and incorrect cross-reference to Rule 124(d) from Rule 1092, thereby providing market participants with a clearer description of the appropriate appeal process in Rule 1092.

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 enhanced clarity of Rule 1092 resulting from this proposed rule change will benefit all market participants equally.

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)(iii) of the Act[6] and subparagraph (f)(6) of Rule 19b–4 thereunder.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2018–15 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–2018–15. 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2018–15, and should be submitted on or before March 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–02860 Filed 2–12–18; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 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, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82654; File No. SR–BOX–2018–04]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Section VI. (Technology Fees) of the BOX Fee Schedule

February 7, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2018, BOX Options Exchange LLC (the ''Exchange'') 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 by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend Section VI. (Technology Fees) of the BOX Fee Schedule. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on February 1, 2018. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section VI (Technology Fees) in the Fee Schedule. Specifically, the Exchange proposes to amend Section VI.B. (High Speed Vendor Feed (''HSVF'')) in the BOX Fee Schedule to revise the fee charged per month for all market participants for receiving the HSVF. The Exchange's proprietary HSVF is currently available to all market participants at a fee of $750.00 per month; however, the Exchange now proposes to increase the fee to $1,500.00 per month for all market participants who receive the HSVF. This fee will be payable by any market participant that receives the HSVF through a direct connection to BOX and will be assessed once per market participant.

In February 2013, the Exchange made its proprietary direct market data product, the HSVF, available to all market participants at no cost.[5] In August 2016, the Exchange established a fee of $750 per month for the HSVF for all market participants.[6] The Exchange now proposes to raise the monthly fee for the HSVF. The BOX HSVF is a proprietary product that provides: (i) Trades and trade cancelation information; (ii) best-ranked price level to buy and the best-ranked price level to sell; (iii) instrument summaries (including information such as high, low, and last trade price and traded volume); (iv) the five best limit prices for each option instrument; (v) request for Quote messages; [7] (vi) PIP Order, Improvement Order and Block Trade Order (Facilitation and Solicitation) information; [8] (vii) orders exposed at NBBO; [9] (viii) instrument dictionary (*e.g.,* strike price, expiration date, underlying symbol, price threshold, and minimum trading increment for instruments traded on BOX); (ix) options class and instrument status change notices (*e.g.,* whether an instrument or class is in pre-opening, continuous trading, closed, halted, or prohibited from trading); and (x) options class opening time.

The Exchange notes that data connection fees are charged by other options markets such as Cboe BZX Exchange, Inc. (''BZX''), Cboe EDGX Exchange, Inc. (''EDGX''), Cboe Exchange, Inc. (''Cboe''), Cboe C2 Exchange, Inc. (''C2''), Nasdaq BX, Inc. (''BX''), The Nasdaq Options Market (''NOM''), and Nasdaq PHLX LLC (''PHLX'').[10]

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[11] in general, and Section 6(b)(4) and (5) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using the Exchange's facilities and is not designed to permit unfair discrimination among them.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and self-regulatory organization (''SRO'') revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [13]

Likewise, in NetCoalition v. Securities and Exchange Commission [14] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[15] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data. . . . to be made available to investors and at what cost.'' [16]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers.' . . .'' [17] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

BOX believes that the allocation of the proposed fee is fair and equitable in accordance with Section 6(b)(4) of the Act, and not unreasonably discriminatory in accordance with Section 6(b)(5) of the Act. As described in greater detail below, if BOX has calculated improperly and the market deems the proposed fees to be unfair, inequitable, or unreasonably discriminatory, firms can discontinue the use of their data because the proposed product is entirely optional to all parties. Firms are not required to purchase data and BOX is not required to make data available or to offer specific pricing alternatives for potential purchases. BOX can discontinue offering a pricing alternative (as it has in the past) and firms can discontinue their use at any time and for any reason (as they often do), including due to their assessment of the reasonableness of fees

[5] *See* Securities Exchange Act Release No. 68833 (February 5, 2013), 78 FR 9758 (February 11, 2013) (SR–BOX–2013–04).

[6] *See* Securities Exchange Act Release No. 78565 (August 18 [sic], 2016), 81 FR 55251 (August 3 [sic], 2016) (SR–BOX–2016–40).

[7] *See* Exchange Rules 100(a)(57), 7070(h) and 8050.

[8] As set forth in Exchange Rules 7150 and 7270, respectively.

[9] As set forth in Exchange Rules 7130(b)(3) and 8040(d)(6), respectively.

[10] *See* the BZX Fee Schedule, available at: *http://markets.;cboe.com/us/options/membership/fee_schedule/bzx/,* the EDGX Fee Schedule, available at: *http://markets.cboe.com/us/options/membership/fee_schedule/edgx/,* the Cboe Fee Schedule, available at *http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf* and the Cboe Data Services Fee Schedule, available at *https://www.cboe.org/publish/mdxfees/cboe-cds-fees-schedule-for-cboe-datafeeds.pdf,* the C2 Fee Schedule, available at: *http://www.cboe.com/publish/C2FeeSchedule/C2FeeSchedule.pdf* and the C2 Data Services Fee Schedule, available at: *https://www.cboe.org/publish/mdxfees/c2-cds-fees-schedule.pdf,* the BX Fee Schedule, available at: *http://nasdaqomxbx.cchwallstreet.com/NASDAQBXTools/PlatformViewer.asp?selectednode=chp_1_2_15&manual=%2FNASDAQOMXBX%2Fmain%2Fbx-eq-rules%2F;* the NOM Fee Schedule, available at: *http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp_1_1_15_1_2&manual=%2Fnasdaq%2Fmain%2Fnasdaq-optionsrules%2F,* the PHLX Fee Schedule, available at: *http://nasdaqomxphlx.cchwallstreet.com/NASDAQPHLXTools/PlatformViewer.asp?selectednode=chp_1_4_2&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx-rulesbrd%2F,* and the NASDAQ U.S. Derivatives Data Price List, available at: *http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions.*

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

[13] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[14] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[15] *See NetCoalition,* at 534–535.

[16] *Id.* at 537.

[17] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

charged. BOX continues to establish and revise pricing policies aimed at increasing fairness and equitable allocation of fees among subscribers.

The Exchange's proprietary HSVF is currently available to all market participants at a fee of $750.00 per month; however, the Exchange now proposes to increase the fee to $1,500.00 per month for all market participants who receive the HSVF. The Exchange believes that raising the HSVF fee to $1,500 per month per connection is reasonable and appropriate as it is within the connectivity fee range that is charged by other options exchanges.[18] The Exchange believes comparing the HSVF to the data connectivity fees at other exchanges is appropriate as the Exchange currently assess [sic] the HSVF fee by connection to and not consumption of the data.

In addition, the Exchange believes that its fees are equitable and not unfairly discriminatory because all market participants are charged the same fee for access to the HSVF. Further, the Exchange notes that all market participants who wish to receive the feed may, as the feed is available to anyone willing to pay the proposed $1,500 monthly fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change to the Fee Schedule will simply allow the Exchange to charge all market participants equally for the costs incurred by connecting to the BOX Network. The HSVF is similar to proprietary data products currently offered by other exchanges, and these other exchanges charge comparable monthly fees.[19] While connection to the HSVF is required to receive the broadcasts for and participate in the Exchange's auction mechanisms,[20] the Exchange does not believes [sic] the proposed monthly fee will impede competition within these auctions. As discussed above, the Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges and non-exchange markets. Further, excessive fees for connectivity would serve to impair [sic] ability to compete for order flow rather than burdening competition. As such, 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.

Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the NetCoalition court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. BOX believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. Data products are valuable to many end subscribers only insofar as they provide information that end Subscribers expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's Participant's view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer (''BD'') will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the BD chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the BD will choose not to buy it. Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two reasons. First, the product will contain less information, because executions of the BD's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the BD is directing orders will become correspondingly more valuable.

Thus, an increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' NetCoalition at 24. However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders,

[18] *See supra,* note 10. Cboe's and C2's data distributor CDS charges a $500 port fee per month; BZX and EDGX charge a connectivity fee between $250 and $14,500 a month for connectivity depending upon the data feed; BX charges a port fee between $500 and $650 per month depending upon the port; NOM charges a port fee between $650 and $750 a month depending upon the port, and PHLX charges a connectivity fee between $65 and $6,000 a month depending upon the data feed. The Exchange notes that the above mentioned exchanges charge these fees per port, while the Exchange proposes to assess the fee once per market participant. Furthermore, the Exchange notes that Cboe, C2, BZX, EDGX, NASDAQ BX, NOM, and PHLX charge the above mentioned connectivity fees in addition to data fees, which range from $1 to $14,500 depending upon the data feed and user type.

[19] *Id.*

[20] BOX's auction mechanisms include the Price Improvement Period (''PIP''), Complex Order Price Improvement Period (''COPIP''), Facilitation Auction and Solicitation Auction.

and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. Some exchanges pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an ''excessive'' price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including eleven SRO markets, as well as internalizing BDs and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including BOX, NYSE, NYSE MKT, NYSE Arca, and BATS/Direct Edge.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple BDs' production of proprietary data products. The potential sources of proprietary products are virtually limitless. Notably, the potential sources of data include the BDs that submit trade reports to TRFs and that have the ability to consolidate and distribute their data without the involvement of FINRA or an exchange-operated TRF.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and NYSE Arca did before registering as exchanges by publishing proprietary book data on the internet. Second, because a single order or transaction report can appear in a core data product, a SRO proprietary product, and/or a non-SRO proprietary product, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and BATS/Direct Edge. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While BDs have previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg and Thomson Reuters. In Europe, Cinnober aggregates and disseminates data from over 40 brokers and multilateral trading facilities.[21]

In this environment, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' NetCoalition I at 539. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. If a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act[22] and Rule 19b–4(f)(2) thereunder,[23] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the

[21] *See http://www.cinnober.com/boat-trade-reporting.*

[22] 15 U.S.C. 78s(b)(3)(A)(ii).

[23] 17 CFR 240.19b–4(f)(2).

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2018–04 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–BOX–2018–04. 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2018–04, and should be submitted on or before March 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–02864 Filed 2–12–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82652; File No. SR–CboeBZX–2018–009]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use on the Exchange's Equity Options Platform

February 7, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2018, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') 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 by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-Members of the Exchange pursuant to BZX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule for its equity options platform (''BZX Options'') to make certain changes to the following tiers: (i) Customer Penny Pilot Add Tiers under footnote 1; (ii) Quoting Incentive Program (''QIP'') Tiers under footnote 5; (iii) Market Maker Non-Penny Pilot Add Volume Tiers under footnote 7; and (iv) Away Market Maker Non-Penny Pilot Add Volume Tiers under 11.

Customer Penny Pilot Add Tiers

The Exchange currently offers eight Customer[6] Penny Pilot Add Tiers under footnote 1, which provide an enhanced rebate ranging from $0.40 to $0.53 per contract for qualifying Customer orders that add liquidity in Penny Pilot Securities[7] and yield fee code PY. The Exchange now proposes to modify Tier 1's required criteria and rebate. Currently under Tier 1, a Member may receive a rebate of $0.40 per contract where they have an ADV[8] greater than or equal to 0.05% of average OCV.[9] As amended, a Member may receive a rebate of $0.35 per contract where they

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

[6] ''Customer'' applies to any transaction identified by a Member for clearing in the Customer range at the OCC, excluding any transaction for a Broker Dealer or a ''Professional'' as defined in Exchange Rule 16.1. *http://markets.cboe.com/us/options/membership/fee_schedule/bzx/.*

[7] ''Penny Pilot Securities'' are those issues quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01. *Id.*

[8] ''ADV'' means average daily volume calculated as the number of contracts added or removed, combined, per day. *Id.*

[9] ''OCV'' means the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation (''OCC'') for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close. *Id.*

have an ADAV [10] in Customer orders greater than or equal to 0.05% of average OCV. The Exchange also proposes to update the Standard Rates table accordingly to reflect the tier's revised rebate.

QIP Tiers

The Exchange currently offers three QIP Tiers under footnote 5, which provide an additional rebate ranging from $0.02 to $0.04 per contract for qualifying Market Maker [11] orders that add liquidity in: (i) Penny Pilot Securities that yield fee code PM; and (ii) Non-Penny Pilot Securities that yield fee code NM. The additional rebate per contract is for an order that adds liquidity to BZX Options in options classes in which a Member is a Market Maker registered pursuant to Exchange Rule 22.2. A Market Maker must be registered with BZX Options in an average of 20% or more of the associated options series in a class in order to qualify for QIP rebates for that class. The Exchange now proposes to amend the required criteria for Tiers 1 and 2 and delete the Tier 3. The Exchange does not propose to amend the amount of the additional rebate for Tiers 1 and 2.

- Under current Tier 1, a Member may receive an additional rebate of $0.02 per contract where they have an ADV greater than or equal to 0.40% of average OCV. The Exchange proposes to amend the required criteria for Tier 1 to now require that the Member have an ADAV in Market Maker orders greater than or equal to 0.15% of average OCV.
- Under current Tier 2, a Member may receive an additional rebate of $0.04 per contract where they have an ADV greater than or equal to 3.25% of average OCV. Similar to as proposed above for Tier 1, the Exchange proposes to amend the required criteria for Tier 2 to now require that the Member have an ADAV in Market Maker orders greater than or equal to 0.35% of average OCV.
- Under Tier 3, a Member may receive an additional rebate of $0.03 per contract where they have an ADAV in Market Maker orders greater than or equal to 0.50% of average OCV. The Exchange proposes to delete Tier 3.

Market Maker Non-Penny Pilot Add Volume Tiers

The Exchange currently offers three Market Maker Non-Penny Pilot Add Volume Tiers under footnote 7, which provide an enhanced rebate ranging from $0.45 to $0.65 per contract for qualifying Market Maker orders that add liquidity in Non-Penny Pilot Securities and yield fee code NM. The Exchange now proposes to amend the required criteria for Tiers 1 and 2 and delete the Tier 3.

- Under current Tier 1, a Member may receive an enhanced rebate of $0.45 per contract where they have an ADV greater than or equal to 0.40% of average OCV. The Exchange proposes to amend the required criteria for Tier 1 to now require that the Member have an ADAV in Market Maker orders greater than or equal to 0.10% of average OCV.
- Under current Tier 2, a Member may receive an enhanced rebate of $0.52 per contract where they have an ADV greater than or equal to 1.30% of average OCV. Similar to as proposed above for Tier 1, the Exchange proposes to amend the required criteria for Tier 2 to now require that the Member have an ADAV in Market Maker orders greater than or equal to 0.35% of average OCV.
- Under Tier 3, a Member may receive an enhanced rebate of $0.65 per contract where they have an ADAV in Market Maker orders in Non-Penny Pilot Securities greater than or equal to 0.10% of average OCV and an ADAV in Non-Customer [12] orders greater than or equal to 3.00% of average OCV. The Exchange proposes to delete Tier 3 and update the Standard Rates table accordingly.

Away Market Maker Non-Penny Pilot Add Volume Tiers

The Exchange currently offers two Away Market Maker [13] Non-Penny Pilot Add Volume Tiers under footnote 11, which provide an enhanced rebate ranging from $0.40 to $0.52 per contract for qualifying Away Market Maker orders that add liquidity in Non-Penny Pilot Securities and yield fee code NN. The Exchange now proposes to amend the required criteria for Tiers 1 and 2. The Exchange does not propose to amend the amount of the enhanced rebate for Tiers 1 and 2.

- Under current Tier 1, a Member may receive an enhanced rebate of $0.40 per contract where they have an ADV greater than or equal to 0.40% of average OCV. The Exchange proposes to amend the required criteria for Tier 1 to now require that the Member have an ADAV in Non-Customer orders greater than or equal to 0.10% of average OCV.
- Under current Tier 2, a Member may receive an enhanced rebate of $0.52 per contract where they have an ADV greater than or equal to 1.30% of average OCV. Similar to as proposed above for Tier 1, the Exchange proposes to amend the required criteria for Tier 2 to now require that the Member have an ADAV in Non-Customer orders greater than or equal to 0.35% of average OCV.

Implementation Date

The Exchange proposes to implement the above changes to its fee schedule on February 1, 2018.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,[14] in general, and furthers the objectives of Section 6(b)(4),[15] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange. The Exchange believes it is reasonable to offer and incrementally modify incentives intended to help to contribute to the growth of the Exchange.

The Exchange believes that the proposed modifications to the tiered pricing structure are reasonable, fair and equitable, and non-discriminatory. Volume-based pricing such as that proposed herein have been widely adopted by exchanges, including the Exchange, and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to: (i) The value to an exchange's market quality; (ii) associated higher levels of market activity, such as higher levels of liquidity provisions and/or growth patterns; and (iii) introduction of

[10] ''ADAV'' means average daily added volume calculated as the number of contracts added and ''ADV'' means average daily volume calculated as the number of contracts added or removed, combined, per day. *Id.*

[11] ''Market Maker'' applies to any transaction identified by a Member for clearing in the Market Maker range at the OCC, where such Member is registered with the Exchange as a Market Maker as defined in Rule 16.1(a)(37). *Id.*

[12] ''Non-Customer'' applies to any transaction that is not a Customer order. *Id.*

[13] ''Away Market Marker'' applies to any transaction identified by a Member for clearing in the Market Maker range at the OCC, where such Member is not registered with the Exchange as a Market Maker, but is registered as a market maker on another options exchange. *Id.*

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4).

higher volumes of orders into the price and volume discovery processes. In particular, the proposed changes are intended to further incentivize Members to send increased order flow to the Exchange in an effort to qualify for the enhanced rebates made available by the tiers, in turn contributing to the growth of the Exchange. Because ADAV of particular category of orders (*e.g.,* Market Maker, Non-Customer, or Customer) generally makes up a smaller range than the previously required ADV of all orders that add liquidity submitted by the Member, the Exchange proposes to amend the percentage of ADAV necessary to achieve the tier so that it is substantially identical to the previously required percentage of OCV. The Exchange believes that those changes are equitable and reasonable because they will keep the difficulty to achieve each tier's criteria relatively unchanged from its current requirements. Also, limiting the ADAV requirement to a category of orders is designed to align the tier with the fee code it is associated with so that a rebate provide to a certain type of liquidity adding order is based on meeting criteria reasonably related to that type of order flow the tier is designed to attract.

Lastly, the Exchange believes that eliminating tiers are proposed herein is reasonable, fair, and equitable because this tier was not providing the desired result of incentivizing Members to increase their participation on the Exchange. As such, the Exchange also believes that the proposed elimination of this tier would be non-discriminatory in that it currently applies equally to all Members and, upon elimination, would no longer be available to any Members. Further, its elimination could allow the Exchange to explore other pricing mechanisms such as those described herein, in which it may enhance market quality for all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed amendment to its fee schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. The Exchange does not believe that the proposed changes burdens competition, but instead, enhances competition as it is intended to increase the competitiveness of the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and paragraph (f) of Rule 19b–4 thereunder.[17] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2018–009 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–CboeBZX–2018–009. 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2018–009, and should be submitted on or before March 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–02862 Filed 2–12–18; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82650; File No. SR–CBOE–2018–013]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Market Data Fees

February 7, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 2018, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Cboe Data Services (''CDS'') fee schedule to increase the fees for the BBO, Book Depth, and Complex Order Book (''COB'') data feeds.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the CDS fee schedule to increase the fees for the BBO, Book Depth, and COB data feeds.

BBO and Book Depth Data Feed

The BBO Data Feed is a real-time data feed that includes the following information: (i) Outstanding quotes and standing orders at the best available price level on each side of the market; (ii) executed trades time, size, and price; (iii) totals of customer versus non-customer contracts at the best bid and offer (''BBO''); (iv) all-or-none contingency orders priced better than or equal to the BBO; (v) expected opening price and expected opening size; (vi) end-of-day summaries by product, including open, high, low, and closing price during the trading session; (vi) recap messages any time there is a change in the open, high, low or last sale price of a listed option; (vii) COB information; and (viii) product IDs and codes for all listed options contracts. The quote and last sale data contained in the BBO data feed is identical to the data sent to the Options Price Reporting Authority (''OPRA'') for redistribution to the public.

The Book Depth Data Feed is a real-time, low latency data feed that includes all data contained in the BBO Data Feed described above plus outstanding quotes and standing orders up to the first four price levels on each side of the market, with aggregate size (''Book Depth'').

CDS currently charges a Data Fee, payable by a Customer, of $7,000 per month for internal use and external redistribution of the BBO and/or Book Depth data feeds.[3] The Data Fee entitles a Customer to provide the BBO and/or the Book Depth data feed to an unlimited number of internal users and Devices[4] within the Customer. A Customer receiving the BBO and/or Book Depth data feeds from another Customer is assessed the Data Fee by CDS pursuant to its own market data agreement with CDS, and is entitled to use the Data internally and/or distribute it externally.[5] All Customers have the same rights to utilize the data internally and/or distribute it externally as long as the Customer has entered into a written agreement with CDS for the data and pays the Data Fee.

The Exchange proposes to increase the Data Fee for both the BBO and Book Depth data feeds from $7,000 per month to $9,000 per month.[6] The Exchange is not proposing to amend the User Fee for either the BBO or Book Depth data feeds. The Data Fee for the Book Depth data feed will continue to be waived for Customers who also purchase the companion BBO data feed.[7]

COB Data Feed

The COB Data Feed is a real-time data feed that includes data regarding the Exchange's Complex Order Book and related complex order information. The COB Data Feed contains the following information for all Exchange-traded complex order strategies (multi-leg strategies such as spreads, straddles and buy-writes): (i) Outstanding quotes and standing orders on each side of the market with aggregate size, (ii) data with respect to executed trades (''last sale data''), and (iii) totals of customer versus non-customer contracts.

CDS currently charges Customers[8] of the COB Data Feed a Data Fee of $100 per month plus applicable User Fees. The Exchange now proposes to increase the Data Fee for the COB data feed from $100 to $3,000 per month. The Exchange notes that it had previously charged a Data Fee of $3,000 per month for the COB Feed[9] and later reduced that fee to its current rate to incentive further redistribution of the data feed.[10] The Exchange now proposes to return the fee for the COB data feed to its original rate to bring the cost of the data feed in line with that of similar data feeds offered by other exchanges. The Exchange is not proposing to amend the User Fee for either the COB data feed. The Data Fee for the COB Data Feed would continue to be waived for Customers of the BBO and/or Book Depth data feeds.[11]

Implementation Date

The Exchange intends to implement the proposed fees on February 1, 2018.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(4),[13] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. The Exchange believes that the proposed

[3] A BBO Data Feed ''Customer'' is any person, company or other entity that, pursuant to a market data agreement with CDS, is entitled to receive data, either directly from CDS or through an authorized redistributor (*i.e.,* a Customer or an extranet service provider), whether that data is distributed externally or used internally. The CDS fee schedule for Exchange data is located at *https://www.cboe.org/general-info/pdfframed?content=/publish/mdxfees/cboe-cds-fees-schedule-for-cboe-datafeeds.pdf&section=SEC_MDX_CSM&title=Cboe%20CDS%20Fees%20Schedule.*

[4] A ''Device'' means any computer, workstation or other item of equipment, fixed or portable, that receives, accesses and/or displays data in visual, audible or other form.

[5] A Customer may choose to receive the data from another Customer rather than directly from CDS's system because it does not want to or is not equipped to manage the technology necessary to establish a direct connection to CDS.

[6] The Exchange also proposes to amend the first column of the BBO Data Feed fees to identify Cboe as ''Cboe Options'' to be consistent with the Depth Book and COB data feed fee descriptions.

[7] Such COB Data Feed Customers are still subject to User Fees.

[8] A Customer is any person, company or other entity that, pursuant to a market data agreement with CDS, is entitled to receive data, either directly from CDS or through an authorized redistributor (*i.e.,* a Customer or an extranet service provider), whether that data is distributed externally or used internally. The CDS fee schedule for Exchange data is located at *https://www.cboe.org/general-info/pdfframed?content=/publish/mdxfees/cboe-cds-fees-schedule-for-cboe-datafeeds.pdf&section=SEC_MDX_CSM&title=Cboe%20CDS%20Fees%20Schedule.*

[9] *See* Securities Exchange Act Release No. 70683 (October 15, 2013), 78 FR 62798 (October 22, 2013) (SR–CBOE–2013–087).

[10] *See* Securities Exchange Act Release No. 73955 (December 30, 2014), 80 FR 598 (January 6, 2015) (SR–CBOE–2014–094).

[11] Such COB Data Feed Customers are still subject to User Fees.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4).

rates are equitable and non-discriminatory in that they apply uniformly to all recipients of Exchange data. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to recipients.

The Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act [14] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[15] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's customers and market data vendors who subscribe to the above data feeds will be subject to the proposed fees. The above data feeds are distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation purchase this data or to make this data available. Accordingly, distributors and users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to the above data feeds further ensure that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. For example, the above data feeds provide investors with alternative market data and competes with similar market data product currently offered by other exchanges. If another exchange (or its affiliate) were to charge less to distribute its similar product than the Exchange charges for the above data feeds, prospective users likely would not subscribe to, or would cease subscribing to either market data product.

The Exchange notes that the Commission is not required to undertake a cost-of-service or rate-making approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.[16]

BBO Data Feed

The Exchange believes the proposed increase in the Data Fee for BBO data is equitable and not unfairly discriminatory because it would apply equally to all Customers. The Exchange believes the proposed Data Fee is reasonable because it compares favorably to fees that other markets charge for similar products. For example, Nasdaq PHLX LLC (''PHLX'') charges Internal Distributors a monthly fee of $4,500 per organization and External Distributors a monthly fee of $5,000 per organization for its ''TOPO Plus Orders'' data feed, which like the BBO Data Feed includes top-of-book data (including orders, quotes and trades) and other market data.[17] Nasdaq ISE, LLC (''ISE'') offers a ''Top Quote Feed'', which includes top-of-book data, and a separate ''Spread Feed'', which like the BBO Data Feed includes order and quote data for complex strategies. ISE charges distributors of its Top Quote Feed a base monthly fee of $3,000 and distributors of its Spread Feed a base monthly fee of $3,000 [18] (totally $6,000 in the aggregate to receive the same data as offered by the BBO feed). The Exchange believes the proposed rate is reasonable based on the value of the market data included in the BBO feed and the market share that the data represents. The Exchange also notes that Customers who receive the BBO feed may also receive the Book Depth and COB data feeds at no extra charge.

Book Depth Data Feed

The Exchange believes the proposed Data Fee for the Book Depth Data Feed is equitable and not unfairly discriminatory because it would apply equally to all Customers. The Exchange believes the proposed Data Fee is reasonable because it compares favorably to fees that other markets charge for similar products. For example, PHLX charges Internal Distributors a monthly fee of $4,000 and External Distributors a monthly fee of a $4,500 for its Depth data feed that includes full depth of quotes and orders and last sale data for options listed on PHLX.[19] In addition, ISE charges a $5,000 per month distributor fee for its Real-time Depth of Market data feed.[20] The Exchange also notes that Customers who receive the Book Depth feed may also receive the BBO and COB data feeds at no extra charge. The Exchange believes the proposed rate is reasonable based on the value of the market data included in the BBO feed and the market share that the data represents.

[14] 15 U.S.C. 78k–1.

[15] 17 CFR 242.603.

[16] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's website at *http://www.sec.gov/rules/concept/s72899/buck1.htm. See also* Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR–NYSE–2014–64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

[17] *See* Section IX of the PHLX Pricing Schedule (setting forth the fees for proprietary market data).

[18] *See* Sections VIII(h) and (I) of the Nasdaq ISE Schedule of Fees.

[19] *See supra* note 17.

[20] *See* Section VIII(f) of the Nasdaq ISE Schedule of Fees.

COB Data Feed

The Exchange believes the proposed Data Fee for the COB Data Feed is equitable, reasonable, and not unfairly discriminatory because they would apply equally to all Customers of the COB Data Feed. The Exchange notes that it had previously charged a Data Fee of $3,000 per month for the COB Feed [21] and later reduced that fee to its current rate to incentive further redistribution of the data feed.[22] The Exchange now proposes to return the fee for the COB data feed to its original rate to bring the cost of the data feed in line with that of similar data feeds offered by other exchanges. For example, ISE charges distributors of its Spread Feed a base monthly fee of $3,000,[23] equal to what the Exchange proposes to charge for the COB data feed. The Exchange also notes that Customers who receive the BBO and Book Depth feeds may also receive the COB data feed at no extra charge. The Exchange believes the proposed rate is reasonable based on the value of the market data included in the COB feed and the market share that the data represents.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange's ability to price the BBO, Book Depth, ad COB data feeds is constrained by: (i) Competition among exchanges that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data.

An exchange's ability to price its proprietary data feed products is constrained by (1) the existence of actual competition for the sale of such data, (2) the joint product nature of exchange platforms, and (3) the existence of alternatives to proprietary data.

The Existence of Actual Competition. The Exchange believes competition provides an effective constraint on the market data fees that the Exchange, through CDS, has the ability and the incentive to charge. The Exchange has a compelling need to attract order flow from market participants in order to maintain its share of trading volume. This compelling need to attract order flow imposes significant pressure on the Exchange to act reasonably in setting its fees for market data, particularly given that the market participants that will pay such fees often will be the same market participants from whom the Exchange must attract order flow. These market participants include broker-dealers that control the handling of a large volume of customer and proprietary order flow. Given the portability of order flow from one exchange to another, any exchange that sought to charge unreasonably high data fees would risk alienating many of the same customers on whose orders it depends for competitive survival. The Exchange currently competes with fourteen options exchanges (including its affiliate, C2) for order flow.[24]

In addition, in the case of products that are distributed through market data vendors, the market data vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Internet portals, such as Google, impose price discipline by providing only data that they believe will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Similarly, Customers will not offer the BBO, Book Depth or COB Data Feeds unless these products will help them maintain current users or attract new ones. For example, a broker-dealer will not choose to offer the BBO, Book Depth or COB Data Feeds to its retail customers unless the broker-dealer believes that the retail customers will use and value the data and the provision of such data will help the broker-dealer maintain the customer relationship, which allows the broker-dealer to generate profits for itself. Professional users will not request any of these feeds from Customers unless they can use the data for profit-generating purposes in their businesses. All of these operate as constraints on pricing proprietary data products.

Joint Product Nature of Exchange Platform. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade executions are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platforms where the order can be posted, including the execution fees, data quality, and price and distribution of their data products. The more trade executions a platform does, the more valuable its market data products become. The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's broker-dealer customers view the costs of transaction executions and market data as a unified cost of doing business with the exchange.

Analyzing the cost of market data product production and distribution in isolation from the cost of all of the inputs supporting the creation of market data and market data products will inevitably underestimate the cost of the data and data products. Thus, because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of both obtaining the market data itself and creating and distributing market data products. It would be equally misleading, however, to attribute all of an exchange's costs to the market data portion of an exchange's joint products. Rather, all of an exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 15 options self-regulatory organization (''SRO'') markets, as well as internalizing broker-dealers (''BDs'') and various forms of alternative trading systems (''ATSs''), including dark pools

[21] *See* Securities Exchange Act Release No. 70683 (October 15, 2013), 78 FR 62798 (October 22, 2013) (SR–CBOE–2013–087).

[22] *See* Securities Exchange Act Release No. 73955 (December 30, 2014), 80 FR 598 (January 6, 2015) (SR–CBOE–2014–094).

[23] *See* Sections VIII(I) of the Nasdaq ISE Schedule of Fees.

[24] The Commission has previously made a finding that the options industry is subject to significant competitive forces. *See e.g.,* Securities Exchange Act Release No. 59949 (May 20, 2009), 74 FR 25593 (May 28, 2009) (SR–ISE–2009–97) (order approving ISE's proposal to establish fees for a real-time depth of market data offering).

and electronic communication networks (''ECNs''). Competition among trading platforms can be expected to constrain the aggregate return that each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market data products (or provide market data products free of charge), and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market data products, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

The Existence of Alternatives. The Exchange is constrained in pricing the BBO, Book Depth and COB Data Feeds by the availability to market participants of alternatives to purchasing these products. The Exchange must consider the extent to which market participants would choose one or more alternatives instead of purchasing the exchange's data. Other options exchanges can and have produced their own top-of-book, book depth and complex strategies market data products, and thus are sources of potential competition for CDS. For example, as noted above, ISE and PHLX offer market data products that compete with the BBO, Book Depth and COB Data Feeds. The large number of SROs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and BD is currently permitted to produce proprietary data products, and many currently do. In addition, the OPRA data feed is a significant competitive alternative to the BBO and last sale data included in the BBO and Book Depth Data Feeds.

The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [25] and paragraph (f) of Rule 19b–4 [26] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2018–013 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–CBOE–2018–013. 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2018–013 and should be submitted on or before March 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–02861 Filed 2–12–18; 8:45 am]

BILLING CODE 8011–01–P

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82646; File No. SR–CBOE–2018–010]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delete Obsolete Rules

February 7, 2018.

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 January 25, 2018, Cboe Exchange, Inc. (''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

thereunder.[4] 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 delete Rules that no longer apply to the Exchange and make other nonsubstantive changes to the Rules.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to delete Rules that no longer apply to the Exchange and to make other nonsubstantive changes to the Rules.[5]

Deletion of Rules

The Exchange proposes to delete the following rules and chapters from its rulebook:

• *Rule 2.40—Market-Maker Surcharge for Brokerage.* Rule 2.40 operated as a pilot program until March 30, 2000, at which time the program expired (and the Exchange did not request renewal). The Exchange does not impose a surcharge on Market-Maker transactions pursuant to this rule. Any fees and rebates applicable to any Market-Maker transactions are included in the Cboe Options Fees Schedule.

• *Rule 6.2—Trading Rotations.* Rule 6.2 states the Exchange may use the procedures described in current Rules 6.2, 6.2A, or 6.2B to conduct trading rotations in all options listed on the Exchange. Currently, the Exchange only uses the procedures set forth in current Rule 6.2B (proposed Rule 6.2) to conduct trading rotations, and no longer conducts trading rotations pursuant to current Rule 6.2. Therefore, this provision no longer applies to trading on the Exchange.[6]

• *Rule 6.2A—Rapid Opening System (''ROS'').* The Exchange used ROS to open options prior to implementation of the Exchange's Hybrid Trading System, which includes the Hybrid 3.0 Platform. Currently, all options listed on the Exchange trade on its Exchange's Hybrid Trading System. As stated in Rule 6.2A, ROS does not apply to series trading on the Hybrid Trading System, which open on the Cboe Options Hybrid Opening System (''HOSS'') (pursuant to current Rule 6.2B (proposed Rule 6.2)). Therefore, Rule 6.2A no longer applies to any options listed for trading on the Exchange.[7]

• *Rules 6.8—RAES Operations and 6.8B—Automatic ORS Order Execution Against Booked Orders.* The Exchange's Retail Automatic Execution System (''RAES'') was an automated execution system feature of the Exchange's Order Routing System (''ORS'') operated by the Exchange and that provided automated order execution and reporting services for options. RAES and ORS are no longer used, as all options trading on the Exchange currently occurs on the Hybrid Trading System, which includes Exchange's Order Handling System (''OHS''). Therefore, RAES and ORS no longer apply to any options listed for trading on the Exchange.[8]

• *Rule 6.10—LOU System Operations.* The Large Order Utility (''LOU'') System was a facility of the Exchange that provided order routing, handling, and execution for eligible options orders routed electronically to the Exchange. The LOU System is no longer used, as all options trading on the Exchange trade on the Hybrid Trading System. Therefore, the LOU System no longer applies to any options listed for trading on the Exchange.

• *Rule 6.13B—Penny Price Improvement.* Pursuant to Rule 6.13B, the Exchange may designate one or more options trading on the Hybrid Trading System in a Penny Price Improvement Program, which allows Trading Permit Holders to provide price improvement beyond the Exchange's disseminated quote for classes not already quoted in penny increments and for which the simple auction liaison system is not in effect. The Exchange currently has not designated, and has no intention to designate, any options for participation in this program. Therefore, this program no longer applies to any options listed for trading on the Exchange.[9]

• *Rule 6.54(a)—Accommodation Liquidation (Cabinet Trades) for Classes Not Trading on the Cboe Options Hybrid System.* Rule 6.54 describes cabinet trading permitted on the Exchange.

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange initially filed the proposed rule change on January 3, 2018 (SR–CBOE–2018–003). On January 25, 2018 the Exchange withdrew SR–CBOE–2018–003 and refiled as SR–CBOE–2018–009. On business date January 25, 2018, the Exchange subsequently withdrew SR–CBOE–108–009 [sic] and submitted this filing.

[6] The proposed rule change makes corresponding changes to the following rules to delete references to trading rotations and the rule proposed to be deleted: Rules 6.6, 6.18, 6.25(b)(1), 6.73(c) (no longer applicable because trading rotations pursuant to current Rule 6.2B (proposed Rule 6.2) are fully electronic), 21.11, 22.11, and 24.13 and Interpretation and Policy .01 (the body of proposed Rule 24.13 states opening rotations will be conducted in accordance with Rule 24.13 or proposed Rule 6.2, so there is no need to include a statement in Rule 24.13, Interpretation and Policy .01 that states proposed Rule 6.2 describes procedures for a trading rotation, as it would be redundant).

[7] The proposed rule change makes corresponding changes to the following rules to delete references to ROS and the rule proposed to be deleted: Rules 1.1(fff) and (ggg), 6.2, 6.6, 6.18, 6.25(b)(1), 8.60(c)(11) and Interpretation and Policy .02, 22.11, and 24.13. Because the proposed rule change deletes both Rules 6.2 and 6.2A, the proposed rule change also renumbers Rule 6.2B to be Rule 6.2, and makes corresponding changes throughout the Rules, including Rules 6.1A, 6.3A, 6.12, 6.12A, 6.35 [sic] (b)(v)(B)(V), 8.15, 8.85, and 17.50.

[8] The proposed rule change makes corresponding changes to the following rules to delete references to RAES and ORS, change references from ORS to OHS, and the rules proposed to be deleted: Rules 1.1(fff) and (ggg), 6.3, Interpretation and Policy .05, 6.6(b) and (e) and Interpretation and Policy .01, 6.7(b) (the Hybrid System includes OHS and the book), 6.8C (which the proposed rule change renumbers as 6.8), 6.13(a) and (c), 6.18, 8.7(b)(iii) and Interpretations and Policies .07 (which is being deleted in its entirety, as described below) .11(a) (the Exchange deleted the paragraph letter for current paragraph (b), as it will be the only paragraph in that Interpretation and Policy, as well as the introduction to that paragraph regarding its applicability to classes on the Hybrid System, because all classes are on the Hybrid System), 8.13, 8.16, 8.51(c)(1)(a)(iii), 8.60(c)(7) (the proposed rule change renumbers provisions (8) through (10) as (7) through (9)) and Interpretation and Policy .02, 8.85(a)(ix) (current paragraph (a)(ix) no longer applies, as there are no current Exchange sponsored automated programs that require a market participant's participation, and the proposed rule change renumbers subparagraphs (x) and (xi) as (ix) and x), and deletes from current subparagraph (x) (proposed subparagraph (xi) the introduction to that paragraph regarding its applicability to classes on the Hybrid System, because all classes are on the Hybrid System), 23.7, 24.15, 24.17, 24.21(j)(1), and 24B.15.

[9] The proposed rule change makes corresponding changes to the following rules to delete references to the Penny Price Improvement Program and the rules proposed to be deleted: Rules 1.1(fff) and (ggg), 6.45, Interpretations and Policies .01 and .02, Rule 6.47, Interpretation and Policy .02, and Rule 6.74, Interpretation and Policy .09.

Paragraph (a) describes cabinet trading for classes not trading on the Hybrid System, while paragraph (b) describes cabinet trading for classes trading on the Hybrid System. All options trading on the Exchange currently trade on the Hybrid Trading System, and thus Rule 6.54(a) no longer applies to any options listed for trading on the Exchange.[10]

• *Chapter VII—Order Book Officials.* Order Book Officials were Exchange employees responsible for maintaining the book with respect to classes assigned to them, effecting proper executions of orders placed with them, displaying bids and offers, and monitoring the market for classes assigned to them. The Exchange currently has no employees designated as, and does not intend to designate any employees as, Order Book Officials, as Order Book Official functions are generally obsolete now that most trading occurs electronically.

The proposed rule change deletes Rules 7.1 through 7.3, 7.4 except for subparagraph (a)(1) (which is being moved to Rule 6.11, with some modifications described below), 7.5, 7.7 through 7.10, and Chapter VII, Section B, as they relate solely to responsibilities of Order Book Officials.

Rule 7.4(a)(1) states public customer orders in Hybrid and Hybrid 3.0 classes are eligible for entry into the electronic book, and the Exchange may determine on a class-by-class basis other orders that are eligible for entry into the electronic book. Currently, after a class is open for trading (see current Rule 6.2B (proposed Rule 6.2) for a description of orders the System accepts prior to opening), the System accepts for entry into the Book (1) quotes of all Market-Makers and orders of any origin code in Hybrid classes and (2) quotes of Lead Market-Makers (''LMMs'') and orders of priority customers in Hybrid 3.0 classes, while the Exchange continues to have flexibility to permit orders of other origin codes be eligible for book entry. The Exchange proposes to codify this current book eligibility (which is consistent with the Exchange's authority in current Rule 7.4(a)(1)) in Rule 6.11. The proposed rule change also deletes the provision in current Rule 7.4(a)(1) that states Trading Permit Holders submitting orders or quotes for entry in to the book must do so electronically and in the format announced by the Exchange. It is redundant to state orders and quotes for entry in the electronic book must be submitted electronically, and Rule 6.53A describes the types of order formats Trading Permit Holders must use.[11]

Rule 7.5, Interpretation and Policy .03 states every Floor Broker who represents a Market-Maker with an order in any options class must, by public outcry at the post, indicate the identity of such Market-Maker at the request of any Trading Permit Holder or Order Book Official. The proposed rule change moves this provision (with the reference to Order Book Official deleted) to Rule 6.73, which relates to responsibilities of Floor Brokers.

Rule 7.6 regarding the requirement for PAR Official to report unusual activity is proposed to move to Rule 6.12B(b)(v).[12] The proposed rule change moves currently applicable provisions in Rule 7.12 (regarding PAR Officials) to Rule 6.12B (with some nonsubstantive changes).[13] PAR Officials are Exchange employees or independent contractors whom the Exchange may designate as being responsible for operating a PAR workstation and effecting proper executions of orders placed with them. PAR Officials no longer maintain the book with respect to assigned classes, as the electronic book manages electronic orders and quotes. The proposed rule change deletes the provision in current Rule 7.12(b)(i) regarding the definition of customer limit orders, as customer orders are now defined in Rule 1.1(www) and (yyy) (which are proposed to be relettered as (yyy) and (zzz), as described below). The proposed rule change deletes current Rule 7.12(b)(i)(C), which applies to the Intermarket Options Linkage Plan that no longer exists.[14] Pursuant to the current linkage plan, including the definition of an intermarket sweep order (''ISOs'') in Rule 6.53, ISOs may only be handled electronically (they may only be entered as immediate-or-cancel or for book entry if they do not execute), and thus would never be routed to a PAR workstation under the Rules. Therefore, PAR Officials no longer have responsibilities with respect to routed orders under the current linkage plan. The proposed rule change moves Rule 7.12(b)(i)(E), which relates to orders received during a trading rotation pursuant to current Rule 6.2 or HOSS pursuant to current Rule 6.2B (proposed Rule 6.2), to proposed Rule 6.12B(b)(i)(D). The proposed rule change changes the term immediately to promptly, as under current Rule 7.12 and proposed Rule 6.12(b), the term immediately means as soon as practicable but within 30 seconds. However, proposed Rule 6.12B(b)(i)(D) exempts these orders from being displayed within 30 seconds, so the term immediate did not seem appropriate. The term promptly still requires action as soon as practicable, but may be longer than 30 seconds. The proposed rule change moves current Rule 7.12(b)(ii), (iv), and (v) to proposed Rule 6.12B(b)(ii), (iii), and (iv), respectively, and moves current Rule 7.12(c) and (d) to proposed Rule 6.12B(c) and (d), respectively. The proposed rule change deletes Rule

[10] The proposed rule change makes a corresponding change to current paragraph (b), eliminates paragraph lettering for paragraph (b) (as that will be the only paragraph in the rule), and reletters subparagraphs (i) and (ii) as (a) and (b), consistent with paragraph lettering throughout the rules.

[11] The proposed rule change makes corresponding changes to the following rules to change cross-references to Rule 7.4 to Rule 6.11: Rules 6.13(b)(i)(A)(2) and (iii), 23.3(b), and 24.11A (the proposed rule change also deletes the Interpretations and Policies section of this rule, as there are currently none).

[12] The proposed rule change makes corresponding changes to the following rules to delete references to Order Book Officials and the rules proposed to be deleted: Rules 6.3, Interpretations and Policies .01 and .02, including the related footnote (these interpretations also delete references to post directors, which are no longer used at the Exchange, and only relate to prior circumstances under which Post Directors or Order Book Officials would suspend trading; those functions no longer exist on the Exchange, and the Exchange currently only halts trading in accordance with the remaining provisions of Rule 6.3 and other rules related to trading halts), 6.6(b) and (e) (which also deletes references to post directors, which are no longer used at the Exchange), 6.12A, 6.20(a) and Interpretations and Policies .02 (currently, there are only four PAR Officials on the trading floor, who all float to all trading crowds as necessary and are thus no longer assigned to classes) and .04(ii), 6.43(a), 6.54, Interpretations and Policies .01 and .02 (the proposed rule change replaces references to Order Book Officials to PAR Officials, consistent with Interpretation and Policy .02, which indicates PAR Officials may perform the functions of Order Book Officials for purposes of that rule), 6.73, Interpretation and Policy .01 (which only relates to comparing execution prices to those in displayed by an Order Book Official (pursuant to Rules 6.45(b) and 6.73, Floor Brokers must use due diligence to execute orders at the best price and provide first priority based on price); additionally, bids and offers are made in response to requests from Floor Brokers that represent orders in open outcry (see Rule 6.4(b) [sic] and Rule 6.73 contains other provisions that require a Floor Broker to make sure all persons in the crowd are aware of requests for quotes and use due diligence when handling and executing orders, making Interpretation and Policy .01 redundant and unnecessary), 8.7(c) (the Exchange notes Market-Makers not permitted to enter a trading station in a floor brokerage capacity, as set forth in Rule 8.8) and Interpretation and Policy .09 (changes cross-reference to Rule 7.5 to Rule 8.7(d)(iv), which describes current Market-Maker obligations, including the obligation of Market-Maker to provide a quote upon Exchange request), and 24.13 and Interpretation and Policy .03 (which the proposed rule change renumbers to .02).

[13] The proposed rule change makes corresponding changes to the following rules to change cross-references to Rule 7.12 to Rule 6.12B: Rules 6.12A, 6.18(d)(i), and 6.20(a).

[14] Chapter VI, Section E describes Exchange responsibilities pursuant to the current linkage plan, the Options Order Protection and Locked/Crossed Market Plan.

7.12(b)(iii), as PAR Officials no longer maintain the book (as described above) and do not have the ability to remove orders from the book. The proposed rule change replaces the term ''senior Trading Operations official'' with ''senior Help Desk personnel'' in current Rule 7.12(b)(iv) (proposed Rule 6.12(b)(iii)), which term is used throughout the rules. The proposed rule change deletes Rule 7.12, Interpretation and Policy .01, as it relates to the Exchange's responsibility to appoint PAR Officials to trading stations prior to March 24, 2006. The Exchange currently has PAR Officials appointed to all trading stations on the trading floor.

• *Autoquote.* Autoquote was an Exchange electronic quotation system that automatically monitored and updated market quotes using a mathematical formula measuring certain characteristics of the option and underlying interest. Rules related to LMMs and DPMs require them to provide continuous electronic quotes in appointed classes using Autoquote or a proprietary automated quotation updating system. Currently, all Market-Makers that submit electronic quotes use a proprietary system, and Autoquote is no longer used. The proposed rule change deletes Rule 8.7, Interpretation and Policy .07, which describes Autoquote, as well as the requirement of LMMs and DPMs to provide electronic quotes, which requirement is included in Rules 8.15 and 8.85, respectively.[15]

• *S&P 100 Modified Opening Rotation.* Rule 24.13, Interpretation and Policy .02 provides a modified opening rotation that the Exchange may use for S&P 100 options, but the rule also provides the Exchange with the authority to open this class using HOSS pursuant to current Rule 6.2B (proposed Rule 6.2). The Exchange currently uses HOSS to open S&P 100 options, and does not intend to use the modified opening in the future. Therefore, this provision no longer applies to the opening of S&P 100 options.[16]

• *Rule 8.7(c)—Market-Maker Entry into Trading Station in Unappointed Class other than As Floor Broker.* Rule 8.7(c) states whenever a Market-Maker enters the trading station for a class of options contracts in a class in which it is not appointed, in other than a floor brokerage capacity, the Market-Maker must fulfill obligations established in Rule 8.7(b) and, for the rest of the trading day, as well as undertake certain additional obligations. This rule text essentially requires a Market-Maker to act like a Market-Maker when it enters a trading station in the capacity of a Market-Maker in an unappointed class. However, pursuant to Rule 8.3, on the trading floor, Market-Makers have an appointment to trade in all hybrid classes, so if it goes to any trading station on the floor as a Market-Maker, it has an appointment for the classes at that station and is subject to Market-maker obligations. That provision, in conjunction with the restriction on acting as a Market-Maker and Floor Broker on the same day, make the provision in Rule 8.7(c) unnecessary and duplicative. Therefore, the proposed rule change deletes this provision.

• *Market-Maker Exemption from Rule 8.7(b)(iv) Obligations.* Rule 8.7, Interpretation and Policy .13 provided Market-Makers with a temporary exemption from requirements set forth in Rule 8.7(d)(iv) on a pilot basis until February 17, 2007. That pilot has expired, and the Exchange did not renew it. Therefore, the proposed rule change deletes Rule 8.7, Interpretation and Policy .03, as it no longer applies to trading on the Exchange.

• *Chapter XXIVA—Flexible Exchange Options (''FLEX Options'').* When the Exchange began offering FLEX Options for trading, FLEX Options traded pursuant to Rule XXIVA on the trading floor. The Exchange then developed the FLEX Hybrid Trading System on which FLEX Options could trade both on the trading floor and electronically. Chapter XXIVB describes FLEX Options trading on this system, and provides the Exchange with ability to permit FLEX trading pursuant to Chapter XXIVA or XXIVB. The open outcry rules in Chapter XXIVA are substantially similar to those in Chapter XXIVB. The Exchange has determined all FLEX trading must occur on the FLEX Hybrid Trading System pursuant to Chapter XXIVB. Therefore, Chapter XXIVA no longer applies to the trading of any FLEX Options.[17] The proposed rule change renumbers Chapter XXIVB and the rules in that chapter to Chapter XXIVA, and updates cross-references throughout the rules.

• *Chapter XXVI—Market Baskets.* Chapter XXVI describes rules applicable to market basket contracts, which are contracts obligating the seller to sell and the purchaser to purchase a designated number of shares of each of the stocks comprising the index on which the market basket is based. The Exchange currently does not list, and does not intend to list in the future, market basket contracts for trading. Therefore, Chapter XXVI no longer applies to any options trading on the Exchange.[18]

• *Chapter XXVII—Buy-Write Option Unitary Derivatives (''BOUNDS'').* Chapter XXVIII describes rules applicable to BOUNDS, which are securities issued, or subject to issuance, by the Options Clearing Corporation pursuant to its rules, which gives holders and writers thereof such rights and obligations as may be provided in its rules. The Exchange currently does not list, and does not intend to list in the future, BOUNDS for trading. Therefore, Chapter XXVII no longer applies to any options trading on the Exchange.

• *Chapter XXXI—Approval of Securities for Original Listing.* Chapter XXXI describes rules pursuant to which the Exchange may list equity securities for listing on the Exchange. The Exchange currently does not list any equity securities on the Exchange. Therefore, Chapter XXXI currently applies to no securities listed on the Exchange.[19]

Pursuant to Section 957 of the Dodd-Frank Act, Section 6(b)(10) of the Act[20] requires the rules of each national securities exchange to prohibit any member that is not the beneficial owner of a security registered under Section 12 of the Act[21] from granting a proxy to vote the security in connection with certain shareholder votes, unless the beneficial owner of the security has instructed the member to vote the proxy in accordance with the voting instructions of the beneficial owner. The

[15] The proposed rule change also deletes references to Autoquote in Rules 6.43(b), 8.15(c), 8.51(c)(1)(a)(iii), 8.60 Interpretation and Policy .02. Rules 8.7, Interpretation and Policy .07, 8.15(c), and 8.85(a)(x) provide components of a formula used for automated quoting by Market-Makers using proprietary automated quoting systems will be disclosed unless the Exchange exempts them from disclosing this information. For competitive reasons, the Exchange exempts all Market-Makers from disclosing this information, so the proposed rule change deletes those provisions, as it does not intend to require Market-Makers from disclosing proprietary information going forward.

[16] The proposed rule change also renumbers current Interpretation and Policy .03 to .02.

[17] The proposed rule change also deletes references to Chapter XXIVA in the following rules: Rules 3.2(b), 5.9, 6.1A(c), 6.24, Interpretation and Policy .05, 6.49A(c)(6), Introduction to Chapter XX, 20.12, Introduction to Chapter XXII, 22.16, Introduction to current Chapter XXIVB, 28.17, 29.18, and Introduction to Chapter XXIX.

[18] The proposed rule change also deletes references to market baskets and the rules proposed to be deleted in: Rules 8.8, Interpretation and Policy .02 and 24B.10 (which is proposed to be renumbered as 24A.10).

[19] Options may be listed for trading on the Exchange pursuant to Chapter V and XXIV. The proposed rule change leaves a placeholder in Chapters XXX and XXXI for rules related to listing and trading of equity securities. The Exchange would file a proposed rule change to adopt new rules if it determines to list and trade equity securities in the future.

[20] 15 U.S.C. 78f(b)(10).

[21] 15 U.S.C. 78l.

shareholder votes covered by Section 957 include any vote with respect to (1) the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940 (the ''Investment Company Act''), (2) executive compensation, or (3) any other significant matter, as determined by the Commission, by rule.[22]

Rules 31.82 through 31.88 currently include provisions that cover these proxy voting requirements with respect to Trading Permit Holders. However, because this proposed rule change deletes Chapter XXXI, the proposed rule change adds Rule 4.25 to retain the provisions required by Section 957. Proposed Rule 4.25 is substantially similar to rules of other options exchanges.[23]

• *Chapters XL through XLIX—Screen-Based Trading.* Chapters XL through XLIX describe trading on the Exchange's screen-based trading system. The screen-based trading system is no longer used, as all options trading on the Exchange trade on the Hybrid Trading System. Therefore, the screen-based trading rules no longer apply to any options listed for trading on the Exchange.[24]

• *Chapters L through LIV—CBOE Stock Exchange (''CBSX'').* Chapters L through LIV describe trading on CBSX, which is the Exchange's facility for trading stocks, warrants, IPRs, IPSs, and Trust Issued Receipts (non-options securities). CBSX ceased market operations on April 30, 2014. Therefore, the CBSX rules no longer apply to any trading on the Exchange.[25] The Exchange would file a proposed rule change to adopt new rules if it determines to list and trade non-options securities in the future.

Additional Nonsubstantive Changes

In addition to nonsubstantive changes described above, the proposed rule change makes the following nonsubstantive changes:

• The proposed rule change moves Interpretation and Policy .01 to the definition of Professional in Rule 1.1(ggg) to Interpretation and Policy .06 to Rule 1.1, so that all Interpretations and Policies to Rule 1.1 are in the same place.

• Currently, there are two paragraphs erroneously lettered as Rule 1.1(mmm) and (ppp). The proposed rule change corrects this lettering and updates the paragraph lettering to reflect these corrections.

• The proposed rule change makes updates throughout the rules to conform paragraph lettering and numbering to other rules, as well as to reflect deleted rule provisions.

• Rule 6.2, Interpretation and Policy .01(b) and (c) erroneously refer to LMMs as LLMs. The proposed rule change corrects [sic] those erroneous references.

The proposed rule change amends Rule 6.43(b) to indicate it only applies to Hybrid 3.0 classes, which is consistent with the current rule text and current trading practices.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[26] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[27] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[28] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, by deleting rules that no longer apply to Cboe Options trading (which rules have generally not been applicable in years), and making other nonsubstantive changes to better organize and more consistently number and letter rules, the rules will more clearly identify currently applicable rules, which the Exchange believes removes impediments to and perfects the mechanism of a free and open market. The Exchange believes the proposed rule change will eliminate confusion regarding which rules apply to current trading, which ultimately protects investors and the public interest. The proposed rule change has no impact on current trading on Cboe Options.

The proposed rule change regarding proxy voting is substantially similar to C2 Supplemental Rules to C2 Chapter 4 and Nasdaq ISE Rule 421 and consistent with Section 957 of the Dodd-Frank Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

Cboe Options 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 proposed rule change deletes rules that no longer apply to Cboe Options trading and makes other nonsubstantive changes, and thus has no impact on current trading on Cboe Options. Therefore, the proposed rule change has no impact on competition. The proposed rule change eliminates confusion with respect to rules applicable to current trading on Cboe Options.

The proposed rule change regarding proxy voting is substantially similar to C2 Supplemental Rules to C2 Chapter 4 and Nasdaq ISE Rule 421 and consistent with Section 957 of the Dodd-Frank Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. 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[29] and Rule 19b–4(f)(6)[30] thereunder.[31]

[22] 15 U.S.C. 78f(b)(10)(B).

[23] *See, e.g.,* C2 Supplemental Rules to C2 Chapter 4 and Nasdaq ISE Rule 421.

[24] The proposed rule change makes corresponding changes to the following rules to delete references to screen-based trading and the rules proposed to be deleted: Rules 1.1(fff) and (ggg), 3.2(b), and 3.3.

[25] The proposed rule change makes corresponding changes to the following rules to delete references to CBSX and the rules proposed to be deleted: Rules 3.1A, 3.2(b), 3.3, and 6.20A, Interpretation and Policy .01.

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

[28] *Id.*

[29] 15 U.S.C. 78s(b)(3)(A).

[30] 17 CFR 240.19b–4(f)(6).

[31] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [32] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay. According to the Exchange, the proposed rule change is consistent with the protection of investors and the public interest because it eliminates confusion as to the rules that currently apply to trading on Cboe Options. The Commission believes that deleting obsolete rules will add clarity and transparency to the Exchange's rules. Therefore, the Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[33]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2018–010 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–CBOE–2018–010. 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2018–010 and should be submitted on or before March 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Eduardo A. Aleman,

Assistant Secretary.

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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. The Exchange has satisfied this requirement.

[32] 17 CFR 240.19b–4(f)(6)(iii).

[33] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82653; File No. SR–Phlx–2018–13]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule To Exclude NDX and NDXP Options From the Strategy Caps and From Special Pricing for FLEX Transactions

February 7, 2018.

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 January 26, 2018, 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, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule to exclude A.M. and P.M.-settled options on broad-based indexes with nonstandard expiration dates from its pricing for Strategy Caps and for FLEX transactions.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on February 1, 2018.

The text of the proposed rule change is available on the Exchange's website 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange lists A.M. and P.M.-settled options on the Nasdaq 100® Index with nonstandard expiration dates under the symbols ''NDX'' and ''NDXP,'' [3] respectively. NDX and NDXP are proprietary products that are or soon will be traded exclusively on the Exchange and its affiliates.[4] The pricing schemes applicable to these products reflects their proprietary and exclusive nature.[5] That is, transactions in NDX and NDXP are exempt from many of the fee caps, fee waivers, and prices that otherwise apply to other options transactions. For example, transactions in options overlying NDX and NDXP are excluded from the ''Monthly Market Maker Cap'' and the ''Monthly Firm Fee Cap.'' Furthermore, for members executing facilitation orders, NDX and NDXP options transactions are excluded from waivers of the Firm Floor Options Transaction and the Broker-Dealer Floor Options Transaction charges.

Presently, however, one category of fee cap remains applicable to transactions in NDX and NDXP. Pursuant to Section II of the Pricing Schedule, transactions in NDX and NDXP are subject to so-called ''Strategy Caps.'' Strategy Caps limit the fees that otherwise apply to certain categories of options participants when they engage in Floor options transactions while employing strategies set forth in the Pricing Schedule, namely dividend, merger, short stock interest, reversal and conversion, jelly roll, or box spread strategies.

Additionally, pursuant to Section IV.B. of the Pricing Schedule, special pricing applies to transactions by Customers and Non-Customers in NDX and NDXP FLEX options.[6] Customers presently pay no fees for such transactions, while Non-Customers pay $0.25 per contract. Moreover, the Monthly Firm Fee Cap, Monthly Market Maker Cap, Strategy Caps and the Options Surcharge described in Section II of the Pricing Schedule apply to FLEX Transaction Fees for NDX and NDXP.

The Exchange proposes to amend these two provisions of the Pricing Schedule. First, the Exchange proposes to amend Section II to exempt transactions in NDX and NDXP from Strategy Caps. Second, the Exchange proposes to apply Section II pricing to transactions in NDX and NDXP FLEX options. Accordingly, electronic and floor options transaction charges for FLEX options overlying NDX and NDXP will be $0.75 per contract for all Non-Customers. No transaction charge will apply to Customers for NDX or NDXP FLEX options. A $0.25 per contract surcharge will be assessed to Non-Customers in NDX and NDXP FLEX options.

The purpose of these two amendments to the Pricing Schedule is to further refine the pricing of transactions in NDX and NDXP to reflect the exclusive and proprietary nature of these products.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [9]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [10] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[11] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [12]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [13] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange's proposal to exclude NDX and NDXP options transactions from the Strategy Caps in Section II of the Pricing Schedule is reasonable because these caps apply to Multiply-Listed Options and NDX and NDXP are not Multiply-Listed Options. As noted above, NDX and NDXP are listed exclusively on the Exchange. The Exchange does not believe that such caps are necessary to incentivize member organizations to execute strategies on the Floor involving products like NDX or NDXP that are exclusive to it. The Exchange's proposal to exclude NDX and NDXP options transactions from Strategy Caps is also equitable and not unfairly discriminatory because the Exchange will apply this cap exclusion in a uniform manner.

The Exchange's proposal to exclude NDX and NDXP FLEX options from Section IV.B.—FLEX Transaction Fees pricing and instead apply to such transactions Section II pricing is reasonable because the Exchange believes that FLEX option pricing will continue to be competitive despite the exclusion of NDX and NDXP. The Exchange's proposal is equitable and not unfairly discriminatory because the Exchange will uniformly exclude NDX

[3] The Exchange lists NDXP on a pilot basis. *See* Securities and Exchange Act Release No. 82341 (December 15, 2017), 82 FR 60651 (December 21, 2017) (SR–Phlx–2017–79).

[4] NDX is listed on Phlx, Nasdaq ISE, and Nasdaq GEMX. Several NDX options are listed on Cboe, but once they expire later this year, NDX will be entirely exclusive to the Nasdaq, Inc. Exchanges. NDXP presently is listed only on Phlx, but other Nasdaq-owned self-regulatory organizations intend to list it at a later date.

[5] *See* Securities and Exchange Act Release No. 82341 (December 15, 2017), 82 FR 60651 (December 21, 2017) (SR–Phlx–2017–79).

[6] The characteristics of a FLEX option are discussed in Rule 1079.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[10] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[11] *See NetCoalition,* at 534–535.

[12] *Id.* at 537.

[13] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

and NDXP FLEX options from FLEX option pricing. Moreover, the Exchange will apply to participants in NDX and NDXP FLEX options the same Section II transaction charges it applies to participants in other types of NDX and NDXP options transactions.

The Exchange notes that the proposed transaction charges for NDX and NDXP FLEX options are reasonable, equitable and not unfairly discriminatory as NDX and NDXP are exclusively listed products. The Exchange seeks to recoup its operational costs [14] for listing proprietary products. Also, pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in particular products. Other options exchanges price by symbol.[15] Further, the Exchange notes that with its products, market participants are offered an opportunity to either transact NDX or NDXP or separately execute options overlying PowerShares QQQ Trust (''QQQ'').[16] Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact the Nasdaq 100® Index.[17] When exchanges are able to recoup costs associated with offering proprietary products, it incentivizes growth and competition for the innovation of additional products.

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. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. The Exchange notes that with its products, market participants are offered an opportunity to either transact NDX or NDXP or separately execute options overlying PowerShares QQQ Trust (''QQQ''). Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact the Nasdaq 100 Index.[18]

The Exchange's proposal to exclude NDX and NDXP from the Strategies Caps does not impose an undue burden on competition because no market participant would be eligible to count NDX or NDXP toward the Strategies Caps.

The Exchange's proposal to exclude NDX and NDXP from FLEX Option pricing in Section IV.B. and instead apply Section II pricing to such transactions does not impose an undue burden on competition because the proposal would apply to participants in FLEX NDX and NDXP options transactions the same transactions fees that it assess for other types of NDX and NDXP options transactions.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2018–13 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–Phlx–2018–13. 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2018–13, and should be submitted on or before March 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–02863 Filed 2–12–18; 8:45 am]

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[14] By way of example, in analyzing an obvious error, the Exchange would have additional data points available in establishing a theoretical price for a Multiply Listed Option as compared to a proprietary product, which requires additional analysis and administrative time to comply with Exchange rules to resolve an obvious error.

[15] *See* pricing for RUT on CBOE's Fees Schedule.

[16] QQQ is an exchange-traded fund based on the Nasdaq–100 Index®.

[17] QQQ options overlies the same Index as NDX and NDXP, namely the Nasdaq 100® Index. This relationship between QQQ options and NDX and NDXP options is similar to the relationship between RUT, the iShares Russell 2000 Index, and IWM which is the ETF on RUT.

[18] *See* note 17 above.

[19] 15 U.S.C. 78s(b)(3)(A)(ii).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82645; File No. SR–CboeEDGX–2018–004]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use on the Exchange's Equity Options Platform

February 7, 2018.

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 January 31, 2018, Cboe EDGX Exchange, Inc. (''Exchange'' or ''EDGX'') 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 by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-Members of the Exchange pursuant to EDGX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.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 parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule for its equity options platform (''EDGX Options'') to decrease the Exchange's standard rebate for Customer[6] orders. Fee codes PC and NC are currently appended to all Customer orders in Penny Pilot Securities[7] and Non-Penny Pilot Securities,[8] respectively, and result in a standard rebate of $0.05 per contract. The Exchange proposes to decrease the standard rebate for all Customer orders in Penny Pilot Securities and Non-Penny Pilot Securities to a standard rebate of $0.01 per contract. In addition to reflecting the increase in the Fee Codes and Associated Fees portion of the Exchange's fee schedule for fee codes PC and NC, the Exchange proposes to replace references to the $0.05 rebate with $0.01 rebate on the Standard Rates table with respect to fee codes PC and NC. The Standard Rates table provides a range of rebates and fees applicable to executions on the Exchange in summary form.

The Exchange proposes to implement these amendments to its fee schedule on February 1, 2018.

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 of the Act.[9] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[10] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls.

The Exchange believes that its proposal to reduce the rebate provided by fee code PF [sic] is fair and equitable and reasonable because the proposed rebate remains consistent with pricing previously offered by the Exchange as well as its competitors and does not represent a significant departure from the Exchange's general pricing structure. Specifically, the Exchange notes that it previously provided a rebate of $0.01 per share to orders that yielded fee codes PC and NC prior to increasing the rebate to its current level.[11] In addition, the lower rebate is more than that offered by Nasdaq BX, Inc. (''BX''), which does not provide a standard rebate for similar orders.[12] Therefore, the Exchange believes the rebate for Customer orders remains consistent with pricing previously offered by the Exchange as well as other options exchanges and does not represent a significant departure from such pricing.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed amendments to its fee schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

[6] The term ''Customer'' applies to any transaction identified by a Member for clearing in the Customer range at the Options Clearing Corporation (''OCC''), excluding any transaction for a Broker Dealer or a ''Professional'' as defined in Exchange Rule 16.1.

[7] The term ''Penny Pilot Security'' applies to those issues that are quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01.

[8] The term ''Non-Penny Pilot Security'' applies to those issues that are not Penny Pilot Securities quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] *See* Securities Exchange Act Release No. 78062 (June 14, 2016), 81 FR 39981 (June 20, 2016) (SR–BatsEDGX–2016–21).

[12] *See* Section 2 of the BX fee schedule *available at http://www.nasdaqtrader.com/Micro.aspx?id=BXOptionsPricing.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and paragraph (f) of Rule 19b–4 thereunder.[14] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–CboeEDGX–2018–004 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–CboeEDGX–2018–004. 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2018–004 and should be submitted on or before March 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–02856 Filed 2–12–18; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 10311]

Advisory Committee on Historical Diplomatic Documentation—Notice of Rescheduled Meeting

The Advisory Committee on Historical Diplomatic Documentation has rescheduled the previously announced September 10–11 meeting (see 82 FR 55150). The new dates for the meeting are August 27–28.

The committee will meet on August 27, 2018, in open session to discuss unclassified matters concerning declassification and transfer of Department of State records to the National Archives and Records Administration and the status of the *Foreign Relations* series.

The Committee will meet in open session from 11:00 a.m. until noon in SA–4D Conference Room, Department of State, 2300 E Street NW, Washington, DC 20372 (Potomac Navy Hill Annex). RSVP should be sent not later than August 20, 2018. Requests for reasonable accommodation should be made by August 13, 2018. Requests made after that date will be considered, but might not be possible to fulfill.

Closed Session. The Committee's session in the afternoon of Monday, August 27, 2018; in the morning of Tuesday, August 28, 2018, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for review of classified documentation concerning the *Foreign Relations* series and other declassification issues. These are matters properly classified and not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure.

RSVP Instructions. Prior notification and a valid government-issued photo ID (such as driver's license, passport, U.S. Government or military ID) are required for entrance into the Department of State building. Members of the public planning to attend the open meetings should RSVP, by the dates indicated above, to Julie Fort, Office of the Historian (202–955–0214). When responding, please provide date of birth, valid government-issued photo identification number and type (such as driver's license number/state, passport number/country, or U.S. Government ID number/agency or military ID number/branch), and relevant telephone numbers. If you cannot provide one of the specified forms of ID, please consult with Julie Fort for acceptable alternative forms of picture identification.

Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. Please see the Security Records System of Records Notice (State-36) at *https://www.state.gov/documents/organization/242611.pdf,* for additional information.

Questions concerning the meeting should be directed to Reneé A. Goings, or Adam Howard, Department of State, Office of the Historian, Washington, DC 20372, telephone (202) 955–0200, (email *history@state.gov*).

Note that requests for reasonable accommodation received after the date indicated in this notice will be considered, but might not be possible to fulfill.

Julie L. Fort,

Designated Federal Officer, Advisory Committee on Historical Diplomatic Documentation.

[FR Doc. 2018–02873 Filed 2–12–18; 8:45 am]

BILLING CODE 4710–11–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 558 (Sub-No. 21)]

Railroad Cost of Capital—2017

AGENCY: Surface Transportation Board.

ACTION: Notice of decision instituting a proceeding to determine the railroad industry's 2017 cost of capital.

SUMMARY: The Board is instituting a proceeding to determine the railroad industry's cost of capital for 2017. The decision solicits comments on the following issues: The railroads' 2017 current cost of debt capital; the railroads' 2017 current cost of preferred equity capital (if any); the railroads' 2017 cost of common equity capital; and the 2017 capital structure mix of the railroad industry on a market value basis. Comments should focus on the various cost of capital components listed above using the same methodology followed in *Railroad Cost of Capital—2016,* EP 558 (Sub-No. 20) (STB served Aug. 7, 2017).

DATES: Notices of intent to participate are due by March 30, 2018. Statements of the railroads are due by April 20, 2018. Statements of other interested persons are due by May 11, 2018. Rebuttal statements by the railroads are due by June 1, 2018.

ADDRESSES: Comments may be submitted either via the Board's e-filing system or in the traditional paper format. Any person using e-filing should comply with the instructions at the E-FILING link on the Board's website, at *http://www.stb.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 558 (Sub-No. 21), 395 E Street SW, Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez at (202) 245–0333. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Board's decision is posted on the Board's website, *http://www.stb.gov.* Copies of the decision may be purchased by contacting the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238. Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.

Authority: 49 U.S.C. 10704(a).

Decided: February 7, 2018.

By the Board, Board Members Begeman and Miller.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2018–02886 Filed 2–12–18; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 290 (Sub-No. 4)]

Railroad Cost Recovery Procedures—Productivity Adjustment

AGENCY: Surface Transportation Board.

ACTION: Proposed railroad cost recovery procedures productivity adjustment.

SUMMARY: In a decision served on February 8, 2018, the Board proposed to adopt 0.996 (−0.4% per year) as the measure of average (geometric mean) change in railroad productivity for the 2012–2016 (five-year) period. This represents an increase of 0.3% from the average for the 2011–2015 period. The Board's February 8, 2018 decision in this proceeding stated that comments may be filed addressing any perceived data and computational errors in the Board's calculation. It also stated that, if there were no further action taken by the Board, the proposed productivity adjustment would become effective on March 1, 2018.

DATES: The productivity adjustment is effective March 1, 2018. Comments are due by February 23, 2018.

ADDRESSES: Send comments (an original and 10 copies) referring to Docket No. EP 290 (Sub-No. 4) to: Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Michael Smith, (202) 245–0322. Federal Information Relay Service (FIRS) for the hearing impaired, (800) 877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on the Board's website at *http://www.stb.gov*. Copies of the decision may be purchased by contacting the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0236.

Decided: February 7, 2018.

By the Board, Board Members Begeman and Miller.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2018–02888 Filed 2–12–18; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fifty Sixth RTCA SC–224 Standards for Airport Security Access Control Systems Plenary

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

ACTION: Fifty Sixth RTCA SC–224 Standards for Airport Security Access Control Systems Plenary.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Fifty Sixth RTCA SC–224 Standards for Airport Security Access Control Systems Plenary.

DATES: The meeting will be held March 29, 2018, 10:00 a.m.–1:00 p.m.

ADDRESSES: The meeting will be held at: RTCA Headquarters, 1150 18th Street NW, Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Karan Hofmann at *khofmann@rtca.org* or 202–330–0680, or The RTCA Secretariat, 1150 18th Street NW, Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or website at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the Fifty Sixth RTCA SC–224 Standards for Airport Security Access Control Systems Plenary. The agenda will include the following:

1. Welcome/Introductions/ Administrative Remarks
2. Review/Approve Previous Meeting Summary
3. TSA Report
4. Report on Document Distribution Mechanisms
5. Report on the New Guidelines and Other Safe Skies Reports
6. Discussion on DO–230I
7. Decision To Approve Release of DO–230I for Final Review and Comment (FRAC)
8. Discussion on Terms of Reference (TOR) and DO–230J Revision
9. Action Items for Next Meeting
10. Time and Place of Next Meeting
11. Any Other Business
12. Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 7, 2018.

Mohannad Dawoud,

Management & Program Analyst, Partnership Contracts Branch, ANG–A17, NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2018–02833 Filed 2–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fiftieth RTCA SC–206 Aeronautical Information and Meteorological Data Link Services (AIS) Plenary

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

ACTION: Fiftieth RTCA SC–206 Aeronautical Information and Meteorological Data Link Services (AIS) Plenary.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Fiftieth RTCA SC–206 Aeronautical Information and Meteorological Data Link Services (AIS) Plenary.

DATES: The meeting will be held March 15, 2018 8:30 a.m.–12:00 p.m.

ADDRESSES: The meeting will be held at: Harris Corporation—Technology Center, 1395 Troutman Blvd NE, Palm Bay, FL 32905. Pre-registration is required by March 2nd.

FOR FURTHER INFORMATION CONTACT: Karan Hofmann at *khofmann@rtca.org* or 202–330–0680, or The RTCA Secretariat, 1150 18th Street NW, Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or website at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the Fiftieth RTCA SC–206 Aeronautical Information and Meteorological Data Link Services (AIS) Plenary. The agenda will include the following:

1. Opening Remarks: DFO, RTCA, and Chairman
2. Attendees' Introductions
3. Review and Approval of Meeting Agenda
4. Approval of Previous Meeting Minutes (Herndon, VA)
5. Sub-Groups Reports
   A. SG1: CSC JC and Other SC Coordination (ISRAS)
   B. SG5: FIS–B MOPS
6. Decision on TOR Changes/Rejoining WG–76
7. Future Meetings Plans and Dates
8. Industry Coordination
   A. Horizon 2020—Honeywell
9. Action Item Review
10. Other Business
11. Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 7, 2018.

Mohannad Dawoud,

Management & Program Analyst, Partnership Contracts Branch, ANG–A17, NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2018–02834 Filed 2–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Program Management Committee Meeting

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

ACTION: RTCA Program Management Committee Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Program Management Committee Meeting.

DATES: The meeting will be held March 22, 2018 8:30 a.m.–4:30 p.m.

ADDRESSES: The meeting will be held at: RTCA Headquarters, 1150 18th Street NW, Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Karan Hofmann at *khofmann@rtca.org* or 202–330–0680, or The RTCA Secretariat, 1150 18th Street NW, Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or website at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the RTCA PMC Program Management Committee Meeting. The agenda will include the following:

1. Welcome and Introductions
2. Review/Approve
   A. Meeting Summary December 19, 2017
   B. Administrative SC TOR Revisions
3. Publication Consideration/Approval
   A. Revision to DO–257A—Minimum Operational Performance Standards for the Depiction of Navigational Information on Electronic Maps Prepared, by SC–227 (Standards of Navigation Performance)
4. Integration and Coordination Committee (ICC)
5. Cross Cutting Committee (CCC)
6. Past Action Item Review
7. Discussion
   A. SC–223—Internet Protocol Suite (IPS) and Aeronautical Mobile Airport Communication System (AEROMACS)—Discussion—Revised TOR
   B. SC–229—406 MHZ Emergency Locator Transmitters (ELTS)—Discussion—Revised TOR
   C. SC–236—Standards for Wireless Avionics Intra-Communication System (WAIC) WITHIN 4300–4400 MHZ—Discussion—Revised TOR
   D. SC–147—Aircraft Collision Avoidance Systems—Discussion—Status
   E. SC–206—Aeronautical Information and Meteorological Data Link Services—Discussion—Temporary Restricted Areas White Paper—Discussion
   F. NAC—Status Update
   G. TOC—Status Update
   H. DAC—Status Update
   I. FAA Actions Taken on Previously Published Documents—Report
   J. Special Committees—Chairmen's Reports and Active Inter-Special Committee Requirements Agreements (ISRA)—Review
   K. European/Eurocae Coordination—Status Update
8. Documents Open for Final Review and Comment
9. Other Business
10. Schedule for Committee Deliverables and Next Meeting Date
11. New Action Item Summary

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 7, 2018.

Mohannad Dawoud,

Management & Program Analyst, Partnership Contracts Branch, ANG–A17, NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2018–02832 Filed 2–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0238]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From TowMate, LLC

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: FMCSA announces its decision to renew for a period of 5 years TowMate, LLC's (TowMate's) current exemption allowing motor carriers to operate rechargeable wireless temporary stop, turn, and tail lighting systems during temporary towing operations. Under the Federal Motor Carrier Safety Regulations (FMCSRs), all required lamps, with the exception of battery-powered lamps used on projecting loads, must be powered by the electrical system of the motor vehicle. The Agency has concluded that granting this exemption renewal would not have an adverse impact on safety, and that use of rechargeable wireless temporary stop, turn, and tail lighting systems during temporary towing operations would likely achieve a level of safety equivalent to or greater than the level of safety provided by the regulation. However, the Agency requests comments and information on the exemption, especially from anyone who believes this standard will not be maintained.

DATES: This decision takes effect February 9, 2018. Comments must be received on or before February 20, 2018.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2015–0238 using any of the following methods:

- *Website: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday-Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the ''Public Participation'' heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the ''Privacy Act'' heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to Room W12–140, DOT Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Public participation: The *http://www.regulations.gov* website is generally available 24 hours each day, 365 days each year. You may find electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* website as well as the DOT's *http://docketsinfo.dot.gov* website. If you would like notification that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Ms. Amina Dines, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC–PSV, (202) 366–2782, *Amina.Dines@dot.gov,* Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31315 and 31136(e) to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). This authority is codified in 49 CFR part 381. Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305(a)).

The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must specify the effective period of the exemption (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

TowMate's Application for Exemption

TowMate applied for an exemption from 49 CFR 393.23 to allow motor carriers to operate rechargeable wireless temporary stop, turn, and tail lighting systems during temporary towing operations. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.23, ''Power Supply for Lamps,'' provides that ''All required lamps must be powered by the electrical system of the motor vehicle with the exception of battery powered lamps used on projecting loads.''

The application stated:

> TowMate is making this request because the use of conventional hard wired temporary stop, turn, and tail lights has many drawbacks that wireless tow lights solve. These include broken connections, frayed wires, burnt out incandescent bulbs, and the potential to be snagged or pulled from the tow light receptacle due to improper running of wires, and road hazards, along with the safety hazard of increasing the amount of time spent on the roadside or the scene of an accident by stringing wired lighting systems between vehicles and securing the wires. With the advent of LED technology coupled with advancements in battery technologies, wireless tow lights are more reliable and better equipped for the rigors of daily temporary use.
>
> Temporary wireless stop, turn, tail lighting systems can operate for 10+ hours of

continuous use on a full charge, and in-cab wire-less monitoring systems give the driver constant information on the functioning of the system, displaying state of charge of the battery inside the unit, displaying the functioning of the system during operation, and warning the driver if the unit is no longer functioning. In this sense, wireless tow lights provide a level of safety and redundancy that is not currently required on wired temporary lighting systems. In an emergency situation with a drained battery, power can be directly connected to the temporary wireless stop, turn, and tail lighting system from a standard 4 pin or 7 pin electrical connection.

Without the proposed temporary exemption, tow and haul away operators will be forced to continue to use cumbersome wired temporary towing light systems, placing an unnecessary burden on their daily operations. The current temporary lighting requirements for stop, tail, and turn lamps require that the lamps receive their power from a direct wired connection to the towing vehicle with no ascertainable benefit from doing such. Wireless tow lights afford benefits that wired systems are unable to, such as redundancies like monitoring the status of the unit in real time, thus assuring their proper operation at all times.

On August 6, 2015, FMCSA published notice of the TowMate application and requested public comment (80 FR 47031). The Agency received twenty comments, all in support of TowMate's application. FMCSA granted the exemption on February 9, 2016 (81 FR 6927). The Agency concluded that permitting the use of rechargeable wireless temporary stop, turn, and tail lighting systems during temporary towing operations will reduce the time tow operators spend at the side of the road connecting wired lighting systems between vehicles, thereby reducing their risk of injury and increasing safety. The Agency determined that use of the rechargeable wireless lighting systems will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption. In towing operations during the exemption period, motor carriers are allowed to use rechargeable wireless temporary stop, turn, and tail lighting systems that do not meet the lighting power supply requirements of 49 CFR 393.23, provided the requirements of 49 CFR 393.17(b)(2) are met. The decision to grant the temporary exemption was also consistent with an amendment made in an August 15, 2005 final rule allowing battery powered lamps on the rear of projecting loads.

TowMate's Request To Renew the Exemption

At the time the exemption was granted, the term of temporary exemptions was limited by statute to a maximum of 2 years. However, the Fixing America's Surface Transportation (FAST) Act, signed on December 4, 2015, now allows an exemption to be granted for a period of up to 5 years (49 U.S.C. 31315(b)(2)) if FMCSA finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption'' (§ 31315(b)(1)). TowMate has requested a 5-year extension of the current exemption.

Basis for Renewing Exemption

FMCSA is not aware of any evidence showing that the operation of rechargeable wireless temporary stop, turn, and tail lighting systems during temporary towing operations during the current exemption has resulted in any degradation of safety. The Agency believes that extending the exemption for a period of 5 years will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

The renewal outlined in this notice extends the exemption from February 9, 2018, through February 9, 2023, and requests public comment. During that period, motor carriers will be allowed to use rechargeable wireless temporary stop, turn, and tail lighting systems that do not meet the lighting power supply requirements of 49 CFR 393.23 during temporary towing operations, provided the requirements of 49 CFR 393.17(b)(2) are met. The exemption will be valid for 5 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) Motor carriers and/or commercial motor vehicles fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Request for Comments

FMCSA requests comments from parties with data concerning the safety record of motor carriers using rechargeable wireless temporary stop, turn, and tail lighting systems during temporary towing operations in accordance with the conditions of the exemption. The Agency will evaluate adverse evidence submitted during the comment period and at any time during the 5-year period of the exemption. If safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b)(1), FMCSA will take immediate steps to revoke the exemption.

Issued on: February 6, 2018.

Cathy F. Gautreaux,

Deputy Administrator.

[FR Doc. 2018–02890 Filed 2–12–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2017–0118]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this provides the public notice that on November 7, 2017, Denver's Regional Transportation District (RTDC) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 236. FRA assigned the petition Docket Number FRA–2017–0118.

In accordance with 49 CFR 236.588, RTDC is requesting approval to perform periodic testing of the Automatic Train Control system (ATC) at an interval of 92 days for the RTDC fleet of electric multiple unit equipment (EMUs), numbered RTDC 4001 through RTDC 4066. Currently RTDC is performing ATC periodic testing at an interval of 60 days as required by 49 CFR 236.588. In support of this request, RTDC states that the original equipment manufacturer (OEM) Siemens Rail Automation (formerly PHW, Inc.) has developed the maintenance and testing program for these vehicles based on a 92-day interval. RTDC has included relevant portions of this program with its petition. RTDC further states that to date, there have been no issues with the ATC system found during periodic testing that would be impacted by increasing the testing interval to 92 days. RTDC adds that granting the

requested approval would not result in an additional costs and would allow RTDC to improve efficiency and resource allocation while complying with the OEM's maintenance requirements.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by March 30, 2018 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. 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 *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2018–02867 Filed 2–12–18; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2006–25764]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this provides the public notice that by a letter dated December 21, 2017, Union Pacific Railroad Company (UP) petitioned the Federal Railroad Administration (FRA) for an extension of its waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 232. FRA assigned the petition Docket Number FRA–2006–25764.

UP originally received conditional relief in 2007 from 49 CFR 232.205, *Class I brake test-initial terminal inspection,* and 49 CFR 215 *Freight car safety standards,* for freight cars received in interchange at the United States/Mexico border crossing in Calexico, California, to permit required inspections to be conducted in El Centro, California, 10.1 miles north of Calexico. The original justification for the relief, as stated by UP, included: Inadequate capacity at the yard in Calexico, due to increased rail traffic volume;

- Inability to adjust its infrastructure due to Calexico yard's location in the middle of the city (causing the yard to be effectively ''boxed in'' by existing development and the locations of highway crossings);
- The need to avoid ''bottleneck'' delays at Calexico, affecting commerce on both sides of the border; and
- The elimination of choked flow of automobile traffic in Calexico, when trains stop or go very slowly across street crossings for inspections.

UP's relief was extended for an additional five years in a decision letter dated March 26, 2013. In support of its present petition to extend its relief, UP states it has been operating under the requirements set forth in the waiver for the past ten years and no adverse effect on the safety of operations has occurred.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by March 30, 2018 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. 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 *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2018–02866 Filed 2–12–18; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0020]

Inventory of U.S.-Flag Launch Barges; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice to U.S.-flag launch barge owners and operators.

SUMMARY: The Maritime Administration is updating its inventory of U.S.-flag launch barges. Additions, changes and comments to the list are requested. Launch barge information may be found at *http://www.marad.dot.gov/ships-and-shipping/domestic-shipping/launch-barge-program/.*

DATES: Submit comments on or before March 15, 2018.

ADDRESSES: Comments should refer to docket number MARAD–2018–0020. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.Carr@dot.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 46 CFR part 389 (Docket No. MARAD–2008–0045) Determination of Availability of Coastwise-Qualified Vessels for the Transportation of Platform Jackets, the Final Rule requires that the Maritime Administration publish a notice in the **Federal Register** requesting that owners or operators (or potential owners or operators) of coastwise qualified launch barges notify us of:

(1) Their interest in participating in the transportation and, if needed, the launching or installation of offshore platform jackets; (2) the contact information for their company; and, (3) the specifications of any currently owned or operated coastwise qualified launch barges or plans to construct same.

In addition, we are also seeking information on non-coastwise qualified (U.S.-flag) launch barges as well.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

By Order of the Maritime Administrator.

Dated: February 8, 2018.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

REPORTED U.S.-FLAG LAUNCH BARGES

Vessel name	Owner	Built	Length (ft.)	Beam (ft.)	DWT (L.T.)	Approx launch capacity (L.T.)	Coastwise qualified
455 4	Crowley Marine Services	2009	400	105	19,226	18,766	X
455 5	Crowley Marine Services	2009	400	105	19,226	18,766	X
455 6	Crowley Marine Services	2009	400	105	19,226	18,766	X
455 7	Crowley Marine Services	2009	400	105	19,226	18,766	X
455 8	Crowley Marine Services	2010	400	105	19,226	18,766	X
455 9	Crowley Marine Services	2010	400	105	19,226	18,766	X
Barge 400L	Crowley Marine Services	1997	400	100	19,646	19,146	X
Barge 410	Crowley Marine Services	1974	400	99.5	12,035	11,535	X
Barge 455–3	Crowley Marine Services	2008	400	105	19,226	18,766	X
Barge 500–1	Crowley Marine Services	1982	400	105	16,397	15,897	X
Julie B	Crowley Marine Services	2008	400	130	23,600	23,100	X
Marty J	Crowley Marine Services	2008	400	105	19,226	18,766	X
MWB 403	HMC Leasing, Inc	1979	400	105	16,322	6,800	X
INTERMAC 600	J. Ray McDermott, Inc	1973	500	120	32,290	15,600	
McDermott Tidelands 020	J. Ray McDermott, Inc	1980	240	72	5,186	5,000	X
McDermott Tidelands 021	J. Ray McDermott, Inc	1980	240	72	4,700	2,200	X
McDermott Tidelands 021	J. Ray McDermott, Inc	1981	240	72	5,186	5,000	X
McDermott Tidelands No. 012	J. Ray McDermott, Inc	1973	240	72.2	4,217	4,000	X
McDermott Tidelands No. 014	J. Ray McDermott, Inc	1973	240	72.2	4,217	4,000	X
MARMAC 11	McDonough Marine Service	1994	250	72	4,743	4,200	X
MARMAC 12	McDonough Marine Service	1994	250	72	4,743	4,200	X
MARMAC 15	McDonough Marine Service	1995	250	72	4,743	4,200	X
MARMAC 16	McDonough Marine Service	1995	250	72	4,743	4,200	X
MARMAC 17	McDonough Marine Service	1997	250	72	4,743	4,200	X
MARMAC 18	McDonough Marine Service	1998	250	72	4,743	4,200	X
MARMAC 19	McDonough Marine Service	1999	250	72	4,743	4,200	X
MARMAC 20	McDonough Marine Service	1999	250	72	4,743	4,200	X
MARMAC 21	McDonough Marine Service	2002	260	72	5,163	4,500	X
MARMAC 22	McDonough Marine Service	2003	260	72	5,082	4,500	X
MARMAC 23	McDonough Marine Service	2009	260	72	5,082	4,500	X
MARMAC 24	McDonough Marine Service	2010	260	72	5,082	4,500	X

REPORTED U.S.-FLAG LAUNCH BARGES—Continued

Vessel name	Owner	Built	Length (ft.)	Beam (ft.)	DWT (L.T.)	Approx launch capacity (L.T.)	Coastwise qualified
MARMAC 25	McDonough Marine Service	2010	260	72	5,082	4,500	X
MARMAC 300	McDonough Marine Service	1998	300	100	10,105	9,500	X
MARMAC 301	McDonough Marine Service	1996	300	100	9,553	9,000	X
MARMAC 3018	McDonough Marine Service	1996	318	95′ −9″	10,046	9,500	
MARMAC 400	McDonough Marine Service	2001	400	99′ −9″	11,272	10,500	X
MARMAC 9	McDonough Marine Service	1993	250	72	4,743	4,200	X
COLUMBIA NORFOLK	Moran Towing	1982	329′ 3 1/2″	78	8,036	8,000	X
FAITHFUL SERVANT	Puglia Engineering, Inc	1979	492	131	23,174	23,000	
ATLANTA BRIDGE	Trailer Bridge, Inc	1998	402	100	6,017	6,017	X
BROOKLYN BRIDGE	Trailer Bridge, Inc	1998	402	100	6,017	6,017	X
CHARLOTTE BRIDGE	Trailer Bridge, Inc	1998	402	100	6,017	6,017	X
CHICAGO BRIDGE	Trailer Bridge, Inc	1998	402	100	6,017	6,017	X
MEMPHIS BRIDGE	Trailer Bridge, Inc	1998	402	100	6,017	6,017	X

[FR Doc. 2018–02885 Filed 2–12–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of three persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel. 202–622–4855; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On February 7, 2018, OFAC determined that that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. MUHAMMAD, Rahman Zeb Faqir (a.k.a. MUHAMMAD, Rahman Zayb Faqir; a.k.a. ''ALAMZEB''; a.k.a. ''AURANGZEB''; a.k.a. ''KHAN, Rahman Ieb''; a.k.a. ''ZAIB, Alam''; a.k.a. ''ZAIB, Rehman''; a.k.a. ''ZEB, Rahman R''), Bashgram Laal Qila Wersakay, Lower Dir, Khyber Pakhtunkhwa Province, Pakistan; Lalqillah, Lower Dir District, Khyber Pakhtunkhwa Province, Pakistan; DOB 01 Jan 1970; alt. DOB 01 Jan 1974; POB Dir, Pakistan; nationality Pakistan; National ID No. 1530562382221 (Pakistan) (individual) [SDGT] (Linked To: LASHKAR E-TAYYIBA).

Designated pursuant to section 1(d)(i) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism'' (E.O. 13224) for assisting in, sponsoring, or providing financial, material, or technological support for, or financial or other services to or in support of, LASHKAR E-TAYYIBA, an entity determined to be subject to E.O. 13224.

2. KHAN, Hizb Ullah Astam (a.k.a. MOAZZAM, Hizbullah Qari; a.k.a. ''Hazab Allah''; a.k.a. ''Hazab Ullah''; a.k.a. ''Hazeb Ullah''; a.k.a. ''Hazib Ullah''; a.k.a. ''Hiz Bullah''; a.k.a. ''Hizb Allah''; a.k.a. ''Hizb Ullah''; a.k.a. ''Hizbulah''; a.k.a. ''Hizbullah''; a.k.a. ''Qari Hizbullah''), House Number 5, Akhunabad, Shaheen Muslim Town, Peshawar, Pakistan; House Number 5, Akhunabad, Chok Yadagr Branch, Peshawar, Pakistan; Matin, Darah-ye Pech District, Kunar Province, Afghanistan; DOB 01 Mar 1982; alt. DOB 03 Jan 1982; POB Peshawar, Pakistan; nationality Pakistan; National ID No. 1730113198199 (Pakistan) (individual) [SDGT] (Linked To: AMEEN AL-PESHAWARI, Fazeel-A-Tul Shaykh Abu Mohammed).

Designated pursuant to section 1(c) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism'' (E.O. 13224) for acting for or on behalf of AMEEN AL-PESHAWARI, Fazeel-A-Tul Shaykh Abu Mohammed, an individual determined to be subject to E.O. 13224.

3. KHAN, Dilawar Khan Nadir (a.k.a. KHAN, Dilawar), Peshawar, Khyber Pahktunkhwa Province, Pakistan; DOB 1982; alt. DOB 1981; POB Lower Dir, Khyber Pakhtunkhwa Province, Pakistan; nationality Pakistan; citizen Pakistan (individual) [SDGT] (Linked To: AMEEN AL-PESHAWARI, Fazeel-A-Tul Shaykh Abu Mohammed).

Designated pursuant to section 1(c) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism'' (E.O. 13224) for acting for or on behalf of AMEEN AL-PESHAWARI, Fazeel-A-Tul Shaykh Abu Mohammed, an individual determined to be subject to E.O. 13224.

Dated: February 7, 2018.

Andrea Gacki,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2018–02831 Filed 2–12–18; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0156]

Agency Information Collection Activity: Notice of Change in Student Status

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 16, 2018.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Cynthia Harvey-Pryor, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Cynthia.harvey.pryor@va.gov.*

Please refer to ''OMB Control No. 2900–0156 in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology. 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.

Authority: 38 U.S.C. 3020.

Title: Notice of Change in Student Status.

OMB Control Number: 2900–0156.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 22–1999b.

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

Estimated Annual Burden: 68,586 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Responses: 411,517.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–02875 Filed 2–12–18; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 83 Tuesday,
No. 30 February 13, 2018

Part II

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 416, 417, et al.
Egg Products Inspection Regulations; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 416, 417, 500, 590 and 591

[Docket No. FSIS–2005–0015]

RIN 0583–AC58

Egg Products Inspection Regulations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the egg products inspection regulations by requiring official plants that process egg products (herein also referred to as ''egg products plants'' or ''plants'') to develop and implement Hazard Analysis and Critical Control Point (HACCP) Systems and Sanitation Standard Operating Procedures (Sanitation SOPs) and to meet other sanitation requirements consistent with the meat and poultry regulations. FSIS is proposing to eliminate those current regulatory provisions that are inconsistent with HACCP, Sanitation SOPs, and the proposed sanitation requirements. FSIS is also proposing to specify in the regulations that official plants are required to process egg products to be edible without additional preparation to achieve food safety.

In addition, FSIS is proposing to: Provide for generic approval as part of the prior label approval system for egg products; make changes to labeling requirements for shell eggs consistent with those in the Food and Drug Administration's (FDA's) regulations; require special handling instructions on egg products; eliminate the requirements for prior approval by FSIS of egg products plant drawings, specifications, and equipment; incorporate egg products plants into the coverage of the ''Rules of Practice'' that the Agency follows when initiating administrative enforcement actions; and change the Agency's interpretation of the requirement for continuous inspection in agency law.

FSIS is also announcing that it is seeking public comment on draft guidance designed to help small and very small plants producing egg products to meet the new regulatory requirements being proposed in this rulemaking. Should the rule become final, FSIS intends to finalize this guidance.

DATES: Comments must be received on or before June 13, 2018. FSIS is providing a longer comment period than typical for this proposed rule because of the magnitude of the proposed action and the need to provide for possible public meetings on the proposed action.

ADDRESSES: FSIS invites interested persons to submit comments on this proposed rule and the draft guidance. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 1400 Independence Avenue SW, Mailstop 3782, Room 8–163B, Washington, DC 20250–3700.
- *Hand- or Courier-Delivered Submittals:* Deliver to Patriots Plaza 3, 355 E Street SW, Room 8–163B, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2005–0015. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E Street SW, Room 8–164, Washington, DC 20250–3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Victoria A. Levine, Program Analyst, Issuances Staff, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 6079, South Agriculture Building, Washington, DC 20250–3700; telephone (202) 720–5627; fax (202) 690–0486.

SUPPLEMENTARY INFORMATION:

Executive Summary

FSIS is proposing to amend the egg products inspection regulations (9 CFR part 590) to require that official plants [1] that process egg products develop and implement Hazard Analysis and Critical Control Points (HACCP) systems and Sanitation Standard Operating Procedures (Sanitation SOPs), in accordance with the regulations in 9 CFR parts 416 and 417, and to meet proposed sanitation requirements (proposed 9 CFR part 591). The Agency is proposing to eliminate those regulations that are incompatible with the regulations for HACCP and Sanitation SOPs and to convert prescriptive, command-and-control requirements to general sanitation standards.

Existing regulations that FSIS is proposing to revise or eliminate include those relating to egg products plant grounds and pest management; plant sanitation; plant construction, including rooms, doors, and windows; lighting; ventilation and odors; plumbing; sewage disposal; water supply and solution re-use; and dressing rooms, lavatories, and toilets. The Agency is proposing to replace all of these with general sanitation requirements, as it has previously done with the requirements on the same subjects in the meat and poultry products regulations.

The Agency is also proposing to specify in the regulations that official plants are required to process egg products to be edible without additional preparation to achieve food safety (proposed 9 CFR 590.570). This will ensure that the products are free of detectable pathogens. The proposed regulations will require egg product plants to maintain control of egg products that have been sampled and tested for public health hazards, *e.g., Salmonella,* until the test results become available (proposed amendments to 9 CFR 590.504). The proposed amended regulations will provide for the use of irradiated shell eggs in the processing of egg products and food products containing them (proposed 9 CFR 590.590).

The Agency is proposing to make the egg products labeling and ''other consumer protection'' requirements, including requirements for generically approved labeling, more like the labeling requirements for meat and poultry products (proposed 9 CFR 590.412).

FSIS is proposing to align the import requirements for eggs and egg products more closely with the import requirements for meat and poultry products (proposed 9 CFR 590, Subpart B).

FSIS is proposing to change organizational terms and job titles that appear in the regulations but that are no longer used in FSIS (proposed amendment of 9 CFR 590.5).

FSIS is also proposing to change the Agency's interpretation of the requirement for continuous inspection in 21 U.S.C. 1034(a). Inspection will no

[1] As defined in the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*). Exempted plants, as defined in 9 CFR 590.5, are also official plants, per the statute.

longer be conducted during all processing operations, but may instead be provided at least once per shift.

Finally, FSIS is proposing to replace the rules of practice governing enforcement procedures for egg product plants with those that apply to meat and poultry product establishments (proposed amendments to 9 CFR part 500).

Costs attributable to the proposed rule are those associated with the development and implementation of HACCP plans and Sanitation SOPs and the need for new product labels with safe-handling instructions. The impact of the costs is somewhat mitigated by the fact that 93 percent of egg products plants already use a written HACCP plan to address at least one production step in their process.

FSIS will continue to test for *Salmonella* and *Listeria* monocytogenes (Lm) in egg products. If FSIS detects the pathogens in the product, under HACCP, plants will be required to take corrective actions to prevent recurrence of the problem, if the plant has determined the pathogen is reasonably likely to occur in its production process (9 CFR 417.3(a)). If FSIS detects the pathogen and the plant has not determined that the hazard is reasonably likely to occur, the plant will be required to take corrective actions and also will be required to reassess its HACCP plan (9 CFR 417.3(b)). FSIS also will continue to require that egg product plants test pasteurized egg products for pathogens. Plants must ensure that egg products that test positive for pathogens are condemned or reprocessed (9 CFR 590.422).

The proposed rule will provide greater flexibility and incentives for innovation through reductions in paperwork and unnecessary approvals. In addition, plants voluntarily meeting HACCP requirements and also complying with current prescriptive regulations would reduce costs because they would be operating entirely under HACCP requirements.

TABLE 1—SUMMARY OF ESTIMATED COSTS AND BENEFITS

Discussion of benefits and costs			
	Low	Mid	High
Benefits ($1,000) [a]	5,585	5,585	5,585
Costs ($1,000)	2,195.0	4,235.2	6,287.8
Net Benefits ($1,000)	3,389.7	1,349.5	−703.1
Industry Benefits	• Long-term efficiency gains, as shown in academic literature derived from producing egg products in a HACCP system. • Less burdensome or elimination of waiver, blueprints, no objection letter, changes to production equipment, and label approval submissions to FSIS. • Cost savings from the elimination of overtime and holiday pay paid to FSIS inspectors for inspection.		
Agency Benefits	• Long-term benefits from improved inspection personnel coverage. Egg products inspection personnel will now be trained under a HACCP system and can be positioned for inspection in traditional meat and poultry establishments. • Salary savings for the reduction in inspection at egg products plants. • Savings from the reduction or elimination of waiver, blueprints, no objection letter, changes to production equipment, and label approval submissions to FSIS from industry.		
Industry Costs	• Cost to the plant to create HACCP plans and Sanitation SOPs. • Costs to the plant for additional recordkeeping and monitoring. • Cost to the plant for training personnel in the HACCP system.		
Agency Costs	• Costs for training inspection program personnel in HACCP and egg products inspection. • Costs to the Agency to provide relief inspectors while egg products plants inspectors are being trained. • Additional travel costs for inspection personnel on patrol assignments in egg products plants. • Loss of overhead paid to the Agency by industry.		

[a] Costs were annualized over 10 years at the 7 percent discount rate.

A copy of each document referenced in this notice of proposed rulemaking is available for viewing in the FSIS Docket Room, on the FSIS website as a related document associated with this docket, and on *www.regulations.gov,* unless otherwise noted.

Table of Contents

I. Background

FSIS's Regulatory Jurisdiction Over Egg Products

FSIS carries out its food safety responsibilities with respect to eggs and egg products under the provisions of the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031–1056).

To prevent the entry into commerce of any egg product that is capable of use as human food and is misbranded or adulterated, the Secretary of Agriculture regulates the processing of egg products under 21 U.S.C. 1034. Section 1034(a) states that the Secretary ''shall, whenever processing operations are being conducted, cause continuous inspection to be made, in accordance with the regulations promulgated under this Act, of the processing of egg products, in each plant processing for commerce, ...'' Therefore, under FSIS's current interpretation of the EPIA, an inspector needs to be on the premises during all such operations. The Secretary has also been authorized to make inspections, as appropriate, of the facilities of egg handlers (including transport vehicles) to determine whether shell eggs destined for the ultimate consumer are being held under refrigeration at an ambient temperature of no greater than 45 degrees Fahrenheit after packing and contain labeling that indicates that refrigeration is required (21 U.S.C. 1034(e)).

Under 21 U.S.C. 1043, the Secretary of Agriculture has the authority to promulgate such rules and regulations as he deems necessary to carry out the purposes or provisions of the Act. The Secretary is also responsible for the administration and enforcement of the EPIA, except as otherwise provided in 21 U.S.C. 1034(d).

1. What Products Are Covered Under the EPIA

Under the EPIA, FSIS regulates egg products. FSIS also has been delegated the authority to establish temperature and labeling requirements applicable to shell eggs destined for the ultimate consumer (*see* 21 U.S.C. 1034(e)(1)).

Under 21 U.S.C. 1033(f), the term ''egg product'' means any ''dried, frozen, or liquid eggs, with or without added ingredients, excepting products which contain eggs only in a relatively small proportion or historically have not been, in the judgment of the Secretary, considered by consumers as products of the egg food industry, and which may be exempted by the Secretary under such conditions as he may prescribe to assure that the egg ingredients are not adulterated and such products are not represented as egg products.'' The EPIA does not define ''relatively small proportion,'' nor does it provide additional guidance as to what criteria the Secretary should take into consideration when determining what egg products consumers consider to be products of the egg food industry.

Under 21 U.S.C. 1034(a), the Secretary requires continuous inspection to be made of the processing of egg products in each plant processing for commerce. There are currently 77 such official plants that are under FSIS jurisdiction. Under the EPIA, ''processing'' means ''manufacturing egg products, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing, cooling, freezing, drying, or packaging egg products'' (21 U.S.C. 1033(w)). Thus, egg products processing operations, such as mixing, pasteurizing, freezing, packaging, or relabeling, must be conducted under continuous Agency inspection.

The definition of ''egg product'' in the egg products inspection regulations (9 CFR 590.5) includes a list of specific products that have been exempted as not being ''egg products.'' These exempted products include freeze-dried products; imitation egg products; egg substitutes; dietary foods; dried no-bake custard mixes; egg nog mixes; acidic dressings; noodles; milk and egg dip; cake mixes; French toast; and sandwiches containing eggs or egg products. Such products must, however, be prepared from inspected egg products or from eggs containing no more restricted eggs than are allowed in the official standards for U.S. Consumer Grade B shell eggs.[2] Exempted products are subject to the jurisdiction of the Food and Drug Administration (FDA).

As stated above, products that contain eggs only in a relatively small proportion are exempted from the definition of ''egg product'' and thus not amenable under the EPIA. Several of the products listed in the preceding paragraph have been exempted from the coverage of ''egg products'' for this reason, including dried no-bake custard mixes; egg nog mixes; acidic dressings; noodles; milk and egg dip; cake mixes; and French toast. The egg product ingredients in these foods are not easily distinguished in the food and are used simply to add flavor. Other products that include eggs but are not subject to FSIS jurisdiction are closed-face sandwiches containing eggs or egg products and balut, a Philippine delicacy. These products are subject to the jurisdiction of FDA.

Cooked egg products, such as cooked egg patties, cooked omelets, and freeze-dried cooked eggs, also fall under FDA's jurisdiction because they are produced from USDA-inspected and passed egg products. To eliminate confusion as to who has statutory authority over these types of products, FSIS is proposing to amend the definition of ''egg product'' in 9 CFR 590.5 to include cooked egg products as not being egg products under FSIS jurisdiction.

2. Product Amenability Determinations Under the EPIA

FSIS considers a product to be amenable under the EPIA if it consists of dried, frozen, or liquid eggs, with or without added ingredients. Examples include Pasteurized Frozen Whole Egg with citric acid; plain Pasteurized Frozen Whole Egg without added ingredients; Pasteurized Liquid Yolk with 10% salt; Pasteurized Frozen Scrambled Egg Mix with Whole Egg and pepper, starch, and dried milk; Frozen Yolks with 10% sugar added; Frozen Egg Whites with whipping aids (such as sodium sulfate or triethyl citrate); Pasteurized Enzyme Modified Dried Egg Product with Egg Yolks and xanthan gum and citric acid to preserve color, and less than 1% silicon dioxide as an anticaking agent and phospholipase; Spray Dried Albumin; and Spray Dried Egg Whites with calcium citrate and salt (or other added ingredients).

FSIS has determined that some of the products on the list of specific products that have been exempted as not being ''egg products'' are incorrectly categorized as such. FSIS believes that these products, egg substitutes and freeze-dried egg products, are, in fact, egg products, and should therefore no longer be exempt from inspection by FSIS under the EPIA. FSIS is seeking comment on the number of facilities that might become dual jurisdiction facilities, that is, regulated by FSIS and FDA, if egg substitutes and freeze-dried egg products are no longer exempt from FSIS inspection.

Egg Substitutes

Egg substitutes are low-cholesterol products that are characterized by yolk replacement by other non-egg ingredients such as vegetable oil, nonfat dry milk, soy protein, gums, food coloring, artificial flavors, and vitamins and minerals (for nutritional fortification). The fundamental ingredient in these products is egg white, but they may also include added

[2] *See* the United States Standards, Grades, and Weight Classes for Shell Eggs, AMS 56.216(c). *http://www.ams.usda.gov/sites/default/files/media/Shell_Egg_Standard%5B1%5D.pdf.*

egg-white solids or a small amount of yolk. When the EPIA and the egg products inspection regulations were written, the production of egg substitutes was exempted from United States Department of Agriculture (USDA) inspection in the egg products inspection regulations.

As a result, egg substitutes are under the jurisdiction of FDA. FDA has overseen the formulation, packaging, labeling, storage, and transportation of egg substitutes under the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 301–399). Egg substitutes do not undergo continuous inspection during processing (unless the starting ingredient is unpasteurized egg white), and most egg substitutes do not bear a USDA inspection legend.

However, FSIS tentatively finds that egg substitutes should no longer be exempt from inspection by FSIS under the EPIA. Egg substitutes are similar, if not identical, in some cases, in formulation to egg products. Indeed, the egg product ingredient is distinctive and significantly contributes to the basic nature of egg substitutes by characterizing the food. The only substantive difference among these categories of products is color and nutrients. When a color additive is mixed with pasteurized egg whites, the resulting product is called an ''egg substitute.'' The application of color to pasteurized egg whites has generally not been conducted under FSIS inspection.

The processing of egg substitutes is also similar to that of other egg products, and the contamination risks associated with these types of products are the same. Egg products and egg substitutes are manufactured using the same process, though egg substitutes processed in an FDA facility do not have to re-pasteurized; where CCPs exist in the manufacture of egg products, they exist in the production of egg substitutes, *e.g.,* during mixing, blending, pasteurization, if applicable, cooling, and packaging. The fact that egg substitutes are formulated with pasteurized egg whites does not mean that all food safety risks associated with the products are eliminated. Some egg substitutes are not re-pasteurized after production, even though they have been further processed in the FDA facility. To produce egg substitutes, manufacturers need to reprocess pasteurized egg whites because of the risk of product contamination post-pasteurization.

Because the risks associated with egg substitutes are the same as those associated with egg products, and because the reprocessing step presents a point in the process where contamination of egg substitutes might occur, under the EPIA, the processing of egg substitutes needs to take place within the framework of HACCP and Sanitation SOP preventive control measures. Furthermore, the addition of color and other ingredients does not materially change the products such that the jurisdiction over the inspection of the products should be different than for other egg products. In an effort to be more transparent about the roles and responsibilities of FSIS and FDA regarding eggs, and after consulting with FDA, FSIS is proposing to assert jurisdiction over egg substitutes.

In addition, FSIS is proposing to assert jurisdiction over freeze-dried egg products. Under 9 CFR 590.5, these are exempted from being egg products. However, FSIS tentatively finds this categorization to be incorrect. Freeze-dried egg products are amenable under the EPIA because they consist of a pasteurized egg product that is flash frozen and placed in a vacuum chamber where ice particles are removed. The food safety risks associated with freezing the product and contemplated by the EPIA are the same whether the process takes place in an FSIS-inspected egg products plant or an FDA-inspected facility. As a result, if this proposal is adopted, freeze-dried egg products will no longer be exempt and will be subject to FSIS's jurisdiction. Therefore, FSIS is proposing to amend the list of products exempted as not being egg products in 9 CFR 590.5 to eliminate freeze-dried products and egg substitutes.

II. Proposed Changes to Specific Regulations

A. 9 CFR Part 591

Under proposed 9 CFR 591.1(a), all official plants will have to comply with the requirements contained in 9 CFR parts 416, Sanitation, and 417, HACCP Systems. For the purposes of these parts, as well as 9 CFR part 500, Rules of Practice, an ''official establishment'' or ''establishment'' will include a plant that processes egg products (proposed 9 CFR 591.1(b)).

B. HACCP

FSIS is proposing to adopt HACCP as the organizing structure for its egg products food safety program because HACCP has been proven to be an optimal framework for building science-based process control into food production systems to prevent food safety hazards. Under proposed 9 CFR 590.149(b) and 591.1(a), official plants will be required to comply with 9 CFR part 417, the Agency's regulation on HACCP, as a condition of receiving inspection.

HACCP is a flexible system that will enable official plants to tailor their control systems to the needs of their particular plants and processes. Under proposed 9 CFR 590.149(b)and 591.1 and 9 CFR part 417, each egg products plant will be required to develop and implement a HACCP system for food safety that is designed to prevent, eliminate, or reduce to an acceptable level the occurrence of biological, chemical, and physical hazards that are reasonably likely to occur in the plant's process. Plants will be responsible for developing and implementing HACCP plans that incorporate the controls that are necessary to produce safe egg products. Given the requirements in 9 CFR part 417, FSIS is proposing to amend or eliminate many of the processing and facility requirements contained in 9 CFR 590.500–575.

Under 9 CFR part 417, when developing a HACCP plan (9 CFR 417.2(b)), a plant conducts a hazard analysis to identify and list the biological, chemical, or physical food safety hazards that are reasonably likely to occur in its production process for a particular product and the measures necessary to prevent, eliminate, or reduce the occurrence of those hazards to an acceptable level. The plant then identifies the points in each of its processes at which control is necessary to achieve this goal (9 CFR 417.2(c)(2)). These points are called ''critical control points'' (CCPs). The plant would have to establish critical limits for the preventive measures associated with each identified CCP. A critical limit is the maximum or minimum value to which a hazard must be controlled at a CCP to prevent, eliminate, or reduce to an acceptable level the occurrence of the identified food safety hazard. Critical limits are most often based on process parameters such as temperature, time, water activity, pH, or humidity.

FSIS is proposing to treat egg products similarly to the way it treats ready-to-eat (RTE) meat and poultry products. FSIS will require that official plants produce egg products to be edible without additional preparation to achieve food safety. Pathogens detected in or on RTE egg products would adulterate those egg products under 21 U.S.C. 1033(a)(1)) because they would contain a poisonous or deleterious substance which may render them injurious to health.

For example, FSIS regards any amount of Lm in an RTE product as a product adulterant (9 CFR 430.4). Because the product is RTE, it is likely to be consumed without any effort to kill the pathogen, and the presence of the pathogen may render the product

injurious to health (21 U.S.C. 601(m)(1), 453(g)(1)) and would cause the product to be unhealthful.[3] The same would be true of an RTE egg product containing *Salmonella* or Lm. While egg products may receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes, they are produced to be edible without additional preparation to achieve food safety. The presence of *Salmonella* or Lm, therefore, would render the product injurious to health (21 U.S.C. 1033(a)(1)) and would cause it to be unhealthful.

FSIS has also addressed shiga-toxin producing E. coli (STEC) in certain raw beef products (non-intact or intended for non-intact use) in this manner. FSIS considers an acceptable reduction for STEC to be a reduction to an undetectable level (*i.e.,* a level that would not be detectable using the FSIS testing method or a method with a sensitivity at least equivalent to FSIS's method).[4] This means that an establishment producing RTE meat or poultry products or certain raw beef products needs to address the pathogens so that they will not be detected by FSIS or other equivalent testing. FSIS has recommended that establishments do their own testing to verify that their HACCP systems address the pathogens of concerns.[5] While establishments can use their own testing methods, those methods should be at least as sensitive as FSIS's.[6] FSIS has also said that establishments can address the pathogen in their HACCP plan or Sanitation SOPs or other prerequisite program.[7] This same guidance would apply to egg products plants.

Under the Agency's verification testing program, egg products are broken into seven product categories—four liquid and three dried. Each month, inspectors collect one egg product sample per process from each plant that produces egg products. Thus, inspectors could sample an egg products plant as many as seven times per month depending on the number of plant production processes occurring during the month. After inspectors collect the samples, FSIS Field Service Laboratories analyze the samples for the presence of Salmonella and Lm using the protocols listed in the Microbiology Laboratory Handbook.[8] [9]

Once a plant has established critical limits for the measures associated with each identified CCP, it will need to monitor the identified CCPs to assess whether the CCP is within the established critical limit (9 CFR 417.2(c)(4)). Monitoring is an integral part of HACCP, and monitoring frequencies must be sufficient to ensure that each CCP is under control. The plant's HACCP plan would also have to include corrective action to be taken when monitoring indicates that there is a deviation from a critical limit at a CCP, because the existence of a HACCP plan does not guarantee that problems will not arise (9 CFR 417.2(c)(5)). For example, corrective action plans must be in place to identify and correct the cause of a deviation and to determine the disposition of potentially adulterated product.

Plants will also have to develop and maintain effective recordkeeping procedures that document the entire HACCP system (9 CFR 417.2(c)(6)). Finally, plants will need to list the verification procedures, and the frequency with which those procedures will be performed, that the plant will use to ensure that the HACCP system is in compliance with the HACCP plan (9 CFR 417.2(c)(7)). Periodic verification will help the plant to ensure that it is operating in accordance with its HACCP plan. The occurrence of unforeseen hazards evidences that the HACCP plan needs to be reassessed. If this proposal is adopted, individuals developing, reassessing, and modifying HACCP plans in accordance with 9 CFR 417.2(b) and 417.3 will have to have successfully completed a course of instruction in the application of the seven HACCP principles to meat, poultry, or egg products processing, including a segment on the development of a HACCP plan for a specific product and on record review (9 CFR 417.7(b)).

Under this proposal, if an egg products plant fails to develop and implement a HACCP plan that complies with proposed 9 CFR 590.149(b) and 591.1 and 9 CFR 417.2, or to operate in accordance with other 9 CFR part 417 requirements, FSIS is likely to file a complaint to withdraw or refuse inspection services, pursuant to 9 CFR 500.6 or 500.7. As with official meat and poultry products establishments, FSIS will verify that the plant's HACCP plans comply with the requirements of proposed 9 CFR 590.149(b) and 591.1 and 9 CFR part 417; that these plans have been validated by the facility; and that plants are producing egg products to be edible without additional preparation to achieve food safety. In other words, these products must be free of detectable pathogens.

Hazard Analysis

If this proposal is adopted, each egg products plant will be required to conduct a hazard analysis to determine the food safety hazards reasonably likely to occur in its production processes and to identify the preventive measures that it needs to take to control those hazards (proposed 9 CFR 590.149(b) and 591.2 and 9 CFR 417.2(a)(1)). The analysis must include a flow chart that describes the steps of the process and that identifies the intended use or consumers of the finished product (9 CFR 417.2(a)(2)).

Contamination with *Salmonella* spp. can be a food safety hazard that is reasonably likely to occur in the production of egg products. Therefore, as part of its hazard analysis, each egg products plant should consider addressing this food safety hazard in its HACCP system. Consistent with the application of HACCP in meat and poultry operations, plants may determine that the Sanitation SOP or a prerequisite program is an appropriate and suitable means to effectively prevent the occurrence of certain food safety hazards and thus make them not reasonably likely to occur.

HACCP Plan

Under this proposed rule, each egg products plant will be required to develop and implement a HACCP plan covering each product produced whenever the hazard analysis reveals one or more food safety hazards that are reasonably likely to occur. Note that a single HACCP plan may encompass multiple products within a single processing category (*see* proposed 9 CFR 590.149(b) and 591.2 and 9 CFR 417.2(b)(1)) if the food safety hazards,

[3] Control of Listeria monocytogenes in Ready-to-Eat Meat and Poultry Products; Final Rule (68 FR 34208, Jun. 6, 2003).

[4] E. coli O157:H7 Contamination of Beef Products (67 FR 62325, October 7, 2002) (available at: *http://www.fsis.usda.gov/wps/wcm/connect/ad259bcd-5b85-4696-9888-89872bee39ee/00-022N.pdf?MOD=AJPERES*).

[5] Control of Listeria monocytogenes in Ready-to-Eat Meat and Poultry Products; Final Rule (68 FR 34214, Jun. 6, 2003).

[6] FSIS. 2013. Establishment Guidance for the Selection of a Commercial or Private Microbiological Testing Laboratory (available at: *http://www.fsis.usda.gov/wps/wcm/connect/464a4827-0c9a-4268-8651-b417bb6bba51/Guidance-Selection-Commercial-Private-Microbiological-Testing-lab-062013.pdf?MOD=AJPERES*).

[7] HACCP Systems Validation (80 FR 27557, May 14, 2015).

[8] Isolation and Identification of Salmonella from Meat, Poultry, Pasteurized Egg, and Siluriformes (Fish) Products and Carcass and Environmental Sponges. January 2, 2017 (available at: *https://www.fsis.usda.gov/wps/wcm/connect/700c05fe-06a2-492a-a6e1-3357f7701f52/MLG-4.pdf?MOD=AJPERES*).

[9] Isolation and Identification of Listeria Monocytogenes from Red Meat, Poultry, Ready-To-Eat Siluriformes Fish and Egg Products, and Environmental Samples January 2, 2017 (available at: *https://www.fsis.usda.gov/wps/wcm/connect/1710bee8-76b9-4e6c-92fc-fdc290dbfa92/MLG-8.pdf?MOD=AJPERES*).

CCPs, critical limits, and procedures identified within are essentially the same.

Once completed, the HACCP plan must be signed and dated by a responsible official, that is, the individual with overall authority on-site or a higher level official of the plant. This signature signifies that the plant accepts and will implement the HACCP plan. The HACCP plan must be signed and dated not only upon initial acceptance by the processor but also upon any modification to the plan and at least annually, as required by 9 CFR 417.4(a)(3) (9 CFR 417.2(d)).

Corrective Actions

Under this proposed rule, the HACCP plan must identify the corrective actions that the plant will take when responding to a deviation from a critical limit and assign responsibility for taking corrective action. Corrective actions must ensure that no product that is injurious to health or that is otherwise adulterated as a result of the deviation enters commerce; that the cause of the deviation is identified and eliminated; that the CCP will be under control after the corrective action is taken; and that measures to prevent recurrence are established (proposed 9 CFR 590.149(b) and 591.2 and 9 CFR 417.3).

Because pre-established corrective actions may not cover every contingency, and unforeseen hazards or deviations may occur, 9 CFR 417.3(b) provides a series of steps that must be taken in such situations. These steps include segregating and holding affected product and conducting a review to determine the acceptability of the product for distribution, ensuring that any adulterated product or product otherwise injurious to health does not enter commerce, and reassessing HACCP plans to determine whether any modification is needed.

Validation, Verification, and Reassessment

Under this proposed rule, every egg products plant will be required to validate its HACCP plan's adequacy in controlling the food safety hazards identified during the hazard analysis. Once the plant has determined that the HACCP plan is functioning as intended, it will have to validate that the plan is being effectively implemented (proposed 9 CFR 590.149(b) and 591.1 and 9 CFR 417.4(a)).[10] FSIS will provide additional guidance to plants on how to validate their HACCP systems.

Upon completion of the hazard analysis and the development of the HACCP plan, the plant will conduct its initial validation, which consists of the activities the plant must perform to determine whether the plan is functioning as intended. During this initial validation, the facility repeatedly tests the adequacy of the CCPs, critical limits, monitoring and recordkeeping procedures, and corrective actions set forth in the HACCP plan. Validation also encompasses reviews of the records, routinely generated by the HACCP system, in the context of other validation activities. Plants may use independent consultants, process authorities, or employees trained in accordance with 9 CFR 417.7 for plan development and validation.

The data used to validate a HACCP plan may be derived from various sources, including the scientific literature, product testing results, experimental research results, scientifically-based regulatory requirements, FSIS compliance guidelines, computer-modeling programs, and data developed by process authorities (a process authority is a person or organization with expert knowledge in the relevant products, process controls, and regulations). However, validation data must include at least 90 days of in-plant data or information reflecting the plant's experience in implementing the HACCP plan during plant operations. These data are needed because validation must demonstrate not only that the HACCP plan is scientifically sound, but also that this particular egg products plant can implement the HACCP plan and make it work.

To ensure that the HACCP plan is functioning as intended on a continual basis, the plant would conduct ongoing verification activities (proposed 9 CFR 590.149 and 591.1 and 9 CFR 417.4(a)(2)). Verification is intended to show that the HACCP system is working effectively on a day-to-day basis, resulting in the production of safe food. Verification is distinct from ongoing plant monitoring, which is designed to provide a record showing that the written HACCP plan is being followed.

Verification includes repeatedly reviewing and evaluating the various components of the HACCP system. Verification activities should provide practical results specific to the operation of the given HACCP plan and could include, but would not be limited to, checking the adequacy of critical limits; reviewing CCP-monitoring records; reviewing monitoring and recordkeeping procedures; calibrating process-monitoring instruments; collecting in-line or finished product samples for biological (*e.g. Salmonella* spp.), chemical, or physical analysis; and directly observing and evaluating the adequacy of corrective actions.

Under this proposed rule, plants will also be required to reassess the adequacy of their HACCP plans at least annually and whenever any changes occur that could affect the hazard analysis or alter the HACCP plan. Examples of such changes include changes in raw materials or the source of raw materials; product formulation; production volume; packaging; or the intended use or consumers of the finished product (proposed 9 CFR 590.149, 591.1, and 591.2, and 9 CFR 417.4(a)(3)). This reassessment must be conducted by an individual who has successfully completed a course of instruction in the application of the seven HACCP principles, including a segment on the development of a HACCP plan for a specific product, for example, liquid egg product, and on record review (9 CFR 417.7(b)).

By periodically monitoring its HACCP plan, a plant can ensure that the plan is continuously effective in controlling and preventing food safety hazards. It also provides a plant the opportunity to apply relevant experiences to improving process controls.

Records

Under this proposed rule, plants will have to maintain records regarding their operations under HACCP. These records include the written hazard analysis and all supporting documentation, the written HACCP plan and all decision-making documents associated with the development of CCPs and critical limits, and documents supporting the monitoring and verification procedures selected and the frequency of those procedures. Records documenting the monitoring of CCPs and critical limits, corrective actions, verification procedures and results, product codes, and product name or identity will also have to be maintained. Each entry on a record maintained under the HACCP plan will have to be made at the time the specific event occurred and include the date and time recorded, and be signed or initialed by the employee making the entry.

Prior to shipping product, the plant will have to review the processing and production records associated with the HACCP plan to ensure that they are complete, all critical limits were met, and, if applicable, that corrective actions were taken (proposed 9 CFR 590.149 and 591.1 and 9 CFR 417.5(c)).

[10] On May 14, 2015, FSIS announced the availability of the final revision of its Compliance Guideline for Hazard Analysis Critical Control Point (HACCP) systems validation (80 FR 27557).

This pre-shipment review will have to be conducted by someone other than the person who produced the records, where practicable, and preferably by an individual trained in accordance with 9 CFR 417.7 or the responsible plant official.

C. Sanitation Standard Operating Procedures (Sanitation SOPs)

General

Proper sanitation is an important and integral part of every food process and a fundamental requirement under the law. Insanitary facilities and equipment, and poor food handling and personal hygiene practices among employees, create an environment in which pathogens can flourish. Furthermore, the law is quite clear: Eggs or egg products that have been prepared, packed, or held under insanitary conditions whereby they may have been contaminated with filth, or whereby they may have been rendered injurious to health are deemed adulterated (21 U.S.C. 1033(a)(4)). FSIS inspection program personnel are expressly charged with ensuring that product is produced and held under sanitary conditions.[11] For these reasons, FSIS is proposing to require that all plants that process egg products develop, implement, and maintain written Sanitation SOPs to prevent direct contamination or adulteration of product before and during operations (9 CFR 416.11). Under this proposed rule, plants will be required to maintain daily records to document adherence to the SOPs (§ 416.16). FSIS is proposing to cross-reference 9 CFR part 416 in 9 CFR 591.1 rather than duplicate the regulatory text.

Sanitation SOPs are necessary because they clearly define each plant's responsibility to consistently follow effective sanitation procedures to minimize the risk of direct product contamination and adulteration. This proposal is based on FSIS's determination for meat and poultry plants that effective sanitation is essential for food safety and for the successful implementation of HACCP. FSIS is not aware of any reason why the same determination should not be made for egg products plants.

Well-run plants have effective quality control and sanitation programs, including written Sanitation SOPs. Such programs are based, in large part, on the plants' recognition of the link between the existence of insanitary conditions during the processing and production of egg products and the likelihood that bacteria, including pathogenic bacteria, will contaminate the finished product. Some plants, however, do not have adequate programs and do not consistently maintain good sanitation. In fact, poor sanitation is the most frequently cited problem identified by FSIS inspection program personnel in egg products plants.

If FSIS finalizes this proposal, all official plants will be required to develop, implement, and maintain written Sanitation SOPs, as well as comply with the Sanitation requirements (9 CFR 416.1–6), in accordance with 9 CFR part 416. As a result, FSIS is proposing to amend or replace many of the current sanitary requirements contained in 9 CFR 590.500–575. The plant's Sanitation SOPs will need to describe all procedures the plant conducts daily to prevent direct contamination or adulteration of products (proposed 9 CFR 591.1(a) and 9 CFR 416.12(a)). The Sanitation SOPs will also need to specify the frequency with which each procedure in the Sanitation SOPs is to be performed and identify the plant employees responsible for implementing and maintaining the procedures (9 CFR 416.12(d)). The Sanitation SOPs will have to be signed and dated, upon initiation and any modification, by ''the individual with overall authority on-site or a higher level official of the plant.'' The signature will signify that the plant will implement and maintain the Sanitation SOPs in accordance with 9 CFR part 416 (proposed 9 CFR 591.1 and 9 CFR 416.12(b)). Official plants will also have to identify their pre-operational sanitation procedures in their written Sanitation SOPs, distinguishing them from sanitation activities to be carried out during operations (proposed 9 CFR 591.1 and 9 CFR 416.12(c)).

Under this proposal, each plant will be required to conduct the pre-operational and operational procedures as specified in the Sanitation SOPs, monitor the conduct of the procedures, and routinely evaluate the effectiveness of the SOPs and modify the Sanitation SOPs as necessary, in light of changes to the facility, personnel, or operations, to ensure that they remain effective in preventing direct product contamination and adulteration (proposed 9 CFR 591.1 and 9 CFR 416.13 and 416.14).

Plants will have to take corrective action when either the plant or FSIS determines that the Sanitation SOPs, or their implementation, may have failed to prevent direct product contamination or adulteration (9 CFR 416.15(a)). Corrective actions include ''procedures to ensure appropriate disposition of product(s) that may be contaminated, restore sanitary conditions, and prevent the recurrence of direct contamination or adulteration of product(s), including appropriate reevaluation and modification of the Sanitation SOPs and the procedures specified therein . . .'' (proposed 9 CFR 591.1 and 9 CFR 416.15(b)).

If this proposed rule is adopted, plants will have to keep daily records documenting that the sanitation and monitoring procedures listed in the Sanitation SOPs are performed and maintain records documenting any corrective actions taken to prevent direct contamination or adulteration of products, or when the plant determines or FSIS notifies it that its Sanitation SOPs are inadequate (proposed 9 CFR 591.1 and 9 CFR 416.16(a)). Under this proposal, records may be maintained on a computer, provided that plants implement controls to ensure the integrity of the electronic data (9 CFR 416.16(b)). Records could be retained off-site, provided that they are not removed from the plant for at least 48 hours following their completion, and that they can be provided to FSIS personnel within 24 hours of being requested (9 CFR 416.16(c)).

Under the proposed Sanitation SOPs, FSIS inspection program personnel will verify that plant management is conducting its operations in a sanitary environment and manner. Failure to comply with the Sanitation SOPs provides presumptive evidence of insanitation. As is now the case, inspection program personnel will act to prevent a facility from operating under insanitary conditions.

D. Sanitation Requirements

In addition to Sanitation SOP requirements, FSIS is proposing to remove the current sanitation requirements discussed below for egg products plants from its regulations. Some of the existing plant sanitation requirements will no longer be needed in light of the proposed HACCP and Sanitation SOP requirements. Further, some of the existing plant sanitation requirements impede innovation and blur the distinction between plant and inspector responsibilities for maintaining sanitary conditions. Should these regulations become final, they will provide official plants with more flexibility to innovate with regard to facility design, construction, and operations.

[11] Under 21 U.S.C. 1035, official plants must be operated in accordance with such sanitary practices and have such premises, facilities, and equipment as are required by regulations promulgated by the Secretary to effectuate the purposes of the EPIA.

The sanitation requirements proposed in this rule will not only provide plants with the flexibility to innovate in facility design, construction, and operations but will also articulate the standards for good sanitation and for food product safety that must be met by egg products processors. All sanitation requirements have the same intent: A plant that processes egg products must operate under sanitary conditions, in a manner that ensures that the product is not adulterated and that does not interfere with FSIS inspection and its enforcement of such standards. However, because the proposed sanitation requirements define the results to be achieved by sanitation, but not the specific means to achieve those results, plants can meet the sanitation requirements in different ways. Regardless of the means by which plants comply with the standards under this proposed rule, the required results will be the same for all egg products plants.

FSIS is proposing to replace most of the current sanitation regulations in 9 CFR 590.500 through 590.560 with the general sanitation requirements set out in 9 CFR 416.1 through 416.6, which the Agency is proposing to incorporate by reference (proposed 9 CFR 591.1(a)). This proposed change will significantly reduce the number of egg and egg products sanitation regulations and consolidate most sanitation requirements for eggs and egg products with those for meat and poultry products.

General Sanitation—9 CFR 416.1 and Proposed 9 CFR 591.1

The current sanitation regulations for eggs and egg products require that plants, including rooms, windows, and floors, be kept clean and reasonably dry, and free from objectionable odors, flies, insects, and rodents. Section 416.1 of 9 CFR, which applies to meat and poultry establishments, provides greater flexibility: ''Each official establishment must be operated and maintained in a sanitary manner sufficient to ensure that product is not contaminated, adulterated, or misbranded.'' Unlike command-and-control regulations, examples of which are cited below, 9 CFR 416.1 will provide facilities with the maximum possible flexibility to innovate in facility design, construction, and operation.

Examples of current requirements to be replaced by the general standards are: § 590.500(d), which states that materials and equipment not currently needed shall be handled or stored in a manner so as not to constitute a sanitary hazard; § 590.500(e), concerning doors and windows leading to rooms where exposed edible product is handled; § 590.522(a) concerning breaking room operations; and § 590.539(a), concerning the defrosting of frozen egg product in a sanitary manner.

The proposed rule would also provide flexibility to industry in facility design, construction, and operation by the replacement of the following regulations with the general standards in 9 CFR 416.1: § 590.506(c), which requires the installation of an approved exhaust system for the continuous removal directly to the outside of any steam, vapors, odors, or dust in the candling and transfer room; § 590.508(a), which states that candling and transfer rooms and equipment shall be kept clean, free from cobwebs, dust, objectionable odors, and excess packing materials; and § 590.546(b), which requires that the air intake source in albumen flake process drying facilities be free from foul odors, dust, and dirt.

Establishment Grounds and Pest Management—9 CFR 416.2(a)

The current egg products plant requirements for facility grounds are unnecessarily prescriptive. For example, 9 CFR 590.500(b) requires that the premises be free from refuse, waste, and other materials and conditions that constitute a source of odors or a harbor for insects, rodents, and other vermin, while § 590.500(g) states that drains and gutters shall be properly installed with approved traps and vents. Several other sections (§§ 590.542(a), 547(a), and 548(a)) require that rooms be kept free of flies, insects, and rodents.

The other prescriptive establishment grounds regulations are 9 CFR 590.500(a) and (c), which require that the plant be free from objectionable odors, dust, and smoke-laden air and state that the buildings shall be of sound construction and kept in good repair to prevent the entrance or harboring of vermin, and § 590.522(a), which states that the breaking room shall be kept in dust-free clean condition and free from flies, insects, and rodents. In addition, 9 CFR 590.522(a) requires that the plant keep the floor clean and reasonably dry during breaking operations and free of egg meat and shells.

The general sanitation requirements in 9 CFR 416.2(a) preserve the intent of these requirements that grounds be maintained to prevent conditions that could lead to the contamination or adulteration of product, and that establishments implement and maintain an integrated pest control program to eliminate the harborage of pests on the grounds and within the plant facilities. This regulation, however, provides the flexibility and leave to innovate that the Agency is proposing to incorporate into the egg product regulations.

Establishment Construction—9 CFR 416.2(b)

The egg products inspection regulations concerning construction of egg products plants are very prescriptive and inflexible. For example, 9 CFR 590.500 prescribes numerous, specific requirements for different areas within an official plant, *e.g.,* dressing rooms, toilet facilities, and refuse rooms. Other regulations containing prescriptive construction requirements include § 590.506, candling and transfer-room facilities and equipment; § 590.520, breaking room facilities; § 590.546, albumen flake process drying operations, § 590.560, concerning personnel facilities; and § 590.570(a), concerning pasteurization facilities.

Section 416.2(b) of 9 CFR sets out construction sanitation requirements that will allow for increased flexibility in regard to facility operation construction and maintenance if adopted by reference through proposed 9 CFR 591.1. Plants will be able to design facilities and equipment in the manner that they deem best to maintain the required sanitary environment for food production.

In addition to the six prescriptive egg products construction regulations listed above, there are seven more construction requirements that will be replaced by 9 CFR 416.2(b) if this proposal is finalized. They are 9 CFR 590.146(b)(5) and (d), concerning the requirements for floor plans and revised blueprints submitted prior to receiving inspection service or making changes or revisions to an official plant; § 590.500(i), (j), (l), and (o), concerning structure construction materials, maintenance requirements for rooms in which shell eggs or egg products are handled, and toilet and refuse room requirements; § 590.532(a), concerning liquid egg holding tank requirements; § 590.534(a), concerning freezing room requirements; § 590.548(c), which addresses heat treatment room construction requirements; § 590.550, dealing with washing and sanitizing room or area facility requirements; and § 590.560(a) and (b), concerning the health and hygiene of plant personnel and the construction of personnel facilities.

Light—9 CFR 416.2(c)

The lighting requirements for breaking rooms in official plants in § 590.520(a) prescribe specific light intensities for all working surfaces in the room and at breaking and inspection stations. For example, all working

surfaces must have at least 30 foot-candles of light intensity, while breaking and inspection stations must have at least 50 foot-candles of light intensity. Other egg products regulations do not contain specific lighting requirements, stating only that rooms shall be adequately or well-lighted (*see* §§ 590.500(l)(i), 548(a), and 550(a)).

The intent of the lighting requirements is to ensure that there is enough light of adequate quality to monitor sanitary conditions and processing operations and to examine product for evidence of adulteration or misbranding. Section 416.2(c) of 9 CFR has codified this intent as a general sanitation requirement, and it will be applicable to plants that process egg products if this proposed rule is finalized. Under 9 CFR 416.2, which requires that lighting be of good quality and of sufficient intensity to ensure that sanitary conditions are maintained, and that product is not adulterated, plants will have the flexibility to determine what light intensities are appropriate to ensure sanitation in different operational contexts. Therefore, FSIS is proposing to remove §§ 590.500(l)(1), 520(a), 548(a), and 550(a) from the egg products inspection regulations.

Ventilation—9 CFR 416.2(d)

The egg products inspection regulations addressing ventilation generally require that ventilation provide for a positive flow of outside filtered air through rooms and air of suitable working temperature during operations, and that rooms be kept free from objectionable odors and condensation (*see* §§ 590.500, 590.504(p), 590.506(c), 590.520(d), 590.550(a)). Objectionable odors or condensation are to be reduced to the extent possible or eliminated because they can adulterate product. FSIS has codified a single sanitation requirement, 9 CFR 416.2(d), which preserves the intent of the current egg products regulations. This codification will simplify FSIS's egg products ventilation regulations by consolidating them into 9 CFR 416.2(d).

In addition to the regulations discussed above, FSIS is proposing to remove the following regulations from 9 CFR part 590 because they will be replaced by proposed 9 CFR 416.2(d) if this rule is finalized: 9 CFR 590.435(d), which states that containers and packing or packaging materials in which shell eggs are received into the official plant shall be free from odors and materials which could contaminate or adulterate the eggs or egg products; § 590.508(b), requiring the removal of containers for trash and inedible eggs at least once daily and their cleaning and treatment in such a manner as to prevent odors or objectionable conditions in the plant; § 590.530(a), which states that liquid egg storage rooms, including surface coolers and holding tank rooms, shall be kept clean and free from odors and objectionable odors and condensation; and § 590.536(a), concerning the conditions in which freezing rooms are to be kept.

Other regulations to be replaced by 9 CFR 416.2(d) will be: 9 CFR 590.540(d), which states that air drawn into the drier in spray process drying facilities be free from foul odors, dust, and dirt; § 590.546(b), requiring that intake air sources in albumen flake process drying facilities be free from foul odors, dust, and dirt; § 590.549, requiring that dried egg storage be sufficient to adequately handle the production of the plant and be kept clean, dry, and free from objectionable odors; and § 590.560(b), requiring that toilets and dressings be kept clean and that toilet rooms be ventilated to the outside of the building.

Plumbing—9 CFR 416.2(e)

The design, installation, and maintenance of an adequate plumbing system are key responsibilities of an egg products plant. Because plumbing systems carry water into plants and convey water, sewage, and other waste from plants, problems with plumbing systems can easily cause product contamination or adulteration. The plumbing sanitation requirements in 9 CFR 416.2(e) set out the essential condition plants must achieve with their plumbing systems: plumbing systems cannot cause adulteration of product and must ensure sanitary operating conditions. Plants otherwise will be allowed to build plumbing systems suitable to the nature and volume of their production. Therefore, FSIS is proposing to eliminate the requirement in § 590.500(g) that drains and gutters with approved traps and vents be installed. The Agency is also proposing to eliminate the prescriptive requirements regarding lavatory accommodations in § 590.500(l) and (m).

Sewage Disposal—9 CFR 416.2(f)

The current regulations require any person desiring to process egg products under continuous inspection to submit drawings and specifications before receiving approval of a plant and facilities as an official plant. Information that must be submitted includes how the plant intends to dispose of sewage (§ 590.146(b)(7)). Section 590.504(q) states that all liquid and solid material in the official plant shall be disposed of in a manner approved by the Administrator to prevent product contamination and in accordance with acceptable environmental protection practices.

Section 416.2(f) of 9 CFR, sewage disposal, will replace both of these regulations by requiring that sewage be disposed into a sewage system separate from all other drainage lines or disposed of through other means sufficient to prevent backup of sewage into areas where product is processed, handled, or stored.

Water Supply and Reuse—9 CFR 416.2(g)

The current regulations regarding water supply and reuse in plants require that the water supply be ample, clean, and potable, with adequate pressure and facilities for its distribution throughout the plant or portion thereof utilized for egg processing and handling operations and protected against contamination and pollution (§ 590.500(h)). Section 590.500(h) also requires that the applicant for inspection obtain and furnish to the Administrator, at the Administrator's request, a water report, issued under the authority of a State or municipal health authority, certifying to the potability of the water supply. When ice is used as an emergency refrigerant by being placed directly into the egg meat, § 590.530(f) requires that the source of the ice be certified by the local or State board of health and that the ice be handled in a sanitary manner.

Section 416.2(g)(1) of 9 CFR sets out a transparent water supply performance standard concerning potable water. The water must comply with Environmental Protection Agency (EPA) National Primary Drinking Water regulations. These EPA regulations are applicable to public water systems. Because these regulations already apply to potable water used by egg products plants, the reference in the sanitation requirements would not constitute a new requirement for these plants. The sanitation requirement also restates the current requirement that plants must make available to FSIS, upon request, State or local certificates attesting to water quality.

The egg products industry uses large quantities of water for processing products and for cleaning. Water and water based (aqueous) solutions are widely used for prewetting, washing, and rinsing eggs, product formulation, and cleaning and sanitizing equipment. Reuse of water solutions, therefore, can offer significant economic advantages.

Section 590.515(a), for example, sets forth the requirements for washing shell

eggs to be presented for breaking. They include changing the wash water every four hours or more often if needed to maintain sanitary conditions and at the end of each shift (paragraph (a)(4)); adding replacement water to the wash water of washers continuously to maintain a continuous overflow (paragraph (a)(5)); piping waste water from the egg washing operation directly to drains (paragraph (a)(6)); and completing continuous washing operation as rapidly as possible (paragraph (a)(7)). Section 590.516(a) requires that all shell eggs be spray rinsed with potable water containing an approved sanitizer of not less than 100 ppm but no more than 200 ppm of available chlorine or its equivalent immediately prior to breaking.

Section 590.552 establishes cleaning and sanitizing requirements for equipment used in egg processing operations that comes in contact with liquid eggs or exposed edible products. While such equipment may be cleaned by any sanitary means, it is preferable to use water to do so. Paragraph (b)(2) requires that shell eggs that have been sanitized and equipment that comes in contact with edible products be rinsed with clean water after sanitizing if other than hypochlorites are used as sanitizing agents.

Section 416.2(g)(2) through (6) of 9 CFR sets forth sanitation requirements for the reuse of water in meat and poultry establishments. If this proposal is adopted, plants will also be able to use reuse water in their operations, as appropriate.

Prior to the implementation of 9 CFR 416.2(g), reuse water was permitted in meat and poultry establishments only under certain circumstances, and any other reuse situation had to be approved by the Agency in advance. However, once technologies were developed that can recondition water for safe and effective reuse in various applications, the Agency recognized that reuse water may be used safely and effectively in certain food processing situations.

Under 9 CFR 416.2(g), reuse water can be treated to render it free of biological, chemical, and physical hazards. Some of the general treatment options used include filtration, chlorination, ozonation, ultraviolet (UV) radiation, and heating. Use of these procedures can usually return water to a level of quality appropriate to its intended use. After treatment, however, such water should be tested regularly to ensure continual freedom from biological, chemical, or physical hazards.

Depending upon the original use, the intended use, and the duration of reuse, a wide range of acceptable biological, chemical, or physical contaminant levels are possible in reuse water. The previous degree of exposure or potential exposure to contaminants dictates the appropriate reconditioning treatment and the allowable reuse.

FSIS requires official egg products plants to produce pasteurized, RTE products that are free of pathogens. Therefore, reuse water that is used to chill or cook pasteurized, RTE egg products must be free of fecal coliforms because their presence would indicate that the water was contaminated, possibly with pathogenic organisms (9 CFR 416.2(g)(2)). Other types of contamination will also have to be reduced sufficiently to prevent adulteration of product.

Section 416.2(g)(3) of 9 CFR deals with the use and reuse of water, ice, and solutions used to chill or wash raw product. In response to questions raised at public meetings in Columbus, OH, and Sacramento, CA, on March 30 and April 6, 2000, and Washington, DC, on July 31, 2001, held to obtain comments on FSIS's and FDA's thinking at the time on approaches to ensure egg safety from farm to table, FSIS has tentatively concluded that unprocessed shell eggs, *i.e.,* eggs that have not yet been washed, sized, or candled, are more like raw product than RTE product. As a result, FSIS has determined that the provisions of 9 CFR 416.2(g)(3), which regulate the use of reuse water to wash raw product, will apply to official plants. Consequently, water used to wash unprocessed shell eggs may be reused for the same purpose, provided that measures are taken to reduce biological, chemical, and physical contamination so as to prevent contamination or adulteration of the eggs. Such reused water from use on raw eggs may not come into contact with processed shell eggs.

Paragraph (g)(4) of 9 CFR 416.2 will allow plants that recondition their water through an advanced wastewater treatment facility to use such reconditioned water on raw product, except in product formulation and throughout the plant in edible and inedible production areas. This water is not, however, potable, and it may not have ever contained human waste. Product, facilities, and equipment coming in contact with this water must undergo a separate final rinse with non-reconditioned water that meets the criteria prescribed in 9 CFR 416.2(g)(1). The reuse water described above would most likely be used to wash solid waste from equipment and floors.

Paragraph (g)(5) of 9 CFR 416.2 will permit plants to use any water for any purpose in edible or inedible product areas, provided that it has never contained human waste, has been conditioned to be free of pathogenic organisms, and does not contact edible product. Finally, paragraph (g)(6) states that any water not meeting the conditions of 9 CFR 416.2(g)(1) through (5) may not be used, except in areas where no edible product is handled or prepared, and may not be used in any manner which would allow it to contaminate or adulterate edible product.

Moving the egg products water supply and reuse regulations into 9 CFR 416.2(g) will consolidate them with those for meat and poultry. The proposed sanitation requirements in 9 CFR 416.2(g) are intended to and should account for every allowable water reuse situation in official plants, including those covered by the following egg products inspection regulations, which will be replaced by 9 CFR 416.2(g) if this proposal is finalized: § 590.520(e), which requires adequate and easily accessible hand washing facilities in an official plant; § 590.539(d)(1), which permits frozen eggs packed in metal or plastic containers to be placed in running tap water (70 degrees F or lower) without submersion to speed defrosting; and § 590.552(a) and (b)(2), concerning equipment cleaning and sanitizing requirements.

Dressing Rooms, Lavatories, and Toilets—9 CFR 416.2(h)

The current regulations concerning dressing rooms, lavatories, and toilets in egg products plants are highly prescriptive. For example, § 590.500(l)(2) provides a formula that serves as the basis for determining the toilet facilities required in an official plant, the intent being to ensure that plants provide an adequate number of toilet bowls, thus maintaining related sanitary conditions. The sanitation requirement in 9 CFR 416.2(h) gives plants the responsibility and flexibility to determine how many dressing rooms, lavatories, and toilets it needs. Of course, plants will have to meet any applicable State and local codes concerning the number of lavatories and toilets in the workplace.

There are also other requirements for dressing rooms, lavatories, and toilets currently in the egg products regulations (*see* § 590.520(e), concerning hand washing facilities in breaking rooms, § 590.560(a) and (b), concerning health and hygiene of personnel, and § 590.146(b)(5), requiring floor plans to show the locations of hand-washing facilities and toilets). The proposed sanitation requirement in 9 CFR 416.2(h) eliminates the need for these

requirements because it renders them redundant.

Equipment and Utensils—9 CFR 416.3

The egg products inspection regulations concerning equipment and utensils are unduly prescriptive and can deprive official plants of the flexibility to innovate in regard to equipment and utensil sanitation. The equipment and utensil sanitation requirement that FSIS is proposing to adopt for plants not only provides flexibility but also clarifies plant responsibility for selecting and maintaining equipment and utensils in a manner that effectively prevents product contamination or adulteration.

If this proposal is adopted, plants will no longer have to install and use equipment that complies with the applicable 3–A or E–3–A Sanitary Standards and accepted practices currently in effect for such equipment (§ 590.502(b)). Instead, equipment and utensils used for processing or otherwise handling edible product or ingredients will only have to be of such material and construction as to facilitate thorough cleaning and be durable and suitable for its intended use. Plants will need to ensure that product is not contaminated, adulterated, or misbranded during processing, handling, or storage. Equipment and utensils will still need to be maintained in sanitary condition so as not to contaminate or adulterate product. In addition to 9 CFR 590.502(b), FSIS is also proposing to remove the following sections from 9 CFR part 590 because 9 CFR 416.3 will make them redundant:

- § 590.500(n), requiring suitable facilities for cleaning and sanitizing utensils and equipment at convenient locations throughout the plant
- § 590.504(f) and (n), requiring personnel handling utensils or containers which may come into contact with egg products to wash their hands and maintain them in a clean condition and requiring most utensils and equipment to be clean and sanitized at the beginning of processing operations and kept clean and sanitary during all processing operations
- § 590.506(a), which states that the equipment shall be arranged to facilitate cleaning and the removal of refuse and excess packing material from the candling and transfer room
- § 590.508(c) and (d), requiring the handling of shell eggs in a manner to minimize sweating prior to breaking and placing shell eggs with extensively damaged shells, unless otherwise prohibited, into leaker trays
- § 590.515(a)(1) and (b), requiring that shell egg cleaning equipment be kept in good repair and be cleaned after each day's use or more frequently, if necessary, and requiring that the temperature of wash water be maintained at 90 degrees F or higher, and shall be at least 20 degrees F warmer than the temperature of the eggs to be washed, throughout the cleaning cycle
- § 590.520(g), states that a suitable container conspicuously identified shall be provided for the disposal of rejected liquid
- § 590.522(d), (h), (s), (t), (u), (v), (y), (aa)(1)–(3), containing prescriptive requirements for the cleaning of breaking machines and equipment, including mechanical breaking machines, as well as other equipment used in the processing of egg products, such as cups, knives, racks, etc., dump tanks, drawoff tanks, and churns, strainers, filtering devices, etc., and containers used for transporting liquid eggs products
- § 590.538, concerning the construction and cleaning of defrosting facilities
- § 590.539(f), concerning the cleaning of crushers and other equipment used in defrosting operations
- § 590.540(h), requiring the construction of powder conveying equipment as will facilitate thorough cleaning
- § 590.542(b)(2) and (c)(1), requiring the sanitizing of spray process drying equipment within 2 hours prior to resuming spray drying operations and the clearing of sifters and conveyers used for other than dried albumen powder when such equipment is not to be used for 24 hours or longer
- § 590.548(b)(3)–(5), which requires that equipment and utensils used in dried eggs be kept off the floor and be kept clean at all times and whenever contaminated be cleaned and sanitized. It also requires that all equipment used to mechanically package dried egg products be vacuum cleaned daily
- § 590.560(c) and (d), prohibiting personnel affected with any communicable disease in a transmissible stage or a carrier of such disease, or affected by a list of other health conditions, from coming into contact with equipment used to process eggs. Paragraph (d) requires workers coming in contact with equipment to wear clean outer uniforms

Food-Contact Surface Cleaning and Sanitation—9 CFR 416.4(a)

The egg products inspection regulations require that egg products plants clean food contact surfaces at the start of processing operations, and that they keep equipment and utensils clean and sanitary during all processing operations (9 CFR 590.504(n)). Section 590.522(aa)(3) of 9 CFR states that mechanical egg breaking equipment shall be clean and sanitized prior to use, and during operations the machines shall be cleaned and sanitized approximately every 4 hours or more often if needed to maintain them in a sanitary condition. It also requires that the equipment be cleaned at the end of each shift. *See* also 9 CFR 590.552(a).

The objective of the food-contact surface cleaning requirements has always been to mitigate biological, chemical, and physical contamination that could adulterate product. The proposed food-contact surface cleaning sanitary operations requirement in 9 CFR 416.4(a) embodies this objective and clarifies plant responsibility for determining how best to achieve it. The advantage of this proposed standard is that it would provide plants with the flexibility to innovate when determining how to mitigate biological, chemical, and physical contamination that could adulterate product. For this reason, therefore, FSIS is proposing to remove the egg products inspection regulations discussed above, as well as following sections, and replace them with the sanitary operations requirement in 9 CFR 416.4(a):

- § 590.504(i) and (k), requiring the removal, cleaning, and sanitizing of utensils and equipment that are contaminated during the course of processing egg products and containing the admonition that all reasonable precautions be taken to avoid soiling or contaminating the surface of any package or container liner which is or will be in direct contact with egg products
- § 590.515(a)(4), which states that wash water will be changed every four hours or more often, if needed, to maintain sanitary conditions and at the end of each shift
- § 590.522(x), (z), and (aa)(2), requiring that containers for holding egg products variously be washed, rinsed, sanitized, and drained immediately prior to use and cleaned after each use. The pipelines of systems for pumping egg liquid directly from egg breaking machines must be cleaner or flushed as often as necessary to maintain them in a sanitary condition, and they must be cleaned and sanitized at the end of each shift. Other pumping system equipment must be cleaned and sanitized at least every four hours or sooner to maintain it in sanitary condition

- § 590.539(e), which states that sanitary methods will be used in handling containers and removing egg product
- § 590.542, which includes prescriptive requirements for maintaining sanitary conditions in spray process drying operations
- § 590.544(c) and (d), which states that dry blending must be done in accordance with § 590.548 or in a closed blending system and in accordance with clean, sanitary practices. Edible dried egg powder may be reconstituted, repasteurized, and redried when accomplished in a clean, sanitary manner
- § 590.548(b)(4), which includes prescriptive requirements for maintaining sanitary conditions in drying, blending, packaging, and heat treatment rooms and facilities.

Non-Food-Contact Surface Cleaning and Sanitation—9 CFR 416.4(b)

If this proposed rule (proposed 9 CFR 591.1) is adopted, official plants that process egg products will have to keep, in accordance with 9 CFR 416.4(b), non-food-contact surfaces, such as floors and walls, free of any biological contaminants, chemical contaminants, or physical contaminants that could adulterate egg products. FSIS is proposing to remove the following sections and replace them with the sanitary operations requirement in 9 CFR 416.4(b) because this requirement will give plants greater flexibility and responsibility for developing sanitary procedures specific to the nature of their operations:

- § 590.500(j) and (l)(1), requiring rooms and compartments in which shell eggs or egg products are handled or processed to be maintained in a clean and sanitary condition
- § 590.504(g) and (h), prohibiting the storage of products or materials that create objectionable conditions in any room, compartment, or place where shell eggs or egg products are processed, stored, or handled and permitting only compounds approved by the Administrator that will not deleteriously affect shell eggs or egg products when used in an approved manner to be used in an official plant
- § 590.515(b), prohibiting shell eggs from being washed in the breaking room or any room where edible products are processes
- § 590.522(m), stating that ingredients used in, or for, processing egg products, must be handled in a clean and sanitary manner
- § 590.546(b), requiring that intake air sources be free from foul odors, dust, and dirt
- § 590.548(b)(3), requiring that dry blending equipment and supplies be kept off of the floor

Cleaning Compounds and Sanitizers—9 CFR 416.4(c)

Section 590.504(h) of 9 CFR requires that FSIS approve detergents, wetting agents, or other similar compounds, among other things, before they can be used within an official plant. Section 590.552(b) of 9 CFR states that sanitizing shall be accomplished by such methods as approved by the Administrator and requires the approval of chemicals and compounds used for sanitizing by the Administrator before use. These requirements are intended to ensure that egg products are not adulterated with chemicals or any injurious substance.

FSIS is proposing to replace 9 CFR 590.504(h) and 552(b) with proposed 9 CFR 591.1 and the single sanitary operations requirement in 9 CFR 416.4(c), which states that cleaning compounds and sanitizing agents must be safe and effective under the conditions of use, and that plants would not be required to obtain prior approval from FSIS. If this proposed rule becomes final, plants that process egg products would be able to use cleaning compounds and sanitizing agents that are safe and effective under the conditions of use. They would have to use, handle, and store them in a manner that would not adulterate product or create insanitary conditions and maintain documentation to support that these compounds and agents are safe and effective. Plants would, however, have to meet the use requirements for the substances promulgated by other regulatory agencies, such as FDA and EPA, who are responsible for ensuring that these substances are safe for their intended uses.

Operational Sanitation—9 CFR 416.4(d)

The egg products requirements for operational sanitation (sanitation measures carried out during operations) are spread through a number of regulations. (*See* 9 CFR 590.515 concerning egg cleaning operations; § 590.516 concerning sanitizing and drying of egg shells prior to breaking; and § 590.522 concerning breaking room operations.)

These requirements are unnecessarily prescriptive. For example, § 590.515(a)(4) requires an official plant to change wash water approximately every 4 hours or more often if needed to maintain sanitary conditions and at the end of each shift. Section 590.522(s) requires the cleaning and sanitizing of cups, knives, racks, separators, trays, spoons, liquid egg pails, and other breaking equipment every 2½ hours.

If adopted, the sanitary operations requirement in 9 CFR 416.4(d) will consolidate the concepts in all of these operational sanitation requirements (which are discussed in this preamble and are currently spread throughout §§ 590.500–575) in a single place and remove them from the egg products inspection regulations. Plants will be required to protect egg products from adulteration during processing, handling, storage, loading, and unloading at and during transportation from their premises.

Employee Hygiene—9 CFR 416.5(a)

The current egg products inspection regulations mandate specific employee hygiene practices which egg products plants must adopt. For example, plant personnel handling exposed edible product must wash their hands before beginning work and upon returning to work after leaving the work room (§ 590.560(e)). Section 590.560(f) states that expectorating or other unsanitary practices are not permitted in official plants.

The proposed sanitation requirement in 9 CFR 416.5(a) requires that all persons working in contact with product, food-contact surfaces, and product-packaging materials adhere to hygienic practices while on duty to prevent adulteration of product and the creation of insanitary conditions. It would, if adopted, allow plants to develop alternative or innovative means to ensure that employee hygiene practices do not result in product adulteration, without being as prescriptive and restrictive as the current egg products inspection regulations. Therefore, FSIS is proposing to remove § 590.560 and replace it with the proposed sanitation requirement in § 416.5(a).

Employee Clothing—9 CFR 416.5(b)

The requirements regarding employee clothing are prescriptive. For example, § 590.560(d) states that workers coming into contact with liquid or dried eggs, containers, or equipment shall wear clean outer uniforms, while paragraph (h) of that section requires all persons in breaking and packaging rooms to properly wear hair nets or caps. Section 590.560(g) prohibits the use of tobacco in any form or the wearing of jewelry, nail polish, or perfumes in any area where edible products are exposed.

As stated in the previous section, FSIS is proposing to remove § 590.560 and replace it with the sanitation requirement in 9 CFR 416.5(b) and proposed 9 CFR 591.1(a). If the

proposed rule is finalized, cleanliness in employee hygiene would be required without the prescriptiveness of § 590.560. Under 9 CFR 416.5(b), aprons, frocks, and other outer clothing worn by persons in plants processing egg products who handle product must be made of material that is disposable or readily cleaned. Clean garments will also have to be worn at the start of each working day, and garments will have to be changed during the day as often as necessary to prevent adulteration of product and creation of insanitary conditions.

Employee Disease—9 CFR 416.5(c)

The sanitation requirement in 9 CFR 416.5(c) is similar to the requirements for employee health in § 590.560(c) to prevent transmission of communicable diseases. FSIS is proposing to remove § 590.560(c) and adopt proposed 9 CFR 591.1 and 416.5(c) for egg products plants.

Tagging Insanitary Equipment, Rooms, or Compartments—9 CFR 416.6

Retention tags or other devices and methods as may be approved by the Administrator are used for the control and identification of equipment, utensils, rooms, or compartments in official plants that are found to be unclean or otherwise in violation of the egg products inspection regulations (§ 590.426). This requirement is similar to the sanitation requirement articulated in 9 CFR 416.6, which requires the attachment of a ''U.S. Rejected'' tag to any equipment, utensil, room, or compartment at an official establishment that is insanitary, or the use of which could cause the adulteration of product. Both regulations prohibit the use of tagged equipment, utensils, rooms, or compartments until they have been made acceptable and require the removal of tags by program employees. Therefore, FSIS is proposing to replace § 590.426 with 9 CFR 416.5(c) and proposed 9 CFR 591.1. This proposed sanitation requirement for plants that process egg products would serve to provide consistency between the egg products requirements and the meat and poultry requirements.

Sanitation Performance Standards Compliance Guide

To meet the sanitation requirements proposed in this document, egg products plants may develop and employ sanitation or processing procedures customized to the nature and volume of their production. However, FSIS has developed a Sanitation Performance Standards Compliance Guide (Compliance Guide) that presents or references methods already proven to be effective in maintaining sanitary conditions in meat and poultry products establishments, which is posted on the Agency's web page: *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/compliance-guides-index/sanitation-performance-standards.* If this proposed rule is adopted, and before it takes effect, FSIS will update the Compliance Guide to include methods that are effective in maintaining sanitary conditions in egg products plants. Past FSIS regulations and guidance, as well as recommendations from the current Model Food Code issued by FDA and other technical sources, will be included or cited.

Plants that follow the recommendations in the Compliance Guide could be reasonably certain that they will be meeting the sanitation requirements. They would need to be mindful, however, that each processing environment is unique, and that in some cases, the methods presented in the Compliance Guide might require validating the adequacy to ensure sanitary conditions or to prevent the adulteration of egg products.

E. Egg Products Are ''Ready-To-Eat''

21 U.S.C. 1036(a) requires that egg products inspected at an official plant and found to be not adulterated be pasteurized before they leave the official plant, except as otherwise permitted by the regulations of the Secretary. Any detectable pathogen would adulterate egg products under 21 U.S.C. 1033(a)(1) because it would contain a poisonous or deleterious substance which may render them injurious to health. Pasteurized egg products are ready-to-eat; that is, they have been prepared so that they can be consumed as is, without any additional cooking.

In 2005, FSIS undertook a quantitative microbial risk assessment to assist Agency risk managers in evaluating possible pasteurization performance standards for reducing the likelihood of *Salmonella* spp. contamination in liquid and dried egg products, and, subsequently, for reducing the risk of human illness, hospitalization, and death associated with egg products.[12] However, while the risk assessment showed that pasteurization resulting in a 6-$\log_{10}$ reduction of *Salmonella* was predicted to be effective for reducing illnesses from *Salmonella* spp. in egg products, FSIS has chosen to propose a standard for egg products that requires them to be produced to be edible without additional preparation to achieve food safety. FSIS has chosen this approach because in-plant inspectors cannot effectively verify whether a plant has met a specific lethality standard. The Agency can, however, effectively verify whether *Salmonella* is present in an egg product through testing. Overall, this approach is simpler than that of $\log_{10}$ pasteurization performance standards and is consistent with the approach used by FSIS in establishing requirements for most RTE meat and poultry products.

Meat and poultry establishments produce the vast majority of their RTE products without needing to meet FSIS-specified time and temperature combinations or lethality performance standards codified in the regulations. The only FSIS regulations that include specific times and temperatures for ready-to-eat products are for cooked uncured meat patties, which must meet or exceed the times and temperatures listed in 9 CFR 318.23, and for pork, and products containing pork, which must meet or exceed the times and temperatures listed in 9 CFR 318.10. Cooked beef and poultry products must meet the lethality performance standards listed in 9 CFR 318.17 and 381.150. FSIS previously removed prescriptive time and temperature requirements for other ready-to-eat meat and poultry products from the meat and poultry regulations. Such prescriptive time and temperature requirements are not necessary because under the statutes, establishments need to produce ready-to-eat products (including egg products) so that no detectable pathogens exist in the final products.

Therefore, FSIS is proposing to amend the egg products inspection regulations by removing the prescriptive regulations on the pasteurization of egg products (9 CFR 590.570 and .575). If this proposed rule is finalized, 9 CFR 590.570 would be replaced by a new regulation specifying that egg products are ready-to-eat and do not require additional steps to ensure food safety, consistent with the definition of ''ready-to-eat'' product in 9 CFR 430. Egg products must be produced such that the finished product is free of detectable pathogens. In addition, egg products would not be required to bear a safe-handling instruction or other labeling that directs that the product must be cooked or otherwise treated for safety.

The current requirements for egg products mandate step-by-step

[12] FSIS. 2005. Risk Assessments of *Salmonella* Enteritidis in Shell Eggs and *Salmonella* spp. in Egg Products. (*http://www.fsis.usda.gov/wps/portal/fsis/topics/science/risk-assessments*).

processing measures and specifically prescribe minimal time and temperature combinations for the pasteurization treatment of various egg products. Under HACCP, these prescriptive requirements are not necessary. Under HACCP, egg products plants are required to produce product by controlling, eliminating, or reducing microbial hazards so that the finished product has no detectable pathogens.

Plants that choose not to develop new or modified procedures will be able to continue to follow a set of pasteurization time and temperature combinations for products that have been validated as achieving the intended pathogen reduction, such as those in the current regulations. FSIS has developed a draft compliance guideline document that includes these procedures. The draft guideline document can be found at: *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/compliance-guides-index.* An official plant would then need to validate that it is properly applying the FSIS time and temperature combinations provided in the guidance material and conduct monitoring and verification activities to demonstrate proper execution of the selected combinations.

The pasteurization time and temperature compliance guidelines specifically will assist small and very small businesses in identifying validated procedures. The materials will be posted on the Agency's website.

F. Not Applying the Mark of Inspection Pending Test Results

As discussed previously, egg products inspected at an official plant and found to be not adulterated must be pasteurized before they leave the official plant, except as otherwise permitted by the regulations of the Secretary. They must also bear the official inspection legend and official plant number of the plant where the products were processed.[13]

9 CFR 590.504(o) requires that egg products be pasteurized in accordance with the egg products inspection regulations before being released into consuming channels, while paragraph (o)(1) requires that they be sampled and tested for the presence of *Salmonella* to ensure that they were adequately pasteurized. 9 CFR 590.580 sets forth the specific testing requirements, and in this proposal, FSIS has rewritten this section for clarity.

While FSIS does not require final product testing for *Salmonella* in RTE meat and poultry products, the Agency is continuing to require testing for *Salmonella* for RTE egg products by official plants. An egg products plant's *Salmonella* testing data continues to be important in monitoring process control.[14] [15] As part of its control verification effort, FSIS also will continue to collect and analyze samples from egg product processes for *Salmonella* and Lm.

While 9 CFR 590.504(o) states that egg products must be pasteurized before being released into consuming channels, 9 CFR 590.504(d) does permit inspection program personnel to allow egg products to be moved from an official plant before the plant receives laboratory results for *Salmonella,* or any other test results, if the plant retains control of the product. The plant must ensure that the product will be returned to the plant for reprocessing if the test results show that the product is positive for *Salmonella.*

FSIS allows meat and poultry establishments to move product to locations other than the production facility prior to the receipt of FSIS test results so long as the establishment maintains control of the product. It also permits them to package and label products sampled and tested for adulterants with the mark of inspection pending negative test results, provided those products do not enter commerce, *i.e.,* the products remain under the establishment's control until negative test results become available. The product does not, however, actually receive the mark of inspection until negative test results have been returned.

The egg products regulations are the same. Egg products plants may move product pending test results only under circumstances that will ensure the return of the product to the plant for reprocessing, or under such other conditions as the Administrator may determine to ensure compliance with part 590. FSIS's practice of allowing egg products to be moved pending receipt of results of tests done by FSIS or the plant is codified in 9 CFR 590.504(d).

Failure of an egg products plant to hold or maintain control of product pending Agency or plant test results endangers public health. Therefore, FSIS is proposing to revise paragraph (e) to 9 CFR 590.504 to make clear that egg products plants that move product that has been sampled by the Agency or the plant before receiving test results must maintain control of the products represented by the sample pending the test results.

The Agency is not requiring the use of any particular control measures to ensure that product is not used or distributed for sale before test results are known. Instead, egg products plants may continue to use, or develop, their own new, effective methods of control.

G. Irradiated Shell Eggs

Shell eggs that are subjected to ionizing radiation may be used in the production of egg products because when applied at sufficient doses, irradiation can be a means of destroying disease-producing bacteria in food and result in a pasteurized product. Specifically, food irradiation is the process of exposing food to high levels of radiant energy. Forms of radiant energy include: Microwave and infrared radiation that heat food during cooking; visible light or ultraviolet light used to dry food or kill surface microorganisms; and ionizing radiation, resulting from cobalt-60, cesium-137, x-ray machines, or electron accelerators, that penetrates deeply into food, killing insect pests and microorganisms without significantly raising the temperature of the food. Food is most often irradiated commercially to extend shelf life, eliminate insect pests, or reduce pathogenic microorganisms. Food irradiation for these purposes is practiced in many countries, including the United States.

Irradiation is subject to the food additive provisions of the FFDCA. FDA has the primary responsibility for determining whether food additives are safe for particular uses. FDA lists uses of food additives it has concluded are safe in 21 CFR parts 172 through 179. Under section 201(s) of the FFDCA (21 U.S.C. 321(s)), a source of radiation used to treat food is defined as a food additive. A source of radiation is used to process or treat food such that, analogous to other food processes, its use can affect the characteristics of the food.

In a notice published in the **Federal Register** on March 20, 1998 (63 FR 13675), FDA announced that a food additive petition (FAP 8M4584) had been filed by Edward S. Josephson, University of Rhode Island, Food Science and Nutrition Research Center, 530 Liberty Lane, West Kingston, RI 02892–1802, to amend the food additive

[13] 9 CFR 411(c)(5) requires that containers of product bearing official identification display that identification and the plant number. Official identification means the official inspection mark or any other symbol prescribed by the regulations in part 590 to identify the status of any article. *See* 9 CFR 590.5.

[14] The current *Salmonella* sampling levels that egg products plants must meet are provided in FSIS Directive 10,230.4, *Salmonella* Surveillance Program for Liquid and Frozen Egg Products.

[15] The USDA, FSIS Pasteurized Egg Products Lab (PEPRLab) Program is a program for laboratories performing *Salmonella* analysis on official surveillance samples of pasteurized egg products.

regulations to provide for the safe use of ionizing radiation for the reduction of *Salmonella* in fresh shell eggs.

The petitioner submitted published articles and other study reports containing data and information related to eggs and other kinds of food in the areas of radiation chemistry, nutrition, toxicology, and microbiology. FDA considered the data and studies submitted in the petition, as well as other information in its files relevant to the safety and nutritional adequacy of eggs treated with ionizing radiation.

Based on the totality of evidence from all evaluated data and studies, FDA determined that: (1) The proposed use of irradiation on fresh shell eggs at levels not to exceed 3.0 kGy is safe, (2) the irradiation can achieve its intended technical effect of reducing the numbers of *Salmonella* in fresh shell eggs, and, therefore, (3) it should amend 21 CFR 179.26 to provide for the use of irradiation on fresh shell eggs. Consequently, on July 21, 2000 (65 FR 45280), FDA approved the use of ionizing radiation on eggs in the shell to reduce the internal level of *Salmonella.* It also amended its regulations by expanding the list of products (21 CFR 179.26(b)) for which ionizing irradiation may be safely used to include fresh shell eggs. (While FDA does not define the word ''egg,'' FSIS has included the definition contained in the EPIA in 9 CFR 590.5.)

While the irradiation of fresh shell eggs at the doses approved by FDA will reduce the level of microorganisms in shell eggs (65 FR 45281, July 21, 2000), the irradiation treatment of shell eggs to be processed as liquid egg product will not sufficiently eliminate pathogens of public health concern from this form of egg. As a result, treating shell eggs used to process egg products only with ionizing radiation will not result in a final egg product that is completely pasteurized, *i.e.,* RTE. Because the irradiation treatment approved by FDA is insufficient to produce a ready-to-eat product based on the maximum approved irradiation dose specified in 21 CFR 179.26, it must be used in combination with other lethality treatments to complete the total lethality required to result in a pasteurized, RTE egg product.

Under proposed 9 CFR 590.590, the irradiation treatment must precede the heat or other lethality treatment because FDA has not approved the use of irradiation on egg products. Irradiated shell eggs or the use of the irradiated contents of fresh shell eggs for inclusion in pasteurized egg products must be reflected in the ingredient statement on the finished product labeling (proposed 9 CFR 590.410(a)(3)).

H. Implementation of Regulatory Requirements Domestic Plants

All official plants will be subject to the requirements put forth in this proposal if it is adopted. FSIS intends to phase in the HACCP requirements in this proposal over a 2-year period after publication of a final rule, both as a means to reduce the impact for small and very small businesses and to ensure that FSIS inspection program personnel are properly trained and equipped with the tools to carry out the new requirements for inspection. FSIS intends to enforce the Sanitation SOP measures and the sanitation requirements one year after publication of a final rule because these regulations should involve less significant changes for the plants, and these regulations provide the plant increased flexibility.

FSIS intends to enforce the requirement that egg products be processed to be edible without additional preparation to achieve food safety on the effective date of the rule. This requirement is consistent with current regulatory and statutory requirements; FSIS tests samples from all egg products for *Salmonella* and Lm. FSIS will continue to do so should this rule become final.

Under this proposal, FSIS would no longer control design specifications for buildings and equipment. Instead, FSIS would focus its regulatory attention on determining whether an official plant is successfully meeting sanitation requirements. Should this rule become final, plants would be required to ensure that the design of buildings and equipment is appropriate for sanitary food production and for maintaining good sanitary conditions in accordance with broad sanitation principles. In addition, official plants adopting Sanitation SOPs of their own design would identify the elements of good sanitation required to prevent direct product contamination, carry out their Sanitation SOPs on a daily basis, and achieve acceptable sanitation results.

Foreign Plants

Under 9 CFR 590.910, to export egg products to the United States, foreign countries will have to have a system of inspection that is equivalent to the system in the United States. Should this rule become final, as HACCP and other regulatory provisions are implemented in the American domestic market, foreign countries that export egg products to the United States would be evaluated to ascertain whether their inspection systems provide equivalent food safety protection, including adequate levels of enforcement.

I. Labeling and Other Consumer Protection Regulatory Requirements

Official plants are responsible for ensuring that labeling used on egg products is truthful and not false or misleading (21 U.S.C. 1036). They are also responsible for ensuring that all labeling complies with the EPIA and the egg products inspection regulations. To ensure that official plants comply with applicable statutory and regulatory labeling requirements, FSIS conducts a prior approval program for labels used on federally-inspected egg products (9 CFR 590.411). Examples of label features that FSIS evaluates include the standardized, common or usual, or descriptive name of the product; an ingredients statement containing the common or usual name of each ingredient listed in descending order of predominance; and handling statements if the product is perishable.

To obtain label approval, egg products plants must submit sketch labels to FSIS before they print the labels, containers, or packaging materials that bear official identification (9 CFR 590.411(a)). The information submitted is evaluated by the FSIS Labeling and Program Delivery Staff (LPDS) for conformance with the EPIA and the regulations adopted under it.

Before July 1996, FSIS conducted a prior approval program for meat and poultry labels used on federally-inspected meat and poultry products. As with egg products, the meat and poultry prior approval program was intended to ensure that the labels applied to those products complied with the labeling and standards requirements of the Federal Meat Inspection Act, the Poultry Products Inspection Act, and their implementing regulations.

Effective July 1, 1996, FSIS modified its prior label approval program for meat and poultry products by eliminating the need for submitting final labels to the Agency. The Agency changed the previous program by requiring the submission of only sketch labels (*i.e.,* printer's proofs) and by expanding the types of labels that are generically approved and that could be applied to products in final form without first submitting such labels to the Agency for evaluation and approval (60 FR 67443, Dec. 29, 1995). FSIS took this action to improve the label approval system by eliminating the need for industry to re-submit sketches in final label form, thereby reducing the number of labels being submitted to the Agency for approval.

On November 7, 2013, FSIS published a final rule that amended the meat and poultry products inspection regulations to expand the circumstances under which the labels of meat and poultry products would be deemed to be generically approved by the Agency. Effective January 6, 2014, FSIS regulations only require four categories of meat and poultry product labels to be submitted to LPDS for approval, as described in 9 CFR 412.1. FSIS requires the submission of labels: (1) Intended for temporary approval; (2) for products produced under religious exemption; (3) for products for export with labeling deviations; and (4) with special statements and claims as described in § 412.1(c). All labels that do not fit into one of the four categories are eligible for generic approval.

As part of its effort to make the egg products inspection regulations as consistent as possible with the Agency's meat and poultry products regulations, FSIS is proposing to modify the prior label approval program for egg products labeling. If finalized, the program will be consistent with the prior label approval system that is in place for meat and poultry products, including the regulations that permit generically approved labeling. Under this system, only labeling that meets the criteria described in 9 CFR 412.1 will have to be submitted to FSIS for evaluation and approval.

Therefore, FSIS is proposing to revise 9 CFR 590.411 to require all official plants, including those certified under a foreign inspection system in accordance with 9 CFR 590.910, to comply with the requirements contained in 9 CFR 412.1. As a result, egg products plants will have to submit only four categories of product labels to FSIS for approval, including labels: (1) Intended for temporary approval; (2) for products produced under religious exemption; (3) for products for export with labeling deviations; and (4) with special statements and claims as described in 9 CFR 412.1(c).

In addition, FSIS is proposing to revise 9 CFR 590.412 to require that all official plants, including those certified under a foreign inspection system in accordance with § 590.910, comply with the requirements in 9 CFR 412.2. Under this section, egg products plants would be authorized to use generically approved labels and thus would be free to use such labels without submitting them to the Agency for approval, provided the label displays all of the required mandatory features in a prominent manner and is not otherwise false or misleading in any particular.

As with meat and poultry products, FSIS would select samples of generically approved labels from the records maintained by official plants and plants certified under foreign inspection systems to determine compliance with label requirements (9 CFR 412.2(a)(2)). If the Agency finds that an official plant is using a false or misleading label, it would institute the proceedings prescribed in 9 CFR 500.8 to revoke the approval for the label.

Current 9 CFR 590.50 requires shell eggs that are packed into containers destined for the ultimate consumer to be labeled to state that refrigeration is required. However, on December 5, 2000, FDA amended 21 CFR part 101 to require that all shell eggs bear a safe handling statement. This statement, which is intended to inform consumers that there may be a risk associated with the consumption of eggs, and of the ways that they can properly handle and prepare eggs in order to reduce such risks, specifically instructs consumers to keep eggs refrigerated (21 CFR 101.17). As a result, FSIS's labeling requirement essentially duplicates FDA's, which became effective on September 4, 2001. Since it is FSIS's intention not to unnecessarily burden any parties with its regulatory requirements, FSIS is proposing to state in its regulations that shell eggs packed into containers destined for the ultimate consumer must be labeled in accordance with 21 CFR 101.17(h).

Meat and poultry products that require special handling to maintain their wholesome condition are required to bear handling statements. To ensure that the egg products inspection regulations will be as consistent as possible with the Agency's meat and poultry products regulations, FSIS is proposing a similar requirement for certain egg products, 9 CFR 590.410(a). Under this proposal, packaged egg products that require special handling to maintain their wholesome condition would have to bear the statement ''Keep Refrigerated,'' ''Keep Frozen,'' ''Perishable Keep Under Refrigeration,'' or a similar statement. This statement would have to be prominently displayed on the principal display panel. Similarly, egg products that are distributed frozen and thawed before or during display for sale at retail would have to bear the statement ''Keep Frozen'' on the shipping container. Consumer-sized containers for such egg products would have to bear the statement ''Previously Handled Frozen for Your Protection, Refreeze or Keep Refrigerated.''

J. Rules of Practice

Under the EPIA, FSIS ensures that egg products are wholesome, not adulterated, and properly marked, labeled, and packaged. FSIS has broad authority to issue regulations to carry out the provisions of the EPIA, including the authority to prescribe terms and conditions under which inspection will be provided and maintained (21 U.S.C. 1035(b) and 1043).

Currently, when FSIS refuses to inaugurate inspection in a plant, seeks to withdraw inspection, or refuses to approve egg products markings, labels, or containers, the Agency initiates an administrative action under 9 CFR 590.160. FSIS is proposing to replace 9 CFR 590.160(a)–(c) and (f)(1) with the supplemental rules of practice contained in 9 CFR part 500. These supplemental rules already apply to meat and poultry products establishments. Should this proposed rule become final, 9 CFR part 500, Rules of Practice, would apply to egg products plants, as an official establishment or establishment would include an official plant under proposed 9 CFR 591.1(b).

FSIS is proposing to amend 9 CFR 500.2(c) to add 9 CFR 590.310 to the list of regulatory citations under which an establishment [16] may appeal a regulatory control action. FSIS is also proposing to amend 9 CFR 500.3(a)(7) to allow FSIS to take a withholding action or to impose a suspension without providing an establishment prior notification because the establishment did not destroy a condemned egg product that has been found to be adulterated and has not been reprocessed, in accordance with 9 CFR part 590, within three days of notification.

FSIS is proposing to amend 9 CFR 500.5(a)(5) and (c) to add 9 CFR 590.310 to the list of regulatory citations under which it must advise an establishment that it may appeal a withholding action or suspension, and under which an establishment may appeal a withholding action or suspension. FSIS is also proposing to amend 9 CFR 500.6 by adding section 18 of the EPIA (21 U.S.C. 1047) to the statutory citations under which the FSIS Administrator may file a complaint to withdraw a grant of Federal inspection because a recipient of inspection, or anyone responsibly connected to the recipient, is unfit to engage in any business requiring inspection.

[16] For the purposes of Part 500, Rules of Practice, an official establishment or establishment includes an official plant. *See* proposed § 591.1(b).

FSIS is proposing to amend paragraphs (a)(3) and (5) of 9 CFR 500.7 to permit the FSIS Administrator to refuse to grant Federal inspection because an applicant has not demonstrated that adequate sanitary conditions exist in the establishment as required by the egg products inspection regulations, or because the applicant is unfit to engage in any business requiring inspection as specified in 21 U.S.C. 1047. FSIS is also proposing to amend 9 CFR 500.8(a) to allow FSIS to rescind or refuse approval of false or misleading marks, labels, or sizes or forms of any container for use with any egg product under sections 7 or 14 of the EPIA (21 U.S.C. 1036 and 1043). If this proposal is adopted, 9 CFR 500.8(c) will provide for an opportunity for a hearing, in accordance with the Uniform Rules of Practice, 7 CFR subtitle A, part 1, subpart H, if FSIS rescinds or refuses approval of false or misleading marks, labels, or sizes or forms of any container for use with any egg product.

Should this rule become final, FSIS would take a withholding action or impose a suspension without providing the plant prior notification because: (1) The official plant does not have a HACCP plan as specified in 9 CFR 417.2; (2) the official plant does not have Sanitation Standard Operating Procedures as specified in accordance with 9 CFR 416.11 and 416.12; or (3) the official plant does not maintain sanitary conditions (9 CFR 500.3(a)). FSIS would also take these actions when facilities apply for a grant of inspection and the applicant or recipient, or anyone responsibly connected with the applicant or recipient, is unfit to engage in business because of prior criminal convictions, or when plant personnel assault, intimidate, or interfere with Federal inspection service (21 U.S.C. 1047).

The proposed rules of practice will ensure that enforcement procedures are fair; identify situations that may lead FSIS to take enforcement action that may include refusing to apply or withholding the marks of inspection from product or suspending or withdrawing inspection from facilities; provide an opportunity for official plants to address and correct problems before the Agency files a formal administrative complaint to suspend or withdraw inspection; establish the procedures FSIS will follow in taking such actions; and consolidate the rules of practice applicable to official plants with those applicable to meat and poultry products establishments.

K. Other Regulatory Changes

1. Elimination of Official Egg Products Plant Equipment and Facility Prior Approval Requirements

The egg products inspection regulations require that official egg products plants applying for inspection submit to FSIS multiple sets of drawings of and specifications for the facilities for approval before inspection can be granted (§ 590.146). The regulations require plans to be submitted to the Agency for approval before any remodeling of facilities, and they require that prior approval by FSIS be obtained for equipment and utensils proposed for use in preparing edible product or product ingredients in official plants (§§ 590.146(d), 590.502, 590.504).

The prior-approval process is a feature of the traditional ''command-and-control'' regulatory approach. While prior approval provides assurance that equipment, facilities, and processes, as designed, meet certain requirements that are intended to ensure food safety or quality, it also reflects the emphasis of the current egg products inspection system on dictating the way in which official plants maintain sanitation and produce safe food. This feature of the current system is inconsistent with FSIS's view of the appropriate allocation of responsibility between the Agency and official plants. It is an obstacle and too often a deterrent to innovation by official plants seeking to improve operations, and it contributes to unproductive use of FSIS resources both in managing the approval system and policing official plants' compliance with approved facility and equipment specifications.

Experience has shown that FSIS prior approvals are of limited value in ensuring good sanitation. They are limited in both scope, in that they deal only with official plant facilities as presented in drawings, and time, in that they are given once, on the condition that official plants will maintain a sanitary operating environment after their facilities are approved. Ultimately, an official plant's implementation of good Sanitation SOPs on a continuing basis is more critical than the actual design of a facility. Plant-operated sanitation procedures will achieve, without prior approval, the same objectives as the FSIS prior approvals, thereby rendering the prior approval procedures unnecessary. Thus, under HACCP-based inspection, the FSIS prior approvals could no longer be considered an efficient and cost-effective means to achieve sanitation objectives.

Under this proposal, although there will no longer be a requirement for an official plant to submit facility drawings and specifications when applying for a grant of inspection, FSIS will continue to use a specific process to determine whether to grant inspection. This process will still include an on-site review, or ''walk-through,'' of the plant's facilities by FSIS inspection program personnel as part of the pre-decisional review of the facility's capability to produce complying product. However, the decision-making process will no longer include the review and prior approval of facility blueprints and specifications by the Agency. The on-site review will not involve matching items on the blueprints with the actual facilities represented. Instead, the focus of the review will be on the extent to which the facility is able to maintain a sanitary environment for food production and not impede government inspection.

Prior approval by FSIS of equipment and utensils proposed for use in preparing edible egg products or product ingredients will also be eliminated under this proposal. FSIS's one-time approval does not address daily operational issues such as proper maintenance and adjustment of equipment to prevent product contamination. Such issues are covered by the requirement in 9 CFR 416.3 that equipment and utensils be of such material and construction that they can be thoroughly cleaned and sanitized, as well as by other general sanitation requirements.

While facilities will be required to meet the general sanitation requirements prescribed in the regulations, they will have the flexibility to determine the specific steps to be taken to comply with those requirements. Facilities will be able to use equipment based on their own evaluation of their ability to utilize the equipment in a sanitary way.

In its inspection activities, FSIS will verify that plant equipment meets those general standards. FSIS inspection program personnel will act if they find that the equipment that a facility is using creates an insanitary condition that may render product injurious to health.

2. Eggs and Egg Products Import Requirements

FSIS is proposing to amend the regulations governing the importation and inspection of foreign eggs and egg products to align them more closely with the regulations governing the importation of foreign meat and poultry products. Historically, significant

differences have existed in how FSIS makes determinations of eligibility for the import of meat and poultry products to the United States as opposed to determinations for imported egg products. Similarly, requirements and procedures for the reinspection of imported products presented for entry into domestic commerce have been applied differently to meat and poultry products than to egg products. In this proposal, therefore, to improve import program efficiency and food safety controls, FSIS is seeking to harmonize the requirements and procedures applicable to imported eggs and egg products with those applicable to imported meat and poultry products.

FSIS is proposing to amend 9 CFR part 590 by adding a new subpart B, Imports (9 CFR 590.900 *et seq.*), that will contain the imported egg products regulations. FSIS is proposing to amend these regulations by adding 9 CFR 590.900, which includes paragraphs that define certain basic terms, *Import (Imported)* and *Offered for entry,* and for product from eligible countries: *Entry (Entered).* FSIS is also proposing to add the term *Official Import Inspection Establishment* consistent with the definition in the meat inspection regulations.

FSIS is proposing to add a new 9 CFR 590.901 to 9 CFR part 590 to establish the identity of inspected and passed imported egg products as domestic products. In so doing, the Agency seeks to ensure that imported egg products that bear the mark of inspection may be combined with inspected and passed domestic products for purposes of further processing or sale in domestic commerce.

FSIS is proposing to amend 9 CFR 590.910 to establish the process and criteria that the Agency will follow to evaluate the equivalence of the inspection programs of foreign countries interested in gaining eligibility to export egg products to the United States. This section also delineates the manner in which foreign governments will be required to maintain the equivalence of their egg products inspection programs, including their certification of eligible establishments, separation of certified from uncertified establishments, and audits to verify the on-going equivalence of food safety and HACCP controls in certified establishments. FSIS is also proposing to prescribe the manner in which foreign governments are to certify eligible establishments to FSIS. Finally, proposed 9 CFR 590.910 includes provisions for the public notification of determinations of equivalence made by FSIS of foreign egg products inspection programs.

FSIS is addressing those circumstances in which a shipment of imported egg products may be rejected for container defects, but are otherwise found to be acceptable, by proposing to add a new paragraph (d) to 9 CFR 590.945 to identify the conditions under which imported egg products consignments with damaged containers may be reoffered for inspection.

For the handling of imported egg products, FSIS is proposing to amend 9 CFR 590.930 to require official import inspection establishments that re-inspect egg products to meet the sanitation requirements in 9 CFR part 416. The sanitation requirements in 9 CFR part 416 address conditions within establishments, such as facility and equipment sanitation, employee hygiene, and the development and implementation of sanitation standard operating procedures and associated recordkeeping requirements.

FSIS is proposing to amend 9 CFR 590.940 to establish official inspection marks for imported egg products. Current regulations require only that egg products found to be acceptable for importation be properly labeled and bear the inspection mark of the country of origin. FSIS is proposing that imported egg products bear the same mark of inspection that is applied to imported meat and poultry products. Additionally, this section outlines a procedure for the pre-stamping of official marks of inspection on product containers prior to the completion of an inspection assignment. These changes are intended to help to facilitate the clearance of inspected product during the examination process when the product is not being held pending the receipt of laboratory test results.

FSIS is proposing to amend 9 CFR 590.945 to clarify the procedures for the treatment and handling of imported egg products identified as ''U.S. Refused Entry.'' Paragraph (a)(5) of that section states that if the owner or importer fails to take the required action within the time specified under paragraph (a)(4) of this section, the Department will take such actions as may be necessary to effectuate its order to have the product destroyed for human food purposes. The Department shall seek court costs and fees, storage, and proper expenses in the appropriate forum.

FSIS is proposing to amend 9 CFR 590.955 to include shipping or identification marks among the list of required items for the labeling of imported egg products shipping containers. Shipping and identification marks are identifiers included on product container labels to distinguish product contained in a particular shipment from other product shipped elsewhere from the same production lot. Including shipping and identification marks on the shipping container labels facilitates identification of the product in the event of a recall or compliance investigation.

9 CFR 590.956 permits the relabeling of all egg products eligible for importation with an approved label under the supervision of an FSIS inspector at an official egg products plant or other location. Under proposed 9 CFR 590.411(f)(1), if the Administrator has reason to believe that any labeling, including the size or form of any container in use or proposed for use, with respect to egg products is false or misleading in any way, the Administrator may direct that such use be withheld unless the labeling or container is modified so that it will not be false or misleading, or the formulation of the product is altered so that it is not adulterated or would not cause misbranding.

While 9 CFR 590.956 permits the relabeling of all egg products eligible for importation with an approved label, proposed 9 CFR 590.411(f)(1) would permit only those products whose containers, labels, or packaging materials are false or misleading to be modified so that the containers or labels are not adulterated or would not be misbranded. Therefore, FSIS is proposing to amend 9 CFR 590.956 to permit only those egg products that have been refused entry into the United States solely because of misbranding to be brought in compliance with the labeling requirements of 9 CFR chapter III. An authorized representative of the Secretary will have authority to supervise any such compliance activities.

Under 9 CFR 590.965, egg products that have been inspected and marked by USDA may be returned from foreign countries. They are not considered importations within the meaning of 9 CFR part 590. Because such products are inspected and passed U.S. product, they are handled in the same manner as domestic products. FSIS is proposing to amend 9 CFR 590.965 to permit the re-entry of inspected and passed egg products from foreign countries if they are not adulterated or misbranded at the time of such return. The product may be subject to reinspection in an official plant before it can be released into commerce. Such products would be exempted from further requirements under 9 CFR part 590, and returned shipments must be reported to the Administrator by letter prior to their arrival at the United States port of entry. The proposed language will be

consistent with that for returned United States inspected and marked poultry products (9 CFR 381.209).

9 CFR 590.960 provides an exemption from foreign export certification and import inspection requirements for imported egg products that are intended for an importer's personal use, display, or laboratory analysis or that are not intended for sale or distribution in domestic commerce. FSIS is proposing to extend the 50 pound exemption for dried egg products to liquid or frozen egg products, which may currently not exceed 30 pounds in weight. This proposed change is consistent with the personal exemption provisions for imported meat and poultry products, which permit any product in a quantity of 50 pounds or less which was purchased by the importer outside of the United States for his/her own consumption to be imported into the United States from any country without compliance with the provisions of chapter III of title 9.

On September 19, 2014, FSIS published a final rule amending 9 CFR 590.915 and 590.920 to provide an electronic alternative to the paper-based import inspection application and the foreign inspection and foreign plant certificate processes (79 FR 56220). It also removed from the regulations the discontinued ''streamlined'' import inspection procedures for Canadian product. The Agency is reproducing the amended regulatory text in the codified text of this rule for context and clarity. It is not, however, amending that text.

3. Changes to Defined Terms

FSIS is proposing to amend the egg and egg products inspection regulations by updating the terminology used to refer to Agency personnel and the definitions of various terms. FSIS is proposing to remove the undesignated paragraphs of 9 CFR 590.5 that define *Chief of the Grading Branch, Inspector/Grader, National Supervisor, Regional Director,* and *Service* because such positions/entities do not exist within FSIS. As mentioned previously, FSIS assumed responsibility for conducting the egg products inspection program from AMS on May 28, 1995. Therefore, 9 CFR part 590 references should refer to FSIS and its officials. FSIS is also proposing to remove the term *Sanitize* from 9 CFR 590.5. As discussed earlier in this document, the Agency is proposing to consolidate the current sanitation regulations applicable to official plants into 9 CFR 590.1 and part 416. While not explicitly defined, the concept underlying the term ''sanitize'' is explained in 9 CFR part 416. Therefore, to eliminate this difference between the meat and poultry inspection regulations and the egg and egg products inspection regulations, FSIS is proposing to remove the term *Sanitize* from 9 CFR 590.5.

FSIS is also proposing to remove the definition for the term *Eggs of current production.* ''Eggs of current production'' are those eggs that have moved through the usual marketing channels since the time they were laid and are not in excess of 60 days old.[17] AMS uses the concept of ''eggs of current production'' to maintain the integrity of its quality standards and the AMS grade shield. It is a quality, not a food safety, indicator. Therefore, FSIS is proposing to remove the term because continued application of the regulatory requirement may unduly restrict the availability of edible eggs. However, FSIS is requesting comments on whether it should keep the term ''eggs of current production,'' and any support that the term is still necessary.

Finally, FSIS is proposing to remove the definition for the term ''plant.'' Under this definition, the term ''plant'' can refer to an exempted plant, *i.e.,* a plant where the Administrator has determined that the facilities and operating procedures meet the standards prescribed in part 590, and where the eggs received or used in the manufacture of egg products contain no more than restricted eggs than are allowed by the official standards of U.S. Consumer Grade B for shell eggs, and where an exemption has been granted, or an official plant, which means any plant in which the plant facilities, methods of operations, and sanitary procedures have been found suitable and adequate for the continuous inspection of egg products in accordance with part 590 and in which inspection service is carried on. FSIS is proposing to remove this definition because it is proposing to eliminate the exempted plant regulations, which is discussed later in this document. FSIS is proposing to add, in alphabetical order, an undesignated paragraph to 9 CFR 590.5 defining ''official plant.'' An ''official plant'' will be any plant in which the plant facilities, methods of operation, and sanitary procedures have been found suitable and adequate by the Administrator for the inspection of egg products pursuant to the regulations in this part and in which inspection service is carried on.

FSIS is proposing to revise the undesignated paragraphs of 9 CFR 590.5 that define the terms *Administrator, Egg, Egg product, Pasteurize, Processing,* and *Shell egg packer.* FSIS is proposing to revise the definition for the term *Administrator* to make reference to the FSIS Administrator instead of the AMS Administrator. This change reflects the fact that the authority for inspecting egg products under the EPIA's food safety provisions was delegated by the Secretary of Agriculture to FSIS from AMS in November 1994.

Because the term *Dirty egg* or *Dirties* is defined twice in 9 CFR 590.5, once as an undesignated stand alone term and once as a definition under the term *Egg* (paragraph c)), FSIS is proposing to eliminate this redundancy by removing the undesignated stand-alone term and its definition of *Dirty egg* or *Dirties.* While the definition of *Dirty egg* or *Dirties* in paragraph (c) of the term *Egg* is properly located, FSIS is proposing to revise it. The definition includes prominent stains as a criterion for classifying an egg as ''dirty,'' but the EPIA's definition of the term does not include this criterion (21 U.S.C. 1033(g)(3)). In addition, rather than being called ''dirties,'' dirty eggs are referred to as ''dirts'' in 7 CFR 59.720, which the Agency is proposing to add to the egg products inspection regulations. Consequently, FSIS is proposing to delete the words ''prominent stains'' from the definition of *Dirty egg* or *Dirties* in the regulations.

Also in 9 CFR 590.5, FSIS is proposing to replace the term *Official standard* with the term *Official standards,* correcting a typographical error made when the term was transferred from 7 CFR chapter 1, part 59 to 9 CFR chapter III, part 590 on December 31, 1998 (63 FR 72352).

FSIS is also proposing to amend the definition of *Processing,* to make clear that official plants may not repackage pasteurized dried egg products unless inspection program personnel are available to provide inspection oversight during the process. FSIS is proposing to amend the definition of *Pasteurize* to eliminate the requirement that only lethality treatments prescribed in the egg products inspection regulations may be used to destroy harmful viable microorganisms.

FSIS is also proposing to amend the term *Shell egg packer (grading station)* by removing the phrase *(grading station). Grading station* is a term used by AMS to differentiate between the two primary types of egg handlers: (1) Producer-packers, who pack only their own production, and (2) grading stations, which are all other facilities that segregate and pack eggs. While FSIS also distinguishes between producer-packers and all other packing facilities

[17] On April 19, 2006, AMS amended its definition of ''eggs of current production'' to mean shell eggs that are no more than 21 days old (71 FR 20288).

in its regulations, the phrase *(grading station),* when included as part of the defined term itself, causes confusion because FSIS does not perform any grading functions.

FSIS is proposing to add to 9 CFR 590.5 an undesignated paragraph that defines *Program employee* because it is specific to FSIS and refers to Agency personnel. FSIS is also proposing to define the phrase *Shipped for retail sale. Shipped for retail sale* means eggs that are forwarded from the processing facility for distribution to the ultimate consumer.

4. Conditions for Receiving Inspection

FSIS is proposing a 9 CFR 591.1(a) which, by cross-reference, will require that official plants, before receiving Federal inspection, develop written sanitation Standard Operating Procedures, in accordance with 9 CFR part 416, conduct a hazard analysis, and develop and implement a HACCP plan, in accord with 9 CFR part 417. Conditional inspection may be provided for a period not to exceed 90 days, during which period the plant will have to validate its HACCP plan.

5. Miscellaneous Changes

FSIS is proposing to amend the following egg products inspection regulations to match the text in the meat and poultry products inspection regulations:

9 CFR 590.118 Identification.

9 CFR 590.120 Financial interest of inspectors.

9 CFR 590.136 Accommodations and equipment to be furnished by facilities for use of program employees in performing service.

9 CFR 590.146 Survey and grant of inspection.

9 CFR 590.310 Appeal inspections.

FSIS is also proposing to eliminate the issuance of appeal certificates (9 CFR 590.360) and the cost of an appeal to a plant (9 CFR 590.370). Under current 9 CFR 590.300 and proposed 9 CFR 590.310, official plants have the right to appeal inspection decisions.

6. Reinterpreting the Requirement for Continuous Inspection in 21 U.S.C. 1034(a)

The EPIA requires the continuous inspection of the processing of egg products whenever processing operations are being conducted in each plant processing egg products for commerce (21 U.S.C. 1034(a)). FSIS has interpreted this to require the presence of inspection program personnel at each egg products plant whenever the manufacturing of egg products is being conducted, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing, cooling, freezing, drying, or packaging egg products. This level of inspection coverage is similar to that required at meat and poultry slaughter establishments, where FSIS conducts inspection during all slaughter operations. In contrast, at meat and poultry processing establishments, FSIS conducts inspection at least once per shift.

Based on the Agency's experience inspecting egg products plants since 1995, the Agency believes that egg products operations are more similar to meat and poultry processing operations, and especially those that produce ready-to eat products, than they are to meat and poultry slaughter operations, where inspection is required for each meat or poultry carcass. Like ready-to-eat meat and poultry processing operations, the typical egg products processing operation is a streamlined, automated process, with one or more lethality steps to destroy pathogens of concern in the finished product. As a result, FSIS is proposing to change the Agency's interpretation of ''continuous inspection'' in 21 U.S.C. 1034(a). Therefore, FSIS now intends to require inspection in egg products plants at least once per shift, instead of during all processing operations. FSIS welcomes comment on possible criteria the Agency might use in determining how inspection will be specifically adjusted in egg products plants.

Section 590.100 provides exemptions from continuous inspection under certain circumstances, provided that the conditions for exemption and the provisions of the regulations are met. Paragraph (b) of 9 CFR 590.100 provides an exemption from continuous inspection at any plant where the facilities, sanitation, and operating procedures are the same as required in part 590 for official plants and where the eggs received or used in the manufacture of egg products contain no more restricted eggs than are allowed by the official standards for U.S. Consumer Grade B shell eggs, and the egg products processed at such plant. Plants granted an exemption under 9 CFR 590.100(b) are called ''exempted plants.''

Instead of continuous inspection, exempted plants are subject to periodic inspections, provided they have met the facility, operating procedures and practices, and sanitation standards required for official egg products plants as contained in 9 CFR 590.500–590.580. They are also subject to other provisions applicable to official plants, which includes maintaining records which must be made available to duly authorized representatives of the Administrator for review. Product from exempted plants may not bear official identification (9 CFR 590.680(a)). Exempted product labels must bear the statement, ''Exempted-E.P.I.A. Registration No. __.'' The registration number is that assigned to the exempted plant as provided in 9 CFR 590.650.

The Agency's proposal to no longer require inspection coverage during all processing operations removes the need for this exemption. The circumstances provided by this exemption can be accommodated under FSIS's changed interpretation of ''continuous inspection'' in 21 U.S.C. 1034(a) and would allow such exempted plants to bear official identification. Therefore, FSIS is proposing to remove the specific exemption from continuous inspection found in 9 CFR 590.100(b), as well as the regulations in 9 CFR 590.600–590.680 authorizing these types of exempted egg products plants. The other exemptions from inspection for certain types of egg products processing, provided at 9 CFR 590.100(e) and (g), would remain, but would be redesignated as paragraphs (b)(1) and (2). Paragraph (f), now reserved, would be removed.

III. Executive Orders 12866, 13563, and 13771 and the Regulatory Flexibility Act

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, or reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated a ''significant'' regulatory action under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget under Executive Order (E.O.) 12866.

A. Need for Regulatory Action

The proposed rule will enable official plants to increase efficiency from complying with less burdensome regulations. FSIS is proposing that the current ''command and control'' egg products inspection regulations be changed to more flexible regulatory requirements. Under this proposed rule, egg products plants would be required to develop and maintain HACCP systems. A HACCP system allows greater flexibility for producers to

realize increased production efficiency. In addition, the proposed rule will allow plants to use different pasteurization methods. With 93 percent of egg products plants already under a HACCP system,[18] many have incurred additional unnecessary costs from complying with FSIS requirements in terms of ''command and control'' regulations and by processing under their own HACCP systems. By operating under the HACCP system alone, egg products plants can use plant resources in a more efficient manner while controlling for hazards in innovative ways in their HACCP plans.

Furthermore, regulatory action is warranted by the non-negligible public health risks associated with pasteurized egg products. The FSIS 2005 risk assessment estimated 5,500 cases of *Salmonella* per year due to pasteurized liquid egg products. This represents 0.5% of the approximately 1.03 million annual domestically acquired foodborne illnesses caused by *Salmonella* estimated by Scallan et al. (2011, Emerging Infectious Diseases 17(1):7–15). Gurtler et al. (2013, Foodborne Pathogens and Disease, 10(6):492–499) identifies four *Salmonella* outbreaks during 2007–2012 that were possibly caused by contaminated pasteurized egg products. Also, process control failures in the production of pasteurized egg products have the potential for especially serious health outcomes because the Food Code recommends pasteurized egg products for highly susceptible populations (FDA 2013 Food Code, Sec. 3–8).

Baseline of the Egg Products Industry

Currently, egg products are produced under FSIS jurisdiction by 77 egg products plants. Egg products include liquid, frozen, and dried whole eggs, whites, yolks, and various blends with or without non-egg ingredients. According to the FSIS Public Health Information System (PHIS) Database, we estimate that the egg products industry produced 1.8 billion pounds of dried, frozen, and liquid egg products for distribution in commerce and produced 4 billion pounds of liquid unpasteurized product for further processing in 2014.[19] Liquid egg products are produced in 73 percent of plants and accounted for 19 percent of all egg products marketed as finished product in 2014.[20] Liquid egg products represent the largest product type produced by egg products plants.

A survey by RTI International in 2014, Egg Products Industry Survey,[21] showed that 93 percent of egg products plants use a written HACCP plan to address at least one production step in their process.[22] The remaining 7 percent would need to create HACCP plans under this proposed rule, as well as any of the 93 percent of egg products plants that have HACCP plans for some egg products, but not for others.

This proposed rule would require that egg products plants maintain sanitation SOPs equivalent to the specifications of FSIS. Ninety-one percent of egg products plants already conduct sanitation procedures for food contact surfaces either daily or more frequently and document those procedures for sanitation standard operating procedures (Sanitation SOPs).[23]

Egg products production is easily the least labor-intensive process of the industries and products that FSIS regulates. Egg products plants tend to be highly mechanized and staffed with relatively low numbers of employees. Based on the results of a 2014 industry survey,[24] no egg products plants employ enough employees to be categorized as HACCP size Large. Because of the high product volume output to low employee count that egg products plants enjoy, nearly all plants that have less than 10 employees have over $2.5 million in annual sales, making them ineligible for the HACCP size Very Small category. Therefore, the large majority (98 percent) of egg products plants fall into the HACCP size Small category. In this section, FSIS discusses the size of individual plants. For a discussion of the size of egg products businesses under the Small Business Administration's (SBA) definition, see the initial Regulatory Flexibility Analysis section of this document.

Table 2 displays plants and processes.

TABLE 2—EGG PRODUCTS PLANTS AND TOTAL PROCESSES

Plants	Breaking	Liquid	Dried	Total processes
77	56	52	17	125

FSIS inspection of egg products plants includes 95 inspection program personnel (IPP), who conduct daily pre-operational sanitation inspections and monitor sanitary conditions of the plant premises, facilities, and equipment continually during operations at every egg products plant in multiple shifts. FSIS IPP are responsible for observing the cleanliness, type, and wholesomeness of raw materials and finished products, the handling of ingredients, pasteurization, packaging, labeling, freezing, storing, and all other operations related to the processing and production of egg products. In the past, FSIS has determined through regulation that, under the EPIA, IPP are required to conduct continuous inspection at egg products plants. This requirement means IPP must be on duty whenever eggs are broken; liquid eggs arrive at the receiving plant; egg products are blended, reconstituted, or reformulated; egg products are pasteurized or packaged; and non-denatured inedible egg products arrive at, or are shipped from, the plant.[25]

Expected Cost of the Proposed Rule

Presented here are economic analyses for the breaking of shell eggs, the production of pasteurized liquid egg

[18] RTI International. 2014. ''Survey of Egg Packing and Egg Products Processing Plants.'' Revised Final Report. RTI Project no. 0211740.015.001. 3040 Cornwallis Rd., P.O. Box 12194 Research Triangle Park, NC 27709–2194. OMB No. 0583–0162.

[19] In the Fiscal Year 2014, the monthly average production volume was used to calculate the annual estimate for 77 egg products plants in the PHIS database.

[20] In the Fiscal Year 2014, the monthly average production volume was used to calculate the percentage for 77 egg products plants in the PHIS database.

[21] RTI International. 2014. ''Survey of Egg Packing and Egg Products Processing Plants.'' Revised Final Report. RTI Project no. 0211740.015.001. 3040 Cornwallis Rd., P.O. Box 12194 Research Triangle Park, NC 27709–2194.

[22] RTI International. 2014. ''Survey of Egg Packing and Egg Products Processing Plants.'' Revised Final Report. RTI Project no. 0211740.015.001. 3040 Cornwallis Rd., P.O. Box 12194 Research Triangle Park, NC 27709–2194.

[23] Ibid.

[24] Under the HACCP size definitions, large establishments have 500 or more employees and small establishments have fewer than 500 but more than 10 employees. Very small establishments have fewer than 10 employees or annual sales of less than $2.5 million. These definitions are outlined in Pathogen Reduction: Hazard Analysis and Critical Control Point (HACCP) Systems (61 FR 38806 (July 25, 1996) available at: *http://www.fsis.usda.gov/OPPDE/rdad/FRPubs/93-016F.pdf.*

[25] U.S. Department of Agriculture, Egg Products Inspectors Handbook. AMS PY-Instruction No. 910. January, 1975.

products (including frozen egg products), and the production of pasteurized dried egg products. Also provided are estimated government costs associated with this proposed regulation. All recurring and one-time cost estimates are in 2016 dollars, and discount rates of 3 percent and 7 percent are used to calculate annualized costs over a 10-year period. For the purposes of the cost estimate, FSIS did not consider plant HACCP size because of the regularity in size explained previously (98 percent small). FSIS does not anticipate costs experienced by Very Small plants to differ greatly from those experienced by Small plants, because this proposed rule does not require any major capital, structural, or machinery investment or the hiring of additional employees, which can impose a large burden on Very Small plants.

Egg products plant personnel compensation (wages and benefits) that plants would need to provide to their employees because of the proposed regulation is derived using Bureau of Labor Statistics Occupational Employment Statistics wage rates and National Compensation Survey benefits percentages. The wage rate for a Quality Control (QC) manager is estimated to be $51.47 per hour; for Supervisors or QC technicians, $34.26 per hour; and for Production workers, $13.00 per hour.[26] Plants may pay employees for benefits such as paid leave, health insurance, and retirement and savings, and FSIS applied a benefits factor[27] of two to the hourly wage rate to estimate a total compensation rate for a Quality Control (QC) manager at $102.94 per hour; and for Supervisors or QC technicians at $68.52 per hour; and for Production workers at $26.00 per hour.

Hazard Analysis & Critical Control Points (HACCP) Systems: The cost estimates for HACCP implementation include costs associated with plan development and reassessment, training, and monitoring and recordkeeping costs. If egg products plants follow current time/temperature regulations, FSIS would accept their approach, and FSIS would not require that plants do a significant amount of analysis in their HACCP plan. Upon completion of the hazard analysis and development of the HACCP plans, plants are required to determine whether their HACCP plans are functioning as intended. During the initial validation period, plants are to test, repeatedly, the adequacy of the CCPs, critical limits, monitoring and recordkeeping procedures, and corrective actions identified in the HACCP plan.[28] Plants are also required to perform an annual reassessment of their HACCP plans.

HACCP Plan Development and Reassessment: Egg products plants operate to produce a variety of products using a number of different processing techniques. Under this proposed rule, each plant would be required to evaluate its processes to determine the adequacy of existing written HACCP plans and the number of plans that would need to be created or modified to meet the requirements of the proposed rule. A large number of egg products plants already have HACCP plans for their processes. These plants will be required to validate and reassess their HACCP plans annually, to ensure that their HACCP plans are consistent with the regulations that FSIS is proposing in this document. For plants that currently lack HACCP plans, FSIS estimated the cost of initial plan development and validation and annual reassessment and validation. Under this proposed rule, every egg products plant would be required to reassess the adequacy of the HACCP plan at least annually and whenever any changes occur that could affect the hazard analysis or alter the HACCP plan. Such changes may include, but are not limited to, changes in raw materials, source of raw materials, or product formulation. For the purposes of estimating costs, FSIS simplified the production of egg products into three processes: the breaking of shell eggs, the production of pasteurized liquid egg products (including frozen egg products), and the production of pasteurized dried egg products.

Using these three process definitions and data from PHIS, FSIS categorized plants by process. For reference, Table 2 above displays plants and processes. Using results from the 2014 Egg Products Industry Survey, FSIS applied a distribution, by process, of plants responding affirmatively to having a written HACCP plan to the population of egg products plants.[29] Using this data, FSIS estimated the number of processes in those plants that require a HACCP plan to be developed. This information is displayed in Table 3.[30]

TABLE 3—PROCESSES WITHOUT WRITTEN HACCP PLANS

Breaking	Liquid	Dried	Total processes
9	12	3	24

For plan development and reassessment, FSIS used the Cost of Food Safety Investments[31] final report, updated for inflation from 2014 to 2016 dollars using the Consumer Price Index (CPI) for Urban Consumers, and, with the assumed benefits factor of two. FSIS estimates the costs for plan development and reassessment using the low estimate, (plan developed internally—low estimate—$17, 130), the high estimate (plan developed with consultant—high estimate—$42,423), and the average of the mid-estimates of the plan developed with a consultant and internally ($31,271).[32] FSIS also incorporated an initial validation cost of $27,408 ($13,704–$41,112) and an ongoing (yearly) reassessment cost of $28,188 ($14,094–$42,282) for all HACCP plans. FSIS applied these estimates to the number of processes needing HACCP plans to determine the cost of HACCP plan development, validation, and reassessment, displayed in Table 4.

[26] Estimates obtained from the Bureau of Labor Statistics May 2016 National Industry-Specific Occupational Employment and Wage Estimates, for Management Occupations (Occupational Code 11–0000), *https://www.bls.gov/oes/current/oes113051.htm#ind,* Food Scientists and Technologists (19–1012), *https://www.bls.gov/oes/current/oes191012.htm,* and Production Occupations (51–0000) *https://www.bls.gov/oes/current/oes513023.htm.*

[27] This analysis accounts for fringe benefits and overhead by multiplying wages by a factor of two.

[28] 9 CFR 417.4.

[29] *See* Appendix A, Section 4.

[30] For the purposes of the table, the number of processes was rounded to the nearest whole number. For the purposes of cost calculations and to be more exact, the Agency kept the actual figures, including digits past the decimal point, for instance, the number of total processes is actually 24.2507 rather than 24. These figures are not exact whole numbers because the Agency used the survey participant responses for which processes they use, as percentages of the total survey responses. These percentages were used to derive the total number of establishments that use each process applying that to the total population of egg products plants in Agency data (please see appendix A).

[31] RTI International. Cost of Food Safety Investments Final Report. Available at: *https://www.fsis.usda.gov/wps/wcm/connect/0cdc568e-f6b1-45dc-88f1-45f343ed0bcd/Food-Safety-Costs.pdf?MOD=AJPERES.* These cost figures were adjusted for inflation using the average CPI–U from 2014 to 2016.

[32] For plan development costs, in order to mitigate outliers, the Agency selected the greater of the two lowest costs between developing the plan internally and the cost for developing with a consultant for the low estimate, and the lesser of the two highest costs between developing the plan internally or with a consultant for the high estimate.

TABLE 4—ESTIMATED HACCP PLAN DEVELOPMENT, VALIDATION, AND REASSESSMENT COSTS
[$1,000s]

Cost component	Initial cost (low estimate–high estimate)	Recurring cost (low estimate–high estimate)	Annualized cost—3% (low estimate–high estimate) over 10	Annualized cost—7% (low estimate–high estimate) over 10 years
Development	758.3 (415.4–1028.8)	0	86.3 (47.3–117.1)	100.9 (55.3–136.9)
Initial Validation* for 25 New Plans	667.4 (332.3–997.0)	0	75.6 (37.8–113.5)	88.4 (44.2–132.7)
Annual Reassessment**	2,839.9 (1420.2–4,259.9)	3,523.5 (1,761.8–5,285.3)	3,445.7 (1,722.8–5,168.5)	3,432.5 (1,716.3–5,148.8)

*These estimates are calculated using the actual number of unrounded processes or 24.2507 processes.
**"Initially, plants with existing HACCP plans will begin reassessing in year 1. Plants without existing plans, after developing their plans in year 1, will begin reassessing their plans in the following years.

The above analysis does not include costs associated with taking a corrective action when routine monitoring of a CCP detects a deviation from an established critical limit. It is not possible to determine the costs of these corrective actions, but we expect that, for well-designed processes with HACCP, these costs would occur infrequently.

HACCP Training and Personnel: We assume that each egg products plant will employ a QC manager and a QC technician to ensure compliance with the proposed measures. Based on the 2014 Egg Products Industry Survey final report, approximately 7 percent of plants do not employ any HACCP plans.[33] Thus, we assume 7 percent of plants (approximately five) will need to obtain training for a QC manager, assuming one per plant, and a QC technician and three production workers for each processing operation shift (an average of 1.7 shifts per plant based on the results of the Industry Survey).

Although the HACCP system is different than the current system, FSIS believes that in egg products plants, only a portion of production employees, or a minimum number per shift, would actually receive training, given that the duties for most of the production employees will remain very similar or even the same when the plant operates under HACCP. FSIS is seeking comment on its assumed staffing and training cost estimates.

FSIS used initial and recurring annual refresher training cost estimates (updated using the CPI for Urban Consumers from 2014 to 2016 dollars and the assumed benefit factor of two) and the number of hours of training from the Cost of Food Safety Interventions[34] final report updated with the assumed benefit factor of two. QC Managers would be trained initially at a cost of $3,991.29 (ranging from $1,995.65 to $5,986.94), with an annual refresher at a cost of $205.88 ($102.94 to $308.82). QC Technicians would be trained initially at a cost of $3,165 ($1,583 to $4,748), with an annual refresher at a cost of $137 ($69 to $206). An additional opportunity cost for training was added to account for the time lost when employees were in training at the per hour compensation rate (including wage and benefit factor) of the employees being trained for the length of the training and for replacement personnel to work covering the time of the training. Production employees would also need to be trained; however, FSIS assumed that this training would take place on the job, and therefore would only impose opportunity costs. We use an annual turnover rate of 27.9 percent[35] to estimate recurring costs due to employee separation and the need to train new employees. These estimates are displayed in Table 5.

TABLE 5—HACCP-RELATED TRAINING COSTS
[$1000s]

Plants	Shifts	Initial training costs (low estimate–high estimate)	Recurring training costs (low estimate–high estimate)	Annualized cost—3% (low estimate–high estimate) over 10 years	Annualized cost—7% (low estimate–high estimate) over 10 years
5	9	78.9 (39.5–118.4)	27.9 (13.9–41.8)	33.7 (16.8–50.5)	34.7 (17.3–52)

HACCP Recordkeeping: The proposal requires facilities to record observations when monitoring CCPs and to document any deviations and corrective actions. The rule requires that an employee not involved in recording observations certify such records. Recordkeeping costs include the time it takes to make observations and to record the results of those observations, plus the cost of certifying and maintaining records. The level and extent of recordkeeping for the proposed rule should not change greatly for egg products plants already using HACCP plans. Plants with existing HACCP plans are already documenting CCPs, as well as documenting information for the current regulations. For these plants, there will be a cost savings and reduction in recordkeeping costs, because they are keeping records for both a HACCP system and the current regulations.

FSIS used data from the 2014 Egg Products Industry Survey to estimate how many plants do not have HACCP plans, and the number of plans needed at these plants. FSIS also estimated the number of shifts at those plants.[36] The cost of recordkeeping is dependent on several factors, each of which has to be documented in some manner, such as the number of HACCP plans developed by each plant, the number of shifts operated by each plant, the number of CCPs per HACCP plan, the number of pre-shipment reviews conducted, and any decision-making for hazard analysis that may require documentation.

[33] *See* Appendix A, Section 5.

[34] RTI International. Cost of Food Safety Investments Final Report. Available at: *https://www.fsis.usda.gov/wps/wcm/connect/0cdc568e-f6b1-45dc-88f1-45f343ed0bcd/Food-Safety-Costs.pdf?MOD=AJPERES.* These cost figures were adjusted for inflation using the average CPI–U from 2014 to 2016.

[35] Ibid.

[36] *See* Appendix A, Section 6.

The numbers of CCPs in egg products plants likely vary considerably across the industry. An FSIS technical expert [37] suggested four to six CCPs per HACCP plan, as an average. Therefore, we assumed that the average number of CCPs is five per egg products plant, per plan. We assumed 3 minutes (+/− 1 minute) for monitoring recordkeeping and 1 minute (+/− 30 seconds) for certifying per CCP.[38] FSIS is seeking comment on these time assumptions. From the above assumptions, we estimate (Table 6) the annual cost of HACCP recordkeeping and monitoring. The Agency seeks comment on the number of CCPs anticipated, taking into account the variables listed above.

TABLE 6—ANNUAL HACCP RECORDKEEPING AND MONITORING COSTS

[$1000s]

Plans	Effective annual shifts	Annualized—3% recordkeeping costs (low estimate–high estimate) over 10 years	Annualized—7% recordkeeping costs (low estimate–high estimate) over 10 years	Annualized—3% monitoring costs (low estimate–high estimate) over 10 years	Annualized—7% monitoring costs (low estimate–high estimate) over 10 years
24	10,509	68.3 (45.5–91.9)	68.3 (45.5–91.1)	60.0 (30.0–90.0)	60.0 (30.0–90.0)

Table 7 presents a summary of the total HACCP-related costs as a result of the rule. These figures are annualized over 10 years at 3 percent and 7 percent discount rates.

TABLE 7—TOTAL HACCP-RELATED INDUSTRY COSTS

[$1000s] *

Cost component	Annualized costs—3% (low estimate–high estimate) over 10 years	Annualized costs—7% (low estimate–high estimate) over 10 years
Plan Development and Reassessment	3,607.7 (1808.0–5399.1)	3,621.9 (1,815.8–5,418.4)
Training	33.7 (16.8–50.5)	34.7 (17.3–52.0)
Recordkeeping & Monitoring	128.3 (75.5–181.1)	128.3 (75.5–181.1)
Total	3,769.7 (1,900.3–5,630.7)	3,784.9 (1,908.6–5,651.5)

* Numbers in table may not sum to totals due to rounding.

Sanitation Standard Operating Procedures (Sanitation SOPs)

Plan Development: For the most part, plants already have plans for sanitation insofar as FSIS already requires certain sanitation procedures. FSIS used responses from the 2014 Egg Products Industry Survey [39], which describes the number of plants where they train their employees on sanitation SOPs, to estimate the percentage of plants that have sanitation SOPs. This accounts for approximately 91 percent of all egg products plants. FSIS assumed that if a plant is training production employees, then it has a written plan in place that the training is based on and would likely meet the requirements of the proposed rule. FSIS then applied this percentage to determine the number of plants that would need to develop written sanitation SOPs (approximately 7). The current Sanitation SOP requirements for egg products plants will not change greatly, because the basis and standards for the sanitation of the plants will remain consistent with the current guidelines. For the proposed rule, the Sanitation SOPs will be created by the plant to meet FSIS standards under the HACCP system.

FSIS used cost estimates from the Cost of Food Safety Interventions [40] final report, with labor costs updated for inflation from 2014 to 2016 dollars and for the benefit factor described previously. For plan development, FSIS estimated costs using the low estimate (plan developed internally—low estimate—$17,130), the high estimate (plan developed with a consultant—high estimate, $31,018), and the average of the mid-estimates of the plan developed internally and with a consultant ($27,469).[41] The costs of Sanitation SOP plan development are displayed in Table 8.

TABLE 8—COSTS ASSOCIATED WITH THE DEVELOPMENT OF SANITATION SOPS

[$1,000s]

Cost component	Initial cost (low estimate–high estimate)	Recurring cost (low estimate–high estimate)	Annualized cost—3% (low estimate–high estimate) over 10 years	Annualized cost—7% (low estimate–high estimate) over 10 years
Development	185.5 (115.7–209.5)	0	21.1 (13.2–23.8)	24.7 (15.4–27.9)

[37] Curtis, P., North Carolina State University, Raleigh, NC. October 5, 2001. Personal communication with Catherine Viator, RTI. Reported in RTI International. 2002. ''Pathogen Reduction and Other Technological Changes in the Meat, Poultry, and Egg Industries.'' RTI Project no. 07182.017. 3040 Cornwallis Rd., P.O. Box 12194 Research Triangle Park, NC 27709–2194

[38] FSIS estimated these approximate time estimates by first hand observation at egg products plants.

[39] *See* Appendix A, Section 1.

[40] RTI International. Cost of Food Safety Investments Final Report. Available at: *http://www.fsis.usda.gov/wps/wcm/connect/0cdc568e-f6b1-45dc-88f1-45f343ed0bcd/Food-Safety-Costs.pdf?MOD=AJPERES*.

[41] For plan development costs, in order to mitigate outliers, the Agency selected the greater of the two lowest costs between developing the plan internally and the cost for developing with a consultant, and the lesser of the two highest costs between developing the plan internally or with a consultant.

Recordkeeping: Under the proposed rule, plants would be required to maintain daily records sufficient to document the implementation and monitoring of sanitation SOPs. FSIS used data from the 2014 Egg Products Industry Survey to estimate the proportion of plants keeping sanitation records that would meet the requirements of the proposed rule consisting of employee task performance and a log for deviations and corrective actions.[42] FSIS then determined how many of those plants are completing recordkeeping tasks daily.[43] Those plants that are not conducting recordkeeping or are conducting inadequate recordkeeping based on the proposed sanitation SOPs requirements will incur costs to do so.

For plants that are not keeping adequate sanitation records, FSIS estimated costs of recordkeeping based on the frequency of reported recordkeeping tasks. FSIS assumed that each sanitation recordkeeping task would be performed by a production employee and would take approximately 15 minutes (+/− 5 minutes) to complete. A sanitation recordkeeping task would be performed daily, unless the plant reported performing a task more than daily, in which case FSIS assumed there would be one task per shift (an average of 1.7 shifts per plant based on the results of the Industry Survey). The average number of shifts was calculated using question 5.2 of the survey, which asks respondents their total number of production shifts per day.[44] The responses by small and large plants to question 5.2 were combined along with the total responses to get percentages for average number of shifts. The calculation is 25% × 3 shifts + 18% × 2 shifts + 57% × 1 shift = 1.7 shifts.

FSIS further assumed that a QC technician would review records for approximately 10 minutes (+/− 5 minutes) once per day. FSIS used the recordkeeping estimates and time assumptions to estimate the cost to industry for Sanitation SOP recordkeeping, displayed in Table 9.

TABLE 9—SANITATION SOP RECORDKEEPING COSTS

[$1,000s]

Current recordkeeping practices	Recordkeeping frequency	Number of plants	Annualized—3% recordkeeping cost (low estimate–high estimate) over 10 years	Annualized—7% recordkeeping cost (low estimate–high estimate) over 10 years
In compliance with proposed rule	<Daily	7	11.4 (7.6–15.2)	11.4 (7.6–15.2)
	Daily	26	0	0
	>Daily	*17	0	0
Not in compliance with proposed rule	<Daily	3	4.6 (3.0–6.1)	4.6 (3.0–6.1)
	Daily	12	20.5 (13.7–27.4)	20.5 (13.7–27.4)
	>Daily	12	34.2 (22.8–45.7)	34.2 (22.8–45.7)

*For number of plants, FSIS multiplies the percentages from the survey for each category by total number of plants (77). For the category >Daily, in compliance, the calculation of 77 × 22.8% yields 17.56. This count was rounded down to 17 plants to be consistent with the total number of plants in the analysis of 77.

TABLE 10—SANITATION SOP MONITORING COSTS

[$1,000s]

Current recordkeeping practices	Recordkeeping frequency	Number of plants	Annualized—3% monitoring cost (low estimate–high estimate) over 10 years	Annualized—7% monitoring cost (low estimate–high estimate) over 10 years
In compliance with proposed rule	<Daily	7	20.1 (10.0–30.1)	20.1 (10.0–30.1)
	Daily	26	.....	.....
	>Daily	*17	.....	.....
Not in compliance with proposed rule	<Daily	3	8.0 (4.0–12.0)	8.0 (4.0–12.0)
	Daily	12	36.1 (18.0–54.1)	36.1 (18.0–54.1)
	>Daily	12	36.1 (18.0–54.1)	36.1 (18.0–54.1)

*For number of plants, FSIS multiplies the percentages from the survey for each category by total number of plants (77). For the category >Daily, in compliance, the calculation of 77 × 22.8% yields 17.56. This count was rounded down to 17 plants to be consistent with the total number of plants in the analysis of 77.

Training Costs: Egg products plants that are implementing new sanitation SOPs and those not in compliance will also need to conduct initial training for employees. Using data from the 2014 Egg Products Industry Survey, FSIS estimated the number of plants that will need to develop new sanitation SOPs (*see* Table 11) and the average number of shifts at those plants.[45] FSIS assumed that one QC Manager per plant, and one QC Technician and three production employees per shift would be trained.[46] FSIS is seeking comment on these assumptions. FSIS assumed the recurring training would occur for all 77 plants. FSIS used initial and recurring annual refresher training cost estimates from the Cost of Food Safety Interventions[47] final report updated for inflation from 2014 to 2016 dollars and with the assumed benefit factor of two. QC Managers would be trained initially at a cost of $2,756 ($1,378 to $4,134) with an annual refresher at a cost of $205.98 ($102.94 to $308.82). QC Technicians would be trained initially

[42] *See* Appendix A, Section 2.

[43] At least 1 pre-operational sanitation inspection of product contact zones per 9 CFR 416.13 and 416.12(c).

[44] Please see Appendix A.

[45] *See* Appendix A, Section 3.

[46] An FSIS expert has also agreed with the Industry Survey and provided the likely staff needing training at a typical egg products plant.

[47] *See* Footnote 33.

at a cost of $2,342.97 (1,171.50 to 3,514.46) with an annual refresher at a cost of $137 ($68.52 to $205.56). FSIS added an additional opportunity cost to account for the lost hours when employees are in training. Production employees would also need to be trained, however, FSIS assumed that this training would take place on the job and therefore would impose only opportunity costs.

FSIS included recurring training costs to account for labor separation and the need to train new employees. To estimate these ongoing costs, FSIS used an annual labor turnover rate of 27.9 percent [48] and applied that percentage to the initial training costs. The Sanitation SOP-related training costs due to the rule are displayed in Table 11.

TABLE 11—ONE-TIME AND RECURRING SANITATION SOP TRAINING COSTS

[$1000s]

Plants	Shifts	Initial training costs (low estimate–high estimate)	Recurring training costs (low estimate–high estimate)	Annualized cost—3% (low estimate–high estimate) over 10 years	Annualized cost—7% (low estimate–high estimate) over 10 years
34	59	363.7 (214.7–545.6)	140.3 (79.3–225.2)	181.7 (103.8–287.3)	188.7 (107.9–297.8)

Table 12 presents a summary of the total sanitation SOPs-related costs due to the rule annualized over 10 years at 3 percent and 7 percent discount rates.

TABLE 12—TOTAL SANITATION SOPS-RELATED INDUSTRY COSTS

[$1000s] *

Cost component	Annualized costs—3% (low estimate–high estimate) over 10 years	Annualized costs—7% (low estimate–high estimate) over 10 years
Plan Development	21.1 (13.2–23.8)	24.7 (15.4–27.9)
Recordkeeping & Monitoring	171.0 (97.3–244.8)	171.0 (97.3–244.8)
Training	181.7 (103.8–287.3)	188.7 (107.9–297.8)
Total	373.9 (214.2–555.9)	384.5 (220.6–570.5)

* Numbers in table may not sum to totals due to rounding.

Special Handling Statements on Labels: The proposed egg products rule requires ''Keep Refrigerated'' or ''Keep Frozen'' statements for all egg products that require special handling to maintain their wholesome condition. Plants currently include this information on egg products labels; therefore, this new requirement for the industry should not create additional costs.

Costs from Requiring Egg Products Plants to Produce Egg Products That are Edible without Additional Preparation to Achieve Food Safety: The proposed rule requires that egg products plants process egg products that are edible without additional preparation to achieve food safety. FSIS does not anticipate that these plants will need to change their pasteurization practices to meet this requirement and therefore will not incur additional costs, except as a part of their normal operations in regards to complying with HACCP plan verification and monitoring activities. These verification and monitoring activities are discussed above as part of the HACCP costs of this proposed rule for recordkeeping and monitoring. FSIS has developed a Compliance Guideline for Small and Very Small Plants that produce ready-to-eat egg products. This guidance document is designed to help small and very small plants meet the proposed regulatory requirements by providing the best practice recommendations by FSIS, based on the best scientific and practical considerations. FSIS is seeking comment on this guidance document, which is posted on the Agency's web page: *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/compliance-guides-index*.

Below, the total industry costs are presented:

TABLE 13—TOTAL INDUSTRY COSTS

[$1,000] *

Cost component	Annualized costs—3% (low estimate–high estimate)	Annualized costs—7% (low estimate–high estimate)
HACCP	3,769.7 (1,900.3–5,630.7)	3,784.9 (1908.6–5651.5)
Sanitation SOPs	373.9 (214.2–555.9)	384.5 (220.6–570.5)
Total	4,143.6 (2,114.5–6,186.6)	4,169.4 (2,129.2–6,220.0)

* Numbers in table may not sum to totals due to rounding.

Agency Costs

Training and Personnel: FSIS employs 95 egg products inspectors that exclusively inspect egg products plants. Some egg products plant inspectors already have HACCP training from past inspection experience in meat and poultry plants. For inspectors without prior experience, FSIS will need to train them in the HACCP system. The long-term objective of the Agency is to establish an inspection system where inspection program personnel would be equally qualified to conduct inspection

[48] Annual total separations rate for nondurable goods, Bureau of Labor Statistics Job Openings and Labor Turnover Survey, available at: *http://www.bls.gov/news.release/jolts.t16.htm*.

activities at meat or poultry establishments, and egg product plants.

The Agency anticipates that it will need to train 51 egg products inspection personnel [49] and 24 meat or poultry inspectors (non-egg products inspectors). Fifty-one of these inspectors will require a 4-week training course on HACCP methods called Inspection Methods training, and 24 inspectors already trained in HACCP inspection will be trained in egg product inspection. The inspection methods training for egg products inspection personnel would be longer than for other plant personnel because it includes additional topics (*e.g.,* processing and slaughter inspection in a HACCP environment, rules of practice, and fundamental food microbiology) that not all egg products plant personnel need to perform their job. The total costs (including travel, lodging, per diem, and training program) for the 4-week training program is approximately $6,000 [50] per inspector, and the one-week egg product inspection training is approximately $1,200 per inspector. Therefore, the one-time Agency training costs total $334,800 (51 × $6,000) + (24 × $1,200).

Replacement inspectors will be required during periods when egg products plant inspectors are being trained. The Agency's district offices estimate the cost of replacement inspectors to be $2,800 per person [51] for inspection methods training and $700 per person for egg products inspection training. Consequently, the one-time cost of replacement inspectors is $159,600 derived from (51 × $2,800) and (24 × $700). Thus, the total one-time cost of training inspectors at egg products plants is $494,400. Table 14 provides the summary of the costs associated with inspector training.

TABLE 14—INSPECTION PROGRAM TRAINING COSTS AT 3% AND 7% DISCOUNT RATES ANNUALIZED OVER 10 YEARS*

[$1,000]

Cost component	Number of IPP	Cost per IPP	One-time cost	Annualized cost—3% over 10 years	Annualized cost—7% over 10 years
Inspection Methods Training	51	6	306	34.8	40.7
Egg Products Inspection Training	24	1.2	28.8	3.3	3.8
Replacement IPP	75	.....	159.6	18.2	21.2
Total	.....	.....	494.4	56.3	65.8

* Numbers in table may not sum to totals due to rounding.

Total Costs: Table 15 provides a summary of the estimated total costs for the industry and Agency. The table includes annualized costs over 10 years at discount rates of 3 percent and 7 percent.

TABLE 15—TOTAL COSTS

[$1,000] *

Total costs	Annualized costs—3% (low estimate–high estimate) over 10 years	Annualized costs—7% (low estimate–high estimate) over 10 years
Industry:		
HACCP	3,769.7 (1,900.3–5,630.7)	3,784.9 (1,908.6–5,651.5)
Sanitation SOPs	373.9 (214.2–555.9)	384.5 (220.6–570.5)
Agency	.....	.....
IPP Training:	38.1	44.5
Replacement IPP	18.2	21.2
Total	4,199.9 (2,170.8–6,242.9)	4,235.2 (2,195.0–6,287.8)

* Numbers in table may not sum to totals due to rounding.

The total annualized cost to the egg products industry of the proposal is $0.002 per pound of aggregate egg products ($4,143,600/1.8 billion pounds) at the 3 percent discount rate. The cost of the proposed rule to the egg products industry is minimal, and we do not expect the costs from this rule to have impact on consumer prices.

Expected Benefits of the Proposed Rule

The proposed rule will provide firms in the egg products industry greater flexibility and incentives for innovation. Firms derive benefits from opportunities to innovate and employ more flexible production methods over time.[52] Many egg products plants have already adopted the HACCP system for egg product processing. One reason for this adoption is buyers of egg products (further egg processors or retailers) require the production of egg products to be done under the HACCP system. In addition, under a HACCP system, egg products plants can attain quality accreditations such as one by the Safe Quality Food Institute, which allows egg products plants to access different markets inaccessible to non-HACCP

[49] FSIS Policy Development Staff (PDS) provided the number of personnel that will need training. PDS estimated this number by contacting each district manager in the field where egg products plants are located.

[50] This figure is a mean estimate of training costs from FSIS/OOEET Center for Learning.

[51] This is the average GSA per diem for meals and hotel multiplied by the number of days replacement inspectors would be needed to fill positions. *http://www.gsa.gov/portal/content/104877.*

[52] Coglianese, Cary & David Lazer. 2003. ''Management-Based Regulation: Prescribing Private Management to Achieve Public Goals''. Law & Society Review 37.

processors. Academic literature (please see next section) has also shown that an egg products plant's choice to process under a HACCP system as a management tool can also be internally driven by efficiency gains.[53]

A number of studies in the last few decades have shown important efficiency gains for food production industries after moving into a HACCP system. In a study by Nganje and Mazzocco in 2003,[54] individual plants in the red meat industry benefited from implementing HACCP by gaining efficiency in production. In a study by Henson et al. (2000) [55] on HACCP adoption in the UK dairy industry, the authors also report similar benefits such as ''the reduction in wastage, increases in product shelf life, and decreases in production costs.'' [56]

HACCP systems also enable firms that purchase egg products plant products to reduce costs of raw materials inspection, specification, and inventory.[57] Given the efficiency gains in different food production facilities under FSIS jurisdiction by implementing HACCP, FSIS reasonably expects that the egg products industry will gain some efficiency from HACCP implementation.

Benefits from removing current regulations: A large benefit from moving away from the current regulatory framework is the lessening of administrative burdens on plants and plant personnel. With the movement to a HACCP-based system, IPP will change how they inspect egg products plants by ensuring that plants' HACCP systems are functioning as intended rather than inspecting for compliance with current specifications. This change in how inspection is done will allow for improved allocation of resources to more food- safety tasks and sanitary verifications both for the Agency and for egg products plants. It also allows egg product plants to employ resources in a manner that more efficiently produces safe product instead of allocating resources just to comply with FSIS regulations. For instance, instead of sampling product for time and temperature, a plant can design a system in which its HACCP plan specifies sampling products at a more convenient time in the process, allowing for better personnel resource management to improve production efficiency.

Another aspect of the reduced administrative burden is a reduced need for FSIS approval for changes to plant operations that deviate from current regulations. For example, official plants will no longer need to submit facility blueprints and specifications (plant changes) to the Agency when applying for a grant of inspection, nor will they need to obtain prior approval from FSIS for equipment and utensils proposed for use in preparing edible product or product ingredients. The approval process for a waiver to a regulation or for no objection to production changes will also be eliminated if this proposed rule is adopted. These changes provide cost savings to industry and the Agency and are quantified below. It takes industry on average 100 hours to make an industry submission as described above (waiver, plant blueprint, no objection, or equipment use), including additional correspondence with FSIS. The Agency spends an average of 69 hours to review and approve each submission. FSIS is seeking comment on its estimates of the time it takes industry to develop a submission and to respond to FSIS requests in connection with the submission.

FSIS receives on average nine submissions per year from egg products plants. The submission process involves an egg products plant's QC technician providing the initial submission data and follow-up correspondence with Agency personnel. This follow-up correspondence includes responding to FSIS questions with supporting data. The QC technician is paid an hourly wage of $68.52 per hour, which includes a benefit rate of two.[58] An Agency reviewer would have a General Schedule 13 salary, step 3, at $94.20 per hour, which includes a benefit factor of two.[59] Eliminating these two submission processes will save industry approximately $61,600 annually discounted over 10 years at the 7 percent rate. The Agency would save approximately $58,498 annually discounted over 10 years at the 7 percent rate.

TABLE 16—INDUSTRY AND AGENCY SAVINGS FROM THE ELIMINATION OF AGENCY APPROVAL FOR PLANT AND PRODUCT PROCESSING CHANGES

[$1,000s] *

Total savings	Annualized savings—3% over 10 years	Annualized savings—7% over 10 years
Industry	61.6	61.6
Agency	58.5	58.5
Total	120.1	120.1

* Numbers in table may not sum to totals due to rounding.

The HACCP plan provision of the proposed rule will also give plants flexibility to design their pasteurization and sampling procedures. Ninety three percent of egg products plants have indicated that their plants conduct microbiological testing in addition to those required by regulation.[60] By giving plants the option to sample as determined in their HACCP plan, there may be a cost savings from sampling less. The proposed rule specifies that the final product must be produced to be edible without additional preparation to achieve food safety. This standard provides flexibility to an egg products plant by giving it the necessary end result of pathogen-free products without specifying direct instructions on the processing method. This allows plants to find the most efficient processing or sampling methods to best fit their own production process and resources to produce a pathogen-free product.

Additional Benefits from Generic Labeling: Additional benefits include cost reductions for the Agency and for the egg products plants that submit labels for changes to an existing label or for new label approvals. Currently, an egg products plant must submit a formal application along with a sketch of a product label to FSIS personnel for approval, regardless of the change (including a color or size change to a label). If the proposed rule is finalized,

[53] Kay Cao, Oswin Maurer, Frank Scrimgeour and Chris Drake. 2004. ''The Economics of HACCP (Hazard Analysis & Critical Control Point): A Literature Review, Agribusiness Perspectives Papers'', Paper 64, ISSN 1442–6951.

[54] Nganje W.E. and Mazzocco M.A. 2003. ''The Impact of HACCP on Factor Demand and Output Supply Elasticities of Red Meat''. Journal of Agricultural and Resource Economics.

[55] Henson, S., Holt, G., and Northen, J. (2000). ''Costs and benefits of implementing HACCP in the UK dairy processing sector''. In L.J. Unnevehr (Ed.), The economics of HACCP: Costs and benefits (pp.347–363).

[56] Kay Cao, Oswin Maurer, Frank Scrimgeour, and Chris Drake, The Economics of HACCP (Hazard Analysis & Critical Control Point): A Literature Review, Agribusiness Perspectives Papers 2004, Paper 64, ISSN 1442–6951

[57] Kay Cao, Oswin Maurer, Frank Scrimgeour and Chris Drake, The Economics of HACCP (Hazard Analysis & Critical Control Point): A Literature Review, Agribusiness Perspectives Papers 2004, Paper 64, ISSN 1442–6951

[58] Estimates obtained from the Bureau of Labor Statistics May 2016 National Industry-Specific Occupational Employment and Wage Estimates, for Management Occupations (Occupational Code 11–0000), *https://www.bls.gov/oes/current/oes113051.htm#ind,* Food Scientists and Technologists (19–1012), *https://www.bls.gov/oes/current/oes191012.htm,* and Production Occupations (51–0000) *https://www.bls.gov/oes/current/oes513023.htm.*

[59] Hourly rate, Washington, DC, Office of Personel Management *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2016/DCB_h.pdf.*

[60] RTI International. 2014. ''Survey of Egg Packing and Egg Products Processing Plants.'' Revised Final Report. RTI Project no. 0211740.015.001. 3040 Cornwallis Rd., P.O. Box 12194 Research Triangle Park, NC 27709–2194.

the approval process for certain labels will be streamlined, allowing egg products plants to use certain labels without submitting an application to FSIS because the labels will be generically approvable.[61] Labels that will not qualify for generic approval include temporary approvals, labels for export only that bear labeling deviations, or labels bearing special statements and claims. All other label types can be generically approved. Presently, many egg products plants use special claims on their labels (*e.g.,* organic or free range) and so those labels would not qualify for generic approval. The Agency estimates that approximately 80 percent of labels have prior approval for these claims.[62] If these prior approved producers make other changes to the labels not involving their pre-approved claims, they could qualify for generic labeling.

The number of egg products labels submitted in 2015 was approximately 520, and in 2016, the number rose to 708 labels. FSIS estimates that approximately 50 percent of these new labels would qualify for generic label approval each year. Generic approval would reduce the recordkeeping burden at the plant and Agency by about half the current levels. In order to estimate cost savings through the generic labeling process, the number of future label submissions was estimated based on the annual historic increase in submissions. Using the industry cost savings of $25.00 per label from the prior label approval system: Generic Label Approval final rule,[63] the proposed generic label approval process for egg products could save industry approximately $16,000 annually, discounted over 10 years at the 7 percent rate, from not submitting labels. The Agency would save approximately $61,000 annually, given that on average the review process takes approximately one hour, and a reviewer would have a General Schedule 13 salary, step 3 with a benefit factor of two,[64] having a total compensation of $94.20.

TABLE 17—SAVINGS FROM GENERIC LABELING

[$1,000s]*

Total savings	Annualized savings—3% over 10 years	Annualized savings—7% over 10 years
Industry	16	16
Agency	60.6	60.4
Total	76.7	76.4

*Numbers in table may not sum to totals due to rounding.

Better Agency Resource Coverage: Because all egg products plant inspectors will now be trained in HACCP and can staff FSIS-regulated establishments other than egg products plants, the Agency will experience an improvement in inspection coverage. In the egg products plants themselves, the Agency can also utilize HACCP trained inspectors as relief inspectors. Currently, egg products inspectors can only work in egg products plants.

Change in Inspector Coverage: Under the proposed rule, FSIS inspectors would no longer provide inspection during all processing operations at each egg products plant, but instead may be provided once per shift. Therefore, under the proposal, inspectors may inspect several plants within a reasonable commuting distance (*i.e.,* patrol assignments similar to meat and poultry processing inspection). The Agency expects there to be salary savings associated with patrol assignments through a 3-year change in staffing. The Agency expects to reduce the number of egg products inspectors by 10 inspectors in year 1, 10 inspectors in year 2, and 10 inspectors in year 3, for a total reduction of 30 egg products inspectors through attrition and movement of inspectors to other positions in the Agency.

In addition to Agency savings, there would be cost savings to industry because there would be a reduction in egg products inspector overtime and holiday hours, which industry pays for, due to patrol assignments.

The Agency will incur costs for the additional travel inspectors will incur on patrol assignments, and the loss of overhead industry paid to the Agency for overtime and holiday hours worked. Agency travel costs include mileage increases for existing patrol assignments and GSA cars for new patrol assignments. Please see table 18 for a summary of total savings from the proposed changes in inspection coverage.

TABLE 18—TOTAL NET SAVINGS FROM CHANGES IN EGG PRODUCTS INSPECTION

[$1,000]*

Agency	Annualized estimate—3% over 10 years	Annualized estimate—7% over 10 years
Costs:		
Changes in inspection coverage	1,421	1,421
Savings:		
Reduction in salaries due to changes in inspection coverage	(2,046)	(2,005)
Agency Net Budget Impact	*(625)*	*(548)*
Industry		
Savings:		
Elimination of inspection payments for overtime and holidays	(4,803)	(4,803)
Grand Total Net Savings	*(5,428)*	*(5,388)*

*Numbers in table may not sum to total due to rounding.

[61] As required by 9 CFR 412, the Labeling and Program Delivery Staff (LPDS) evaluates certain sketch applications and all temporary applications for meat and poultry products. All other meat and poultry product label applications may be generically approved without evaluation by LPDS.

[62] This was an approximation made by a label reviewer in the FSIS labeling group.

[63] 78 FR 66826.

[64] Estimates obtained from the Bureau of Labor Statistics May 2016 National Industry-Specific Occupational Employment and Wage Estimates, for Management Occupations (Occupational Code 11–0000), *https://www.bls.gov/oes/current/oes113051.htm#ind,* Food Scientists and Technologists (19–1012), *https://www.bls.gov/oes/current/oes191012.htm,* and Production Occupations (51–0000) *https://www.bls.gov/oes/current/oes513023.htm.*

In summary, the benefits from this proposed rule include improvements in product quality, lower transaction costs, plant innovation, and generally lower operational costs. Additionally, the egg products plants will not have to comply with the current ''command and control'' regulations. By eliminating regulations, administrative burdens will be lessened, including those associated with submitting documentation to FSIS for changes to the plant and plant processes, waivers, and most egg products labels, resulting in cost savings. Industry will also benefit from the reduction in overtime and holiday pay paid for the inspection of egg products plants. Table 19 summarizes the quantified costs and cost savings to industry and the Agency if the proposed rule is implemented. The rule provides a net cost savings of between $1.3 million and $1.4 million annualized over 10 years at the 7 percent and 3 percent rates.

TABLE 19—TOTAL COSTS AND NET BENEFITS

[$1,000s]*

Costs	Annualized 3% mid estimate (low estimate–high estimate) over 10 years	Annualized 7% mid estimate (low estimate–high estimate) over 10 years
Industry:		
HACCP	3,769.7 (1,900.3–5,630.7)	3,784.9 (1,908.6–5,651.5)
Sanitation SOPs	373.9 (214.2–555.9)	384.5 (220.6–570.5)
Agency:		
IPP Training	38.1	44.5
Replacement IPP	18.2	21.2
Total Costs	*4,199.9 (2,170.8 to 6,242.9)*	*4,235.2 (2,195.0 to 6,287.8)*
Savings		
Industry:		
Reduced Plant Approval Processes	−61.6	−61.6
Generic Labeling	−16	−16
Changes in inspection coverage	−4,803	−4,803
Agency:		
Reduced Plant Approval Processes	−58.5	−58.5
Generic Labeling	−60.6	−60.4
Changes in inspection coverage	−625	−585
Total Savings	−5,625	−5,585
Grand Total Net Benefits Mid (low to high) savings minus costs	*1,424.8 (−618.2 to 3,453.9)*	*1,349.5 (−703.1 to 3,389.7)*

*Numbers in table may not sum to totals due to rounding.

Uncertainty Surrounding Public Health Impacts: Currently, the regulations require specific times and temperatures for egg products pasteurization. If a plant wishes to employ an alternative time and temperature combination, the Agency reviews scientific research or data validating other methods of pasteurization (9 CFR 590.570(b)) and issues a ''No Objection'' letters (NOL) approving its use. The proposed rule will eliminate the codified time and temperature regulations and will require egg products plants to process egg products in a way that will ensure that the products are free of detectable pathogens. Due to a lack of data, FSIS is currently unable to compare food safety performance in egg products plants operating under the current regulations to those plants operating in a HACCP system under NOLs with differing pasteurization times and temperatures from those prescribed in the current regulations.

Under HACCP, an egg products plant would be required to conduct a hazard analysis to identify and list the biological, chemical, or physical food safety hazards that are reasonably likely to occur in its production process for a particular product and the measures to prevent, eliminate, or reduce the occurrence of those hazards to an acceptable level. The plant would also be required to identify the points in each of its processes at which control is necessary to achieve this goal (9 CFR 417.2(c)(2)). These points are called ''critical control points'' (CCPs). The plant would have to establish critical limits for the preventive measures associated with each identified CCP. Plants would also be required to validate that their process works as intended (9 CFR 417.4). The HACCP and Sanitation SOP framework will make FSIS inspection more efficient and effective, because the egg products plant would be required to prevent food safety problems rather than react to problems without preventing recurrence.

FSIS has developed a Compliance Guideline for Small and Very Small Plants that produce ready-to-eat egg products. This document updates the current time and temperature regulations based on the best available scientific information.[65] It provides ''safe harbors'' for egg products plants that FSIS considers as recognized procedures that can be employed without any further validation studies. However, the plant would need to validate that it is properly applying the FSIS time and temperature combinations provided in the guidance material and conduct monitoring and

[65] Gurtler, J.B., Marks, H.M., Bailey, R.B, Juneja, V. and Jones, D.R. 2013. Kinetics Model Comparison for the inactivation of *Salmonella* Enteritidis and Oranienburg in 10% salted liquid whole egg. Foodborne Pathogens and Disease. 10:492–499.

Gurtler, J.B., Marks, H.M., Jones, D.R, Bailey, R.B, and Bauer, N.E. 2011. Modeling the thermal inactivation kinetics of heat-resistant *Salmonella* Enteritidis and Oranienburg in 10 percent salted liquid egg yolk. J. Food Prot. 74:882–892.

Jordan, S.S., Gurtler, J.B., Marks, H.M., Jones, D.R. and Shaw, W.K. 2011. A mathematical model of inactivation kinetics for a four-strain composite of *Salmonella* Enteritidis and Oranienburg in commercial liquid egg yolk. Food Micro. 28:67–75.

verification activities in the plant's operating environment.

FSIS will continue to test egg products for *Salmonella* and Lm. If FSIS detects pathogens in the product, plants that have identified the pathogen as reasonably likely to occur in the HACCP hazard analysis will be required to take corrective actions to ensure that they identify problems that led to production of contaminated product, ensure no adulterated product is in commerce, and take measures to prevent recurrence. Plants that have not identified the pathogen as reasonably likely to occur would need to take corrective actions and reassess their HACCP plans in accordance with 9 CFR 417.3(b). Currently, when FSIS detects positives in egg products plants, the Agency response is limited to preventing the product from which the sample was collected from entering commerce or requesting that the producer recall its products. FSIS inspectors currently repeatedly issue noncompliance reports at egg products plants with limited improvements in operations. Therefore, it is possible that the HACCP regulations will improve the operations of egg products plants.

Alternative Regulatory Approaches

The Agency considered two alternatives designed to achieve the regulatory objective outlined in the Need for the Rule section. However, this proposed rule was chosen as the least burdensome, technically acceptable regulatory approach.

Voluntary HACCP regulatory program: A voluntary HACCP system would be very close to the current system. In the current system, 93 percent of egg products plants already have implemented HACCP systems integrated into their processing. Because many plants have already changed to a HACCP system, the Agency does not foresee any non-HACCP operations voluntarily implementing HACCP that have not already done so. These plants would stay at status quo. Therefore, this regulatory option would not lead to a significant change in current egg products plants processing practices. However, there would be additional costs, such as inspector HACCP training and the costs of inspecting a dual system. Also, under the current regulations, continuous inspection prevents inspectors from working patrol assignments, which would save industry overtime costs and Agency resources. These savings would not be fully realized in a dual system. For the plants not operating under HACCP, there are possible consumer benefit losses as some plants may fail to innovate and might continue to comply with current regulation, passing production costs on to consumers. Therefore, FSIS rejected this alternative.

HACCP for large volume egg products plants: In this alternative, only plants with a large production volume would be required to implement HACCP. This alternative would save Agency HACCP training costs for inspection personnel, who inspect small production plants. Small volume plants would be allowed to stay in a non-HACCP system, lowering industry costs. This alternative would need to have certain volume definitions to distinguish the type of plant considered in the alternative. A difficulty associated with the size definition process is that an egg products plant's volume may change depending on the season or from changes in its source eggs. These changes could affect the classification system, which is based on volume, and could create difficulties in identifying the plants most likely to be designated as large volume. Another drawback to this alternative is the possible costs to the small producer in the long run. Although the low-production egg products plants may save initially on costs by not implementing HACCP, this alternative may hurt the plants' long-run efficiencies and competiveness because they would not be gaining the flexibility to innovate that they would by producing under the HACCP system.

TABLE 20—REGULATORY ALTERNATIVES CONSIDERED

Alternative	Costs	Benefits
(1) Existing Voluntary Record-keeping.	Additional costs for the Agency	No additional benefits.
(2) HACCP only for large volume egg products plants.	In the long run, small plants would incur more costs from the lack of efficiency gains associated with HACCP.	Small volume producers would save on costs from not having to change their production process and develop the requisite Sanitation SOP and HACCP plans. Large volume producers would acquire benefits from implementing HACCP.
(3) The Proposed Rule	($1.34 million[66]) annual cost savings to industry and to the Agency.	Achievement of regulatory objective of regulations consistent with other FSIS regulations, clear responsibility of Agency vs. industry, and additional flexibility for industry.

Initial Regulatory Flexibility Analysis: The FSIS Administrator has made a preliminary determination that this proposed rule would not have a significant economic impact on a substantial number of small entities in the United States, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

There are 77 federally-inspected plants. We estimate that at least 12 are large businesses or companies with multiple egg products plants.[67] We estimate that approximately 46 plants are part of these larger companies, leaving 31 plants that could be considered small businesses. In the cost analysis above, FSIS estimated that the cost savings for the industry is approximately 733 thousand (7 percent, 10 years).

This results in an average cost savings to a plant of ($9,200/plant) annualized (7 percent, 10 years). The average revenue for egg products plants is approximately $104.4 million.[68] Therefore, FSIS believes that the total cost savings to revenue ratio per plant is .01 percent. FSIS is seeking public comment on its conclusion of no significant impact on small entities.

[66] This cost is annualized at the 7 percent discount rate over 10 years.

[67] These figures differ from the number of plants in HACCP size categories for small and large as mentioned earlier in the document, because the sizes are derived from the HACCP size rather than a business size. In this section, FSIS does not need HACCP sizes for egg products plants for the Regulatory Flexibility Analysis. Instead, FSIS must analyze egg products company or firm sizes instead of an egg products establishment sizes. The HACCP size of an establishment alone is not enough to verify whether it's part of a larger business. To determine whether a business is small, FSIS analyzed whether egg products establishments were part of larger companies.

[68] Derived from the RTI Industry Survey, Q.5.11, the weighted average of the midpoints of the respondents' answers to the level of annual revenue earned in the year prior to the survey. Q.5.11 What was the approximate value of egg product sales during the past year?

FSIS has developed a Compliance Guideline for Small and Very Small Plants that produce ready-to-eat egg products. This guidance document is designed to help small and very small plants meet the proposed regulatory requirements by providing the best practice recommendations by FSIS, based on the best scientific and practical considerations. FSIS is seeking comment on this guidance document, which is posted on the Agency's web page: *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/compliance-guides-index*.

Appendix A to Executive Orders 12866 and 13563 and the Regulatory Flexibility Act Analysis [69]

The 2014 Egg Products Industry Survey, conducted and published by RTI International, surveyed approximately 57 egg products plants with questions in regard to plants' use of HACCP plans, Sanitation SOPs, the number of plant personnel, hours of operation and the number of shifts, and current sampling practices. The survey design involved collaboration between FSIS personnel and RTI International. The full-scale data collection took place over a 16-week period from February 17, 2014, to June 9, 2014. The survey included 18 questions. The survey also provided information on production volume, types of product, and production processes. The survey was considered to be a census of the industry because all 77 egg products plants currently regulated by FSIS were contacted and asked to respond. The response rate to the survey was 72 percent. Fifty seven egg products plants completed the survey. Of these, 26 (46 percent) completed the survey via mail and 31 (54 percent) completed the Web survey. FSIS used the survey results to supplement the information that FSIS maintains in the Public Health Information System. The responses to the survey were masked so that individual plants could not be identified, so FSIS applied response distributions to the larger population of egg products plants to approximate baseline industry characteristics. In order to describe the egg products plants, which are under FSIS's jurisdiction, brief discussions of the major findings of the survey have been placed throughout this Executive Order 12866 and 13563 discussion and the regulatory flexibility analysis and footnoted accordingly. Please find the link to the survey here: *http://www.fsis.usda.gov/wps/wcm/connect/df3e0400-aaa7-423f-bb11-ff080fc8ce2b/Survey-Egg-Products-09302014.pdf?MOD=AJPERES.*

Section 1 Sanitation SOPs

FSIS estimated the percentage of plants that train production employees for Sanitation SOPs using question 4.5: During the past year, what types of food safety training did permanent employees of this plant receive? A plant was considered to train production employees if it responded affirmatively to choice b. Sanitation SOPs. 91.2 percent of respondents answered that employees receive Sanitation SOPs training.

Section 2 Recordkeeping for Sanitation SOPs

FSIS estimated the percentage of plants that currently meet the proposed recordkeeping requirements using survey question 2.2: ''Which of the following records that are not required by FSIS does this plant maintain?'' A plant was considered to meet both if it answered affirmatively to choices 1—''Employee task performance log verification'' and 2—''Deviation and corrective action log.''

FSIS then determined the frequency at which sanitation tasks are performed using question 2.6: ''How frequently does this plant conduct sanitation inspections of product contact zones?'' If a plant responded affirmatively to choice 1—''More than once per shift,'' it was considered to be conducting sanitation tasks at a frequency greater than daily. If it responded affirmatively to choice 2—''Once per shift before shift operations begin,'' and operates more than one shift daily (determined with question 5.2), then it was also considered to be conducting sanitation tasks at a frequency greater than daily. If it responded affirmatively to choice 2 and operates a single shift per day, or if it responded affirmatively to choice 3—''Once per day before daily operations begin,'' it was considered to be conducting sanitation tasks at a daily frequency. If it answered affirmatively to any other option, it was considered to conduct sanitation tasks less than daily.

Records in compliance			Records not in compliance		
<Daily	Daily	>Daily	<Daily	Daily	>Daily
8.8%	33.3%	22.8%	3.5%	15.8%	15.8%

Section 3 Training for Sanitation SOPs

FSIS used the training estimates from Section 1 and assumed that any plant which did not provide training for Sanitation SOPs did not have a written plan. Then, FSIS estimated the number of shifts of employees needing training for Sanitation SOPs by averaging the reported number of shifts from question 5.2—''How many production shifts are operated each day at this plant?'' Only those plants that do not provide HACCP training were included in the average.

Plants	No sanitation SOPs training	Needed sanitation SOPs	Average sifts	Total shifts
77	8.8%	7	1.7	8

[69] This Appendix describes how the Agency used the 2014 Egg Products Industry Survey conducted and published by RTI International to gather information on egg products plants relating to the cost section of this proposed rule. Specifically, this Appendix outlines how the survey questions were used to estimate the number of egg products plants that have Sanitation SOPs, HACCP plans, training, number of shifts, and record keeping.

Section (1) describes egg products plants' use of Sanitation SOPs. Section (2) outlines the estimates for egg product plants' recordkeeping for Sanitation SOPs. Section (3) describes egg products plants' training for Sanitation SOPs. Section (4) describes the type of product produced by egg products plants and their use of HACCP plans. Section (5) describes the number of egg products plants with HACCP plans. Section (6) estimates the average number of shifts for egg products plants without HACCP plans.

Section 4 Use of HACCP Plans

To determine the percentage of plants which have written HACCP plans in place for their respective processes, FSIS used the survey to first determine which respondents produced products corresponding to the three main processes.

For breaking, FSIS considered all plants that responded to question 1.1: ''Which statement below describes how this plant receives egg inputs?'' and answered affirmatively to choice 1—This plant receives shell eggs only''—or to choice 2—This plant receives both shell eggs and liquid or dried eggs.''

For dried eggs, FSIS considered all plants that responded to question 1.11: ''Does this plant produce this egg product form?'' and answered affirmatively to choice e—''Dried''—or to choice f—''Blended and dried.''

For liquid eggs, FSIS considered all plants that which responded to question 1.11: ''Does this plant produce this egg product form?'' and answered affirmatively to choice a—''Liquid''; to choice b—''Blended and liquid''; to choice c—''frozen''; to choice d—''Blended and frozen''; or g—''Extended shelf life liquid''.

Next, for each process, FSIS determined if the respondent had a written HACCP plan using question 2.1: ''What production steps are used by this plant, and if used, is the step addressed in a written plan?'' Specifically, FSIS considered the plan acceptable if the plant responded affirmatively to option 3—''Used and Addressed in a Written HACCP Plan'' for option j—''Breaking shell eggs''; option m—''Drying egg products''; or option n—''Pasteurizing dried egg whites''; and option l—''Pasteurizing liquid eggs for breaking, dried, and liquid processes, respectively.''

Breaking w/ HACCP	Dried w/ HACCP	Liquid w/ HACCP
84.6%	80.0%	76.5%

Finally, FSIS applied these percentages to PHIS egg products plants production data (*see* Table below) to estimate the number of processes currently operating without HACCP plans.

Plants	Breaking	Dried	Liquid	Total processes
77	56	17	52	125

Breaking w/o HACCP	Dried w/o HACCP	Liquid w/o HACCP	Total processes operating w/o HACCP
9	3	12	24

Section 5 Plants With HACCP Plans

FSIS used the results to question 2.1: ''What production steps are used by this plant, and if used, is the step addressed in a written plan?'' to determine the percentage of plants with no HACCP plans. Specifically, a plant was considered to have no HACCP plans if it did not respond with option 3—''Used and Addressed in a Written HACCP Plan for any of the following: j. Breaking shell eggs, l. Pasteurizing liquid eggs, m. Drying egg products, or n. Pasteurizing dried egg whites.''

Percent with no HACCP	Number of plants (approximate) with no HACCP
7.%	5*

*The number of plants was rounded down.

Section 6 Shifts for Plants Without HACCP Plans

To estimate the number of shifts at plants without any HACCP systems in place, FSIS averaged the responses to question 5.2: ''How many production shifts are operated each day at this plant?'' for those respondents determined to not have HACCP plans as described in Section 5. This average (1.7 shifts) was then applied to the total number of plants estimated to be without HACCP systems.

Executive Order 13771

This proposed rule, if finalized as proposed, is expected to be an E.O. 13771 deregulatory action. We have estimated that this proposed rule would yield cost savings. Assuming a 7 percent discount rate and a perpetual time horizon and a starting year of 2018, the proposed rule would yield approximately $1.29 million (2016$) in annualized cost savings. Assessment of the specific costs and cost savings may be found in the preceding economic analysis.

IV. Paperwork Reduction Act

FSIS has reviewed the paperwork and recordkeeping requirements in this proposed rule in accordance with the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) and has determined that the paperwork requirements constitute new information collections.

Title: Egg Products Hazard Analysis and Critical Control Point (HACCP) Systems and Sanitation Standard Operating Procedures (SOPs).

Type of Collection: New.

Abstract: Under this proposed rule, FSIS is requiring official plants to develop and maintain HACCP and Sanitation SOP records and plans, as well as various transaction records. The egg products industry's documentation of its processes, first in a plan and thereafter in a continuous record of process performance, will be a more effective food safety approach than the sporadic generating of information by inspection program personnel. This documentation gives inspection program personnel a much broader picture of production than they can generate and provides them additional time to perform higher priority tasks. At the same time, it gives plant managers a better view of their own process and more opportunity to adjust it to prevent safety defects.

Sanitation SOPs

To meet the proposed regulation's sanitation requirements, each processor will develop and maintain a Sanitation SOP. The Sanitation SOP would specify the cleaning and sanitizing procedures for all equipment and facilities involved in the production of every product. As part of the Sanitation SOP, a plant employee will record results of daily sanitation checks at the frequencies stated in the Sanitation SOP.

The burden of documenting the adherence to Sanitation SOPs is based on three factors: Recording, reviewing, and storage. Recording encompasses conducting and inscribing the finding

from an observation and filing of the document produced.

HACCP

Under this proposal, the requirements for the implementation of HACCP in official plants will be the same as those being met by meat and poultry products establishments operating under HACCP. The plant will maintain on file the name and a brief resume of the HACCP-trained individuals who participate in the hazard analysis and subsequent development of the HACCP plans. Plants will develop written HACCP plans that include: Identification of hazards reasonably likely to occur in the production process; identification and description of the CCP for each identified hazard; specification of the critical limit which may not be exceeded at the CCP, and, if appropriate, a target limit; description of the monitoring procedure or device to be used; description of the corrective action to be taken if the limit is exceeded; description of the records which would be generated and maintained regarding this CCP; and description of the facility verification activities and the frequency at which they are to be conducted. Critical limits that are currently a part of FSIS regulations must be included. The adequacy of a plant's HACCP plan must be reassessed at least annually and whenever changes occur that could affect the hazard analysis or alter the HACCP plan.

The HACCP records should be reviewed by a plant employee other than the one whom produced the record, before the product is distributed in commerce. If a HACCP-trained individual is on-site, that person should be the reviewer. The reviewer would sign the records. Lastly, HACCP records generated by the processor would be retained on site for at least 1 year.

Labeling

Under this proposal, official plants will be authorized to use generically approved labels without specific evaluation by LPDS. In addition, frozen and refrigerated egg products will be required to bear labels that say, ''Keep Frozen'' or ''Keep Refrigerated.'' Plants already use special handling statements, when appropriate, under general Agency policy governing special handling statements. Therefore, the Agency has already accounted for the labeling paperwork burden.

Estimate of Burden: FSIS estimates that each respondent will spend 927.58 hours per year on this information collection.

Respondents: Official egg products plants.

Estimated Number of Respondents: 77.

Estimated Number of Responses per Respondent: 927.58.

Estimated Total Annual Burden on Respondents: 71,424 hours.

Copies of this information collection assessment can be obtained from Gina Kouba, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, Room 6065–S, South Agriculture Building, 1400 Independence Avenue SW, Washington, DC 20250; (202) 720–5627.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both Gina Kouba, Paperwork Reduction Act Coordinator, at the address provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

V. Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no administrative proceedings will be required before parties may file suit in court challenging this rule.

VI. E-Government Act Compliance

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the internet and other information technologies and providing increased opportunities for citizen access to government information and services, and for other purposes.

VII. Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' E.O. 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FSIS has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a Tribe requests consultation, the Food Safety and Inspection Service will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

VIII. USDA Nondiscrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410. *Fax:* (202) 690–7442.

IX. Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will

announce this **Federal Register** publication on-line through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

List of Subjects

9 CFR Part 416

Meat inspection, Poultry and poultry products, Sanitation.

9 CFR Part 417

Meat inspection, Poultry and poultry products, Record and recordkeeping requirements, Hazard Analysis and Critical Control Point (HACCP) Systems.

9 CFR Part 500

Administrative practice and procedure, Meat inspection, Poultry and poultry products, Rules of practice.

9 CFR Part 590

Eggs and egg products, Exports, Food grades and standards, Food labeling, Imports, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, FSIS proposes to amend 9 CFR chapter III as follows:

■ 1. Revise the heading of subchapter E to read as follows:

SUBCHAPTER E—REGULATORY REQUIREMENTS UNDER THE FEDERAL MEAT INSPECTION ACT, THE POULTRY PRODUCTS INSPECTION ACT, AND THE EGG PRODUCTS INSPECTION ACT

PART 416—SANITATION

■ 2. Revise the authority citation for part 416 to read as follows:

Authority: 21 U.S.C. 451–470, 601–695, 1031–1056; 7 U.S.C. 450, 1901–1906; 7 CFR 2.18, 2.53.

PART 417—HAZARD ANALYSIS AND CRITICAL CONTROL POINT (HACCP) SYSTEMS

■ 3. Revise the authority citation for part 417 to read as follows:

Authority: 21 U.S.C. 451–470, 601–695, 1031–1056; 7 U.S.C. 450, 1901–1906; 7 CFR 2.18, 2.53.

■ 4. In § 417.7, revise paragraph (b) to read as follows:

§ 417.7 Training.

* * * * *

(b) The individual performing the functions listed in paragraph (a) of this section shall have successfully completed a course of instruction in the application of the seven HACCP principles to meat, poultry, or egg products, including a segment on the development of a HACCP plan for a specific product and on record review.

PART 500—RULES OF PRACTICE

■ 5. Revise the authority citation for part 500 to read as follows:

Authority: 21 U.S.C. 451–470, 601–695, 1031–1056; 7 U.S.C. 450, 1901–1906; (33 U.S.C. 1251 *et seq.*); 7 CFR 2.18, 2.53.

■ 6. Amend § 500.2 by revising paragraph (c) to read as follows:

§ 500.2 Regulatory control action.

* * * * *

(c) An establishment may appeal a regulatory control action, as provided in §§ 306.5, 381.35, and 590.310 of this chapter.

■ 7. Amend § 500.3 by revising paragraphs (a)(1) and (a)(7) to read as follows:

§ 500.3 Withholding action or suspension without prior notification.

(a) * * *

(1) The establishment produced and shipped adulterated or misbranded product as defined in 21 U.S.C. 453, 21 U.S.C. 602, or 21 U.S.C. 1033;

* * * * *

(7) The establishment did not destroy a condemned meat or poultry carcass, or part or product thereof, or egg product, that has been found to be adulterated and that has not been reprocessed, in accordance with part 314 or part 381, subpart L, or part 590 of this chapter within three days of notification.

* * * * *

■ 8. Amend § 500.5 by revising paragraphs (a)(5) and (c) to read as follows:

§ 500.5 Notification, appeals, and actions held in abeyance.

(a) * * *

(5) Advise the establishment that it may appeal the action as provided in §§ 306.5, 381.35, and 590.310 of this chapter.

* * * * *

(c) An establishment may appeal the withholding action or suspension, as provided in §§ 306.5, 381.35, and 590.310 of this chapter.

* * * * *

■ 9. In § 500.6:

■ a. Redesignate paragraphs (a) through (i) as paragraphs (a)(1) through (9).

■ b. Designate the introductory text as paragraph (a).

■ c. Revise newly redesignated paragraph (a)(9).

■ d. Add reserved paragraph (b).

The revision and addition read as follows:

§ 500.6 Withdrawal of inspection.

(a) * * *

(9) A recipient of inspection or anyone responsibly connected to the recipient is unfit to engage in any business requiring inspection as specified in section 401 of the FMIA, section 18(a) of the PPIA, or section 18 of the EPIA.

(b) [Reserved]

■ 10. In § 500.7, revise paragraphs (a)(3) and (5) to read as follows:

§ 500.7 Refusal to grant inspection.

(a) * * *

(3) Has not demonstrated that adequate sanitary conditions exist in the establishment as required by part 308, subpart H of part 381, part 416, or part 590 of this chapter;

* * * * *

(5) Is unfit to engage in any business requiring inspection as specified in section 401 of the FMIA, section 18(a) of the PPIA, or section 18 of the EPIA.

* * * * *

■ 11. In § 500.8, revise paragraphs (a) and (c) to read as follows:

§ 500.8 Procedures for rescinding or refusing approval of marks, labels, and containers.

(a) FSIS may rescind or refuse approval of false or misleading marks, labels, or sizes or forms of any container for use with any meat, poultry, or egg product, under section 7 of the FMIA, under section 8 of the PPIA, or under sections 7 or 14 of the EPIA.

* * * * *

(c) If FSIS rescinds or refuses approval of false or misleading marks, labels, or sizes or forms of any container for use with any meat, poultry, or egg product, an opportunity for a hearing will be provided in accordance with the Uniform Rules of Practice, 7 CFR subtitle A, part 1, subpart H.

PART 590—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

■ 12. The authority citation for part 590 is revised to read as follows:

Authority: 21 U.S.C. 1031–1056; 7 CFR 2.18, 2.53.

§§ 590.1 through 590.860 [Designated as Subpart A]

■ 13. Designate §§ 590.1 through 590.860 as subpart A and add a heading for subpart A to read as follows:

Subpart A—GENERAL

■ 14. Amend § 590.5 by:
■ a. Revising the definition of *Administrator.*
■ b. Removing the definition of *Chief of the Grading Branch* and *Dirty egg or Dirties.*
■ c. Revising paragraph (c) of the definition of *Egg* and the definition of *Egg product.*
■ d. Removing the definition of *Eggs of current production, Inspector/Grader,* and *National Supervisor.*
■ e. Adding, in alphabetical order, the definition of *Official plant.*
■ f. Removing the definition of *Official Standard.*
■ g. Adding, in alphabetical order, the definition of *Official standards.*
■ h. Revising the definition of *Pasteurize.*
■ i. Removing the definition of *Plant.*
■ j. Revising the definition of *Processing.*
■ k. Adding, in alphabetical order, the definition of *Program employee.*
■ l. Removing the definitions of *Regional Director, Sanitize,* and *Service.*
■ m. Revising the definition of *Shell egg packer.*
■ n. Adding, in alphabetical order, the definition of *Shipped for retail sale.*

The revisions and additions read as follows:

§ 590.5 Terms defined.

* * * * *

Administrator means the Administrator of the Food Safety and Inspection Service or any officer or employee of the Department of Agriculture to whom authority has been delegated or may be delegated to act in his or her stead.

* * * * *

Egg * * *

(c) *Dirty egg* or *Dirt* means an egg that has a shell that is unbroken and has adhering dirt or foreign material.

* * * * *

Egg product means any dried, frozen, or liquid eggs, with or without added ingredients, excepting products which contain eggs only in a relatively small proportion or historically have not been, in the judgment of the Secretary, considered by consumers as products of the egg food industry, and which may be exempted by the Secretary under such conditions as the Secretary may prescribe to assure that the egg ingredients are not adulterated and such products are not represented as egg products. For the purposes of this part, the following products, among others, are exempted as not being egg products: Cooked egg products, imitation egg products, dietary foods, dried no-bake custard mixes, egg nog mixes, acidic dressings, noodles, milk and egg dip, cake mixes, French toast, and sandwiches containing no more restricted eggs than are allowed in the official standards for U.S. Consumer Grade B shell eggs. Balut and other similar ethnic delicacies are also exempted from inspection under this part.

* * * * *

Official plant means any plant in which the plant facilities, methods of operation, and sanitary procedures have been found suitable and adequate by the Administrator for the inspection of egg products pursuant to the regulations in this part and in which inspection service is carried on.

Official standards means the standards of quality, grades, and weight classes for eggs.

* * * * *

Pasteurize means the subjecting of each particle of egg products to heat or other treatments to destroy harmful viable microorganisms.

* * * * *

Processing means manufacturing of egg products, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing, cooling, freezing or drying, or packaging or repackaging egg products at official plants.

* * * * *

Program employee means any inspector or other individual employed by the Department or any cooperating agency who is authorized by the Secretary to do any work or perform any duty in connection with the Program.

* * * * *

Shell egg packer means any person engaged in the sorting of shell eggs from sources other than or in addition to the person's own production into their various qualities, either mechanically or by other means.

Shipped for retail sale means eggs that are forwarded from the processing facility for distribution to the ultimate consumer.

* * * * *

■ 15. Amend § 590.10 by revising the third sentence to read as follows:

§ 590.10 Authority.

* * * The Food Safety and Inspection Service and its officers and employees will not be liable in damages through acts of commission or omission in the administration of this part.

§§ 590.17 and 590.22 [Removed]

■ 16. Remove §§ 590.17 and 590.22.
■ 17. Revise § 590.28 to read as follows:

§ 590.28 Other inspections.

Inspection program personnel will make periodic inspections of business premises, facilities, inventories, operations, transport vehicles, and records of egg handlers, and the records of all persons engaged in the business of transporting, shipping, or receiving any eggs or egg products.

* * * * *

■ 18. Revise § 590.40 to read as follows:

§ 590.40 Egg products not intended for human food.

Periodic inspections will be made at any plant processing egg products which are not intended for use as human food of its operations and records to ensure compliance with the Act and the regulations in this part. Egg products not intended for use as human food shall be denatured or decharacterized prior to being offered for sale or transportation unless shipped under seal as authorized in *§ 590.504(c) and identified as prescribed by the regulations in this part to prevent their use as human food.*

■ 19. Revise § 590.50 to read as follows:

§ 590.50 Egg temperature and labeling requirements.

(a) All shell eggs packed into containers destined for the ultimate consumer must be stored and transported under refrigeration at an ambient temperature of no greater than 45° F (7.2° C) and must bear a safe handling label in accordance with 21 CFR 101.17(h).

(b) Any producer-packer with an annual egg production from a flock of 3,000 or fewer hens is exempt from the temperature and labeling requirements of this section.

■ 20. Revise § 590.100 to read as follows:

§ 590.100 Specific exemptions.

(a) [Reserved]

(b) The following are exempt, to the extent prescribed, from the continuous inspection of egg products processing operations in section 5(a) of the Act (21 U.S.C. 1034(a)), provided the conditions

for exemption and the provisions of these regulations are met:

(1) The processing and sale of egg products by any poultry producer from eggs of his own flock's production when sold directly to a household consumer exclusively for use by the consumer and members of the household and its nonpaying guests and employees.

(2) The processing in non-official plants, including but not limited to bakeries, restaurants, and other food processors, of certain categories of food products which contain eggs or egg products as an ingredient, as well as the sale and possession of such products. Such products must be manufactured from inspected egg products processed in accordance with the regulations in this part and 9 CFR part 591 or from eggs containing no more restricted eggs than are allowed in the official standards for U.S. Consumer Grade B shell eggs.

§ 590.105 [Removed]

■ 21. Remove § 590.105 and undesignated center heading ''Performance of Service''.

§§ 590.112, 590.114 and 590.116 [Removed]

■ 22. Remove §§ 590.112, 590.114 and 590.116.

■ 23. Add an undesignated center heading above § 590.118 and revise § 590.118 to read as follows:

Performance of Service

§ 590.118 Identification.

Each program employee will be furnished with a numbered official badge that will be carried in a proper manner at all times while on duty. This badge will be sufficient identification to entitle the program employee entry at all regular entrances and to all parts of the official plant and premises to which the program employee is assigned.

§ 590.119 [Removed]

■ 24. Remove § 590.119.

■ 25. Revise § 590.120 to read as follows:

§ 590.120 Financial interest of inspectors.

(a) No program employee will inspect any product in which the employee, the employee's spouse, minor child, partner, organization in which the employee is serving as officer, director, trustee, partner, or employee, or any other person with whom the program employee is negotiating or has any arrangements concerning prospective employment, has a financial interest in the product.

(b) All program employees are subject to statutory restrictions with respect to political activities; *e.g.,* 5 U.S.C. 7324 and 1502.

(c) Violation of the provisions of paragraph (a) of this section or the provisions of applicable statutes referenced in paragraph (b) of this section will constitute grounds for dismissal.

(d) Program employees are subject to all applicable provisions of law and regulations and instructions of the Department and the Food Safety and Inspection Service concerning employee responsibilities and conduct. The setting forth of certain prohibitions in this part in no way limits the applicability of such general or other regulations or instructions.

■ 26. Revise § 590.134(b) to read as follows:

§ 590.134 Accessibility of product and cooler rooms.

* * * * *

(b) The perimeter of each cooler room used to store eggs must be made accessible in order for the Secretary's representatives to determine the ambient temperature under which shell eggs packed into containers destined for the ultimate consumer are stored.

■ 27. Revise § 590.136 to read as follows:

§ 590.136 Accommodations and equipment to be furnished by facilities for use of program employees in performing service.

(a) *Program employee's office.* Office space, including, but not limited to, furnishings, light, heat, and janitor service, will be provided without cost in the official plant for the use of program employees for official purposes. The room or space set apart for this purpose must meet the approval of the Food Safety and Inspection Service and be conveniently located, properly ventilated, and provided with lockers or file cabinets suitable for the protection and storage of supplies and with accommodations suitable for program employees to change clothing. At the discretion of the Administrator, small official plants requiring the services of less than one full-time program employee need not furnish accommodations for program employees as prescribed in this section where adequate accommodations exist in a nearby convenient location.

(b) *Accommodations and equipment.* Such accommodations and equipment must include, but not be limited to, a room or area suitable for sampling product and a stationary or adequately secured storage box or cage (capable of being locked only by the program employee) for holding official samples.

■ 28. Revise § 590.140 to read as follows:

§ 590.140 Application for grant of inspection.

The proprietor or operator of each official plant and official import inspection establishment must make application to the Administrator for inspection service unless exempted by § 590.100. The application must be made in writing on forms furnished by the inspection service. In cases of change of name or ownership or change of location, a new application must be made.

■ 29. Revise § 590.142 to read as follows:

§ 590.142 Filing of application.

An application for inspection service will be regarded as filed only when it has been:

(a) Filled in completely;

(b) Signed by the applicant; and

(c) Received in the appropriate District Office.

■ 30. Revise § 590.146 to read as follows:

§ 590.146 Survey and grant of inspection.

(a) Before inspection is granted, FSIS will survey the official plant to determine if the construction and facilities of the plant are in accordance with the regulations in this part. FSIS will grant inspection, subject to 9 CFR 500.7, when these requirements are met and the requirements contained in § 590.149 are met.

(b) FSIS will give notice in writing to each applicant granted inspection and will specify in the notice the official plant, including the limits of the plant's premises, to which the grant pertains.

§ 590.148 [Removed]

■ 31. Remove § 590.148.

■ 32. Add § 590.149 to read as follows:

§ 590.149 Conditions for receiving inspection.

(a) Before receiving Federal inspection, a plant must have developed written sanitation Standard Operating Procedures, in accordance with part 416 and § 591.1(a)(1) of this chapter.

(b) Before receiving Federal inspection, a plant must conduct a hazard analysis, and develop and implement a HACCP plan, in accord with part 417 and § 591.1(a)(1) of this chapter. Conditional inspection may be provided for a period not to exceed 90 days, during which period the facility must validate its HACCP plan.

(c) Before producing new product for distribution in commerce, a plant must conduct a hazard analysis and develop a HACCP plan applicable to that

product, in accordance with § 417.2 of this chapter. During a period not to exceed 90 days after the date the new product is produced for distribution in commerce, the plant must validate its HACCP plan, in accordance with § 417.4 of this chapter.

■ 33. Revise § 590.160 to read as follows:

§ 590.160 Clean Water Act; refusal, suspension, or withdrawal of service.

(a) Any applicant for inspection at a plant where the operations thereof may result in any discharge into the navigable waters in the United States is required by subsection 401(a)(1) (33 U.S.C. 1341) of the Clean Water Act as amended (86 Stat. 816, 91 Stat. 1566, 33 U.S.C. 1251 *et seq.*), to provide the Administrator with a certification, as prescribed in said subsection, that any such discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the Act (33 U.S.C. 1311, 1312, 1313, 1316, and 1317). No grant of inspection can be issued unless such certification has been obtained, or is waived, because failure of refusal of the State, interstate agency, or the Administrator of the Environmental Protection Agency to act on a request for certification within a reasonable period (which should not exceed 1 year after receipt of such a request). Further, upon receipt of an application for inspection and a certification as required by subsection 401(a)(1) of the Clean Water Act, the Administrator (as defined in § 590.5) is required by subparagraph (2) of said subsection to notify the Administrator of the Environmental Protection Agency for proceedings in accordance with that subsection. No grant of inspection can be made until the requirements of 401(a)(1) and (2) have been met.

(b) Inspection may be suspended or revoked and plant approval terminated as provided in subsection 401(a)(4) and (5) of the Clean Water Act, as amended (33 U.S.C. 1341(a)(4) and (5)).

■ 34. Revise § 590.200 to read as follows:

§ 590.200 Records and related requirements.

(a) Persons engaged in the transporting, shipping, or receiving of any eggs or egg products in commerce, or holding such articles so received, and all egg handlers, except producer-packers with an annual egg production from a flock of 3,000 hens or fewer, must maintain records documenting, for a period of 2 years, the following, to the extent applicable:

(1) The date of lay, date and time of refrigeration, date of receipt, quantity and quality of eggs purchased or received, and from whom (including a complete address, unless a master list is maintained). Process records documenting that the temperature and labeling requirements in § 590.50(a) have been met must also be kept;

(2) The date of packaging, ambient air temperature surrounding product stored after processing, quantity and quality of eggs delivered or sold, and to whom (including a complete address, unless a master list is maintained);

(3) If a consecutive lot numbering system is not employed to identify individual eggs, containers of eggs, or egg products, record the alternative code system used, in accordance with § 590.411(c)(3);

(4) The date of disposal and quantity of restricted eggs, including inedible egg product or incubator reject product, sold or given away for animal food or other uses or otherwise disposed of, and to whom (including a complete address, unless a master list is maintained);

(5) The individual or composite (running tally) record of restricted egg sales to household consumers. Records should show number of dozens sold on a daily basis. The name and address of the consumer is not required;

(6) The date of production and quantity of egg products delivered or sold, and to whom (including a complete address, unless a master list is maintained);

(7) The date of receipt and quantity of egg products purchased or received, and from whom (including a complete address, unless a master list is maintained);

(8) The production records by categories of eggs such as graded eggs, nest-run eggs, dirties, checks, etc.; bills of sale, inventories, receipts, shipments, shippers, receivers, dates of shipment and receipt, carrier names, etc.

(b) All records required to be maintained by this section must be made available to an authorized representative of the Secretary for official review and copying.

(c) Records of all labeling, along with the product formulation and processing procedures as prescribed in §§ 590.410 through 590.412 of this chapter, must be kept by every person processing, except processors exempted under § 590.100 of this chapter.

■ 35. Revise § 590.300 to read as follows:

§ 590.300 Appeal inspections.

Any person receiving inspection service may, if dissatisfied with any decision of an inspector related to any inspection, file an appeal from such decision.

■ 36. Revise § 590.310 to read as follows:

§ 590.310 Appeal inspections; how made.

Any appeal from the inspection decision of any program employee must be made to his or her immediate supervisor having jurisdiction over the subject matter of the appeal.

■ 37. Revise § 590.320 to read as follows:

§ 590.320 How to file an appeal inspection or decision review.

The request for an appeal inspection or review of a program employee's decision may be made orally or in writing. If made orally, written confirmation may be required. The applicant must clearly identify the product involved, the decision being appealed, and the reasons for requesting the appeal.

■ 38. Revise § 590.340 to read as follows:

§ 590.340 Who must perform the appeal inspection or decision review.

An appeal inspection or review of a program employee's decision, as requested in § 590.310, must be performed by a program employee of FSIS other than the one who made the initial decision.

■ 39. Revise § 590.350 to read as follows:

§ 590.350 Appeal samples.

An appeal sample will consist of product taken from the original sample containers plus an equal number of containers selected at random. A condition appeal cannot be made unless all originally sampled containers are available.

§§ 590.360 and 590.370 [Removed]

■ 40. Remove §§ 590.360 and 590.370.

■ 41. Revise § 590.410 to read as follows:

§ 590.410 Egg products required to be labeled.

(a)(1) Packaged egg products that require special handling to maintain their wholesome condition must have the statement ''Keep Refrigerated,'' ''Keep Frozen,'' ''Perishable Keep Under Refrigeration,'' or such similar statement prominently displayed on the principal display panel.

(2) Egg products that are distributed frozen and thawed prior to or during display for sale at retail must bear the statement ''Keep Frozen'' on the shipping container. Consumer-sized containers for such egg products must bear the statement ''Previously Handled Frozen for Your Protection, Refreeze or Keep Refrigerated.''

(3) The labels of packages of egg products produced from shell eggs that have been treated with ionizing radiation must reflect that treatment in the ingredient statement on the finished product labeling.

(b) Containers, portable tanks, and bulk shipments of edible egg products produced in official plants must be labeled in accordance with §§ 590.411 through 590.415 and must bear the official identification shown in Figure 1 of § 590.413.

(c) Bulk shipments of unpasteurized egg products produced in official plants must bear a label containing the words ''date of loading,'' followed by a suitable space in which the date the container, tanker truck, or portable tank is loaded must be inserted. The label must be conspicuously located, and printed and affixed on material that cannot be detached or effaced due to exposure to weather. Before the truck or tank is removed from the place where it is unloaded, the carrier must remove or obliterate the label. Such shipments must also bear the official identification shown in Figure 2 of § 590.415.

■ 42. Revise § 590.411 to read as follows:

§ 590.411 Label approval.

(a) All official plants, including official plants certified under a foreign inspection system in accordance with § 590.910, must comply with the requirements contained in 9 CFR 412.1, except as otherwise provided in this part.

(b) For the purposes of 9 CFR 412.2, an official establishment or establishment certified under a foreign inspection system includes an official plant.

(c) Labels, containers, or packaging materials of egg products must show the following information, as applicable, on the principal display panel (except as otherwise permitted in this part), in accordance with the requirements of this part, or if applicable, 21 CFR 101.17(h):

(1) A statement showing by the common or usual names, if any, of the kinds of ingredients comprising the product. Formulas are to be expressed in terms of a liquid product except for product that is dry-blended. Also, for product to be dried, the label may show the ingredients in order of descending proportions by weight in the dried form. However, the formula submitted must include the percentage of ingredients in both liquid and dried form. If the product is comprised of two or more ingredients, such ingredients must be listed in the order of descending proportions by weight in the form in which the product is to be marketed (sold), except that ingredients in dried product (other than dry blended) may be listed in either liquid or dried form. When water (excluding that used to reconstitute dehydrated ingredients back to their normal composition) is added to a liquid or frozen egg product or to an ingredient of such products (in excess of the normal water content of that ingredient), the total amount of water added, including the water content of any cellulose or vegetable gums used, must be expressed as a percentage of the total product weight in the ingredient statement on the label;

(2) The name, address and zip code of the distributor; qualified by such terms as ''distributed by,'' or ''distributors'';

(3) The lot number or an alternative code indicating the date of production, in accordance with § 590.200(a);

(4) The net content;

(5) An official inspection symbol and the number of the official plant in which the product was processed under inspection as set forth in § 590.413;

(6) Egg products processed from edible eggs of the turkey, duck, goose, or guinea must be clearly and distinctly labeled as to the common or usual name of the product indicating the type of eggs or egg products used in the product, *e.g.,* ''Frozen whole turkey eggs,'' ''Frozen whole chicken and turkey eggs.'' Egg products labeled without qualifying words as to the type of egg used in the product must be produced only from the edible egg of the domesticated chicken or the egg products produced from such eggs.

(d) Liquid or frozen egg products identified as whole eggs and processed in other than natural proportions as broken from the shell must have a total egg solids content of 24.20 percent or greater.

(e) Nutrition information may be included on labels used to identify egg products, providing such labeling complies with the provisions of 21 CFR part 101, promulgated under the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act. Since these regulations have different requirements for consumer packaged products than for bulk packaged egg products not for sale or distribution to household consumers, label submission must be accompanied with information indicating whether the label covers consumer packaged or bulk packaged products. Nutrition labeling is required when nutrients, such as proteins, vitamins, and minerals are added to the product, or when a nutritional claim or information is presented on the labeling, except for the following, which are exempt from nutrition labeling requirements:

(1) Egg products shipped in bulk form for use solely in the manufacture of other food and not for distribution to household consumers in such bulk form or containers.

(2) Products containing an added vitamin, mineral, or protein, or for which a nutritional claim is made on the label, or in advertising, which is supplied for institutional food use only, provided that the manufacturer or distributor provides the required nutrition information directly to those institutions.

(3) Any nutrients included in the product solely for technological purposes may be declared solely in the ingredients statement, without complying with nutrition labeling, if the nutrient(s) is otherwise not referred to in labeling or in advertising. All labels showing nutrition information or claims are subject to review by the Food and Drug Administration prior to approval by the Department.

(f)(1) No label, container, or packaging material may contain any statement that is false or misleading. If the Administrator has reason to believe that a statement or formulation shows that an egg product is adulterated or misbranded, or that any labeling, including the size or form of any container in use or proposed for use, with respect to eggs or egg products, is false or misleading in any way, the Administrator may direct that such use be withdrawn unless the labeling or container is modified in such a manner as the Administrator may prescribe so that it will not be false or misleading, or the formulation of the product is altered in such a manner as the Administrator may prescribe so that it is not adulterated or would not cause misbranding.

(2) If the Administrator directs that the use of any label, container, or packaging material be withdrawn because it contains any statement that is false or misleading, an opportunity for a hearing will be provided in accordance with § 500.8(c) of this chapter.

§ 590.412 [Redesignated as § 590.413]

■ 43. Redesignate § 590.412 as § 590.413.

■ 44. Add a new § 590.412 to read as follows:

§ 590.412 Approval of generic labels.

(a) All official plants, including official plants certified under a foreign inspection system in accordance with § 590.910, must comply with the

requirements in 9 CFR 412.2, except as otherwise provided in this part.

(b) For the purposes of 9 CFR 412.2, an official establishment or establishment certified under a foreign inspection system includes an official plant.

■ 45. Revise newly redesignated § 590.413 to read as follows:

§ 590.413 Form of official identification symbol and inspection mark.

(a) The shield set forth in Figure 1 of this section containing the letters ''USDA'' must be the official identification symbol used in connection with egg products to denote that the official plant receives official inspection service. The inspection mark used on containers of edible egg products is set forth in Figure 1 of this section, except that the plant number may be preceded by the letter ''G'' in lieu of the word plant. The plant number may also be omitted from the official mark if applied on the container's principal display panel or other prominent location and preceded by the letter ''G.''

Figure 1.

(b) [Reserved]

■ 46. Revise § 590.415 to read as follows:

§ 590.415 Use of other official identification.

All unpasteurized egg products shipped from an official plant must be marked with the identification set forth in Figure 2 of this section. Such product must meet all requirements for egg products that are permitted to bear the official inspection mark shown in § 590.413, except for pasteurization, heat treatment, or other method of treatment sufficient to reduce *Salmonella.* Such product must not be released into consumer channels until it has been subjected to pasteurization, heat treatment, or other method of treatment sufficient to reduce *Salmonella.* After pasteurization or treatment, the product may bear the official inspection mark as shown in § 590.413.

Figure 2.

§ 590.418 [Amended]

■ 47. Amend § 590.418 by removing paragraphs (a) and (c) and redesignate paragraph (b) as an undesignated paragraph.

■ 48. Revise § 590.420(a) and (b) to read as follows:

§ 590.420 Inspection.

(a) Inspection shall be made, pursuant to the regulations in this part, of the processing of egg products in each official plant processing egg products for commerce, unless exempted under § 590.100. Inspections, certifications, or specification-type gradings, and other inspections which may be requested by the official plant and are in addition to the normal inspection requirements and functions for the processing, production, or certification for a wholesome egg product under this part, shall be made pursuant to the voluntary egg products inspection regulations (part 592 of this chapter).

(b) Any food manufacturing establishment or institution which uses any eggs that do not meet the requirements of 21 U.S.C. 1044(a)(1) in the preparation of any articles for human food shall be deemed to be a plant processing egg products requiring inspection under the regulations in this part.

* * * * *

§ 590.422 [Amended]

■ 49. Amend § 590.422 by removing the last sentence of the section.

■ 50. Amend § 590.430 by revising paragraph (b) to read as follows:

§ 590.430 Limitation on entry of material.

* * * * *

(b) Inedible egg products may be brought into an official plant for storage, processing, and reshipment provided it is handled in such a manner that adequate segregation and inventory controls are maintained at all times. The processing of inedible egg products must be done under conditions that will not affect the processing of edible products, such as processing in separate areas or at times when no edible products are being processed. If the same equipment or areas are used to process both inedible and edible eggs, then the equipment and processing areas used to process inedible eggs must be thoroughly cleaned and sanitized prior to processing any edible egg products.

■ 51. Revise § 590.435 to read as follows:

§ 590.435 Use of food ingredients and approval of materials.

(a)(1) No substance may be used in the processing of egg products, for any purpose, unless its use is authorized under 21 CFR as a direct food additive (part 172), a secondary direct food additive (part 173), an indirect food additive (parts 174–178), a source of radiation (part 179), an interim-listed direct food additive (part 180), a prior-sanctioned substance (part 181), a Generally Recognized As Safe (GRAS) substance (parts 182 or 184), or by 21 CFR 160.185, or by regulation in this chapter. Substances and ingredients used in the processing of egg products capable of use as human food must be clean, wholesome, and unadulterated.

(2) No substance which is intended to impart color in any egg product may be used unless such use is authorized under 21 CFR as a color additive (parts 73, 74, or 81) or by regulation in this chapter.

(b) Substances permitted for use in egg products under 21 CFR will be permitted for such use under this chapter, subject to declaration requirements in 9 CFR 424.22(c) and 9 CFR 590.411, unless precluded from such use or further restricted in this chapter. Such substances must be safe and effective under conditions of use and not result in the adulteration of product. The Administrator may require, in addition to listing the ingredients, a declaration of the additive and the purpose of its use.

(c) Chemical additives to be used in the processing of egg products must be safe under the conditions of their intended use and in amounts sufficient to accomplish their intended purpose. Chemical additives may not promote deception or cause the product to be otherwise adulterated or unwholesome. Scientific data showing the additive meets the above specified criteria must be maintained and made available to FSIS program employees.

■ 52. Revise § 590.440(c) to read as follows:

§ 590.440 Processing ova.

* * * * *

(c) All products containing ova must be labeled in accordance with § 590.411.

§§ 590.500 and 590.502 [Removed]

■ 53. Remove §§ 590.500 and 590.502.

■ 54. Revise § 590.504 to read as follows:

§ 590.504 General operating procedures.

(a) Operations involving the processing, storing, and handling of eggs, ingredients, and egg products must be strictly in accordance with clean and sanitary methods and must be conducted as rapidly as practicable.

(b)(1) Egg products are subject to inspection in each official plant processing egg products for commerce.

(2) Any egg products not processed in accordance with the regulations in this part or part 591 or that are not otherwise fit for human food will be removed and segregated.

(c)(1) All loss and inedible eggs or inedible egg products must be placed in a container clearly labeled ''inedible'' and containing a sufficient amount of denaturant or decharacterant, such as an acceptable FD&C color additive, suspended in the product. Eggs must be crushed and the substance dispersed through the product in amounts sufficient to give the product a distinctive appearance or odor. Inedible product may be held in containers clearly labeled ''inedible'' which do not contain a denaturant as long as such inedible product is properly packaged, labeled and segregated, and inventory controls are maintained. Such inedible product must be denatured or decharacterized before being shipped from a facility.

(2) Denatured or decharacterized inedible egg products may be shipped from an official plant for industrial use or animal food, provided that it is properly packaged, labeled, and segregated, and inventory controls are maintained.

(d)(1) Egg products must be processed to meet the standard set out in § 590.570.

(2) Unpasteurized egg products may be shipped from an official plant to another official plant only when they are to be pasteurized, heat treated, or treated using other methods of treatment sufficient to reduce *Salmonella* in the second official plant. Shipments of unpasteurized egg products shipped from one official plant to another for pasteurization or treatment must be sealed in cars or trucks and labeled in accordance with § 590.410(c). Containers of unpasteurized egg product must be marked with the identification mark shown in Figure 2 of § 590.415.

(e) When inspection program personnel do not suspect noncompliance by an official plant with any provisions of this part, they may permit that plant to move egg products that have been sampled and analyzed for *Salmonella,* or any other reason, before receiving the test results so long as the plant maintains control of the products represented by the sample pending test results.

§ 590.506 [Removed]

■ 55. Remove § 590.506.

■ 56. Revise § 590.508 to read as follows:

§ 590.508 Candling and transfer-room operations.

Eggs must be handled in a manner that minimizes sweating prior to breaking or processing.

■ 57. Amend § 590.510 by revising paragraphs (a) introductory text, (c)(1) and (3), and (d) introductory text to read as follows:

§ 590.510 Classifications of eggs used in the processing of egg products.

(a) The eggs must be sorted and classified into the following categories:

* * * * *

(c)(1) When presented for breaking, eggs must have an edible interior quality and the shell must be sound and free of adhering dirt and foreign material. However, checks and eggs with a portion of the shell missing may be used when the shell is free of adhering dirt and foreign material and the shell membranes are not ruptured.

* * * * *

(3) Eggs with meat or blood spots may be used if the spots are removed.

(d) All loss or inedible eggs must be placed in a designated container and handled as required in § 590.504(c). Eggs extensively damaged during breaking, whether not completely cracked open mechanically or in the movement of trays of eligible eggs for hand breaking, must be broken promptly. For the purpose of this section and § 590.522, inedible and loss eggs include crusted yolks, filthy and decomposed eggs, and the following:

* * * * *

■ 58. Amend § 590.516 by revising the section heading and paragraph (a) to read as follows:

§ 590.516 Cleaning of eggs prior to packaging, breaking, or pasteurizing.

(a) All eggs, except as provided in § 590.801, must be clean prior to packaging, breaking, or pasteurizing. If a sanitizer is used, it must be used in accordance with FDA requirements for the intended use.

* * * * *

§ 590.520 [Removed]

■ 59. Remove § 590.520.

■ 60. Revise § 590.522 to read as follows:

§ 590.522 Egg products processing room operations.

Eggs used in processed egg products must be broken in a sanitary manner and examined to ensure that the contents are acceptable for human consumption.

§ § 590.530 and 590.532 [Removed]

■ 61. Remove §§ 590.530 and 590.532.

■ 62. Revise § 590.534 to read as follows:

§ 590.534 Freezing facilities.

Freezing rooms, either on or off the premises, must be capable of solidly freezing, or reducing to a temperature of 10 °F or lower, all liquid egg products.

§ § 590.536, 590.538 through 590.540, 590.542, 590.544, 590.546 through 590.550, 590.552 and 590.560 [Removed]

■ 63. Remove §§ 590.536, 590.538 through 590.540, 590.542, 590.544, 590.546 through 590.550, 590.552 and 590.560.

■ 64. Revise § 590.570 to read as follows:

§ 590.570 Control of pathogens in egg products.

Egg products must be produced to be edible without additional preparation to achieve food safety and may receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes. Egg products are not required to bear a safe-handling instruction or other labeling that directs that the product must be cooked or otherwise treated for safety.

§ 590.575 [Removed]

■ 65. Remove § 590.575.

■ 66. Revise § 590.580 to read as follows:

§ 590.580 Pathogen reduction standards testing.

(a) Official plants must test to determine that the production of egg products is in compliance with the Act and the egg products inspection regulations.

(b) To ensure adequate pasteurization:

(1) Pasteurized liquid, frozen, and dried egg products, and heat treated dried egg whites must be sampled and analyzed for the presence of *Salmonella* spp. Such testing must be performed in a manner sufficient such that it is possible for the official plant to verify that the system is capable of eliminating *Salmonella* spp. at the time that the annual reassessment occurs, and as regularly as necessary between annual reassessments, to show that the system, when tested, is working.

(2) Samples must be analyzed for the presence of *Salmonella* spp. with such sequence, with such frequency, and using such laboratory methods as is sufficient to ensure that product is not adulterated.

(3) Samples must be drawn from the final packaged form.

(c) Results of all partial and completed analyses performed under paragraph (b) of this section must be provided to inspection program personnel promptly upon receipt by the official plant. Positive test results must be provided to inspection program personnel immediately upon receipt by the official plant.

■ 67. Add § 590.590 to read as follows:

§ 590.590 Use of irradiated shell eggs to produce egg products.

Irradiated shell eggs used to produce pasteurized egg products must be used in conjunction with heat or another lethality treatment to produce a ready-to-eat product. Unless otherwise approved by FDA, the irradiation treatment of the shell eggs must precede the heat or other lethality treatment applied to the egg products.

§ § 590.600 through 590.680 [Removed]

■ 68. Remove the undesignated center heading ''Exempted Egg Products Plants'' and §§ 590.600 through 590.680.

■ 69. Add an undesignated center heading and § 590.700 to read as follows:

Inspection and Disposition of Restricted Eggs

§ 590.700 Prohibition on disposition of restricted eggs.

(a) No person may buy, sell, or transport, or offer to buy or sell, or offer or receive for transportation in any business in commerce any restricted eggs capable of use as human food, except as authorized in §§ 590.100 and 590.720.

(b) No egg handler may possess with the intent to use, or use, any restricted eggs in the preparation of human food, except as provided in §§ 590.100 and 590.720.

■ 70. Add § 590.720 to read as follows:

§ 590.720 Disposition of restricted eggs.

(a) Except as exempted in § 590.100, eggs classified as checks, dirts, incubator rejects, inedibles, leakers, or loss must be disposed of by one of the following methods at the point and time of segregation:

(1) Checks and dirts must be labeled in accordance with § 590.800 and shipped to an official plant for segregation and processing. Inedible and loss eggs must not be intermingled in the same container with checks and dirts.

(2) By destruction in a manner that clearly identifies the products as being inedible and not for human consumption, such as crushing and denaturing or decharacterizing in accordance with § 590.504(c). The products must also be identified as ''Inedible Egg Product—Not To Be Used As Human Food.''

(3) Processing for industrial use or for animal food. Such products must be

denatured or decharacterized in accordance with § 590.504(c) and identified as provided in §§ 590.840 and 590.860, or properly handled in a manner that clearly identifies the products as being inedible and not for human consumption and does not adulterate egg product intended for human consumption. Notwithstanding the foregoing, product which was produced under official supervision and transported for industrial use or animal food need not be denatured or decharacterized if it is shipped under Government seal and received by a program employee as defined in this part.

(4) By coloring the shells of loss and inedible eggs with a sufficient amount of FD&C color to give a distinct appearance, or applying a substance that will penetrate the shell and decharacterize the contents of the egg. However, lots of eggs containing significant percentages of eggs having small to medium blood spots or meat spots, but no other types of loss or inedible eggs, may be shipped directly to official plants, provided they are conspicuously labeled with the name and address of the shipper and the wording ''Spots—For Processing Only In Official Egg Products Plants.''

(5) Incubator rejects must be broken or crushed and denatured or decharacterized in accordance with § 590.504(c) and labeled as required in §§ 590.840 and 590.860.

(b) Eggs that are packed for the ultimate consumer and have been found to exceed the tolerance for restricted eggs permitted in the official standards for U.S. Consumer Grade B but have not been shipped for retail sale must be identified as required in §§ 590.800 and 590.860 and must be shipped directly or indirectly:

(1) To an official plant for proper segregation and processing; or

(2) Be re-graded so that they comply with the official standards; or

(3) Used as other than human food.

(c) Records must be maintained as provided in § 590.200 to ensure proper disposition.

■ 71. Add § 590.801 to read as follows:

§ 590.801 Nest-run or washed ungraded eggs.

Nest-run or washed ungraded eggs are exempt from the labeling provisions in § 590.800. However, when such eggs are sold to consumers, they may not exceed the tolerance for restricted eggs for U.S. Consumer Grade B shell eggs.

§§ 590.900 through 590.970 [Removed]

■ 72. Remove undesignated center heading ''Imports'' and §§ 590.900 through 590.970.

■ 73. Add subpart B, consisting of §§ 590.900 through 590.965, to read as follows:

Subpart B—Imports

Sec.

Subpart B—Imports

§ 590.900 Definitions; requirements for importation into the United States.

(a) When used in this subpart, the following terms will be construed to mean:

(1) *Import (Imported).* To bring within the territorial limits of the United States, whether that arrival is accomplished by land, air, or water.

(2) *Offer(ed) for entry.* The point at which the importer presents the imported product for reinspection.

(3) *Entry (entered)* means the point at which imported product offered for entry receives reinspection and is marked with the official mark of inspection, as required by § 590.940.

(4) *Official Import Inspection Establishment.* This term means any establishment, other than an official establishment as defined in 9 CFR 301.2, where inspections are authorized to be conducted as prescribed in § 590.925 of this subchapter.

(b) No egg products may be imported into the United States unless they are healthful, wholesome, fit for human food, not adulterated, and contain no dye, chemical, preservative, or ingredient which renders them unhealthful, unwholesome, unadulterated, or unfit for human food. Such products must also comply with the regulations prescribed in this subpart to ensure that they adhere to the standards provided for in the Act. The provisions of this subpart will apply to these products only if they are capable for use as human food.

(c) Approval for Federal import inspection must be in accordance with §§ 590.140 through 590.149.

(d) Egg products may be imported only if they are processed solely in the countries listed in § 590.910(b).

§ 590.901 Egg products offered for entry and entered to be handled and transported as domestic; entry into official plants; transportation.

(a) All egg products, after entry into the United States in compliance with this subpart, will be deemed and treated and, except as provided in §§ 590.935 and 590.960, will be handled and transported as domestic product, and will be subject to the applicable provisions of this part and to the provisions of the Egg Products Inspection Act and the Federal Food, Drug, and Cosmetic Act.

(b) Imported egg products entered in accordance with this subpart may, subject to the provisions of the regulations, be taken into official plants and be mixed with or added to egg products that are inspected and passed or exempted from inspection in such plants.

(c) Imported egg products that have been inspected and passed under this subpart may be transported in commerce only upon compliance with the applicable regulations.

§ 590.905 Importation of restricted eggs.

(a) No containers of restricted eggs other than checks or dirties will be imported into the United States. The shipping containers of such eggs shall be identified with the name, address, and country of origin of the exporter, and the date of pack and the quality of the eggs (*e.g.,* checks of dirties) preceded by the word ''Imported'' or the statement ''Imported Restricted Eggs-For Processing Only In An Official USDA Plant,'' or ''Restricted Eggs—Not To Be Used As Human Food.'' Such identification shall be legible and conspicuous.

(b) For properly sealed and certified shipments of shell eggs for breaking at an official egg products plant, the containers need not be labeled, provided that the shipment is segregated and controlled upon arrival at the destination breaking plant.

§ 590.910 Eligibility of foreign countries for importation of eggs and egg products into the United States.

(a)(1) Whenever it is determined by the Administrator that the system of egg products inspection maintained by any foreign country, with respect to plants preparing products in such country for export to the United States, insures compliance of such plants and their products with requirements equivalent to all the inspection, building construction standards, and all other provisions of the Act and the regulations in this part which are applied to official plants in the United States, and their products, and that reliance can be placed upon certificates required under this part from authorities of such foreign country, notice of that fact will be given by including the name of such foreign country in paragraph (b) of this section. Thereafter, products prepared in such plants which are certified and approved in accordance with paragraph (a)(3) of this section, will be eligible so far as this part is concerned for importation into the United States from such foreign country after applicable requirements of this part have been met.

(2) The determination of acceptability of a foreign egg products inspection system for purposes of this section must be based on an evaluation of the foreign program in accordance with the following requirements and procedures:

(i) The system must have a program organized and administered by the national government of the foreign country. The system as implemented must provide standards equivalent to those of the Federal system of egg products inspection in the United States with respect to:

(A) Organizational structure and staffing, so as to insure uniform enforcement of the requisite laws and regulations in all plants throughout the system at which products are prepared for export to the United States;

(B) Ultimate control and supervision by the national government over the official activities of all employees or licensees of the system;

(C) The assignment of competent, qualified inspectors;

(D) Authority and responsibility of national inspection officials to enforce the requisite laws and regulations governing egg products inspection and to certify or refuse to certify products intended for export;

(E) Adequate administrative and technical support;

(F) The inspection and residue standards applied to egg products produced in the United States.

(G) Other requirements of adequate inspection service as required by the regulations in this part.

(ii) The legal authority for the system and the regulations thereunder must impose requirements equivalent to those governing the system of egg products inspection organized and maintained in the United States with respect to:

(A) Official controls by the national government over plant construction, building and facilities, and equipment;

(B) Official supervision of the processing of egg products in plants by the assignment of inspectors to plants certified under paragraph (a)(2)(iv) of this section to ensure that adulterated or misbranded product is not prepared for export to the United States;

(C) Any product that is prepared under inspection in a plant must be inspected in such a plant as often as the inspector deems necessary in order to ascertain if the product is unadulterated, wholesome, properly labeled, and fit for human food at the time it leaves the plant. Upon any such inspection, if any product or portion thereof is found to be adulterated, unwholesome, or otherwise unfit for human food, such product or portion thereof must be condemned and must receive such treatment as provided in § 590.504(c);

(D) Complete separation of plants certified under paragraph (a)(2)(iv) of this section from plants not certified, and the maintenance of a single standard of inspection and sanitation throughout all certified plants;

(E) Requirements for sanitation at certified plants and for sanitary handling of egg products;

(F) Official controls over condemned material until destroyed or removed and thereafter excluded from the plant;

(G) A Hazard Analysis and Critical Control Point (HACCP) system, as set forth in part 417 of this chapter; and

(H) Other matters for which requirements are contained in the Act or regulations in this part.

(iii) Countries desiring to establish eligibility for the importation of egg products into the United States may request a determination of eligibility by presenting copies of the laws and regulations on which the foreign egg products inspection system is based and such other information as the Administrator may require with respect to matters enumerated in paragraphs (a)(2)(i) and (ii) of this section. Determination of eligibility is based on a study of the documents and other information presented and an initial review of the system in operation by a representative of the Department using the criteria listed in paragraphs (a)(2)(i) and (ii) of this section. Maintenance of eligibility of a country for importation of egg products into the United States depends on the results of periodic reviews of the foreign egg products inspection system in operation by a representative of the Department, and the timely submission of such documents and other information related to the conduct of the foreign inspection system, including information required by paragraph (e) of section 20 of the Act, as the Administrator may find pertinent to and necessary for the determinations required by this section of the regulations.

(iv) The foreign inspection system must maintain a program to assure that the requirements referred to in this section, equivalent to those of the Federal system of egg products inspection in the United States, are being met. The program as implemented must provide for the following:

(A) Periodic supervisory visits by a representative of the foreign inspection system to each plant certified in accordance with paragraph (a)(3) of this section to ensure that requirements referred to in paragraphs (a)(2)(ii)(A) through (H) of this section are being met: Provided, that such visits are not required with respect to any plant during a period when the plant is not operating or is not engaged in producing products for exportation to the United States;

(B) Written reports prepared by the representative of the foreign inspection system who has conducted a supervisory visit, documenting his or her findings with respect to the requirements referred to in paragraphs (a)(2)(ii)(A) through (H) of this section, copies of which must be made available to the representative of the Department at the time of that representative's review upon request by that representative to a responsible foreign meat inspection official: Provided, that such reports are not required with respect to any plant during a period when the plant is not operating or is not engaged in producing products for exportation to the United States; and

(C) Random sampling and testing at the point of production, for residues identified by the exporting country's inspection authorities or by this Agency as potential contaminants, in accordance with sampling and

analytical techniques approved by the Administrator, provided that such testing is required only on samples taken of egg products intended for importation into the United States.

(3) Only those plants that are determined and certified to the Agency by a responsible official of the foreign egg products inspection system as fully meeting the requirements of paragraphs (a)(2)(i) and (ii) of this section are eligible to have their products imported into the United States. Plant eligibility is subject to review by the Agency (including observations of the plants by official program personnel representatives at times prearranged with the foreign egg products inspection system officials). Foreign plants certifications must be renewed annually. Notwithstanding certification by a foreign official, the Administrator may terminate the eligibility of any foreign plant for the importation of its products into the United States if it does not comply with the requirements listed in paragraphs (a)(2)(i) and (ii) of this section, or if current plant information cannot be obtained. The Administrator will provide reasonable notice to the foreign government of the proposed termination of any foreign plant, unless a delay in terminating its eligibility could result in the importation of adulterated or misbranded product.

(i) For a new plant, or any plant for which information from last year's electronic certification or paper certificate has changed, the certification or certificate must contain: The date; the foreign country; the foreign plant's name, address, and foreign plant number; the foreign official's title and signature (for paper certificates only); the type of operations conducted at the plant (*e.g.,* processing, storage, exporting warehouse); and the plant's eligibility status (*e.g.,* new or relisted (if previously delisted)). Processing plant certifications must address the type of products produced at the plant (*e.g.,* the process category).

(ii) If the plant information provided on the preceding year's electronic foreign plant certification or paper certificate, as required in paragraph (a)(3)(i) of this section, has not changed, the certification or certificate must contain: The date, the foreign country, the foreign plant's name, and the foreign official's title and signature (for paper certificates only).

(4) Egg products from foreign countries not listed in paragraph (b) of this section are not eligible for importation into the United States, except as provided by §§ 590.960 and 590.965. The listing of any foreign country under this section may be withdrawn whenever it is determined by the Administrator that the system of egg products inspection maintained by such foreign country does not assure compliance with requirements equivalent to all the inspection, building construction standards, and other requirements of the Act and the regulations in this part as applied to official plants in the United States; or that reliance cannot be placed upon certificates required under this part from authorities of such foreign country; or that, for lack of current information concerning the system of egg products inspection being maintained by such foreign country, such foreign country should be required to reestablish its eligibility for listing.

(b) It has been determined that egg products from the following countries covered by foreign egg products inspection certificates of the country of origin as required by § 590.915 are eligible under the regulations in this part for entry into the United States after inspection and marking as required by the applicable provisions of this part: Canada, The Netherlands.

§ 590.915 Imported products; foreign inspection certificates required.

(a) Except as provided in § 590.960, each consignment imported into the United States must have an electronic foreign inspection certification or a paper foreign inspection certificate issued by an official of the foreign government agency responsible for the inspection and certification of the product.

(b) An official of the foreign government agency must certify that any product described on any official certificate was produced in accordance with the regulatory requirements of § 590.910.

(c) The electronic foreign inspection certification must be in English, be transmitted directly to FSIS before the product's arrival at the official import inspection establishment, and be available to import inspection personnel.

(d) The paper foreign inspection certificate must accompany each consignment; be submitted to import inspection personnel at the official import inspection establishment; be in English; and bear the official seal of the foreign government responsible for the inspection of the product, and the name, title, and signature of the official authorized to issue the inspection certificates for products imported into the United States.

(e) The electronic foreign inspection certification and paper foreign inspection certificate must contain:

(1) The date;

(2) The foreign country of export and the producing foreign establishment number;

(3) The species used to produce the product and the source country and foreign establishment number, if the source materials originate from a country other than the exporting country;

(4) The product's description including the process category, the product category, and the product group;

(5) The name and address of the importer or consignee;

(6) The name and address of the exporter or consignor;

(7) The number of units (pieces or containers) and the shipping or identification mark on the units;

(8) The net weight of each lot; and

(9) Any additional information the Administrator requests to determine whether the product is eligible to be imported into the United States.

§ 590.920 Import inspection application.

(a) Applicants must submit an import inspection application to apply for the inspection of any product offered for entry. Applicants may apply for inspection using a paper or electronic application form.

(b) Import inspection applications for each consignment must be submitted (electronically or on paper) to FSIS in advance of the shipment's arrival at the official import establishment where the product will be reinspected, but no later than when the entry is filed with U.S. Customs and Border Protection.

(c) The provisions of this section do not apply to products that are exempted from inspection by §§ 590.960 and 590.965.

§ 590.925 Inspection of eggs and egg products offered for entry.

(a)(1) Except as provided in §§ 590.960 and 590.965 and paragraph (b) of this section, egg products offered for entry from any foreign country must be reinspected at an official import inspection establishment or official plant by a program inspector before they may be allowed entry into the United States.

(2) Every lot of product must routinely be given visual reinspection by a program inspector for appearance and condition and be checked for certification and label compliance as provided in §§ 590.915, 590.950, and 590.955.

(3) Program inspectors must consult the electronic inspection system for reinspection instructions. The electronic inspection system will assign

reinspection levels and procedures based on established sampling plans and established product and plant history.

(b) Official program personnel may take, without cost to the United States, from each consignment of egg product offered for entry, such samples of the products as are deemed necessary to determine the eligibility of the products for entry into the commerce of the United States.

§ 590.930 Eggs and egg products offered for entry, retention in customs custody; delivery under bond; movement prior to inspection; handling; equipment and assistance.

(a) No egg products required by this subpart to be inspected will be released from customs custody prior to required inspections, but such product may be delivered to the importer, or his agent, prior to inspection, if the importer furnishes a bond, in a form prescribed by the Secretary of the Treasury, on the condition that the product must be returned, if demanded, to the collector of the port where the product was offered for clearance through customs.

(b) Notwithstanding paragraph (a) of this section, no product required by this subpart to be inspected will be moved prior to inspection from the port of arrival where first unloaded, and if arriving by water from the wharf where first unloaded at such port, to any place other than the place designated in accordance with this part as the place where the product must be inspected; and no product will be conveyed in any manner other than in compliance with this subpart.

(c) The importer, or his agent, must furnish such equipment and must provide such assistance for handling and inspecting, where applicable, egg products offered for entry as the program inspector may require.

(d) Official import inspection establishments must provide buildings and equipment that meet the sanitation requirements contained in 9 CFR part 416.

§ 590.935 Means of conveyance and equipment used in handling egg products offered for entry to be maintained in sanitary condition.

(a) Compartments of steamships, railroad cars, and other means of conveyance transporting any egg products to the United States, and all chutes, platforms, racks, tables, tools, utensils, and all other devices used in moving and handling any egg products offered for entry into the United States, must be maintained in accordance with 9 CFR 416.4.

(b) All conveyances containing imported liquid egg products must be sealed by inspection authorities in the exporting country. Seals may be broken at U.S. port-of-entry for purposes of inspection by official program personnel or customs officers.

§ 590.940 Identification of egg products offered for entry; official import inspection marks and devices.

(a) Except for products offered for entry from Canada, egg products that upon reinspection are found to be acceptable for entry into the United States must be identified as ''U.S. Inspected and Passed'' product. The official inspection legend shown in paragraph (b) of this section will identify product only after completion of official import inspection and product acceptance.

(b) The official mark for identifying egg products offered for entry as ''U.S. Inspected and Passed'' must be in the following form, and any device approved by the Administrator for applying such mark must be an official device.[1]

Figure 3

(c) Owners or operators of plants, other than official plants, who want to have import inspections made at their plants, must apply to the Administrator for approval of their establishments for such purpose. Application must be made on a form furnished by the Program, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC, and must include all information called for by that form.

(d) No brand manufacturer or other person will cast or otherwise make, without an official certificate issued by official program personnel, a brand or other marking device containing an official inspection legend, or simulation thereof, as shown in § 590.940(b).

(e) The inspection legend may be placed on containers of product before completion of the official import inspection if the containers are being inspected by an import inspector who reports directly to a program supervisor, the product is not required to be held at the official import inspection establishment pending receipt of laboratory test results, and a written procedure for the controlled stamping, submitted by the official import inspection establishment and approved by the Food Safety and Inspection Service, is on file at the import inspection location where the inspection is to be performed.

(f)(1) The written procedure for the controlled release and identification of product should be in the form of a letter and must include the following:

(i) That stamping under this subpart is limited to those lots of product that can be inspected on the day that certificates for the product are examined;

(ii) That all products that have been pre-stamped will be stored in the facility where the import inspection will occur;

(iii) That inspection marks applied under this part will be removed from any lot of product subsequently refused entry on the day the product is rejected; and

(iv) That the establishment will maintain a daily stamping log containing the following information for each lot of product: The date of inspection, the country of origin, the foreign establishment number, the product name, the number of units, the shipping container marks and foreign inspection certificate number covering the product to be inspected. The daily log must be retained by the establishment in accordance with § 590.200.

(2) An establishment's controlled program privilege may be cancelled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that the establishment has failed to comply with the provisions of this subpart or any conditions imposed pursuant thereto. If the cancellation is oral, the decision and the reasons for it must be confirmed in writing, as promptly as circumstances allow. Any person whose controlled pre-stamping program privilege has been cancelled may appeal the decision to the Administrator, in writing, within ten (10) days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the controlled program was wrongfully cancelled. The Administrator will grant or deny the appeal, in writing, stating the reasons

[1] The number ''I–38'' is given as an example only. The plant number of the official plant, facility, or official import inspection establishment where the product was inspected must be shown on each stamp impression.

for such decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing must be held to resolve such conflict. Rules of practice concerning such a hearing will be adopted by the Administrator. The cancellation of the controlled pre-stamping privilege will be in effect until there is a final determination of the preceding.

§ 590.945 Eggs and egg products offered for entry; reporting of findings to customs; handling of articles refused entry; appeals, how made; denaturing procedures.

(a)(1) Official program personnel must report their findings as to any product that has been inspected in accordance with this subpart to the Director of Customs at the original port of entry where the same is offered for clearance through Customs inspection.

(2) When product is refused entry into the United States, the official mark to be applied to the product refused entry must be in the following form:

Figure 4

(3) When product has been identified as ''U.S. Refused Entry,'' official program personnel must request the Director of Customs to refuse admission of such product and to direct that it be exported by the owner or importer within the time specified in this section, unless the owner or importer, within the specified time, causes it to be destroyed by disposing of it under the supervision of official program personnel so that the product can no longer be used as human food, or by converting it to animal food uses, if permitted by the Food and Drug Administration. The owner or importer of the refused entry product must not transfer legal title to such product, except to a foreign importer for direct and immediate exportation, or to an end user, *e.g.,* an animal food manufacturer or a renderer, for destruction for human food purposes. ''Refused entry'' product must be delivered to and used by the manufacturer or renderer within the 45-day time limit provided in paragraph (a)(4) of this section. Even if such title is illegally transferred, the subsequent purchaser will still be required to export the product or have it destroyed under paragraph (a)(4) of this section.

(4) The owner or importer will have 45 days after notice is given by FSIS to the Director of Customs at the original port of entry to take the action required in paragraph (a)(3) of this section for ''refused entry'' product. An extension beyond the 45-day period may be granted by the Administrator when extreme circumstances warrant it, *e.g.,* a dock workers' strike or an unforeseeable vessel delay.

(5) If the owner or importer fails to take the required action within the time specified under paragraph (a)(4) of this section, the Department will take such actions as may be necessary to effectuate its order to have the product destroyed for human food purposes. The Department will seek court costs and fees, storage, and proper expenses in the appropriate forum.

(6) No egg product that has been refused entry and exported to another country pursuant to paragraph (a)(3) of this section may be returned to the United States under any circumstances. Any such product so returned to the United States will be subject to administrative detention in accordance with section 1048 of the Act and seizure and condemnation in accordance with section 1049 of the Act.

(7) Egg products that have been refused entry solely because of misbranding may be brought into compliance with the requirements of this chapter under the supervision of an authorized representative of the Administrator.

(b) Upon the request of the Director of Customs at the port where an egg product is offered for clearance through the customs, the importer of the product must, at the importer's own expense, immediately return to the Director any product that has been delivered to the importer under this subpart and subsequently designated ''U.S. Refused Entry'' or found in any request not to comply with the requirements in this part.

(c) Except as provided in § 590.930(a) or (b), no person will remove or cause to be removed from any place designated as the place of inspection of egg products that the regulations in this part require to be identified in any way, unless the same has been clearly and legibly identified in compliance with this part.

(d) Any person receiving inspection services may, if dissatisfied with any decision of an inspector relating to any inspection, file an appeal from such decision. Any such appeal from a decision of an inspector must be made to the inspector's immediate supervisor having jurisdiction over the subject matter of the appeal, and such supervisor must determine whether the inspector's decision was correct. Review of such an appeal determination, when requested, must be made by the immediate supervisor of the Department employee making the appeal determination. The egg products involved in any appeal must be identified by U.S. retained tags and segregated in a manner approved by the inspector pending completion of an appeal inspection.

(e) All loss or inedible eggs, or inedible egg products must be disposed of in accordance with § 590.504(c)(1).

§ 590.950 Labeling of immediate containers of egg products offered for entry.

(a) Immediate containers of product offered for entry into the United States must bear a label, printed in English, showing:

(1) The name of the product;

(2) The name of the country of origin of the product, and for consumer packaged products, preceded by the words ''Product of,'' which statement must appear immediately under the name of the product;

(3) [Reserved];

(4) The word ''Ingredients'' followed by a list of the ingredients in order of descending proportions by weight;

(5) The name and place of business of the manufacturer, packer, or distributor, qualified by a phrase which reveals the connection that such person has with the product;

(6) An accurate statement of the quantity;

(7) The inspection mark of the country of origin;

(8) Plant number of the plant at which the egg products were processed; and

(9) The date of production and plant number of the plant at which the egg products were processed or packed.

(b) For properly sealed and certified shipments of shell eggs for breaking at an official plant, the immediate containers need not be labeled, provided that the shipment is segregated and controlled upon arrival at the destination breaking plant.

(c) The labels must not be false or misleading in any respect.

§ 590.955 Labeling of shipping containers of egg products offered for entry.

Shipping containers of imported egg products are required to bear in a prominent and legible manner the name of the product, the name of the country of origin, the foreign inspection system plant number of the plant in which the product was processed, shipping or identification marks, production codes, and the inspection mark of the country or origin. Labeling on shipping containers must be examined at the time of inspection in the United States and if found to be false or misleading, the product must be refused entry.

§ 590.956 Relabeling of imported egg products.

(a) Egg products eligible for importation may be relabeled with an approved label under the supervision of an inspector at an official plant or official import inspection establishment. The new label for such product must indicate the country of origin, except for egg products that are processed (repasteurized or, in the case of dried product, dry blended with product produced in the United States) in an official plant.

(b) Egg products that have been refused entry into the United States solely because of misbranding may be brought into compliance with the labeling requirements of this chapter.

(c) The label for relabeled products must state the name, address, and zip code of the distributor, qualified by an appropriate term such as ''packed for'', ''distributed by'', or ''distributors''.

§ 590.960 Small importations for importer's personal use, display, or laboratory analysis.

Egg products (other than those that are forbidden entry by other Federal law or regulation) from any country, that are exclusively for the importer's personal use, display, or laboratory analysis, and not for sale or distribution; that are sound, healthful, wholesome, and fit for human food; and that are not adulterated and do not contain any substance not permitted by the Act or regulations, may be admitted into the United States without a foreign inspection certificate. Such products are not required to be inspected upon arrival in the United States and may be shipped to the importer without further restriction under this part, except as provided in 9 CFR 590.925(b), provided that the Department may, with respect to any specific importation, require that the importer certify that such product is exclusively for said importer's personal use, display, or laboratory analysis and not for sale or distribution. The amount of liquid, frozen, or dried egg products imported must not exceed 50 pounds.

§ 590.965 Returned to the United States inspected and identified covered products; exemption.

U.S. inspected and passed and so marked egg products exported to and returned from foreign countries will be admitted into the United States without compliance with this part upon notification to and approval of the Food Safety and Inspection Service, in specific cases.

SUBCHAPTER I—EGG PRODUCTS INSPECTION ACT

■ 74. Add part 591 to read as follows:

PART 591—SANITATION REQUIREMENTS AND HAZARD ANALYSIS AND CRITICIAL CONTROL POINT SYSTEMS

Sec.

Authority: 21 U.S.C. 1031–1056; 7 CFR 2.18, 2.53.

§ 591.1 Basic requirements.

(a) All official plants must comply with the requirements contained in 9 CFR parts 416, Sanitation, and 417, Hazard Analysis and Critical Control Point (HACCP) Systems, except as otherwise provided in this chapter.

(b) For the purposes of 9 CFR parts 416, Sanitation, 417, Hazard Analysis and Critical Control Point (HACCP) Systems, and 500, Rules of Practice, an official establishment or establishment includes an official plant.

§ 591.2 Hazard analysis and HACCP plan.

Pursuant to 21 U.S.C. 1035 and 1043, the failure of an official plant to develop and implement a HACCP plan that complies with 9 CFR part 417, or to operate in accordance with the requirements in this part, may render the products produced under those conditions adulterated.

Done at Washington, DC, on: January 9, 2018.

Paul Kiecker,

Acting Administrator.

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Part III

Bureau of Consumer Financial Protection

12 CFR Parts 1005 and 1026
Rules Concerning 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–2017–0015]

RIN 3170–AA72

Rules Concerning 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 interpretation; delay of effective date.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is amending Regulation E, which implements the Electronic Fund Transfer Act, and Regulation Z, which implements the Truth in Lending Act, and the official interpretations to those regulations. This rulemaking relates to a final rule published in the **Federal Register** on November 22, 2016, as amended on April 25, 2017, regarding prepaid accounts under Regulations E and Z. The Bureau is finalizing modifications to several aspects of that rule, including with respect to error resolution and limitations on liability for prepaid accounts where the financial institution has not successfully completed its consumer identification and verification process; application of the rule's credit-related provisions to digital wallets that are capable of storing funds; certain other clarifications and minor adjustments; technical corrections; and an extension of the overall effective date to April 1, 2019.

DATES: The amendments in this final rule are effective on April 1, 2019. The effective date of the final rule published on November 22, 2016 (81 FR 83934), as delayed on April 25, 2017 (82 FR 18975), is further delayed from April 1, 2018 to April 1, 2019. The effective date of the final rule published on April 25, 2017 (82 FR 18975), is delayed from April 1, 2018 to April 1, 2019. The effective date for the addition of § 1005.19(b), published on November 22, 2016 (81 FR 83934), as confirmed on April 25, 2017 (82 FR 18975), is delayed from October 1, 2018 to April 1, 2019.

FOR FURTHER INFORMATION CONTACT: Yaritza Velez, Counsel, and Kristine M. Andreassen, Krista Ayoub, and Thomas L. Devlin, Senior Counsels, Office of Regulations, at 202–435–7700 or *https://reginquiries.consumerfinance.gov/.*

SUPPLEMENTARY INFORMATION:

I. Summary of the Final Rule

The Bureau is finalizing amendments to its 2016 rule that created comprehensive consumer protections for prepaid accounts under Regulation E, which implements the Electronic Fund Transfer Act (EFTA),[1] and Regulation Z, which implements the Truth in Lending Act (TILA) [2] (2016 Final Rule).[3] Through its efforts to support industry implementation of the 2016 Final Rule, the Bureau learned that some industry participants believed that they would have difficulty complying with certain provisions of the 2016 Final Rule that would have gone into effect on October 1, 2017. To facilitate compliance, after notice and comment, the Bureau extended the general effective date of the 2016 Final Rule to April 1, 2018 (2017 Effective Date Proposal and 2017 Effective Date Final Rule, respectively).[4] The 2016 Final Rule, as amended by the 2017 Effective Date Final Rule, is referred to herein as the Prepaid Accounts Rule.

Based on feedback received by the Bureau through its outreach efforts to industry regarding implementation of the 2016 Final Rule as well as in comments received on the 2017 Effective Date Proposal, the Bureau proposed to amend several provisions of the 2016 Final Rule (June 2017 Proposal).[5] After reviewing comments received on the proposal, the Bureau is finalizing the June 2017 Proposal generally as proposed, with certain modifications, as discussed below. These revisions to the Prepaid Accounts Rule are intended to address, in part, certain issues that were unanticipated by commenters on the notice of proposed rulemaking that led to the 2016 Final Rule (2014 Proposal),[6] and are intended to facilitate compliance and relieve burden on those issues. In particular, the Bureau is:

- Revising the error resolution and limited liability provisions of the Prepaid Accounts Rule in Regulation E to provide that financial institutions are not required to resolve errors or limit consumers' liability on unverified prepaid accounts. For accounts where the consumer's identity is later verified, financial institutions are not required to limit liability and resolve errors with regard to disputed transactions that occurred prior to verification.
- Creating a limited exception to the credit-related provisions of the Prepaid Accounts Rule in Regulation Z for certain business arrangements between prepaid account issuers and credit card issuers that offer traditional credit card products. This exception is designed to address certain complications in applying the credit provisions of the Prepaid Accounts Rule to credit card accounts linked to digital wallets that can store funds where the credit card accounts are already subject to Regulation Z's open-end credit card rules in circumstances that appear to pose lower risks to consumers. This final rule also expands the situations in which prepaid account issuers are permitted to run negative balances on prepaid accounts, provided certain conditions are met.
- Extending the overall effective date of the Prepaid Accounts Rule to April 1, 2019.
- Making clarifications or minor adjustments to provisions of the Prepaid Accounts Rule in Regulation E related to an exclusion from the definition of prepaid account, unsolicited issuance of access devices, several aspects of the rule's pre-acquisition disclosure requirements, and submission of prepaid account agreements to the Bureau.
- Making technical corrections to certain provisions of the Prepaid Accounts Rule in both Regulations E and Z.

Due to recent changes in requirements by the Office of the Federal Register, when amending commentary the Bureau is now required to reprint certain subsections being amended in their entirety rather than providing more targeted amendatory instructions. The length of the commentary in this final rule thus appears much longer than what was included in the June 2017 Proposal. The Bureau is releasing an unofficial, informal redline to assist industry and other stakeholders in reviewing the changes that this final rule is making to the Prepaid Accounts Rule.[7]

[1] 15 U.S.C. 1693 *et seq.*

[2] 15 U.S.C. 1601 *et seq.*

[3] The 2016 Final Rule was released by the Bureau on October 5, 2016 and subsequently published in the **Federal Register**. 81 FR 83934 (Nov. 22, 2016).

[4] 82 FR 13782 (Mar. 15, 2017); 82 FR 18975 (Apr. 25, 2017).

[5] 82 FR 29630 (June 29, 2017).

[6] The Bureau released its proposal regarding prepaid accounts under Regulations E and Z, including model and sample disclosure forms, for public comment on November 13, 2014. 79 FR 77102 (Dec. 23, 2014). The Bureau had previously issued an advance notice of proposed rulemaking that posed a series of questions for public comment about how the Bureau might consider regulating general purpose reloadable cards and other prepaid products. 77 FR 30923 (May 24, 2012).

[7] This redline can be found on the Bureau's regulatory implementation page for the Prepaid Accounts Rule, at *https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/.* If any conflicts exist between the redline and the text of the 2016 Final Rule, the 2017 Effective Date

II. Background

In the 2016 Final Rule, the Bureau extended Regulation E coverage to prepaid accounts and adopted provisions specific to such accounts, and generally expanded Regulation Z's coverage to overdraft features that may be offered in conjunction with prepaid accounts. Upon issuing the 2016 Final Rule, the Bureau initiated robust efforts to support industry implementation.[8] Information regarding the Bureau's Prepaid Accounts Rule implementation initiatives and available resources can be found on the Bureau's regulatory implementation website at *https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/.*

In the course of the Bureau's work to help industry implement the 2016 Final Rule, some industry participants raised concerns about what they described as unanticipated complexities arising from the interaction of certain aspects of the rule with certain business models and practices, including those newly adopted, that industry participants did not fully address in their comment letters on the 2014 Proposal. They indicated that these issues could complicate implementation and affect consumers.

In light of these concerns, on March 9, 2017, the Bureau released the 2017 Effective Date Proposal with a request for comment.[9] In that proposal, the Bureau proposed to delay the general effective date of the 2016 Final Rule by six months, to April 1, 2018. While the Bureau did not propose in the 2017 Effective Date Proposal to amend any other substantive provisions of the 2016 Final Rule, many commenters nonetheless advocated for retaining, modifying, or eliminating various provisions of the 2016 Final Rule. These comments are discussed in the section-by-section analyses in part V, where relevant.

On April 20, 2017, the Bureau released the 2017 Effective Date Final Rule, which delayed the general effective date of the 2016 Final Rule until April 1, 2018.[10] The Bureau indicated in that notice that it intended to seek comment on targeted substantive issues raised both through the Bureau's outreach efforts to industry regarding implementation and in comments received on the 2017 Effective Date Proposal.

The Bureau subsequently proposed to amend several provisions of the 2016 Final Rule via the June 2017 Proposal. After reviewing public comments received on the proposal, the Bureau is finalizing the June 2017 Proposal generally as proposed, with certain modifications, as discussed below.

III. Summary of the Rulemaking Process

A. The June 2017 Proposal

In the June 2017 Proposal, the Bureau proposed to amend several provisions of the 2016 Final Rule, largely based on feedback received by the Bureau through its outreach efforts to industry regarding implementation of the 2016 Final Rule as well as in comments received on the 2017 Effective Date Proposal. In particular, the proposed rule would have: Revised the error resolution and limited liability provisions of the Prepaid Accounts Rule with respect to unverified accounts; created a limited exception to the credit-related provisions of the 2016 Final Rule in Regulation Z for certain business arrangements between prepaid account issuers and credit card issuers that offer traditional credit card products; and made clarifications or minor adjustments to several provisions of the 2016 Final Rule. The contents of the June 2017 Proposal are discussed in detail in the section-by-section analysis in part V below.

The Bureau also solicited comment on whether a further delay of the rule's effective date would be necessary and appropriate in light of the proposed amendments, and whether a specific provision addressing early compliance would be necessary and appropriate.

B. Feedback Provided to the Bureau

The comment period for the June 2017 Proposal closed on August 14, 2017. The Bureau received 32 comment letters from consumer advocacy groups; national and regional trade associations; members of the prepaid industry, including issuing banks and credit unions, program managers, and a digital wallet provider; a think tank; and several anonymous commenters. The Bureau also considered comments received after the comment period closed, via several ex parte meetings and other communications.[11] Materials on the record, including summaries of ex parte communications, 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 this final rule as described in parts V and VI below.

In addition to the comments summarized in the section-by-section analysis in part V below, many commenters raised other issues that were beyond the scope of what the Bureau proposed. These comments argued for the Bureau to take a number of actions, including: Refining or limiting the scope of the definition of ''prepaid account'' (for example, to clarify the treatment of so-called ''checkless checking'' accounts or to exempt digital wallets from coverage under the rule); making changes to, or exempting certain prepaid accounts from, the requirement to provide certain disclosures (such as the long form, short form, and/or oral disclosures, in various circumstances); either expanding or reducing the scope of Regulation E's compulsory use prohibition; eliminating the requirement that issuers submit their prepaid account agreements to the Bureau or modifying the general timeframe for agreement submissions; exempting credit unions from coverage under the rule; generally not imposing additional requirements or price caps on prepaid accounts; and rescinding the rule entirely. Other commenters provided more general feedback to the Bureau, offering suggestions about how the Bureau could improve both its rulemaking and regulatory implementation processes, both in general and in particular with respect to the Prepaid Accounts Rule. The Bureau will continue its outreach to industry and other stakeholders to understand their experiences in implementing the Prepaid Accounts Rule and welcomes

Final Rule, or this final rule, the rules themselves, as published in the **Federal Register**, are the controlling documents.

[8] These ongoing efforts include: (1) The publication of a plain-language small entity compliance guide to help industry understand the Prepaid Accounts Rule; (2) the publication of various other implementation tools regarding the Prepaid Accounts Rule, including an executive summary of the rule, summaries of key changes for payroll card accounts and government benefit accounts, a prepaid account coverage chart, a summary of the rule's effective date provisions, and a guide to preparing the short form disclosure; (3) the release of native design files for print and source code for web-based disclosures for all of the model and sample disclosure forms included in the Prepaid Accounts Rule; (4) meetings with industry, including trade associations and individual industry participants, to discuss and support their implementation efforts; and (5) participation in conferences and forums. The Bureau is releasing new and updated implementation materials in connection with this final rule.

[9] 82 FR 13782 (Mar. 15, 2017).

[10] 82 FR 18975 (Apr. 25, 2017). The 2017 Effective Date Final Rule did not delay the October 1, 2018 effective date of the requirement to submit prepaid account agreements to the Bureau in Regulation E § 1005.19(f)(2).

[11] The Bureau's *Policy on Ex Parte Presentations in Rulemaking Proceedings* is available at 82 FR 18687 (Apr. 21, 2017).

feedback regarding its rulemaking and regulatory implementation processes more generally.

IV. Legal Authority

The Bureau is exercising its rulemaking authority pursuant to EFTA section 904(a) and (c), sections 1022(b) and 1032(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[12] and TILA section 105(a) to amend provisions of Regulations E and Z affected by the Prepaid Accounts Rule, as discussed in this part IV and throughout the section-by-section analysis in part V below.

The legal authority for the 2016 Final Rule is described in detail in that rule's **SUPPLEMENTARY INFORMATION**.[13] As amended by the Dodd-Frank Act, EFTA section 904(a) and (c)[14] authorizes the Bureau to prescribe regulations to carry out the purposes of EFTA and provides that such regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions, for any class of electronic fund transfers (EFTs) or remittance transfers as in the judgment of the Bureau are necessary or proper to effectuate the purposes of EFTA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.[15] As amended by the Dodd-Frank Act, TILA section 105(a)[16] directs the Bureau to prescribe regulations to carry out the purposes of TILA and provides that such regulations may contain such additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions as in the judgment of the Bureau are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.[17] [18]

Section 1032(a) of the Dodd-Frank Act[19] 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. Additionally, under section 1022(b)(1) of the Dodd-Frank Act,[20] the Bureau has general authority 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. EFTA, TILA, and title X of the Dodd-Frank Act are Federal consumer financial laws. Accordingly, in finalizing this rule, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b)[21] to prescribe rules under EFTA, TILA, and title X of the Dodd-Frank Act that carry out the purposes and objectives and prevent evasion of those laws. Section 1022(b)(2) of the Dodd-Frank Act[22] prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under section 1022(b)(1).

V. Section-by-Section Analysis

A. Overview of the Amendments to Regulations E and Z

As discussed above, the Prepaid Accounts Rule amended Regulation E, which implements EFTA, and Regulation Z, which implements TILA, along with the official interpretations thereto. Based on feedback received by the Bureau through its outreach efforts to industry regarding implementation as well as in comments received on the 2017 Effective Date Proposal, and following notice and comment on the June 2017 Proposal, the Bureau is amending several provisions of the Prepaid Accounts Rule. This overview provides a summary of the amendments; each amendment, along with its rationale, is discussed in detail in the section-by-section analyses that follow.

Error resolution and limited liability. The Bureau is amending Regulation E §§ 1005.11(c)(2)(i), 1005.18(d)(1)(ii) and (e)(3), comments 18(e)–4 through 6, and appendix A–7(c) to provide that Regulation E's error resolution and limited liability requirements do not extend to prepaid accounts that have not successfully completed the financial institution's consumer identification and verification process (*i.e.,* accounts that have not concluded the process, accounts where the process is concluded but the consumer's identity could not be verified, and accounts in programs for which there is no such process). For accounts where the consumer's identity is later verified, financial institutions are not required to resolve errors and limit liability with regard to disputed transactions that occurred prior to verification. The Bureau is also making related changes to model disclosure language. In addition, the Bureau is requiring that, for accounts in programs where there is no verification process, financial institutions either explain in their initial disclosures their error resolution process and limitations on consumers' liability for unauthorized transfers, or explain that there are no such protections, and that such institutions comply with the process (if any) that they disclose.

Credit card accounts linked to prepaid accounts. The Bureau is creating a limited exception to the credit-related provisions of the Prepaid Accounts Rule in Regulation Z for certain business arrangements between prepaid account issuers and credit card issuers that offer traditional credit card products. This exception is designed to address certain complications in applying the credit provisions of the Prepaid Accounts Rule to credit card accounts linked to digital wallets that can store funds where the credit card accounts are already subject to Regulation Z's open-end credit card rules in circumstances that appear to pose lower risks to consumers.

Specifically, the Bureau is amending the definition of ''business partner'' in § 1026.61(a)(5)(iii) and related commentary to exclude business arrangements between prepaid account issuers and issuers of traditional credit

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[12] Public Law 111–203, section 1084, 124 Stat. 2081 (2010) (codified at 15 U.S.C. 1693a *et seq.*).

[13] *See, e.g.,* 81 FR 83934, 83958–60 (Nov. 22, 2016). The legal authority for the 2017 Effective Date Final Rule is described in that rule's **SUPPLEMENTARY INFORMATION**. 82 FR 18975, 18978 (Apr. 25, 2017).

[14] 15 U.S.C. 1693b(a) and (c).

[15] EFTA section 902 establishes that the purpose of the statute is to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems but that its primary objective is the provision of individual consumer rights. 15 U.S.C. 1693.

[16] 15 U.S.C. 1604(a).

[17] 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.'' 15 U.S.C. 1601(a). Moreover, this stated purpose is tied to Congress' finding that ''economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit[.]'' *Id.*

[18] 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 by at least six months the date of promulgation.'' Section 105(d) further provides that the Bureau ''may at its discretion take interim action by regulation, amendment, or interpretation to lengthen the period of time permitted for creditors or lessors to adjust their forms to accommodate new requirements.'' As it did in the 2017 Effective Date Final Rule, the Bureau is exercising its discretion under TILA section 105(d) to lengthen the period to April 1, 2019. The Bureau believes that the changes the Prepaid Accounts Rule will require to disclosures pursuant to Regulation Z warrant a delayed effective date that conforms to the rest of the rule.

[19] 12 U.S.C. 5532(a).

[20] 12 U.S.C. 5512(b)(1).

[21] 12 U.S.C. 5512(b).

[22] 12 U.S.C. 5512(b)(2).

cards from coverage under the Prepaid Accounts Rule's tailored provisions applicable to hybrid prepaid-credit cards if certain conditions are satisfied. The exclusion applies only to traditional credit card accounts that are linked to a prepaid account. In order to qualify for the exclusion, certain conditions must be satisfied, including that the parties cannot allow the prepaid card to access credit from the credit card account in the course of a transaction with the prepaid card unless the consumer has submitted a written request to authorize linking the two accounts that is separately signed or initialized, cannot condition the acquisition or retention of either account on whether the consumer authorizes such a linkage, and do not vary certain terms and conditions based on whether the two accounts are linked. Under this exception, the linked credit card account will still receive the protections in Regulation Z that generally apply to a credit card account under an open-end (not home-secured) consumer credit plan, but the tailored provisions in the Prepaid Accounts Rule for hybrid prepaid-credit cards will not apply.

Negative balances on prepaid accounts. The Bureau is making changes to Regulation Z to address certain complications related to prohibiting negative balances on digital wallets that are prepaid accounts when a covered separate credit feature offered by a business partner is attached to the digital wallet. Specifically, the Bureau is expanding the exception in § 1026.61(a)(4) that allows prepaid account issuers to provide certain incidental forms of credit structured as a negative balance on the asset feature of prepaid accounts without triggering Regulation Z and the other protections for hybrid prepaid-credit cards. Prior to this final rule, the exception only applied where (1) the prepaid card cannot access credit from a covered separate credit feature accessible by a hybrid prepaid-credit card; (2) the prepaid account issuer has a general policy and practice of declining transactions that will take the account negative (at least outside of the situations involving incidental credit); and (3) the prepaid account issuer generally does not charge credit-related fees. The Bureau is amending § 1026.61(a)(4) to allow a prepaid account issuer to take advantage of the exception in § 1026.61(a)(4) with respect to the negative balance even if a covered separate credit feature offered by a business partner is attached to the prepaid account so long as the other prerequisites contained in § 1026.61(a)(4) are satisfied. The Bureau is also making modifications to § 1026.61(a)(1)(iii) and (a)(3)(ii) and the commentary accompanying § 1026.61(a)(3) and (4) related to this change, as well as modifications to certain commentary elsewhere in Regulation Z for consistency with this change to § 1026.61(a)(4).

Effective date. The Bureau is extending by an additional 12 months the general effective date of the Prepaid Accounts Rule, to April 1, 2019. The Bureau is also extending the effective date for the agreement submission requirement in § 1005.19(b) to April 1, 2019. The Bureau is making conforming changes to §§ 1005.18(b)(2)(ix)(D), (h), and 1005.19(f) and the commentary accompanying § 1005.18(b)(2)(ix)(D) and (E), and (h), and removing the commentary that accompanied § 1005.19(f), to reflect the effective date change and the alignment of the general effective date with the effective date of the agreement submission requirement.

Exclusion from coverage for certain loyalty, award, or promotional gift cards. The revisions to Regulation E § 1005.2(b)(3)(ii)(D)(*3*) and new comment 2(b)(3)(ii)–4 clarify that the exclusion from the Prepaid Accounts Rule for loyalty, award, or promotional gift cards applies both to such products as defined in § 1005.20(a)(4) as well as those that satisfy the criteria in § 1005.20(a)(4)(i) and (ii) and are excluded from § 1005.20 pursuant to § 1005.20(b)(4) because they are not marketed to the general public.

Unsolicited issuance of access devices and pre-acquisition disclosures for prepaid accounts without consumer choice. The revisions to comment 18(a)–1 and to § 1005.18(b)(1)(i) and comment 18(b)(1)(i)–1 clarify how the provisions regarding unsolicited issuance of access devices and the timing of pre-acquisition disclosures apply to prepaid products where a financial institution or third party making a disbursement via a prepaid account does not offer any alternative means for a consumer to receive the funds.

Pre-acquisition disclosures. Several provisions in this final rule provide additional clarity and flexibility with respect to the Prepaid Accounts Rule's pre-acquisition disclosure requirements. The revisions to § 1005.18(b)(1)(ii)(D) and comment 18(b)(1)(ii)–4 allow financial institutions offering prepaid accounts that qualify for the retail location exception in § 1005.18(b)(1)(ii) to satisfy the requirement that they provide the long form disclosure after acquisition by allowing the long form disclosure to be delivered electronically without receiving consumer consent under the Electronic Signatures in Global and National Commerce Act (E-Sign Act),[23] if it is not provided inside the prepaid account packaging material and the financial institution is not otherwise mailing or delivering to the consumer written account-related communications within 30 days of obtaining the consumer's contact information. Revisions to § 1005.18(b)(6)(i)(B) and (C) and comment 18(b)(6)(i)(B)–1 and new comment 18(b)(6)(i)–1 (formerly comment 18(b)(1)(iii)–2) clarify that if a financial institution provides pre-acquisition disclosures in writing and a consumer subsequently completes the acquisition process online or by telephone, the financial institution need not provide the disclosures again electronically or orally. The revisions to § 1005.18(b)(2)(ix)(C) and comment 18(b)(2)(ix)(C)–1.ii provide prepaid account issuers additional flexibility in disclosing additional fee types on the short form. Specifically, they permit financial institutions disclosing additional fee types with three or more fee variations to consolidate those variations into two categories and allow those two categories to be disclosed on the short form.

Section 1005.18(b)(9)(i)(C) requires a financial institution to provide pre-acquisition disclosures in a foreign language if the financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in that foreign language. The Bureau is amending § 1005.18(b)(9)(i)(C), adding new comment 18(b)(9)–1.ii.D, and making conforming changes in comments 18(b)(9)–1.i.E and ii.B to provide that foreign language disclosures are not required for payroll card accounts and government benefit accounts where the foreign language is offered by telephone only via a real-time language interpretation service provided by a third party, or directly by an employer or government agency on an informal or ad hoc basis as an accommodation to prospective payroll card account or government benefit account recipients.

Submission of prepaid account agreements. The Bureau is making several changes to the rules governing submission of prepaid account agreements to the Bureau in § 1005.19. The revisions to § 1005.19(b)(2) and comment 19(a)(2)–1.vii, and new comment 19(b)(2)–2, allow prepaid account issuers to delay submitting a change in the list of names of other

[23] 15 U.S.C. 7001 *et seq.*

relevant parties to a particular prepaid account agreement (such as employers for a payroll card agreement) until the earlier of such time as the issuer is submitting other changes to the Bureau or May 1 of each year (for any updates through April 1 that have not previously been submitted). The revisions to § 1005.19(b)(6)(ii) and (iii) and comment 19(b)(6)–3 permit short form and long form disclosures to be provided to the Bureau as separate addenda to the agreement, rather than integrated into the agreement or as a single addendum. The Bureau is also making changes in conformance with these revisions elsewhere in § 1005.19 and related commentary.

Technical corrections. The Bureau is making technical corrections in Regulations E and Z, such as correcting typographical errors, editing text for consistency, and making similar minor changes to various provisions of the Prepaid Accounts Rule, which are not intended to change the meaning of the Prepaid Accounts Rule.

Regulation E

Subpart A—General

Section 1005.2 Definitions

2(b) Account

2(b)(3) Prepaid Account

2(b)(3)(ii)

2(b)(3)(ii)(D)

In the 2016 Final Rule, the Bureau extended Regulation E coverage to prepaid accounts by creating a new defined term—''prepaid account''—in § 1005.2(b)(3) as a subcategory of the definition of ''account'' in § 1005.2(b)(1). The definition of prepaid account in § 1005.2(b)(3) covers a range of products including general purpose reloadable (GPR) cards, as well as other products such as certain non-reloadable accounts and digital wallets. It also contains several exclusions from the definition of prepaid account, including for gift certificates; store gift cards; loyalty, award, or promotional gift cards; and general-use prepaid cards that are both marketed and labeled as gift cards or gift certificates, all of which are subject to a separate set of requirements under 2009 legislation and implementing regulations.[24] The exclusion for loyalty, award, or promotional gift cards refers to such products as defined in § 1005.20(a)(4) and (b).[25] Section 1005.20(a)(4) defines the term ''loyalty, award, or promotional gift card'' as a card, code, or other device that is issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in connection with a loyalty, award, or promotional program; is redeemable upon presentation at one or more merchants for goods or services, or usable at automated teller machines; and sets forth certain disclosures, as applicable, indicating that it is issued for loyalty, award, or promotional purposes and setting forth its expiration date as well as the amount of any fees and the conditions under which they may be imposed. Section 1005.20(b) lists the exclusions from coverage under the Gift Card Rule, one of which is for loyalty, award, or promotional gift cards.[26]

The Bureau explained in the 2016 Final Rule its reasoning for excluding gift certificates, store gift cards, and general-use prepaid cards that are both marketed and labeled as gift cards or gift certificates from the definition of prepaid account. Specifically, the Bureau stated that, after considering the comments on the 2014 Proposal, it remained convinced that subjecting this general category of products to both the Gift Card Rule and the requirements of the 2016 Final Rule would place a significant burden on industry without a corresponding consumer benefit. In discussing its rationale for having proposed these exclusions in the 2014 Proposal, the Bureau also stated that, among other things, it was concerned about the possibility of consumer confusion regarding products covered by both regimes, though it did not believe the exclusion should extend to products that consumers may use as or confuse with transaction accounts even if such products were also covered by the Gift Card Rule.[27] The Bureau also expressed concern that, were it to impose requirements 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 because, unlike other types of prepaid products, many gift cards do not typically offer these protections.[28]

The Bureau's Proposal

As explained in the June 2017 Proposal, the Bureau became aware through its outreach efforts to industry regarding implementation that there may be some confusion as to whether the exception in § 1005.2(b)(3)(ii)(D)(*3*) extends to loyalty, award, or promotional gift cards that do not contain disclosures pursuant to § 1005.20(a)(4)(iii) but that are nonetheless excluded from coverage under the Gift Card Rule pursuant to § 1005.20(b)(4) because they are not marketed to the general public. Industry stakeholders requested that the Bureau make clear that these cards are excluded from coverage under the Prepaid Accounts Rule. In the alternative, they requested that, if loyalty, award, or promotional gift cards that do not provide the § 1005.20(a)(4)(iii) disclosures are in fact covered by the Prepaid Accounts Rule, the Bureau clarify the timing to add such disclosures in order to qualify for the exclusion under § 1005.2(b)(3)(ii)(D)(*3*), particularly for cards that have already been distributed to consumers for whom the financial institution does not have contact information.

The Bureau proposed to clarify the scope of this exclusion by revising § 1005.2(b)(3)(ii)(D)(*3*) to exclude a loyalty, award, or promotional gift card as defined in § 1005.20(a)(4), or that satisfies the criteria in § 1005.20(a)(4)(i) and (ii) and is excluded from § 1005.20 pursuant to § 1005.20(b)(4). The Bureau also proposed to add comment 2(b)(3)(ii)–4 to explain that proposed § 1005.2(b)(3)(ii)(D)(*3*) would exclude loyalty, award, or promotional gift cards as defined in § 1005.20(a)(4); those cards are excluded from coverage under § 1005.20 pursuant to § 1005.20(b)(3). New comment 2(b)(3)(ii)–4 would have further explained that proposed § 1005.2(b)(3)(ii)(D)(*3*) would also exclude cards that satisfy the criteria in § 1005.20(a)(4)(i) and (ii) and are excluded from coverage under § 1005.20 pursuant to § 1005.20(b)(4) because they

[24] § 1005.2(b)(3)(ii)(D). The exclusions in § 1005.2(b)(3)(ii)(D) each reference specific provisions in § 1005.20, which houses the Board's 2010 rule implementing certain sections of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Pub. L. 111–24, 123 Stat. 1734 (2009) (Credit CARD Act)) applicable to gift cards, gift certificates, and certain types of general-use prepaid cards that are marketed or labeled as gift cards (Gift Card Rule). For products marketed and sold as gift cards (and that satisfy certain other conditions), 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 error resolution and limited liability protections or periodic statements.

[25] § 1005.2(b)(3)(ii)(D)(*3*).

[26] § 1005.20(b)(3).

[27] With respect to general-use prepaid products, the Bureau excluded only such 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 as prepaid accounts may be inadvertently excluded due to occasional or incidental marketing activities, and that consumers would unwittingly think they carry the same protections as other prepaid accounts under the Prepaid Accounts Rule. 81 FR 83934, 83977 (Nov. 22, 2016).

[28] *Id.* at 83976–77.

are not marketed to the general public; such products would not be required to set forth the disclosures enumerated in § 1005.20(a)(4)(iii) in order to be excluded pursuant to proposed § 1005.2(b)(3)(ii)(D)(*3*).

Comments Received

Commenters, including industry trade associations, a think tank, and an anonymous commenter, supported the proposed revision to § 1005.2(b)(3)(ii)(D)(*3*). These commenters agreed that, given the limited nature and use of these types of loyalty, award, and promotional gift cards, it would be appropriate for the Bureau to exclude them from coverage under the Prepaid Accounts Rule. The anonymous commenter stated that because these cards tend to be non-reloadable, small dollar products that are not marketed to the general public, subjecting them to more robust Regulation E requirements would be overly burdensome to industry while providing little consumer benefit. One of the trade associations cautioned that, while it appreciated the proposed exception, it expects that few, if any, products would benefit from the exception because it believes that virtually all loyalty, award, and promotional gift cards already provide the § 1005.20(a)(4)(iii) disclosures and thus qualify for the § 1005.20(b)(3) exclusion under the Gift Card Rule. The Bureau received no comments opposing this aspect of the proposal.

In response to the Bureau's request for comment regarding whether, in the alternative, loyalty, award, or promotional gift cards that do not provide the disclosures enumerated by § 1005.20(a)(4)(iii) should be covered by the Prepaid Accounts Rule but provided with certain transitional exclusions and accommodations, a trade association stated that all loyalty, award, or promotional gift cards should be excluded from the definition of prepaid account, regardless of the method by which the product qualifies as a loyalty, award, or promotional gift card, and therefore the Bureau should not adopt this alternative proposal.

Many commenters did not respond regarding the Bureau's proposed revision to § 1005.2(b)(3)(ii)(D)(*3*) and related commentary specifically but instead commented on the definition of ''prepaid account'' more broadly, urging the Bureau to adopt additional exclusions for other types of products considered prepaid accounts under the 2016 Final Rule. For example, several of these commenters, including trade associations, a program manager, an issuing bank, and an anonymous commenter, urged the Bureau to exclude products that are not marketed to the general public, such as utility company refund cards, jury duty cards, prison release cards, and cards attached to qualified tuition savings plans (*e.g.,* 529 plans).[29] Some of these commenters also urged the Bureau to exclude certain limited-use disbursement cards, such as those used for customer service purposes, arguing that they are akin to loyalty, award, or promotional gift cards.[30] In addition, a program manager and a trade association expressed concern about the limited examples of healthcare and employee benefit products that are excluded from the Prepaid Accounts Rule.[31] These commenters stated that it is unclear whether other types of healthcare products—such as ABLE Act savings plans [32]—qualify for the 2016 Final Rule's exclusions for accounts loaded only with funds from a health savings account or dependent care assistance program.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing the revisions to § 1005.2(b)(3)(ii)(D)(*3*) and adopting new comment 2(b)(3)(ii)–4 as proposed. The Bureau believes it is appropriate to exclude loyalty, award, or promotional gift cards from coverage under the Prepaid Accounts Rule regardless of whether they provide disclosures pursuant to § 1005.20(a)(4)(iii), given the limited nature and use of such products. Some such cards do not meet the definition of prepaid account, as they cannot be used with multiple, unaffiliated merchants, and are thus outside the scope of the Prepaid Accounts Rule's coverage regardless. With regard to any such cards that do meet the definition of prepaid account, the Bureau believes it is necessary and proper to exclude those cards 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.

The Bureau appreciates the trade association's comment that few if any products need this exclusion because, it said, virtually all loyalty, award, and promotional gift cards provide the disclosures enumerated by § 1005.20(a)(4)(iii). However, since the Bureau received questions from industry on the status of such products without the disclosure, the Bureau believes it is appropriate to make this clarification.

The exclusions for other types of products requested by commenters were beyond the scope of the Bureau's proposal, and thus the Bureau is not making any such changes at this time.

Section 1005.11 Procedures for Resolving Errors

11(c) Time Limits and Extent of Investigation

As discussed in detail in the section-by-section analysis of § 1005.18(e)(3) below, the Bureau is making certain changes regarding error resolution and limited liability requirements to address concerns about the treatment of unverified accounts. This change has rendered unnecessary § 1005.11(c)(2)(i)(C), which had been added by the 2016 Final Rule to reflect the exception to the requirement to provide provisional credit for errors asserted on unverified accounts. The Bureau did not receive any comments regarding this portion of the proposal in particular.

Specifically, § 1005.11(c)(2)(i)(C) provided that a financial institution is not required 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 successfully completed its consumer identification and verification process, as set forth in prior § 1005.18(e)(3)(ii). As discussed in

[29] A 529 plan is operated by a State or educational institution, with tax advantages and potentially other incentives to make it easier to save for college and other post-secondary training for a designated beneficiary, such as a child or grandchild. Internal Revenue Service, *529 Plans: Questions and Answers, available at https://www.irs.gov/newsroom/529-plans-questions-and-answers* (last visited Jan. 8, 2018); *see* 26 U.S.C. 529 *et seq.*

[30] An anonymous commenter similarly requested that the Bureau exclude from coverage products that are issued to independent contracts for payments in connection with commercial activity, asserting that, among other things, these products are not established primarily for personal, family, or household purposes. Pursuant to existing § 1005.2(b)(1), Regulation E applies only to accounts that are established primarily for personal, family, or household purposes; accounts that are not established primarily for personal, family, or household purposes are not subject to the Regulation.

[31] An account ''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'' is excluded from the definition of a prepaid account. § 1005.2(b)(3)(ii)(A).

[32] The ABLE Act permits a State to establish and maintain a tax-advantaged savings program under section 529A of the Internal Revenue Code. Contributions may be made to a 529A account established for a designated beneficiary to pay for qualified disability expenses. Internal Revenue Service, *Tax Benefit for Individuals With Disabilities: IRC Section 529A, available at https://www.irs.gov/government-entities/federal-state-local-governments/tax-benefit-for-disability-irc-section-529a* (last visited Jan. 8, 2018).

the section-by-section analysis of § 1005.18(e)(3) below, the Bureau is not requiring a financial institution to comply with the liability limits and error resolution requirements under §§ 1005.6 and 1005.11 for any prepaid account, other than a payroll card account or government benefit account, for which it has not successfully completed its consumer identification and verification process. Because this final rule provides that such accounts are not subject to § 1005.11, § 1005.11(c)(2)(i)(C) is no longer necessary, and thus the Bureau is removing it as proposed. This final rule reverts the text of § 1005.11(c)(2)(i) to its state prior to its amendment by the 2016 Final Rule.

Section 1005.18 Requirements for Financial Institutions Offering Prepaid Accounts

18(a) Coverage

Section 1005.18(a) states that a financial institution shall comply with all applicable requirements of EFTA and Regulation E with respect to prepaid accounts except as modified by § 1005.18. One of those generally applicable requirements concerns the issuance of access devices in § 1005.5, which implements EFTA section 911.[33] Prior to the 2016 Final Rule, comment 18(a)–1 explained when a consumer was deemed to request an access device for a payroll card account;[34] a corresponding provision for government benefit accounts appeared in § 1005.15(b).[35] In the 2016 Final Rule, the Bureau did not modify either of those provisions except to add to comment 18(a)–1 two examples of when a consumer is deemed to request an access device for a prepaid account.[36]

As discussed in the June 2017 Proposal, the Bureau received some questions about application of § 1005.5 to prepaid accounts and believed that additional clarification may be warranted. In particular, industry stakeholders had asked about how § 1005.5—which (along with EFTA section 911) appears to have been drafted with a focus on providing access devices for existing accounts where the consumer has means of accessing funds in the account other than by using the access device—applies to certain prepaid accounts where there is no means of access to the underlying funds other than via the prepaid card.[37]

Specifically, Regulation E provides that a financial institution may issue an access device for an account to a consumer only when solicited to do so by the consumer pursuant to § 1005.5(a) (that is, in response to an oral or written request for the device, or as a renewal of, or in substitution for, an accepted access device) or on an unsolicited basis in accordance with the requirements set forth in § 1005.5(b). Section 1005.5(b) provides that a financial institution may distribute an access device to a consumer on an unsolicited basis if the access device is (1) not validated, meaning that the financial institution has not yet performed all the procedures that would enable a consumer to initiate an EFT using the access device; (2) accompanied by a clear explanation that the access device is not validated and how the consumer may dispose of it if validation is not desired; (3) accompanied by the disclosures required by § 1005.7 of the consumer's rights and liabilities that will apply if the access device is validated; and (4) validated only in response to the consumer's oral or written request for validation, after the financial institution has verified the consumer's identity by a reasonable means.

The Bureau's Proposal

As noted above, the Bureau received questions from industry about how the unsolicited issuance rules set forth in § 1005.5(b) apply to prepaid accounts used for making disbursements where the consumer is given no other option but to receive the disbursement via a prepaid account, such as prison release cards, jury duty cards, and certain types of refund cards. Specifically, the concern stemmed from § 1005.5(b)(2), which requires the financial institution to provide a clear explanation that the access device is not validated and how the consumer may dispose of it if validation is not desired. Industry stakeholders expressed concern that this requirement could be interpreted to mean, in the prepaid context, that they must provide another option by which consumers can receive their funds, despite the Bureau's decision at the time of the 2016 Final Rule not to extend the compulsory use prohibition in § 1005.10(e)(2) to other types of prepaid accounts beyond payroll card accounts and government benefit accounts.[38] Industry stakeholders explained that costs related to providing an additional payment option, such as a paper check, would threaten the financial viability of these generally temporary, limited-use products and potentially cause unbanked consumers to incur check cashing fees to access their funds if these products were eliminated in favor of paper checks. One issuing bank stated that it issues prepaid accounts for use by prisons in work release programs, where the account holds funds for use by an incarcerated individual to pay for transportation, food, or incidentals related to participation in the work release program. The bank explained that, if these funds were disbursed in any other manner (such as in cash), the prison would not be able to ensure that they were used only for approved purposes.

As it stated in the June 2017 Proposal, the Bureau did not intend application of the unsolicited issuance requirements to mandate that consumers be offered other options to receive payments in circumstances beyond those already addressed by the compulsory use prohibition.[39]

The Bureau proposed to clarify application of the unsolicited issuance rules to prepaid accounts where the consumer is not offered any other options by which to receive a disbursement of funds. Specifically, in order to make clear that § 1005.5(b)(2) does not require a financial institution or other party to offer consumers other options to receive such disbursements, the Bureau proposed to add to comment

[33] 15 U.S.C. 1693i.

[34] Comment 18(a)–1 stated that, 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. The 2016 Final Rule did not change this portion of the comment.

[35] Section 1005.15(b) stated that a consumer is deemed to request an access device for a government benefit account when the consumer applies for government benefits that the agency disburses or will disburse by means of an EFT. In addition, it provided that the agency shall also verify the identity of the consumer by reasonable means before the device is activated. This provision was not changed by the 2016 Final Rule.

[36] Specifically, the 2016 Final Rule added to comment 18(a)–1 an explanation that a consumer is deemed to request an access device for a prepaid account when, for example, the consumer acquires a prepaid account offered for sale at a retail location or applies for a prepaid account by telephone or online.

[37] 82 FR 29630, 29635 (June 29, 2017).

[38] 81 FR 83934, 83985 (Nov. 22, 2016).

[39] 82 FR 29630, 29636 (June 29, 2017). EFTA section 913(2), as implemented in § 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 predate the addition of the payroll card provisions in current § 1005.18 to Regulation E. In the 2016 Final Rule, the Bureau added a parallel comment (comment 10(e)(2)–2) for clarity regarding the application of the compulsory use prohibition to government benefit accounts. *See* 81 FR 83934, 93983–85 (Nov. 22, 2016).

18(a)–1 a statement that, if an access device for a prepaid account is provided on an unsolicited basis where the prepaid account is used for disbursing funds to a consumer, and the financial institution or third party making the disbursement does not offer any alternative means for the consumer to receive those funds in lieu of accepting the prepaid account, in order to satisfy § 1005.5(b)(2), the financial institution must inform the consumer that he or she has no other means by which to receive any funds in the prepaid account if the consumer disposes of the access device.

Comments Received

Several industry commenters, including a trade association, an issuing bank, and a think tank, supported the proposed modification to comment 18(a)–1. The issuing bank confirmed that clarification was necessary because some entities had interpreted § 1005.5(b) to mean that, for prepaid accounts where the device itself is the only means by which consumers can access their funds, financial institutions would be required to provide another method of access. The issuing bank also stated that the proposed modification would be especially helpful in connection with prison work release programs and post-incarceration programs that use prepaid cards to help address issues related to security, access to funds for both prisoners and parolees, and proper monitoring of card usage. The issuing bank requested that the Bureau specify what information financial institutions should include with the access device to alert consumers that there are no other means by which to access their funds.

A consumer advocacy group stated that the proposed language did not account for refund provisions that are commonly found in prison release card agreements and could lead to consumer confusion. This commenter explained that most prison release card agreements allow the consumer to obtain a replacement card if the card is lost or stolen and to access funds in the account in a variety of ways, including by making an ATM withdrawal or requesting the issuance of a check. The commenter expressed concern that consumers might interpret the proposed disclosure to mean they have no ability to obtain the funds in their accounts other than by using the access device at the point of sale. This commenter also stated that, if a consumer loses his or her card and wishes to withdraw the remaining balance of the account via an alternative method, the financial institution should allow that, subject to reasonable identity verification procedures. The commenter asserted that, as written, the proposed revision could be read as prohibiting such a transaction. The commenter therefore suggested revisions to the proposed language that it believed would both alert consumers to the importance of retaining the physical card and clearly convey information about alternate methods consumers can use to access their funds.

Consumer advocates and industry commenters also requested that the Bureau make modifications to Regulation E's compulsory use prohibition governing payroll card accounts and government benefit accounts. Specifically, the consumer advocates suggested extending the compulsory use prohibition to other types of prepaid accounts, such as prison release cards, jury duty cards, and certain other types of refund cards or, in the alternative, limiting the fees on cards that are provided on an unsolicited basis. Regarding prison release cards in particular, they urged the Bureau to consider a rulemaking or exercise of its authority under title X of the Dodd-Frank Act to prohibit unfair, deceptive, or abusive acts or practices (UDAAP) to specifically address concerns related to these accounts. On the other hand, a trade association cautioned that an expanded compulsory use prohibition would threaten the viability of these types of prepaid accounts. Another trade association urged the Bureau to refrain from exercising its UDAAP authority without first obtaining more information about the types of programs that do not allow for consumer choice and without providing additional guidance to the public about what could be construed as a UDAAP. An issuing bank requested an exception from the existing compulsory use prohibition for government benefit accounts that mirrors what currently exists for payroll card accounts in emergency situations.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing the revisions to comment 18(a)–1 generally as proposed, with one modification discussed below. The Bureau continues to believe that, for prepaid accounts where an alternative means for a consumer to receive the funds in the account is not offered, it is reasonable for the disclosure required by § 1005.5(b)(2) to include a statement explaining that there is no other way for the consumer to receive his or her funds if the consumer disposes of the access device. However, based on the comments received, the Bureau understands that the proposed wording of the revision could have caused confusion as to whether the access device is the only means to access funds being disbursed via the prepaid account initially or whether using the access device is the only way to access the funds until the account balance is exhausted. Therefore, the Bureau is adopting the comment with a revision to make clear that the financial institution must inform the consumer that the consumer has no other means by which to initially receive the funds in the prepaid account other than by accepting the access device, as well as the consequences of disposing of the access device. The Bureau believes this clarification will resolve any potential confusion related to the disclosure required by § 1005.5(b)(2) for prepaid accounts lacking consumer choice.

The Bureau does not believe it is necessary to require, as part of the § 1005.5(b) disclosure, that financial institutions provide a list of other means of access to funds that are deposited in a prepaid account or to disclose procedures for replacing a lost or stolen access device. The Bureau understands that financial institutions often encourage consumers to review the terms and conditions of their prepaid accounts to learn about other methods, if any, by which they can access their funds, and expects industry will continue doing so. The Bureau also notes that any methods of accessing funds for a fee must be included in the long form disclosure pursuant § 1005.18(b)(4), and that financial institutions are permitted to include information about free services and features in the long form disclosure as well. Regarding the comment requesting that the Bureau provide specific language that financial institutions must include with the prepaid account device to alert consumers that there are no other means by which to access their funds, the Bureau does not believe it would be appropriate to further prescribe specific language as it expects that nature of the disclosure will vary from institution to institution based on their particular circumstances.

Commenters' requests related to Regulation E's compulsory use prohibition more generally are outside the scope of this rulemaking, and thus the Bureau is not making any such changes at this time. The Bureau notes that to the extent prepaid accounts are used to disburse consumers' wages or covered government benefits, as defined under applicable law, such accounts are already covered by § 1005.10(e)(2) and will continue to be so under the Prepaid Accounts Rule. The Bureau notes

further that it is continuing to monitor financial institutions' and other persons' practices relating to consumers' choice of how to receive funds due to them in various circumstances (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.

18(b) Pre-Acquisition Disclosure Requirements

The Prepaid Accounts Rule generally requires a financial institution to provide a consumer with both a ''short form'' and a ''long form'' disclosure before the consumer acquires a prepaid account. The Bureau adopted those pre-acquisition disclosure requirements pursuant to EFTA sections 904(a), (b), and (c), 905(a), and 913(2),[40] and section 1032 of the Dodd-Frank Act,[41] and adjusted the timing and fee disclosure requirements as well as required disclosure language pursuant to EFTA section 904(c). As discussed in the section-by-section analyses that follow, the Bureau is modifying several discrete aspects of the pre-acquisition disclosure requirements to facilitate compliance and reduce burden.

18(b)(1) Timing of Disclosures

18(b)(1)(i) General

Section 1005.18(b)(1)(i) requires a financial institution to provide the short form and long form disclosures required by § 1005.18(b) before a consumer acquires a prepaid account; an alternative timing regime exists for prepaid accounts acquired in retail locations or acquired orally by telephone, as described in § 1005.18(b)(1)(ii) and (iii), respectively.

As discussed in the 2016 Final Rule, the Bureau believed that consumers would benefit from receiving both the short form and long form disclosures in writing prior to acquisition because the disclosures serve different but complementary goals. The Bureau believed that the pre-acquisition disclosures would limit the ability of financial institutions to obscure key fees as well as allow consumers to better comparison shop among products. Even in situations where the consumer might not easily be able to comparison shop, such as when students are offered a card by their university, the Bureau believed that receiving the short form and long form disclosures pre-acquisition would allow consumers to better understand the product's terms before deciding whether to accept it and also could inform the way in which consumers decide to use the product once acquired. Relatedly, the Bureau believed that because consumers often use their prepaid accounts for an extended period, whatever disclosure information a consumer used when selecting the prepaid account could have a significant and potentially long-term impact.[42]

The Bureau's Proposal

Through its outreach efforts to industry regarding implementation, the Bureau received some questions about what it means to provide disclosures ''pre'' acquisition for products where the party making the disbursement to the consumer (or the financial institution) does not offer any alternative means for the consumer to receive those funds. (For further discussion of such products, see the section-by-section analysis of § 1005.18(a) above.) For example, if a refund card is sent by mail, industry stakeholders asked whether the financial institution would have to first mail the pre-acquisition disclosures to the consumer and then later send the card. The Bureau also heard concerns regarding certain in-person acquisition scenarios, such as with prison release or jury duty cards, although pre-acquisition disclosures could be provided more easily in advance of the consumer receiving the prepaid account in such cases.

The Bureau continues to believe that the disclosures required by § 1005.18(b) are important for consumers to receive for all prepaid products, and does not believe exclusions for certain types of products would be appropriate. However, as explained in the June 2017 Proposal, the Bureau did not intend to require that an additional separate formal step for disclosure delivery be added to the acquisition process for products where consumers are not making a choice as to whether to acquire the prepaid account. The Bureau did not believe that sending or otherwise providing the disclosures separately for prepaid accounts in this situation would be beneficial to consumers and acknowledged that, particularly if separate mailings were made, financial institutions could incur additional costs in delivering the pre-acquisition disclosures separately from the prepaid account itself.

The Bureau therefore proposed revisions to § 1005.18(b)(1)(i) and related commentary to clarify the timing requirements for delivery of pre-acquisition disclosures in this situation. Specifically, the Bureau proposed to add to the regulatory text of § 1005.18(b)(1)(i) a statement that, when a prepaid account is used for disbursing funds to a consumer, and the financial institution or third party making the disbursement does not offer any alternative means for the consumer to receive those funds in lieu of accepting the prepaid account, the disclosures required by § 1005.18(b) may be provided at the time the consumer receives the prepaid account. The Bureau also proposed to add an example, as comment 18(b)(1)(i)–1.ii, to illustrate such a scenario involving a utility company that refunds consumers' initial deposits for its utility services via prepaid accounts delivered to consumers by mail. In addition, the Bureau proposed to renumber the paragraphs within comment 18(b)(1)(i)–1 for clarity.

Comments Received

Several industry trade associations and a think tank commented in support of the proposed revisions to § 1005.18(b)(1)(i). One of the trade associations stated that, in situations where the only method to disburse funds is via a prepaid account, requiring the financial institution (or third party) to send the pre-acquisition disclosures separately from the access device offers consumers no benefit or protection and could instead harm consumers by delaying access to their funds. The Bureau received no comments opposing this aspect of the proposal.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing the revisions to § 1005.18(b)(1)(i) and comment 18(b)(1)(i)–1 as proposed, with a grammatical correction in the first sentence. As discussed above and in the 2016 Final Rule, the Bureau continues to believe that consumers will benefit from receiving both the short form and long form disclosures in writing prior to prepaid account acquisition because the disclosures serve different but complementary goals.[43] However, as discussed above, the Bureau did not intend to require that an additional separate formal step for disclosure delivery be added to the acquisition process for products where consumers are not making a choice as to whether to acquire the prepaid account and

[40] 15 U.S.C. 1693b(a), (b), and (c), 1693c(a), and 1693k(2).

[41] 12 U.S.C. 5532.

[42] 81 FR 83934, 84017, 84022 (Nov. 22, 2016).

[43] *Id.*

remains concerned about the potential additional costs for financial institutions balanced against limited benefits to consumers.

The Bureau is therefore finalizing § 1005.18(b)(1)(i) to make clear that, when a prepaid account is used for disbursing funds to a consumer, and the financial institution or third party making the disbursement does not offer any alternative means for the consumer to receive those funds in lieu of accepting the prepaid account, the disclosures required by § 1005.18(b) may be provided at the time the consumer receives the prepaid account. Pursuant to this change, the financial institution or third party is not required to first mail or otherwise deliver the disclosures and then later provide the card.

The Bureau notes that the accommodation in final § 1005.18(b)(1)(i) does not apply to payroll card accounts and government benefit accounts because they are subject to the compulsory use prohibition in § 1005.10(e)(2). Comments 15(c)–1 and 2 and final comment 18(b)(1)(i)–1.i.B address the timing of pre-acquisition disclosures for such accounts.

18(b)(1)(ii) Disclosures for Prepaid Accounts Acquired in Retail Locations

Section 1005.18(b)(1)(ii) states that 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 in person at a retail location provided certain conditions are met. Specifically, these conditions are: (A) The prepaid account access device must be contained inside the packaging material; (B) the short form disclosure required by § 1005.18(b)(2) must be provided on or visible through an outward-facing, external surface of the access device's packaging material; (C) the short form disclosure must include the information set forth in § 1005.18(b)(2)(xiii) that allows a consumer to access the information required to be disclosed in the long form by telephone and via a website; and (D) the long form disclosure must be provided after the consumer acquires the prepaid account.

As discussed in the 2016 Final Rule and as noted above, the Bureau believed that consumers would benefit from receiving both the short form and long form disclosures in writing prior to acquisition because the disclosures serve different but complementary goals. However, the Bureau was cognizant of the potentially significant cost to industry related to providing the long form disclosure prior to acquisition at retail and making packaging adjustments necessary to accommodate such a disclosure given the space constraints for products sold at retail. The Bureau thus finalized the retail location exception in § 1005.18(b)(1)(ii), which it believed struck the appropriate balance between providing consumers with—or access to—important disclosures before acquiring a prepaid account while recognizing the packaging, space, and other constraints faced by financial institutions when selling prepaid accounts at retail.[44]

Specifically, in the 2016 Final Rule, the Bureau explained that it was adopting § 1005.18(b)(1)(ii)(D) to make clear that, to qualify for the retail location exception, a financial institution must provide the long form disclosure after the consumer acquires the prepaid account. The Bureau noted that this provision does not set forth a specific time by which the long form disclosure must be provided after acquisition, but explained that, in practice, it expected that compliance with this requirement would typically be accomplished in conjunction with § 1005.18(f)(1), which requires a financial institution to provide, as part of its initial disclosures given pursuant to § 1005.7, all of the information required to be disclosed pursuant to § 1005.18(b)(4).[45] The financial institution must make the initial disclosures required by § 1005.7 at the time a consumer contracts for an EFT service or before the first EFT is made involving the account. That is, standing alone, § 1005.18(f)(1) does not require inclusion in the initial disclosures of the long form in accordance with the form and formatting requirements set forth in § 1005.18(b)(6) and (7); rather, it only requires that the § 1005.18(b)(4) information be included in the initial disclosures.

The Bureau's Proposal

During the Bureau's outreach efforts to industry regarding implementation, a trade association told the Bureau that providing the long form disclosure—in accordance with the form and formatting requirements set forth in § 1005.18(b)(6) and (7)—as part of the initial disclosures for the prepaid account contained inside the packaging material for prepaid accounts sold at retail may pose problems for financial institutions. The trade association explained that, for at least some institutions, this requirement might necessitate a substantial increase in the size of the packages in order to accommodate the long form disclosure, thus requiring retooling of their ''J-hook'' packaging. Because the 2016 Final Rule did not specify the method by which the long form disclosure must be provided pursuant to § 1005.18(b)(1)(ii)(D), the trade association said that financial institutions might resort to sending the long form disclosure to the consumer by mail to avoid increasing the size of retail packaging to accommodate the disclosure. The trade association also asked whether the long form disclosure could be provided electronically without E-Sign consent, similar to the transitional accommodation in § 1005.18(h)(2)(iv) for providing certain notices to consumers.

In light of these concerns, the Bureau proposed to revise § 1005.18(b)(1)(ii)(D) to state that, if a financial institution does not provide the long form disclosure inside the prepaid account packaging material, and it is not otherwise already mailing or delivering to the consumer written account-related communications within 30 days of obtaining the consumer's contact information, it may provide the long form disclosure in electronic form without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act. That is, this accommodation would only be available to financial institutions that are not otherwise mailing or delivering written account-related communications to the consumer post-acquisition. The Bureau also proposed to add language to comment 18(b)(1)(ii)–4 that would explain that a financial institution that has not obtained the consumer's contact information is not required to comply with the requirements set forth in proposed § 1005.18(b)(1)(ii)(D). A financial institution is able to contact the consumer when, for example, it has the consumer's mailing address or email address.

Comments Received

Several industry commenters, including trade associations, an issuing bank, and a think tank, supported the proposed revisions to § 1005.18(b)(1)(ii)(D). Two trade associations and the issuing bank stated that the proposed revisions would also afford financial institutions some flexibility without increasing costs or harming consumers. These commenters argued that increasing the size of packaging material for prepaid accounts sold at retail, or alternatively separately

[44] *Id.* at 84022.

[45] *Id.* In the 2014 Proposal, proposed § 1005.18(f) would have required, in part, that a financial institution include all of the information required to be disclosed in the long form and be provided in a form substantially similar to the sample form in proposed appendix A–10(e). *See id.* at 84114.

mailing the long form disclosure to the consumer, would impose significant costs on industry and offer little if any consumer benefit, given that consumers will already have access to the information on the long form disclosure by telephone and via a website and that such information will also be included in the initial disclosures. Another trade association stated that providing the long form disclosure inside the prepaid card packaging might not always be feasible because space constraints would require financial institutions to increase the size of the packaging, which could in turn necessitate retail locations to adjust their displays to accommodate the larger packaging.

A group of consumer advocates opposed the proposed revisions to § 1005.18(b)(1)(ii)(D) because, they argued, the result would be that consumers who may not be able to receive electronic communications may never receive the long form disclosure. They also asserted that the retail packaging constraints are not a significant issue, stating that many prepaid cards sold via ''J-hook'' displays already contain printed material that can accommodate the long form disclosure. In response to the Bureau's request for comment on whether a similar modification to § 1005.18(b)(1)(iii)(C) is necessary for prepaid accounts acquired orally by telephone, these commenters agreed with the Bureau's initial assessment that E-Sign consent should not be waived for accounts acquired by telephone because consumers can easily receive the long form disclosure by mail (with their access device) or can consent to electronic communications.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing the revisions to § 1005.18(b)(1)(ii)(D) and comment 18(b)(1)(ii)–4 as proposed. As noted above and in the 2016 Final Rule, the Bureau was aware of the potential significant costs to industry related to the requirement to provide the long form disclosure prior to acquisition at retail and thus finalized the retail location exception in § 1005.18(b)(1)(ii).[46] Based on information received through the Bureau's implementation outreach to industry and in comments on the June 2017 Proposal, the Bureau believes that adding this additional accommodation to the exception is warranted to avoid increased costs and is therefore finalizing § 1005.18(b)(1)(ii)(D) to allow a financial institution to provide the long form disclosure electronically without E-Sign consent, if it does not already provide the long form disclosure inside the prepaid account packaging material, and it is not otherwise already mailing or delivering written account-related communications.

The Bureau requested comment on a number of specific questions about financial institutions' processes and plans for providing the long form disclosure to consumers and whether the Bureau could make other accommodations regarding the retail location exception to facilitate the inclusion of the long form disclosure inside the packaging.[47] The Bureau did not receive any information in response that suggested alternative methods of managing the cost concerns discussed in the proposal. The Bureau recognizes the concerns raised by the group of consumer advocates, but believes it is nonetheless appropriate to make this modification as proposed in light of the concerns raised by industry, described above, that led the Bureau to include this modification in the June 2017 Proposal and echoed in industry's general comments on this aspect of that proposal.

Under this final rule, even consumers who do not have access to electronic communications will nonetheless continue to receive the important information about their prepaid accounts, even though it may not be in the format the Bureau believed would be most beneficial to consumers. For example, consumers will still receive the information required to be disclosed in the long form via the initial disclosures required by §§ 1005.7 and 1005.18(f)(1), which are typically provided inside the packaging of prepaid accounts sold at retail. In addition, financial institutions cannot avail themselves of this new accommodation if they are mailing or delivering any account-related communications (such as sending to the consumer an access device embossed with the consumer's name) within 30 days of obtaining the consumer's contact information. In that instance, the financial institution must include the long form disclosure, in accordance with the form and formatting requirements set forth in § 1005.18(b)(6) and (7),[48] in that mailing (or in a separate mailing); they are not permitted to provide it electronically without E-Sign consent.[49] Financial institutions that sell GPR cards at retail typically mail to consumers a card embossed with their names following successful completion of the identification and verification process. The Bureau thus believes that most consumers who successfully verify their GPR card accounts will receive the long form disclosure as part of that mailing.

The Bureau did not receive any requests to adopt a similar modification to § 1005.18(b)(1)(iii)(C) for prepaid accounts acquired orally by telephone, and thus is not making any changes to that provision. As explained in the June 2017 Proposal, the Bureau does not believe that such a modification is necessary because, in this situation, financial institutions would already be mailing an access device and initial disclosures to consumers and, unlike ''J-hook'' packaging, the Bureau does not believe, nor did commenters assert, that mailing would face the same space constraints.[50]

The Bureau is renumbering comment 18(b)(1)(iii)–2, regarding disclosures for prepaid accounts acquired by telephone, as comment 18(b)(6)(i)(C)–1 and making certain revisions thereto. See the section-by-section analysis of § 1005.18(b)(6)(i) below for further details.

In addition, the Bureau is also making certain technical corrections in § 1005.18(b)(1)(ii) and related commentary. Specifically, the Bureau is correcting grammar and typographical errors in § 1005.18(b)(1)(ii) (changing ''disclosures'' to ''disclosure'', ''are'' to ''is'', and ''include'' to ''includes'')[51] and in the last sentence of comment 18(b)(1)(ii)–2 (changing ''disclosures'' to ''disclosure'').

18(b)(2) Short Form Disclosure Content

18(b)(2)(ix) Disclosure of Additional Fee Types

The Prepaid Accounts Rule's provisions governing the short form require disclosure of certain ''static'' fees that are relatively common across the industry as well as disclosure of certain additional types of fees that the

[46] *Id.* at 84022.

[47] *See* 82 FR 29630, 29638 (June 29, 2017).

[48] The form and formatting requirements in § 1005.18(b)(6) and (7) require, among other things, that the long form disclosure be presented in the form of a table, appear in a minimum type size of eight points, be segregated from other information, and contain only information that is required or permitted for that disclosure.

[49] If the financial institution includes the long form disclosure inside the prepaid account packaging material, it does not need this E-Sign waiver. Likewise, if a consumer gives E-Sign consent, the financial institution may provide the disclosure electronically even if it is mailing or delivering to the consumer written account-related communications within 30 days of obtaining the consumer's contact information.

[50] 82 FR 29630, 29638 (June 29, 2017).

[51] The proposed text of § 1005.18(b)(1)(ii)(D) also included similar corrections in the first sentence (changing ''disclosures'' to ''disclosure'' and ''are'' to ''is''), which the Bureau is finalizing.

financial institution may charge with respect to a particular prepaid account program. Specifically, § 1005.18(b)(2)(ix) requires a financial institution 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 § 1005.18(b)(2)(ix)(D) and (E), subject to certain exclusions, including a de minimis threshold. If an additional fee type required to be disclosed has two fee variations, the 2016 Final Rule's version of § 1005.18(b)(2)(ix)(C) requires the financial institution to disclose the name of the additional fee type along with the names of the two fee variations and the fee amounts; if an additional fee type has more than two fee variations, 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).[52] Comment 18(b)(2)(ix)(C)–1 provides examples illustrating how to disclose two-tier fees and other fee variations in additional fee types.

As discussed in the 2016 Final Rule, the Bureau believed that it was important for financial institutions to disclose to consumers certain fee types not included in the static fees list. The Bureau believed that disclosing additional fee types would create a dynamic disclosure while reducing incentives for manipulating fee structures by, for example, lowering the amount of the static fees in favor of higher fees on fee types incurred less often, thus hiding potential costly charges. The Bureau also believed that putting consumers on notice of such additional fee types would alert them to account features for which they may end up incurring a significant expense. In addition, the Bureau believed that eschewing full standardization in a static short form disclosure in favor of the dynamic disclosure of additional fee types would enable the disclosure to capture market changes and innovations. Furthermore, the Bureau believed that the requirement to disclose additional fee types would allow the short form to reflect the advent of new fee types that consumers may come to incur frequently and for significant cost that otherwise would be prohibited from disclosure in the short form and thus could render it outdated and of diminished value to consumers over time.[53]

The Bureau's Proposal

Through its outreach efforts to industry regarding implementation, the Bureau heard concerns about the requirement to disclose the highest fee (accompanied by an asterisk indicating the fee may be lower depending on how and where the card is used) for additional fee types with more than two fee variations, where one of those fee variations is significantly higher than the others; this may occur, for example, with expedited delivery of a replacement card or a bill payment. Because the 2016 Final Rule's version of § 1005.18(b)(2)(ix)(C) did not allow financial institutions to disclose fee variations within additional fee types when the additional fee type has more than two variations, some industry stakeholders suggested that, rather than disclosing the highest fee in these situations, financial institutions were considering eliminating the service for which that highest fee is charged so as to avoid having to disclose it without additional explanation on the short form.

In response to these concerns, the Bureau proposed to modify § 1005.18(b)(2)(ix)(C) by providing that, for disclosures other than for multiple service plans, a financial institution may, but is not required to, consolidate the fee variations into two categories and disclose the names of those two fee variation categories and the fee amounts in a format substantially similar to that used to disclose the two-tier fees required by § 1005.18(b)(2)(v) (ATM balance inquiry fees) and (vi) (customer service fees) and in accordance with § 1005.18(b)(3)(i) and (b)(7)(ii)(B)(*1*). The Bureau also proposed to revise comment 18(b)(2)(ix)(C)–1.ii to illustrate the two options that a financial institution would have to disclose an additional fee type with more than two fee variations. Specifically, proposed comment 18(b)(2)(ix)(C)–1.ii would provide the following example: 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 has two options for the disclosure. The financial institution may 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 *''. Alternatively, the financial institution may consolidate the fee variations into two categories, such as regular delivery and expedited delivery. In this case, the financial institution would make this disclosure on the short form as: ''Bill payment (regular or expedited delivery)'' and the fee amount as ''$0.50 * or $3.00''.

Comments Received

Several industry commenters, including a trade association and an issuing bank, supported the proposed revisions to § 1005.18(b)(2)(ix)(C), stating that the changes would provide needed flexibility to this aspect of the Prepaid Accounts Rule's disclosure requirements. In addition, the issuing bank stated that the proposed revisions would allow financial institutions to provide clearer information about additional fee types, as well as better information about lower fee options that consumers would find useful. No commenters opposed this aspect of the proposal.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing the revisions to § 1005.18(b)(2)(ix)(C) and comment 18(b)(2)(ix)(C)–1.ii as proposed. The Bureau believes it is appropriate to give financial institutions additional flexibility to provide more detail about additional fee types with multiple fee variations, even though it could add some additional complexity to the short form. Although the Bureau believes that consumers generally will benefit from simplified fee structures, allowing for some flexibility with respect to additional fee types will provide consumers more information about a prepaid account prior to acquisition and

[52] Section 1005.18(b)(2)(ix)(C) contains modified requirements for disclosing additional fee types on a short form disclosure for multiple service plans pursuant to § 1005.18(b)(6)(iii)(B)(*2*).

[53] 81 FR 83934, 84041 (Nov. 22, 2016).

will hopefully incentivize financial institutions to keep services that are useful for consumers and that they may have otherwise eliminated if this requirement had remained unchanged. The Bureau acknowledged in the June 2017 Proposal that allowing financial institutions to avail themselves of this alternative could reduce the amount of ''white space'' on the short form disclosure, which the Bureau has stated is paramount to clarity and consumer comprehension.[54] However, the Bureau believes that the reduction here would be minimal, particularly when contrasted with the potential diminished benefit to consumers of financial institutions eliminating certain relatively expensive but beneficial features, such as expedited card replacement or bill pay.

The Bureau notes that it expects that, if the three or more fee variations cannot be consolidated into two categories in a logical manner, or if doing so would cause consumer confusion, the financial institution must disclose the name of the additional fee type and the highest fee amount in the manner that was required under the 2016 Final Rule, rather than avail itself of the new alternative.

In addition, the Bureau is revising dates in the regulatory text and headings in § 1005.18(b)(2)(ix) to reflect the new overall effective date of the Prepaid Accounts Rule adopted in this final rule, as discussed in detail in part VI below. Section 1005.18(b)(2)(ix)(D) describes the timing requirements for the initial assessment of an additional fee types disclosure, and § 1005.18(b)(2)(ix)(E) describes the timing for the periodic reassessment and update of additional fee types disclosures. The Bureau is revising dates in § 1005.18(b)(2)(ix)(D) and in commentary accompanying § 1005.18(b)(2)(ix)(D)(*1*) and (*2*) and (b)(2)(ix)(E)(*2*) and (*3*), including the headings, to reflect the new April 1, 2019 effective date. The Bureau is not, however, changing the October 1, 2014 date in § 1005.18(b)(2)(ix)(D)(*1*) and related commentary, which is the beginning of the time frame for which financial institutions may calculate additional fee types to disclose, so as not to impose additional burden on financial institutions that have already prepared their additional fee types calculations in reliance on that date.

The Bureau is also making certain technical corrections in § 1005.18(b)(2)(ix) and related commentary. Specifically, the Bureau is adjusting terminology for consistency with other portions of the regulatory text and commentary in the heading for § 1005.18(b)(2)(ix)(D) (changing ''additional fee type'' to ''additional fee types'') and in comment 18(b)(2)(ix)(E)(*4*)–1 (changing ''update additional fee types disclosures'' to ''update the additional fee types disclosure'' and ''listing of the additional fee types disclosures'' to ''listing of the additional fee types''). The Bureau is also correcting grammar and typographical errors in § 1005.18(b)(2)(ix)(E)(*2*) through (*4*) (changing ''disclosures'' to ''disclosure'' and ''additional fee types disclosures'' to ''an additional fee types disclosure'') and in comments 18(b)(2)(ix)(A)–5.i (changing ''disclose'' to ''disclosed'') and 18(b)(2)(ix)(E)(*2*)–1 (changing ''disclosures'' to ''disclosure'').

18(b)(6) Form of Pre-Acquisition Disclosures

18(b)(6)(i) General

Section 1005.18(b)(6)(i) states that the pre-acquisition disclosures required by § 1005.18(b) must be provided in writing, except in certain circumstances where they must be provided electronically or orally by telephone pursuant to § 1005.18(b)(6)(i)(B) and (C), respectively. Specifically, the 2016 Final Rule's version of § 1005.18(b)(6)(i)(B) provides, in part, that these disclosures must be provided in electronic form when a consumer acquires a prepaid account through electronic means, including via a website or mobile application, and must be viewable across all screen sizes. The 2016 Final Rule's version of § 1005.18(b)(6)(i)(C) provides, in part, that the disclosures required by § 1005.18(b)(2) and (5) must be provided orally when a consumer acquires a prepaid account orally by telephone as described in § 1005.18(b)(1)(iii).

As explained in the 2016 Final Rule, 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, the Bureau recognized that in certain situations, it is not practicable to provide written disclosures. With respect to electronic disclosures, the Bureau believed it was important for consumers who decide to go online to acquire prepaid accounts to see the relevant disclosures for that prepaid account in electronic form. Furthermore, regarding oral disclosures, the Bureau believed that when, for example, a consumer acquires a prepaid account orally by telephone, it would not be practicable for a financial institution to provide these disclosures in written form; however, the Bureau believed that consumers should nonetheless have the benefit of these pre-acquisition disclosures.[55]

The Bureau's Proposal

Through its outreach efforts to industry regarding implementation, the Bureau heard concerns from an issuing bank that it would actually be more practicable and convenient to provide the short form and long form disclosures required by § 1005.18(b) in writing rather than electronically or orally for certain payroll card accounts and government benefit accounts. The issuing bank explained that, in these situations under existing practice today, consumers first receive disclosures in writing from the employer or agency; in order to actually acquire the account, consumers either go online or call a customer service line. The issuing bank also expressed concern about the cost to some employers and agencies to train their customer service representatives to provide disclosures orally by telephone or to update their websites to accommodate the requirements set forth in the 2016 Final Rule for electronic disclosures, particularly when written disclosures are already being provided under existing practice to the consumer in advance of acquisition.

In light of these concerns, the Bureau proposed to revise § 1005.18(b)(6)(i)(B) and (C) and comment 18(b)(6)(i)(B)–1 to make clear that financial institutions are permitted to provide written disclosures prior to acquisition rather than having to give the disclosures electronically or orally by telephone. The Bureau also proposed to add new comment 18(b)(6)(i)–1 to illustrate this proposed revision in the payroll card account context. Specifically, the proposed comment would have given an example stating that, if an employer distributes to new employees printed copies of the disclosures required by § 1005.18(b) for a payroll card account, together with instructions to complete the payroll card account acquisition process online if the employee wishes to be paid via a payroll card account, the financial institution is not required to provide the § 1005.18(b) disclosures electronically via the website because the consumer has already received the disclosures pre-acquisition in written form. The Bureau believed that the proposed clarification would alleviate the concern described above without harm to consumers, because the requirement to provide consumers with the disclosures before

[54] 82 FR 29630, 29639 (June 29, 2017); *see also* 81 FR 83934, 84024–25 (Nov. 22, 2016).

[55] 81 FR 83934, 84075–77 (Nov. 22, 2016).

they agree to acquire a prepaid account would remain.

Comments Received

Several industry commenters, including trade associations and an issuing bank, supported the proposed changes to § 1005.18(b)(6)(i)(B) and (C) and related commentary. The issuing bank stated that the proposed revisions would illustrate the value of printed materials and allow financial institutions and third parties to leverage the existing practice of providing consumers with a printed copy of the initial disclosures before asking whether they want to acquire the prepaid account. One of the trade associations stated that printed disclosures are likely more effective and accurate than oral disclosures (especially if they are lengthy) because consumers would have more time to review them. Another trade association stated that providing disclosures electronically or orally when they have already been provided in printed form would be inconvenient, redundant, and costly and would provide little consumer benefit. This commenter further stated that redundancies would burden the enrollment process and could negatively impact employees' perception of the payroll card option.

These commenters also offered a few suggested changes. Specifically, one of the trade associations stated that the final rule should not use the term ''written'' to distinguish printed disclosures from electronic disclosures because electronic disclosures are written disclosures, as recognized by numerous regulations, including Regulation E. This commenter suggested that the Bureau instead refer to the written disclosures as ''printed'' or ''paper'' disclosures, which it believed would avoid any potential confusion. In addition, the issuing bank and another trade association recommended modifying comments 18(b)(1)(iii)–1 and 2 to conform to the proposed changes in § 1005.18(b)(6)(i)(B) and (C).[56] The issuing bank also suggested renumbering comment 18(b)(1)(iii)–2 as new comment 18(b)(6)(i)(C)–1 and inserting a clause at the beginning of that new comment that mirrors the clause at the beginning of the first sentence of proposed new comment 18(b)(6)(i)(B)–1.

The Bureau did not receive any comments opposing this aspect of the proposal.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing the revisions to § 1005.18(b)(6)(i)(B) and (C) and comment 18(b)(6)(i)(B)–1 and adopting new comment 18(b)(6)(i)–1 as proposed. Final § 1005.18(b)(6)(i)(B) and (C) make clear that financial institutions are permitted to provide written disclosures prior to acquisition rather than having to give the disclosures electronically or orally by telephone. The Bureau continues to believe it is important for consumers to receive pre-acquisition disclosures via the method by which they acquire a prepaid account. As noted above, however, the Bureau also believes that consumers can best review the terms of a prepaid account before acquiring it when seeing the terms in written form. The Bureau appreciates the concerns raised by commenters regarding providing electronic or oral disclosures in this context, and believes that if written pre-acquisition disclosures are provided, it is not necessary to also require electronic and oral disclosures.

In addition, as suggested by one of the commenters, the Bureau is modifying comment 18(b)(1)(iii)–2, renumbered as new comment 18(b)(6)(i)(C)–1, for consistency with final § 1005.18(b)(6)(i)(C). The Bureau does not believe a similar modification to comment 18(b)(1)(iii)–1 is necessary as the purpose of that comment is to illustrate when a prepaid account is acquired orally by telephone; it does not discuss the disclosures required for accounts acquired in that manner. Regarding the suggestion from one of the trade associations to refer to the written disclosures as ''printed'' or ''paper'' disclosures, the Bureau notes that comment 18(b)–1 explains that because electronic disclosures 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 disclosures separately. This usage of the terms ''written'' and ''electronic'' is also consistent with, for example, the periodic statement alternative that is currently in effect for payroll cards under existing § 1005.18 as well as the modified version for prepaid accounts in the 2016 Final Rule. Therefore, the Bureau does not believe it is necessary to change the term ''written'' disclosure to ''printed'' or ''paper'' disclosure and is concerned that doing so might result in additional complexities in the rule and create confusion regarding other uses of the term ''written'' in the Prepaid Accounts Rule.

The Bureau is also making technical corrections in the last sentence of § 1005.18(b)(6)(i)(C) to correct grammar and a cross-reference (changing ''disclosures'' to ''the disclosure'' and ''(b)(1)(ii)(B)'' to ''(b)(1)(ii)(C)'').

18(b)(9) 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) 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. Specifically, the financial institution must provide the disclosures in a foreign language if it principally uses a foreign language on the prepaid account packaging material; 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 it provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language. Section 1005.18(b)(9)(ii) requires financial institutions providing the disclosures in a foreign language pursuant to § 1005.18(b)(9)(i) to also provide the information required to be disclosed in the long form pursuant to § 1005.18(b)(4) in English upon a consumer's request and on any part of the website where it discloses this information in a foreign language.

As discussed in the 2016 Final Rule, the Bureau believed that, if a financial institution affirmatively targets consumers by advertising, soliciting, or marketing to them in a foreign language, principally uses a foreign language on the interface that a consumer sees or uses to initiate the process of acquiring a prepaid account, or 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 using a foreign language and therefore should be required to provide the pre-acquisition disclosures in that foreign language. The Bureau believed that requiring financial institutions to provide pre-acquisition disclosures in a foreign language is appropriate in the circumstances described above to ensure that non- and limited-English speaking consumers are able to

[56] Specifically, the issuing bank suggested revising comment 18(b)(1)(iii)–1 to clarify that § 1005.18(b)(1)(iii) applies only when a financial institution does not provide the long form disclosure before acquisition. The trade association suggested revising comment 18(b)(1)(iii)–2 by either referencing § 1005.18(b)(6)(i)(C) or specifically stating that the disclosures need not be provided orally if provided in written form prior to acquisition.

understand the terms of a prepaid account prior to acquisition.[57]

The Bureau's Proposal

During its outreach efforts to industry regarding implementation, the Bureau discussed with an issuing bank its experiences with employers and government agencies that contract with third parties to provide real-time oral language interpretation services in order to facilitate general processes administered by the employer (such as new employee on-boarding) or agency (enrollment in a benefits program), which may include acquisition of a prepaid account. The issuing bank expressed concern that use of these language interpretation services, although generally beneficial to affected consumers, may potentially present difficulties in providing interpretations of the required disclosures to consumers in foreign languages, while also increasing costs for the employer or agency due to longer call times.[58]

The issuing bank explained that these language interpretation services allow consumers to choose from more than one hundred languages, though the employer or agency may not know it will need interpretation services in a particular language until a consumer requests it. The issuing bank emphasized that it is not involved in selecting the third parties providing language interpretation services that employers and government agencies might use as part of their general enrollment processes, and that the interpreters, who are hired to provide language interpretation services only, may not have any particular experience with financial disclosures. The issuing bank also stated that it would not be able to ensure that the long form disclosures, translated into every possible foreign language that could be selected by a consumer, could be provided either electronically (pursuant to § 1005.18(b)(1)(iii)(B)) or in writing (pursuant to § 1005.18(b)(1)(iii)(C)) to the consumer.

The Bureau thus proposed revisions to § 1005.18(b)(9)(i)(C) to provide an exception that would cover the situation described above regarding language interpretation services. Specifically, proposed § 1005.18(b)(9)(i)(C) would have stated that financial institutions must provide the pre-acquisition disclosures in a foreign language in connection with the acquisition of a prepaid account if the financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language, except for payroll card accounts and government benefit accounts where the foreign language is offered by telephone only via a real-time language interpretation service provided by a third party.

Comments Received

Several industry commenters, including trade associations, an issuing bank, and a program manager, supported the proposed revisions to § 1005.18(b)(9)(i)(C), stating that without an exception for payroll card accounts and government benefit accounts acquired using a real-time language interpretation service provided by a third party, the costs and compliance risk associated with the Prepaid Accounts Rule's foreign language requirement would cause entities to stop offering certain foreign language services to the detriment of non- and limited-English speaking consumers. The issuing bank and one of the trade associations asserted that the rule's original requirement would make compliance virtually impossible because government agencies would have to anticipate all the languages that might be requested by consumers in order to provide properly translated disclosures in accordance with the Prepaid Accounts Rule's timing requirements. A group of consumer advocates stated that they did not object to the narrow exclusion proposed by the Bureau. The program manager urged the Bureau to extend the proposed exception to all prepaid products.

In response to the Bureau's request for comment regarding whether it should completely exclude payroll card accounts or government benefit accounts from the § 1005.18(b)(9)(i)(C) requirement, a trade association representing community banks argued that a complete exclusion would be the only meaningful way to eliminate obstacles associated with having to provide foreign language disclosures to payroll card and government benefit account holders. This commenter asserted that community banks are not suited to finance, implement, manage, and guarantee a third party's ability to accurately interpret and provide real-time financial disclosures pertaining to prepaid accounts, and that these issues exist regardless of who delivers the disclosures. In contrast, the group of consumer advocates argued that payroll card accounts and government benefit accounts should not have a categorical exclusion because employees and government benefit recipients that are being solicited to open a payroll card account or government benefit account in a foreign language should receive the pre-acquisition disclosures in that language.

In response to the Bureau's request for comment about whether there are other ways the Bureau might address the issues related to language interpretation services explained above, several of these commenters stated that the proposed exception in § 1005.18(b)(9)(i)(C) should be expanded to include foreign language assistance offered by internal resources, not just third parties. One of the trade associations also urged the Bureau to clarify that the § 1005.18(b)(9)(i)(C) requirement would not be triggered if the financial institution does not formally offer language interpretation services in connection with telephone acquisition of prepaid accounts but an employee provides informal foreign language assistance during the acquisition process, because in this case, the financial institution is not affirmatively targeting the consumer in a foreign language. It explained that language interpretation for onboarding employees and enrolling consumers in payroll card or government benefit programs is not always performed by a third party, and that employees occasionally use their language skills to provide translation and interpretation services for consumers without explicit instruction from their employer to do so. It also stated that, unless the exception is modified, employers and government agencies would likely discourage or even prohibit their employees from offering informal assistance and instead use a third-party language interpretation service in order to qualify for the exception, which would be detrimental to consumers who benefit from immediate foreign language assistance and would create unnecessary impediments to the employers and agencies.[59]

In addition, one of the trade associations and the issuing bank requested that the Bureau consider clarifying that a third party's (*e.g.,* they said, an employer's or retail partner's)

[57] 81 FR 83934, 84091–92 (Nov. 22, 2016).

[58] 82 FR 29630, 29640 (June 29, 2017).

[59] A trade association also commented that, without some flexibility, the foreign language requirement would be particularly burdensome for financial institutions that originate prepaid products exclusively through a branch network and that have already made significant efforts to service areas with a high number of non- and limited-English speaking consumers (such as by hiring staff with foreign language speaking abilities and opening offices in those areas). The Bureau notes that, as discussed in the 2016 Final Rule, even principally using a foreign language in person does not require financial institutions to provide pre-acquisition disclosures in a foreign language pursuant to § 1005.18(b)(9). 81 FR 83934, 84091 (Nov. 22, 2016).

telephone or electronic acquisition activities that are unrelated to the financial services offered by the financial institution are not imputed to the financial institution.

Relatedly, the issuing bank requested that the Bureau consider clarifying that certain State-required pre-acquisition disclosures for payroll card accounts would not implicate the advertising, soliciting, and marketing trigger under § 1005.18(b)(9)(i)(B). This commenter expressed concern that employee onboarding materials translated pursuant to State law could be deemed a solicitation under § 1005.18(b)(9)(i)(B) if such material includes information about how to acquire the payroll card account by telephone or electronically, thus requiring financial institutions to provide pre-acquisition disclosures in a foreign language. This commenter explained that financial institutions might not be made aware of such scenarios and, even if they are, may not have enough lead time to respond appropriately. This commenter further stated that because accurate translations take time to develop, it believes that card acquisition delays could result and engender claims of disparate treatment by non-English speaking employees.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing the revision to § 1005.18(b)(9)(i)(C) with an additional clarification regarding informal or ad hoc telephone conversations, as described below. Specifically, final § 1005.18(b)(9)(i)(C) provides that foreign language pre-acquisition disclosures are required when a financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language. However, foreign language pre-acquisition disclosures are not required for payroll card accounts and government benefit accounts where the foreign language is offered by telephone via a real-time language interpretation service provided by a third party or by an employer or government agency on an informal or ad hoc basis as an accommodation to prospective payroll card account or government benefit account holders. Relatedly, the Bureau is adding a cross-reference to final § 1005.18(b)(9)(i)(C) in comments 18(b)(9)–1.i.E and ii.B, which set forth examples regarding acquisition of prepaid accounts by telephone. The Bureau is also making a technical correction in comment 18(b)(9)–1 introductory text to correct a cross-reference (changing ''§ 1005.18(b)(2) of this section'' to ''§ 1005.18(b)'').

In addition, the Bureau is adopting new comment 18(b)(9)–1.ii.D to provide an example of an informal telephone conversation that would not trigger the requirement in final § 1005.18(b)(9)(i)(C). New comment 18(b)(9)–1.ii.D provides the following example of a situation in which the financial institution would not be required to provide the pre-acquisition disclosures in a foreign language: A consumer calls a government agency to enroll in a government benefits program. The government agency does not offer through its telephone system an option for consumers to proceed in a foreign language. An employee of the government agency assists the consumer with the enrollment process, including helping the consumer acquire a government benefits account. The employee also happens to speak the foreign language in which the consumer is most comfortable communicating, and chooses to communicate with the consumer in that language to facilitate the enrollment process. In this case, the employee offered language interpretation assistance on an informal or ad hoc basis to accommodate the prospective government benefits account holder.

The Bureau intended the foreign language requirements to cover situations where a financial institution affirmatively targets consumers in a foreign language, including providing the means to acquire a prepaid account by telephone in that foreign language. However, the Bureau believes that the situations described by industry stakeholders regarding real-time language interpretation services offered over the telephone by a third party for payroll card accounts and government benefit accounts—as well as informal interpretation assistance provided by employees of an employer or government agency—are distinct, particularly to the extent they involve providing such services in the course of facilitating more general processes by an employer or government agency, such as the onboarding of a new employee or enrollment of a consumer in a benefits program. With respect to informal and ad hoc telephone assistance, the Bureau understands, based on comments received from industry, that such conversations may occur over the telephone in a foreign language, where the employer or government agency itself (rather than a third party) is communicating in a foreign language as an accommodation to prospective payroll card account or government benefit account holders. The Bureau is thus adopting language in final § 1005.18(b)(9)(i)(C) providing that such activities do not trigger the § 1005.18(b)(9)(i) requirement to provide pre-acquisition disclosures in a foreign language. The Bureau remains concerned that applying the foreign language disclosure requirements of § 1005.18(b)(9)(i) in such circumstances might discourage employers and agencies from making language interpretation services available at all.

Nonetheless, the Bureau does not believe it would be appropriate to completely exclude payroll card accounts and government benefit accounts from the foreign language disclosure requirements of § 1005.18(b)(9) as requested by one commenter. When prospective payroll card account or government benefit account holders are affirmatively targeted in a foreign language, the Bureau continues to believe it is appropriate to require the financial institution to provide foreign language pre-acquisition disclosures in accordance with § 1005.18(b)(9)(i).[60]

The Bureau believes the modifications made in final § 1005.18(b)(9)(i)(C) sufficiently address the specific concerns raised by industry. The exception regarding real-time language interpretation services offered over the telephone by a third party addresses industry concerns about the costs and operational challenges associated with providing the pre-acquisition disclosures for payroll card accounts and government benefit accounts in any language a consumer could select through a third-party language interpretation service, including concerns that financial institutions would be unable to ensure the disclosures are interpreted accurately or provided to the consumer in accordance with § 1005.18(b)(1)(iii)(B) and (C). In addition, the exception regarding assistance offered on an informal or ad hoc basis as an accommodation to prospective payroll card account or

[60] Financial institutions, including government agencies pursuant to § 1005.15(a)(1), must provide the pre-acquisition disclosures required by § 1005.18(b) in a foreign language in connection with the acquisition of a prepaid account, if they principally use that foreign language in certain circumstances. The provision discussed in this section, § 1005.18(b)(9)(i)(C), requires a financial institution to provide foreign language disclosures if it provides a means for a consumer to acquire a prepaid account by telephone or electronically principally in a foreign language. Foreign language disclosures are also required when the financial institution principally uses the foreign language on the prepaid account packaging material, or it principally uses that foreign language to advertise, solicit, or market a prepaid account and provide a means in the advertisement, solicitation, or marketing material that the consumer uses to acquire the prepaid account by telephone or electronically. § 1005.18(b)(9)(i)(A) and (B).

government benefit account holders addresses the concerns raised by industry about employers and government agencies that would likely discourage or even prohibit their employees from offering such interpretation assistance to the detriment of consumers who benefit from the immediate assistance.

Furthermore, the Bureau is not excluding any other type of prepaid account from the § 1005.18(b)(9)(i)(C) requirement at this time, as requested by one commenter, because the Bureau is not persuaded that financial institutions are likely to face the same challenges related to language interpretation services outside the payroll and government benefit context.

The Bureau declines to clarify, as one commenter suggested, that providing certain State-required pre-acquisition disclosures for payroll card accounts would not implicate the advertising, soliciting, and marketing trigger for providing foreign language disclosures. The Bureau does not believe that such a blanket clarification would be appropriate; if State-required disclosures rise to the level of principal usage of a foreign language in advertising, soliciting, or marketing a payroll card account (or any other type of prepaid account), the Bureau believes that consumers deserve to have the full pre-acquisition disclosures for that account provided in that foreign language.

Regarding a related issue raised by two commenters, the Bureau agrees that the foreign language activity of a third party that is wholly unrelated to a financial institution's prepaid accounts should not implicate the financial institution's obligations under the Prepaid Accounts Rule. However, the Bureau does not believe that a modification to the regulatory text or commentary of the rule is necessary on this point as the rule is targeted to address situations involving use of foreign languages on the prepaid account packaging material, in advertising, solicitation, or marketing, and in electronic or telephonic acquisition processes.

18(d) Modified Disclosure Requirements

18(d)(1) Initial Disclosures

18(d)(1)(ii) Error Resolution

As discussed in detail in the section-by-section analysis of § 1005.18(e)(3) below, the Bureau is making certain changes regarding error resolution and limited liability requirements to address concerns about the treatment of unverified prepaid accounts. Relatedly, the Bureau is amending § 1005.18(d)(1)(ii), which requires certain disclosures regarding error resolution. One prepaid issuer commented in support of this aspect of the proposal; no other commenters addressed this provision specifically. The Bureau is thus finalizing these amendments as proposed.

EFTA section 905(a)(7) requires financial institutions to provide a summary of the error resolution provisions in EFTA section 908 and the consumer's rights thereunder as part of the initial disclosures and on an annual basis thereafter.[61] These requirements are implemented for accounts generally in §§ 1005.7(b)(10) and 1005.8(b). In the 2016 Final Rule, the Bureau in § 1005.18(d)(1)(ii) required financial institutions following the periodic statement alternative in § 1005.18(c)(1) to modify their § 1005.7(b) initial disclosures by disclosing a notice concerning error resolution that is substantially similar to the notice contained in appendix A–7(b), in place of the notice required by § 1005.7(b)(10). The notice in appendix A–7(b) explains to consumers the error resolution timeframes that apply when financial institutions follow the periodic statement alternative. To further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers, the Bureau is exercising 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 § 1005.18(d)(1)(ii), in order to facilitate compliance with error resolution requirements.

Specifically, the Bureau is amending § 1005.18(d)(1)(ii) to clarify that, for prepaid account programs for which the financial institution does not have a consumer identification and verification process, the financial institution must describe its error resolution process and limitations on consumers' liability for unauthorized transfers or, if none, state that there are no such protections. The revisions to § 1005.18(e)(3), discussed below, will not require a financial institution to offer limited liability and error resolution protections on prepaid accounts in a program for which the financial institution does not have a consumer identification and verification process. The clarification in § 1005.18(d)(1)(ii) is intended to ensure that financial institutions accurately disclose to consumers the limited liability and error resolution protections (if any) that would apply to any such prepaid account in their initial disclosures.[62]

18(e) Modified Limitations on Liability and Error Resolution Requirements

18(e)(3) Limitations on Liability and Error Resolution for Unverified Accounts

EFTA section 908 governs the timing and other requirements for consumers and financial institutions pertaining to error resolution, including provisional credit.[63] EFTA section 909 governs consumer liability for unauthorized EFTs.[64] These requirements are implemented for accounts generally in §§ 1005.11 and 1005.6, respectively. In the 2014 Proposal, the Bureau proposed to use its exceptions authority under EFTA section 904(c) to add new § 1005.18(e)(3) to except unverified prepaid accounts from the error resolution and limited liability requirements of EFTA sections 908 and 909 to the extent such accounts remained unverified. That paragraph would have provided that for prepaid accounts that are not payroll card accounts or government benefit accounts,[65] if a financial institution disclosed to the consumer the risks of not registering and verifying the prepaid account using language substantially similar to the model clause proposed by the Bureau, 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.[66]

[61] 15 U.S.C. 1693c(a)(7) and 1693f.

[62] As discussed in the section-by-section analysis of § 1005.18(e)(3) below, that provision as amended by this final rule provides that financial institutions must comply with any error resolution and limited liability protections they disclose for prepaid accounts in programs for which the financial institution does not have a consumer identification and verification process.

[63] 15 U.S.C. 1693f.

[64] 15 U.S.C. 1693g.

[65] As explained in the 2016 Final Rule, the Bureau excluded payroll card accounts and government benefit accounts from this provision to ensure that, among other things, they maintain the same level of error resolution and limited liability protections that they have under existing Regulation E. 81 FR 83934, 84112 n.502 (Nov. 22, 2016). Furthermore, employers and government agencies are generally required to verify the identity of a prospective payroll card account or government benefit account holder to determine employment status or eligibility for benefits.

[66] As the Bureau explained in the 2014 Proposal, this provision primarily affects GPR cards that are purchased at retail, where the financial institution may—but does not always—obtain consumer identifying information and perform verification at the time the consumer calls or goes online to activate the card. Because of restrictions imposed by the Financial Crimes Enforcement Network's (FinCEN) Prepaid Access Rule (31 CFR

The 2014 Proposal would have required financial institutions to comply with Regulation E requirements regarding limited liability and error resolution, including provisional credit, for accounts that were verified; this would have included applying those protections even to unauthorized transfers or other errors that occurred prior to verification.[67] The Bureau solicited comment on this aspect of the 2014 Proposal, including regarding whether the limited liability and error resolution provisions of Regulation E should apply to unverified, as well as verified, accounts.[68]

The Bureau altered its approach in the 2016 Final Rule in several respects, drawing on two primary sources of information. The first was its analysis of 325 prepaid account agreements, in which the Bureau found that a large majority of the agreements reviewed purported to offer Regulation E error resolution and limited liability protections.[69] The second was comments received from both industry and consumer advocacy groups reflecting a wide spectrum of views on this aspect of the 2014 Proposal, with some consumer groups stating they believed it struck a good balance and others advocating for increased protections, while industry commenters focused mainly on provisional credit rather than error resolution and limited liability protections in general. In response to these considerations, the Bureau finalized § 1005.18(e)(3) and related commentary with several substantive revisions. Specifically, under the 2016 Final Rule's version of § 1005.18(e)(3), financial institutions were required to provide error resolution and limited liability protections for all prepaid accounts, including accounts for which the financial institution has not successfully completed its consumer identification and verification process (*i.e.,* accounts that have not concluded the process, accounts where the process is concluded but the consumer's identity could not be verified, and accounts in programs for which there is no such process). However, for unverified accounts, financial institutions were not required to provide provisional credit while investigations are pending. The Bureau also added additional clarifying language to emphasize that financial institutions were not required to adopt a consumer identification and verification process for all prepaid accounts and to clarify when a financial institution would be deemed to have completed its consumer identification and verification process for a particular prepaid account.

1022.210(d)(1)(v)) and the payment card networks' operating rules, among other things, the Bureau understands that consumer identification and verification is almost always performed before a card can be reloaded, used to make cash withdrawals, or used to receive cash back at the point of sale. However, the Bureau stated it was aware at the time of the 2014 Proposal that some providers allow consumers to use GPR cards purchased at retail to make purchases immediately. 79 FR 77102, 77185 (Dec. 23, 2014).

[67] Regulation E sets certain timelines for investigation of alleged errors. A financial institution may take up to the maximum length of time permitted under § 1005.11(c)(2)(i) or (3)(ii), as applicable, to complete an investigation if it extends provisional credit to the consumer for the amount of the alleged error, so that consumers may continue to access the funds while the financial institution conducts its investigation.

[68] 79 FR 77101, 77185 (Dec. 23, 2014).

[69] Bureau of Consumer Financial Protection, *Study of Prepaid Account Agreements,* at 13 tbl. 3 and 16 tbl. 4 (Nov. 2014) (Study of Prepaid Account Agreements), *available at http://files.consumerfinance.gov/f/201411_cfpb_study-of-prepaid-account-agreements.pdf.* Specifically, the Bureau found that 77.85 percent of all agreements reviewed appeared to provide full error resolution protections, with provisional credit available for all consumers where the error could not be resolved within a defined period of time, and 88.92 percent of all agreements reviewed appeared to provide liability limitations consistent with Regulation E (or better). *Id.* In conducting this study, the Bureau observed that very few agreements expressly differentiated between the protections applicable to verified and unverified accounts. In fact, many of the account agreements reviewed by the Bureau suggested that error resolution and limited liability protections were provided in accordance with Regulation E. 82 FR 29630, 29643 n. 57 (June 29, 2017). The Bureau further understood from comments on the 2014 Proposal that many financial institutions provided some limited liability and error resolution protections—though no provisional credit—for prepaid accounts that had not or could not be verified. Thus, the Bureau believed that the 2016 Final Rule's version of § 1005.18(e)(3) generally reflected industry practice at the time. 81 FR 83934, 84112 (Nov. 22, 2016).

The Bureau's Proposal

Based on concerns raised by industry during the Bureau's outreach efforts regarding implementation and in connection with the 2017 Effective Date Proposal,[70] the Bureau proposed to revise § 1005.18(e)(3) and related commentary to provide that, for prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to comply with the liability limits and error resolution requirements in §§ 1005.6 and 1005.11 for any prepaid account for which it has not successfully completed its consumer identification and verification process. For purposes of this provision, the Bureau proposed that a financial institution would be deemed to have not successfully completed its consumer identification and verification process where: (A) The financial institution has not concluded its consumer identification and verification process with respect to a particular prepaid account, provided that it has disclosed to the consumer the risks of not verifying the account using a notice that is substantially similar to the model notice contained in proposed appendix A–7(c); (B) the financial institution has concluded its consumer identification and verification process with respect to a particular prepaid account, but could not verify the identity of the consumer, provided that it has disclosed to the consumer the risks of not registering and verifying the account using a notice that is substantially similar to the model notice contained in proposed appendix A–7(c); or (C) the financial institution does not have a consumer identification and verification process for the prepaid account program, provided that it has made the alternative disclosure described in proposed § 1005.18(d)(1)(ii), discussed above, and complies with the process it has disclosed.[71] The proposal would have thus returned § 1005.18(e)(3) to approximately what the Bureau had proposed in the 2014 Proposal, with additional modifications to clarify treatment of prepaid account programs for which there is no consumer identification and verification process.

Proposed § 1005.18(e)(3)(iii) would have provided that, once a financial institution successfully completes its consumer identification and verification process with respect to a prepaid account, the financial institution must limit the consumer's liability for unauthorized transfers and resolve errors that occurred prior to verification with respect to any unauthorized transfers or other errors that satisfy the timing requirements of § 1005.6 or § 1005.11, or the modified timing requirements in § 1005.18(e), as applicable.

The Bureau also proposed changes to the commentary accompanying § 1005.18(e). The proposed revisions to comment 18(e)–4 would have aligned it with the proposed text of § 1005.18(e)(3) as well as added commentary from the 2014 Proposal to explain that, for an unauthorized transfer or other error asserted on a previously unverified prepaid account, whether a consumer has timely reported the unauthorized transfer or other error would be based

[70] These concerns are discussed in detail in the June 2017 Proposal. *See* 82 FR 29630, 29642–43 (June 29, 2017).

[71] Comment 18(e)–5 (to which the Bureau proposed some modifications for clarity and consistency, as discussed below) makes clear that a financial institution may not delay completing its consumer identification and verification process or refuse to verify a consumer's identity based on the consumer's assertion of an error.

on the date the consumer contacts the financial institution to report the unauthorized transfer or other error, not the date the financial institution successfully completes its consumer identification and verification process. For an error asserted on a previously unverified prepaid account, the time limits for the financial institution's investigation pursuant to § 1005.11(c) would begin on the day following the date the financial institution successfully completed its consumer identification and verification process.

The Bureau also proposed to revise comments 18(e)–5 and 6 to more closely align with the proposed text of § 1005.18(e)(3) and to clarify the example provided in comment 18(e)–5 illustrating a situation where a financial institution has not successfully completed its consumer identification and verification process. Proposed comment 18(e)–5 would have continued to make clear that financial institutions may not delay completing their consumer identification and verification processes or refuse to verify a consumer's identity in order to avoid investigating an error asserted by a consumer.

Comments Received

The Bureau received a number of comments on its proposed revisions to the error resolution and limited liability regime for prepaid accounts. Industry commenters (including trade associations, issuing banks, program managers, and others) as well as a think tank supported the Bureau's proposal to except prepaid accounts that have not successfully completed the consumer identification and verification process from error resolution and limited liability requirements to the extent such accounts remain unverified.[72] Industry commenters generally cited the difficulty of determining whether an asserted error was actually erroneous without having access to information about the consumer provided during the registration process. These commenters suggested that this would lead to increased fraud losses for the industry, primarily arising from instances where a transaction that was in fact authorized by the accountholder is fraudulently asserted as an error (often referred to as friendly fraud or first-party fraud). They asserted that, because of the increased risk of friendly fraud, financial institutions would limit pre-verification functionality on their prepaid accounts.

[72] The think tank also suggested that the Bureau monitor issues relating to pre-verification errors and consider whether adjustments are necessary in the future.

Several commenters stated that financial institutions' error resolution procedures often require comparison of information provided by the consumer when asserting an error with information previously provided by the consumer to the financial institution (for example, by matching the purchaser's name and shipping address for an online purchase with the consumer's information on file with the financial institution); such information would not be available if the identification and verification process has not been completed.

Commenters also asserted that the provision in the 2016 Final Rule excepting unverified accounts from the provisional credit requirement does not provide meaningful relief because financial institutions often are ultimately unable to establish whether a given transaction on an unverified account was in fact unauthorized. 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. These commenters concluded that the rule would therefore increase financial institutions' fraud protection and mitigation costs.

A trade association predicted that, if required to resolve errors on unverified prepaid accounts that allow immediate access to funds, financial institutions would likely issue refunds on disputed transactions via paper check rather than by refunding directly to the prepaid account in order to avoid fraud and having to recredit accounts for alleged unauthorized transactions that the financial institution does not have sufficient information to investigate. However, issuing refunds by paper check would increase financial institutions' costs and delay consumers' receipt of refunds.

In response to the Bureau's proposal to require financial institutions to limit consumers' liability for unauthorized transfers and their obligation to resolve errors that occurred prior to verification for accounts that are subsequently verified (subject to the timing requirements of § 1005.6 or § 1005.11, or the modified timing requirements in § 1005.18(e), as applicable), several industry commenters urged the Bureau to further limit the scope of pre-verification transactions subject to Regulation E error resolution and limited liability protections.

A number of industry commenters requested that the Bureau only require error resolution and limited liability protections for transactions that take place within a specified time period (generally 30 days) prior to either the consumer's initial submission of registration information or successful completion of the consumer identification and verification process. Several of these commenters stated that requiring error resolution and limited liability protections over a longer time period increases the potential for fraud losses because investigation becomes increasingly difficult as time goes on; a trade association suggested that financial institutions may not have access to information necessary to investigate errors that occur on unverified accounts more than 30 days prior to assertion of the error. A prepaid issuer and a trade association suggested in their comment letters that, because the vast majority of consumers who ever register a prepaid account do so within 30 days after acquiring the account, a 30-day cap would cover most consumers who ultimately successfully complete the identification and verification process. The same issuer and two trade associations also suggested that a prepaid account may be used by multiple individuals prior to verification, which could further complicate subsequent investigations.

Other industry commenters suggested that the Bureau exclude from the rule's error resolution and limited liability protections all transactions that occur prior to either the consumer's initial submission of information or successful completion of the consumer identification and verification process, rather than upon the consumer's acquisition of the account. Several of these commenters stated that because financial institutions rely on verified consumer information to identify fraudulent transactions when they are attempted, it would be inherently more difficult for financial institutions to limit their fraud exposure on pre-verification transactions, even for accounts that are ultimately verified. Specifically, a program manager commented that fraudsters may use stolen identities to complete the registration process, which may go undetected for an extended period; this would allow those fraudsters to collect provisional credits on pre-verification transactions that are fraudulently asserted as erroneous. A business advocacy group and a trade association both suggested that financial institutions would not be able to meet the Regulation E timing requirements for errors that occur before registration is completed, thus requiring financial institutions to provide refunds even on

some errors that could have been fraudulently asserted, either because investigations would take too long or because financial institutions would lack access to necessary information regardless of the amount of time available for an investigation, respectively. Several industry commenters argued that, rather than requiring Regulation E error resolution and limited liability protections on pre-verification errors, the Bureau should highlight to consumers the importance of promptly registering their prepaid accounts in order to receive full protections under Regulation E, or help consumers better understand the differences between consumer protections associated with prepaid accounts and gift cards. One industry commenter opposed providing any error resolution and limited liability protections to pre-verification transactions based on the argument that it would reward consumers for their failure to register prepaid accounts.

Consumer advocates did not oppose the Bureau's proposal, but did urge the Bureau to expressly deem certain types of prepaid accounts registered and verified upon issuance in order to make clear such accounts were not eligible for the proposed exception. For example, a group of consumer advocates suggested that where the person to whom a prepaid account is issued is known to the furnisher of the account (including, they urged, prepaid accounts used to pay individuals for jury service, prison release cards, and utility refunds), the prepaid account should be deemed to have successfully completed the consumer identification and verification process because the furnisher already has significant information about the consumer. Another consumer advocate urged the Bureau to deem prison release cards to have successfully completed the consumer identification and verification process upon issuance, both because the correctional facility or law enforcement agency already has significant information about that person and because, this commenter contended, people who have recently been released from prison or jail are particularly likely to lack regular and reliable access to a telephone or the internet, making prompt registration of this type of prepaid account prohibitively difficult.

A program manager and a trade association both urged the Bureau not to adopt the alternative approach described in the proposal, in which the Bureau considered whether it might be appropriate to apply a different standard to prepaid accounts for which a consumer has attempted but failed to complete the consumer identification and verification process. These commenters noted the difficulty, identified in the proposal, in determining whether a consumer has definitively ''failed to complete'' the process, as opposed there being a delay in the consumer's providing information requested by the financial institution that is needed to complete the process. They also suggested that ''failed to complete'' accounts may in fact be particularly susceptible to fraudulent activity because, in many cases, they represent instances where the financial institution's fraud prevention protocols have detected a higher likelihood of an attempted fraudulent registration (such as, for example, the provided name and address not matching public records).

Commenters also raised issues related to error resolution and limited liability issues addressed by the 2016 Final Rule but outside the scope of the June 2017 Proposal. Specifically, a trade association requested that the Bureau make several modifications to the error resolution and limited liability protections applied to prepaid accounts after they have successfully completed the financial institution's consumer identification and verification process (rather than before, which was the subject of the proposal). Separately, an anonymous commenter stated that financial institutions should incur full liability for any error that is not resolved within 30 days.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing the revisions to § 1005.18(e)(3)(iii) and comment 18(e)–4 with substantial modification; § 1005.18(e)(3)(i), (e)(3)(ii), and (e)(3)(ii)(C) and comment 18(e)–5 are finalized as proposed; and comment 18(e)–6 is finalized as proposed with one minor revision for consistency. The final rule provides that for prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to comply with the liability limits and error resolution requirements in §§ 1005.6 and 1005.11 for any prepaid account for which it has not successfully completed its consumer identification and verification process. Unlike the proposal, the final rule does not require financial institutions to limit liability or resolve errors that occurred prior to verification on accounts that are later successfully verified.

The changes to § 1005.18(e)(3)(iii) revise the paragraph heading and text to provide that once a financial institution successfully completes its consumer identification and verification process with respect to a prepaid account, the financial institution must limit the consumer's liability for unauthorized transfers and resolve errors that occur following verification in accordance with § 1005.6 or § 1005.11, or the modified timing requirements in this paragraph (e), as applicable. The revisions to comment 18(e)–4 parallel the revisions in § 1005.18(e)(3)(iii), and explain that a financial institution is not required to limit a consumer's liability for unauthorized transfers or resolve errors that occur prior to the financial institution's successful completion of its consumer identification and verification process with respect to a prepaid account. The Bureau is not finalizing the proposed text that would have clarified the timelines associated with Regulation E's error resolution and limited liability provisions on pre-verification transactions, as it is no longer necessary in light of the other changes to § 1005.18(e)(3).

To further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers 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 revise § 1005.18(e)(3) to except accounts that have not successfully completed the consumer identification and verification process from the error resolution and limited liability requirements of EFTA sections 908 and 909. The Bureau continues to believe that providing error resolution and limited liability rights to consumers even on unverified accounts would be beneficial to consumers, and remains concerned, as it expressed in the June 2017 Proposal, that consumers with prepaid accounts that have not been or cannot be verified will not have a right to Regulation E error resolution and limited liability protections. However, absent the change made in this final rule, the Bureau is also concerned that financial institutions' fear of fraud losses in connection with the 2016 Final Rule would prompt them to stop offering prepaid accounts at retail that allow for immediate access to funds, to begin providing refunds for accounts that fail verification via paper check (thus delaying consumers' ability to access their funds), or to make other changes to their programs that would decrease the availability or utility of prepaid accounts to consumers.[73] The

[73] The Bureau acknowledges that there is some risk that changing the approach of the 2016 Final Rule may increase the incentive for financial

Continued

Bureau thus believes that, on balance, it is appropriate to adopt this change with respect to unauthorized transactions or other errors that occur on prepaid accounts that have not been or cannot be verified.[74]

Specifically, the Bureau believes that consumers can obtain substantial benefits from those prepaid products that provide immediate functionality upon purchase at retail. However, such benefits would be lost if such products are no longer offered because of fraud concerns. Similarly, consumers who purchase prepaid products but are not able to complete the consumer identification and verification process successfully could be subject to a period of financial disruption if they are required to wait for a return of their funds by check. For example, consider a consumer who loads funds into a new prepaid account and is subsequently unable to successfully complete the financial institution's consumer identification and verification process. Under current industry practice, many financial institutions allow those consumers to spend down the funds that have been loaded into the account in this situation. But if the financial institution were to deactivate the prepaid card and provide a refund in this situation via paper check, the consumer would be unable to access those funds until receiving the check, which is likely to take at least several business days. Furthermore, the consumer may encounter difficulties in receiving the refund check if the consumer lacks a fixed address, and may incur fees to cash the refund check.

The Bureau is also aware that consumers use prepaid accounts for a variety of reasons, and that consumers who do not wish to submit their personal information for verification or who may not be able to have their identities verified would have few other options if financial institutions stop allowing any functionality prior to successful verification. Such consumers could choose instead to use open loop gift cards,[75] for which there is generally not an identification and verification process, but in that case would not receive any of the other benefits of the Prepaid Accounts Rule.

Accordingly, to avoid such outcomes, the Bureau concludes that it is appropriate to not require compliance with Regulation E error resolution and limited liability provisions with regard to transactions on prepaid accounts that have not been or cannot be verified. Although the Bureau proposed to require financial institutions to comply with these requirements once an account has been successfully verified with regard to transactions that occurred prior to the completion of the verification process, the Bureau has concluded based on information presented in the comments and further analysis that a requirement to do so in all circumstances could present complications and fraud risks that may not be justified by the potential benefits. The Bureau is aware that some financial institutions provide limited liability and error resolution protections (though perhaps without provisional credit) on unverified accounts, for pre-verification transactions, or both, as matter of contract or customer service.[76] The Bureau encourages financial institutions to continue and expand offering such services to consumers in appropriate circumstances.

In particular, the Bureau believes, based on comments received and its understanding of the market, that the impact on consumers of this change from the June 2017 Proposal should be extremely limited for several reasons. First, the only accounts at issue here are those that consumers acquire before the financial institution conducts its consumer identification and verification process (generally, prepaid accounts sold at retail). Second, in most prepaid programs where accounts are acquired prior to verification, consumers must attempt the identification and verification process before they can use the account; verification generally occurs in the course of the initial activation phone call or website visit, so consumers whose identities are successfully verified will thus complete the process prior to using the prepaid account and therefore should be unaffected by this change.[77] Likewise, consumers who fail the verification process would not have been entitled to error resolution and limited liability rights under the June 2017 Proposal in any event. Third, the Bureau understands that for programs that allow usage prior to attempted or completed verification, most consumers who successfully verify their accounts do so shortly after acquisition. Finally, the Bureau understands that any consumers who do conduct pre-verification transactions infrequently assert errors.

Other factors also limit potential losses to consumers. For example, as noted above, the Bureau understands that, for a variety of reasons—including FinCEN's Prepaid Access Rule and the payment card networks' operating rules—the consumer identification and verification process is almost always performed before a card can be reloaded, used to make cash withdrawals, or used to receive cash back at the point of sale. Thus, even for consumers with prepaid accounts that can be used prior to attempting or completing verification, disputes are generally limited to purchase transactions because other functions (such as reloads and ATM withdrawals) are not typically permitted prior to verification. Additionally, consumers' potential losses from pre-verification errors will be, at most, the amount of the initial load, which the Bureau understands to generally be limited to a maximum of $500, and in practice often may be significantly less. Thus, the Bureau believes that, in the current market, both the frequency and magnitude of pre-verification errors are low for these accounts. More broadly, the Bureau intends to engage in market monitoring to assess the impact on both financial institutions and consumers of not requiring limited liability and error resolution protections on unverified prepaid accounts.

institutions to offer prepaid accounts for which there is no consumer identification and verification process and are therefore excepted from error resolution and limited liability protections. However, the Bureau believes that any such incentives are likely to be outweighed by the potential benefits to the financial institution of encouraging consumers to register their prepaid accounts to increase the functionality and thus the longevity of the consumer's use of the account.

[74] As noted in the June 2017 Proposal, prepaid accounts that require verification prior to issuance will not be affected by this provision.

[75] An ''open loop'' gift card can be used to make purchases at locations where cards that run on one of the major card networks are accepted. However, such cards are generally excluded from coverage under the 2016 Final Rule, and instead are generally covered by the Gift Card Rule, which requires certain disclosures, limits the imposition of certain fees, and contains other restrictions. As discussed in the 2016 Final Rule, the Gift Card Rule was adopted by the Federal Reserve Board in 2010 to implement certain sections of the Credit CARD Act. *See* 81 FR 83934, 83946–47 (Nov. 22, 2016). The Bureau believes that consumers who use cards that are not labeled and marketed as gift cards should be provided the same protections as other prepaid accounts under the 2016 Final Rule, rather than the more limited protections of the Gift Card Rule. *Id.* at 83977.

[76] In conducting its Study of Prepaid Account Agreements, the Bureau observed that very few agreements expressly differentiated between the protections applicable to verified and unverified accounts. In fact, as noted above, many of the account agreements reviewed by the Bureau suggested that error resolution and limited liability protections were provided in accordance with Regulation E.

[77] The Bureau understands that in nearly all cases, consumers who attempt the identification and verification process will either immediately be successfully verified or fail verification; only in a small number of cases will the verification process take longer than a few minutes. Thus, consumers with prepaid accounts that require attempted verification before use will largely not conduct pre-verification transactions at all.

At the same time, commenters on the June 2017 Proposal expressed concern that a rigid requirement to provide Regulation E limited liability and error resolution rights in connection with all transactions that occur prior to a successful registration could attract more first-party fraud attempts and create complexity and uncertainty for issuers. As noted above, several of these commenters stated that because financial institutions rely on information about consumers obtained during the identification and verification process to identify fraudulent transactions when they are attempted, it would be inherently more difficult for financial institutions to limit their fraud exposure on pre-verification transactions, even for accounts that are ultimately verified.

The Bureau considered requiring financial institutions to provide error resolution and limited liability protections on transactions occurring up to 30 days prior to verification, as suggested by some commenters. While the Bureau appreciates that a 30-day ''lookback'' period may allow some consumers on the margins to resolve pre-verification errors, the small number of accounts that would be implicated would limit the value of this protection, while adding additional complexity to the regulation with a new time period and exposing financial institutions to some potential losses from first-party fraud. On balance, the Bureau believes that a bright-line test based on successful verification of the prepaid account will simplify compliance without significantly increasing costs to consumers. In addition, requiring error resolution and limited liability protections only for post-verification errors aligns the treatment of prepaid accounts with the treatment of traditional checking accounts under Federal anti-money laundering requirements, where identifying information must be collected from the consumer before the account is opened and verification must be complete at the same time or shortly thereafter.[78]

With respect to industry commenters' suggestions that the Bureau encourage consumers to register prepaid accounts more quickly rather than require error resolution and limited liability protections on pre-verification transactions, or that the Bureau's proposal would have led to consumers being rewarded for failing to register their accounts, the Bureau agrees that prompt registration of prepaid accounts provides important benefits to consumers (even beyond this aspect of the rule). The Bureau expects that the pre-acquisition disclosures regarding registration and deposit insurance, pursuant to § 1005.18(b)(2)(xi) and (b)(4)(iii), will help encourage consumers to register their prepaid accounts promptly. This final rule makes prompt registration even more important for consumers, and the Bureau encourages financial institutions to continue to promote to consumers the benefits of registering their accounts promptly (including the availability of error resolution and limited liability protections).

The Bureau also considered imposing a requirement that financial institutions additionally disclose any process they do have for investigating and resolving pre-verification errors, similar to the requirement in final § 1005.18(d)(1)(ii) that financial institutions disclose, for prepaid account programs with no consumer identification and verification process, their error resolution process and limitations on consumers' liability for unauthorized transfers, if any. However, the Bureau is concerned that imposing such an additional disclosure requirement for prepaid accounts more generally might have the unintended effect of discouraging financial institutions from offering any assistance to consumers regarding concerns with pre-verification issues, to the extent that institutions had previously provided such assistance on a discretionary basis.[79]

The Bureau agrees with industry commenters that urged the Bureau not to adopt the alternative approach described in the proposal, which would have created a third category of error resolution and limited liability protections for accounts that have begun, but failed to successfully complete, the financial institution's consumer identification and verification process. As the Bureau noted in the proposal, adding a third category of accounts would increase the complexity of the rule, and it may be difficult for financial institutions to distinguish between a consumer's failure to complete the verification process and a consumer who is merely delayed in providing additional requested information. The Bureau also appreciates the concerns raised by commenters that ''failed to complete'' accounts may in fact be disproportionately likely to be involved in fraudulent activity, because many accounts that fail to complete verification do so based on the financial institution's fraud prevention protocols. Accordingly, the Bureau is not adopting this alternative approach.

With respect to the comments raised by consumer advocates regarding whether certain types of prepaid accounts should be deemed verified at issuance, the Bureau notes that final comment 18(e)–6 provides 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 successfully completed its consumer identification and verification process with respect to that account. While the comment provides one example of a situation where that condition is met, that example is not intended to be exclusive. Thus, while the Bureau is not further modifying the text of § 1005.18(e)(3) or comment 18(e)–6, the Bureau emphasizes that, where the conditions described in that comment are met, a financial institution is deemed to have successfully completed its consumer identification and verification process with respect to that account upon issuance of the account. The Bureau believes that, in at least some cases, the types of prepaid accounts mentioned by consumer advocates (including prison release cards) will in fact meet the conditions described in comment 18(e)–6.

18(h) Effective Date and Special Transition Rules for Disclosure Provisions

As discussed in detail in part VI below, the Bureau is extending the overall effective date of the Prepaid Accounts Rule to April 1, 2019. Section 1005.18(h) includes several transitional exceptions and accommodations related to the effective date. The Bureau is revising dates in the regulatory text and headings throughout § 1005.18(h) and in comments 18(h)–1, 2, and 6 to reflect the new April 1, 2019 effective date.

The Bureau is also making several technical corrections in § 1005.18(h) and related commentary. First, the Bureau is revising comment 18(h)–2 for clarity and to conform with usage of terms elsewhere in that comment and in the regulatory text (changing ''disclosures and access devices'' to ''disclosures on, in, or with access devices or packaging materials'' in the last sentence). Finally, the Bureau is revising comment 18(h)–5 to clarify the provision to which that comment is

[78] *See* 31 CFR 1022.210.

[79] In contrast, the Bureau concluded that it was appropriate to impose such a disclosure requirement on prepaid accounts in programs without consumer identification and verification processes because the model language in appendix A–7(b) is inapplicable to accounts in those programs.

referring (changing ''applicable portions of those provisions'' to ''requirements of § 1005.18(h)(2)(ii)''), and adding a missing space between words.

Section 1005.19 Internet Posting of Prepaid Account Agreements

19(b) Submission of Agreements to the Bureau

Section 1005.19 requires prepaid account issuers to post and submit agreements to the Bureau, pursuant to the Bureau's authority under EFTA sections 904(c) and 905(a) and sections 1022(c)(4) and 1032(a) of the Dodd-Frank Act.[80] As discussed in the section-by-section analyses that follow, the Bureau is narrowing the scope of several aspects of § 1005.19(b) to facilitate compliance and reduce burden.

19(b)(2) Amended Agreements

Section 1005.19(b)(1) requires issuers to make submissions of prepaid account agreements to the Bureau on a rolling basis, in the form and manner specified by the Bureau. 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 and must contain certain information, including other relevant parties to the agreement (such as the employer for a payroll card program).[81] As explained in the 2016 Final Rule, the Bureau believes that providing this information about each agreement will help the Bureau, consumers, and other parties locate agreements on the Bureau's website quickly and effectively.[82] The 2016 Final Rule's version of § 1005.19(b)(2) stated 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 becomes effective. Comment 19(a)(2)–1 provides examples of changes to an agreement that generally would be considered substantive, and therefore would be deemed amendments to the agreement.

The Bureau's Proposal

As explained in the June 2017 Proposal, the Bureau learned through its outreach efforts to industry regarding implementation that some industry stakeholders were concerned about needing to notify the Bureau every time relevant parties to a prepaid account agreement are added or removed; this concern was particularly acute for payroll card accounts. The Bureau understands that while payroll card issuers may customize some payroll card programs for specific employers, payroll card issuers often use a standard account agreement with multiple employers, so that they may add or remove employers without changing the agreement itself. Some stakeholders explained that changes to the list of these employers as relevant parties to the agreement might occur on a somewhat frequent basis, and they expressed concern about continually needing to notify the Bureau of these changes.[83]

Although the Bureau continues to believe that information about other relevant parties to agreements will be useful to the Bureau, consumers, and others, the Bureau acknowledged in the June 2017 Proposal that reporting frequent changes of relevant parties to an agreement for an otherwise unchanging agreement could be time consuming for some issuers.

The Bureau proposed to revise § 1005.19(b)(2) to provide that an issuer may delay submitting a change in the names of other relevant parties to an agreement until such time as the issuer is submitting an amended agreement pursuant to § 1005.19(b)(2) or changes to other identifying information about the issuer and its submitted agreements pursuant to § 1005.19(b)(1)(i), in lieu of submitting such a change no later than 30 days after the change becomes effective. The Bureau also proposed to revise comment 19(a)(2)–1.vii to add a reference to § 1005.19(b)(2) regarding the timing of submitting such changes to the Bureau. The Bureau also requested, but did not receive, comment on whether there are any alternative approaches the Bureau might adopt to reduce burden on issuers while still ensuring that information about other relevant parties is submitted in a timely manner, such as by requiring submission of updated information on other relevant parties at least once per quarter.

Comments Received

A number of industry commenters, including trade associations, a program manager, an issuing bank, and a think tank, supported the proposed revisions to § 1005.19(b)(2). Specifically, several of these commenters stated that the proposed revisions would facilitate compliance and help reduce the cost and burden of having to make a submission every time they made changes to the other relevant parties to an agreement where the agreement itself is not amended. In addition, the issuing bank commenter confirmed that, because issuers frequently offer a single payroll card program to multiple employers (or similar third parties), the requirement in the 2016 Final Rule, if left unchanged, would trigger constant filings with the Bureau because in some cases issuers add employers to these types of programs on a weekly basis.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing § 1005.19(b)(2) with modifications as described below. First, the Bureau is bifurcating the requirements of § 1005.19(b)(2) into final § 1005.19(b)(2)(i), which sets forth the requirements for the submission of amended agreements generally, and final § 1005.19(b)(2)(ii), which sets forth the requirements for the submission of updated lists of names of other relevant parties,[84] and is adding new headings to each for organizational purposes. Final § 1005.19(b)(2)(ii) provides that, notwithstanding § 1005.19(b)(2)(i), an issuer may delay submitting a change to the list of names of other relevant parties to a particular agreement until the earlier of: (A) Such time as the issuer is otherwise submitting an amended agreement or changes to other identifying information about the issuer and its submitted agreements pursuant to § 1005.19(b)(1)(i); or (B) May 1 of each year, for any updates to the list of names of other relevant parties for that agreement that occurred between the issuer's last submission of relevant party information and April 1 of that year. The Bureau is also adding new comment 19(b)(2)–2 to provide examples illustrating the submission requirement in final § 1005.19(b)(2)(ii). In addition, the Bureau is adding a new sentence to § 1005.19(b)(2)(i), for clarity, stating that if other identifying information about the issuer and its submitted agreements previously submitted to the Bureau is amended, the

[80] 15 U.S.C. 1693b(c) and 1693c(a); 12 U.S.C. 5512(c)(4) and 5532(a).

[81] Specifically, § 1005.19(b)(1)(i), as finalized in the 2016 Final Rule, requires issuers to submit 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).

[82] 81 FR 83934, 84136 (Nov. 22, 2016).

[83] 82 FR 29630, 29645 (June 29, 2017).

[84] The Bureau is finalizing these revisions using the term ''lists of names of other relevant parties,'' rather than ''names of other relevant parties,'' for clarity.

issuer must submit updated information to the Bureau, in the form and manner specified by the Bureau, no later than 30 days after the change becomes effective.[85] This addition parallels existing language regarding amended agreements and is intended to avoid confusion about whether issuers must submit to the Bureau agreements that are revised as well as changes to related required information. The Bureau is adopting the proposed revision to comment 19(a)(2)–1.vii (to add a reference to § 1005.19(b)(2) regarding the timing of submitting such changes to the Bureau), with an additional conforming change to align it with revised language in § 1005.19(b)(2)(ii). The Bureau is also making conforming changes in § 1005.19(b)(1)(i) and (iii), (c)(3), and (d)(2)(v), and comments 19(b)(1)–1, 19(b)(2)–1, and 19(b)(6)–1 to reflect the changes made in final § 1005.19(b)(2).

The Bureau continues to believe that revisions to § 1005.19(b)(2) are warranted to address the concerns raised by industry related to the requirement that an issuer update its submission to the Bureau each time there is a change to the list of names of other relevant parties to an agreement. At the same time, the Bureau is cognizant of the necessity for industry to provide timely information in order for their submissions to be useful to the Bureau, consumers, and other interested parties. As noted above, the Bureau sought comment on alternative approaches the Bureau might adopt to reduce burden on issuers while still ensuring that information about other relevant parties is submitted in a timely manner, such as by requiring submission of updated information on other relevant parties at least once per quarter. Although the Bureau received no responses to that solicitation for comment, it has continued its own analysis. Upon further consideration, the Bureau believes it is appropriate to include an annual backstop as part of this accommodation, ensuing that the Bureau will have reasonably up-to-date information about other relevant parties to all prepaid account agreements while still permitting issuers to delay submitting changes to the list of names of other relevant parties to an agreement beyond 30 days after the change becomes effective.

Thus, in most cases, what triggers the requirement to make a submission regarding the names of other relevant parties to a particular prepaid account agreement is a substantive change to the content of the agreement itself or the identifying information enumerated in § 1005.19(b)(1)(i) other than the names of other relevant parties to the agreement. Amendments to one agreement submitted to the Bureau do not trigger the requirement to submit updated lists of the names of other relevant parties to all the issuers' agreements. Issuers may, but are not required to, submit changes to the list of names of other relevant parties to an agreement within 30 days of the change becoming effective (that is, following the same schedule as for submitting other changes to the Bureau). However, in situations in which the Bureau does not have an up-to-date relevant party list from the issuer as of April 1 of a given year, the issuer must provide such updates by May 1 of that year.

19(b)(6) Form and Content of Agreements Submitted to the Bureau

19(b)(6)(ii) Fee Information

The 2016 Final Rule's version of § 1005.19(b)(6)(ii) stated that fee information must be set forth either in the prepaid account agreement or in a single addendum to that agreement. It further stated that the agreement or the addendum thereto must contain all of the fee information, which § 1005.19(a)(3) defines as 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). As explained in the 2016 Final Rule, the Bureau believed that permitting issuers to include the short form and long form disclosures together as part of the prepaid account agreement or in a single addendum to that agreement would provide issuers some flexibility, while ensuring that consumers and other parties reviewing the agreements have access to such information.[86]

The Bureau's Proposal

As explained in the June 2017 Proposal, the Bureau was concerned that permitting the short form and long form disclosures to be included either as part of the prepaid account agreement or in a single addendum might not provide issuers the flexibility the Bureau intended.[87] Given the form and content requirements of the short form and long form disclosures, the Bureau expects that many issuers will likely create two separate documents, making the task of combining the documents into the agreement or a single addendum potentially unnecessarily complex.[88]

The Bureau therefore proposed to revise § 1005.19(b)(6)(ii) to allow issuers to submit the pre-acquisition disclosures either as one or separate addenda. Specifically, proposed § 1005.19(b)(6)(ii) would have provided that fee information must be set forth either in the prepaid account agreement or in addenda to that agreement that attach either or both 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 long form disclosure for the prepaid account pursuant to § 1005.18(b)(4). The agreement or addenda thereto must contain all of the fee information, as defined by § 1005.19(a)(3). The Bureau also proposed to make conforming changes to § 1005.19(b)(6)(iii) and comment 19(b)(6)–3, which govern the requirements for integrated prepaid account agreements and which reference an optional fee information addendum, to reflect the proposed changes to § 1005.19(b)(6)(ii).

Comments Received

Several industry commenters, including trade associations, a program manager, and a think tank, supported the proposed revisions to § 1005.19(b)(6)(ii) and (iii). One of the trade associations confirmed the Bureau's expectation that many issuers will likely create two separate documents (one for the short form disclosure and another for the long form disclosure) and thus would be forced to combine the documents into the agreement or into a single addendum, which they asserted will complicate the submission process if the requirement is left unchanged. Several of the other industry commenters stated that the proposed changes would facilitate compliance and potentially reduce the cost and burden associated with the § 1005.19 submission and posting requirements.

A group of consumer advocates stated that, although they had no objection to the Bureau's proposal to permit issuers to submit the short form and long form disclosures as separate documents, the

[85] The proposed text of § 1005.19(b)(2) also included a technical correction (changing ''comes'' to ''becomes''), which the Bureau is finalizing.

[86] 81 FR 83934, 84143 (Nov. 22, 2016).

[87] 82 FR 29630, 29645 (June 29, 2017).

[88] As noted above, § 1005.19(a)(3) defines fee information, in part, as 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). It does not require that the long form itself, in accordance with the form and formatting requirements of § 1005.18(b)(6) and (7), be submitted. Some issuers may integrate the long form in that fashion into, or append it to, their agreements, in order to satisfy the requirements of §§ 1005.7(b), 1005.18(b)(4) and (f)(1) simultaneously.

Bureau should require the fee information to be submitted separately from the full prepaid account agreements, which they believed would allow consumers and other parties to find the fee information more quickly and easily without having to read the entire terms and conditions document to search for the fee information.[89]

The Final Rule

For the reasons set forth herein, the Bureau is finalizing the revisions to § 1005.19(b)(6)(ii) and (iii) and comment 19(b)(6)–3 as proposed to provide issuers some flexibility when submitting prepaid account agreements and fee information, as it intended in the 2016 Final Rule. The Bureau continues to believe that allowing issuers to include the fee information either as part of the prepaid account agreement or as one or separate addenda will also facilitate compliance.[90] The Bureau is also making a conforming change in comment 19(b)(2)–1 to align with the modified language in the regulatory text.

With respect to the advocates' suggestion to require fee information to be submitted separately, the Bureau is not adopting the advocates' suggestion because doing so would impose an additional affirmative requirement to create separate addenda for the fee information (if an issuer does not already have such information separated) and would be contrary to the Bureau's reasoning for revising § 1005.19(b)(6)(ii), which was to provide issuers flexibility when submitting prepaid account agreements to the Bureau pursuant to § 1005.19(b). However, as discussed above, the Bureau expects that many issuers will likely create a separate document at least for the short form disclosure, and possibly for the long form disclosure as well, given the form and content requirements for such disclosures set forth in § 1005.18(b); the Bureau expects that those issuers will prefer to submit the fee information separately, even without a requirement to do so.[91] The Bureau will monitor the quality and format of agreements and addenda submitted by issuers, and may revisit this issue in a future rulemaking if warranted.

19(f) Initial Submission Date

As discussed in detail in part VI below, the Bureau is extending by an additional 12 months the general effective date of the Prepaid Accounts Rule, to April 1, 2019. The Bureau is likewise extending the effective date of § 1005.19(b) for the agreement submission requirement to April 1, 2019, as it does not believe it is warranted to have an earlier effective date for only that provision. The unified effective date of April 1, 2019 for all Prepaid Accounts Rule provisions renders most of the text of § 1005.19(f) unnecessary, and thus the Bureau is making substantial changes to § 1005.19(f) and related commentary to reflect this..

In the June 2017 Proposal, the Bureau proposed revisions to clarify how the October 1, 2018 effective date was described in § 1005.19(f)(2) and comment 19(f)–1 to avoid any potential confusion between the delayed effective date for § 1005.19(b) and the general effective date of the Prepaid Accounts Rule. In that proposal, the Bureau also stated its continued belief that the October 1, 2018 effective date for the agreement submission requirement of § 1005.19(b) was appropriate, given its ongoing work to develop a streamlined electronic submission process. Although the Bureau received comments seeking a further extension of the April 1, 2018 general effective date, the Bureau did not receive any comments specific to the proposed changes to clarify the interaction of the two effective dates.

As stated in the June 2017 Proposal, the Bureau expects that its streamlined electronic submission process will be fully operational before that provision's original effective date of October 1, 2018. However, because the Bureau is extending the effective date for all provisions of the Prepaid Accounts Rule to April 1, 2019, much of § 1005.19(f)—which had established the separate effective date of the agreement submission requirement along with related provisions (both as set forth in the 2016 Final Rule and as proposed in the June 2017 Proposal)—is now unnecessary. Accordingly, the Bureau is removing most of § 1005.19(f), including its three sub-paragraphs, and replacing it with simplified regulatory text stating the general April 1, 2019 effective date. The Bureau is retaining the portion of § 1005.19(f)(2), renumbered as § 1005.19(f), stating that an issuer must submit to the Bureau no later than May 1, 2019 all prepaid account agreements it offers as of April 1, 2019. The Bureau is also revising the heading for § 1005.19(f) for clarity and removing the commentary that accompanied § 1005.19(f). These changes do not affect the substance of issuers' obligations to submit prepaid account agreements to the Bureau pursuant to § 1005.19(b).

Appendix A–7 Model Clauses for Financial Institutions Offering Prepaid Accounts (§ 1005.18(d) and (e)(3))

The 2016 Final Rule's version of appendix A–7(c) provides model language for use by a financial institution that chooses not to provide provisional credit while investigating an alleged error for prepaid accounts for which it has not completed its consumer identification and verification process, in accordance with the 2016 Final Rule's general limited liability and error resolution provisions. The Bureau proposed to revise that model language to reflect the proposed amendments to § 1005.18(d)(1)(ii) and (e)(3). The proposed language was similar to the language used in the 2014 Proposal, with additional language to clarify that limited liability and error resolution rights would apply only upon successful verification of the consumer's identity. [92] One prepaid issuer commented in support of the proposed model language. The Bureau has removed the last sentence of the proposed model language to conform to the change to § 1005.18(e)(3) pursuant to which financial institutions are not required to resolve pre-verification errors, but otherwise is adopting the model language as proposed.

The language of final appendix A–7(c) reads: ''It is important to register your prepaid account as soon as possible. Until you register your account and we

[89] This group also stated they supported the proposed revisions to § 1005.19(b)(6)(iii), which prohibits issuers from providing the Bureau provisions of an agreement or fee information in the form of change-in-terms notices or riders, because they believed a series of change-in-terms notices or riders would be complicated to piece together. However, the proposed changes to § 1005.19(b)(6)(iii) were not substantive in nature and were proposed merely to conform to the revisions to § 1005.19(b)(6)(ii).

[90] Final § 1005.19(b)(6)(iii) states that 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 addenda described in § 1005.19(b)(6)(ii)). Changes in provisions or fee information must be integrated into the text of the agreement, or the optional fee information addenda, as appropriate. This requirement is unchanged from the 2016 Final Rule other than the revision from ''addendum'' to ''addenda'' and the addition of the cross-reference to § 1005.19(b)(6)(ii).

[91] The Bureau is designing the submission system for prepaid account agreements to allow issuers to submit separate files for the agreement, the short form disclosure, and the long form disclosure information and statements. Issuers will not be required to submit a single file that contains the agreement combined with short form and long form disclosures.

[92] The Bureau tested a version of this model language with consumers as part of its pre-proposal disclosure testing. *See* 79 FR 77102, 77203 and n.327 (Dec. 23, 2014) and ICF Int'l, *ICF Report: Summary of Findings: Design and Testing of Prepaid Card Fee Disclosures,* at 23 (Nov. 2014), *available at https://www.consumerfinance.gov/documents/4776/201411_cfpb_summary-findings-design-testing-prepaid-card-disclosures.pdf.*

verify your identity, we are not required to research or resolve any errors regarding your account. To register your account, go to [internet address] or call us at [telephone number]. We will ask you for identifying information about yourself (including your full name, address, date of birth, and [Social Security Number] [government-issued identification number]), so that we can verify your identity.''

Regulation E Technical Corrections

The Bureau is making technical corrections, such as correcting typographical errors, editing text for consistency, and making similar minor changes, to various provisions of the Prepaid Accounts Rule in Regulation E, which are not intended to change the meaning of the Prepaid Accounts Rule. Where these changes are being made to provisions that the Bureau is also revising for other reasons, these changes are noted in the section-by-section analyses above.[93] In addition, the Bureau is making the following other technical corrections in Regulation E:

- Changing ''customer'' to ''consumer'' identification and verification in § 1005.18(b)(2)(xi) and comments 18(b)(2)(xi)–2 and 18(b)(4)(iii)–1 for consistency with usage of that term elsewhere in Regulation E, including the error resolution and limited liability provisions in revised § 1005.18(e). The Bureau is also correcting the cross-reference at the end of comment 18(b)(2)(xi)–2 (changing ''comments 18(e)–4 and 5'' to ''comments 18(e)–4 through 6'').
- Revising the last sentence of comment 18(b)(5)–2, for consistency with the regulatory text, to state that the § 1005.18(b)(5) disclosure is deemed in close proximity to the ''access device's packaging material'', rather than the ''short form disclosure'', when disclosure of the purchase price is made on or near the sales rack or display for the packaging material at retail locations. The Bureau is also making a grammatical correction in that paragraph (changing ''written short form disclosures'' to ''a written short form disclosure'').
- Adjusting terminology for consistency with other portions of the regulatory text and commentary in § 1005.18(b)(7)(i)(B) (changing ''information'' to ''statements'' in reference to § 1005.18(b)(4)(iii) through (vi) and ''disclosures'' to ''statements'' in reference to § 1005.18(b)(4)(vi)) and in comments 2(b)(3)(i)–6 (changing ''prepaid account'' to ''product'' in the heading), 18(b)(2)(viii)(A)–2.i introductory text and 2.ii introductory text (changing ''fees'' to ''fee types'' in the first sentence of each comment), 18(b)(4)(vii)–1 (changing ''disclosures'' to ''statements'' in reference to § 1005.18(b)(4)(vi)), 18(b)(7)(ii)–1 (changing ''type/pixel'' to ''point/pixel''), 18(c)–5 (changing ''make available'' to ''provide''), and 19(a)(4)–2 (changing ''submit'' to ''make submissions of'').
- Correcting grammar and typographical errors in § 1005.18(b)(1)(iii) (changing ''disclosures'' to ''disclosure'' and ''are'' to ''is''), § 1005.18(b)(6)(ii) (changing ''long form disclosures'' to ''a long form disclosure''), § 1005.18(b)(6)(iii)(A) (changing ''disclosures'' to ''disclosure''), § 1005.18(b)(6)(iii)(B)(*2*) (changing ''preferred-'' to ''preferred''), § 1005.18(b)(7)(i)(B) (changing ''§ 1005.18(b)(4)(vii)'' to ''paragraph (b)(4)(vii) of this section''), and § 1005.18(b)(7)(ii)(C) (changing ''long form disclosures'' to ''the long form disclosure''), and in comments 18(b)(2)(iv)–1 (changing ''comments'' to ''comment'') and 18(b)(2)(viii)(A)–2.v (adding ''the'' before the first reference to ''United States'').
- Correcting a cross-reference in comment 18(c)–6 (changing ''§ 1005.18(e)(3)(i)(A) through (C)'' to ''§ 1005.18(e)(3)(ii)(A) through (C)'').

Regulation Z

Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

Section 1026.61 Hybrid Prepaid-Credit Cards

61(a) Hybrid Prepaid-Credit Card

Background

In the 2016 Final Rule, the Bureau amended Regulations Z and E to establish a set of requirements in connection with ''hybrid prepaid-credit cards'' that can access overdraft credit features offered by the prepaid account issuer, its affiliate, or its business partner.[94] The Bureau was concerned about overdraft credit features associated with prepaid accounts in part because of the way that such services have evolved on traditional checking accounts. As explained in detail in the 2016 Final Rule, checking account overdraft originally developed as an occasional courtesy to consumers by honoring checks that would otherwise overdraw their accounts, and was exempted from the normal rules governing credit under Regulation Z.[95] As debit card use expanded and fees rose, overdrafts increased substantially and depository institutions changed their account pricing structures in part in reliance on overdraft income. In the 2016 Final Rule, the Bureau noted that a substantial number of consumers have moved to prepaid accounts specifically because they have had difficult experiences with overdraft services on traditional checking accounts, and that prepaid account providers have frequently marketed their products as safer and easier to use than comparable products with credit features. In light of these and other considerations, the Bureau concluded that it was appropriate to apply traditional credit card rules to overdraft credit features accessible by hybrid prepaid-credit cards, as well as to adopt a short list of tailored provisions to reduce the risk that consumers would experience problems in accessing and managing prepaid accounts linked to such credit features.[96]

Overdraft credit features accessible by hybrid prepaid-credit cards are referred to as ''covered separate credit features'' in the Prepaid Accounts Rule, as set forth in § 1026.61(a)(2)(i). The Bureau designed this portion of the Prepaid Accounts Rule to ensure that these products will be treated consistently regardless of certain details about how the credit relationship is structured. For example, the rules for covered separate credit features accessible by hybrid prepaid-credit cards apply regardless of whether the credit is offered by the prepaid account issuer itself, its affiliate, or its business partner. The 2016 Final Rule's version of § 1026.61(a)(5)(iii) defined the term ''business partner'' as a person (other than the prepaid account issuer or its affiliate) 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. The 2016 Final Rule's version of comment 61(a)(5)(iii)–1 explained that there are two types of arrangements that create a business partner relationship for purposes of § 1026.61(a)(5)(iii): (1) An agreement between the parties under which a prepaid card can from time to time draw, transfer, or authorize a draw or transfer of credit in the course of

[93] See the section-by-section analyses of § 1005.18(b)(1)(ii), (b)(2)(ix), (b)(6)(i), (b)(9), and (h) above.

[94] Under the Prepaid Accounts Rule, overdraft credit features involve credit that can be accessed from time to time in the course of authorizing, settling, or otherwise completing transactions conducted with a prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers.

[95] 81 FR 83934, 84158 (Nov. 22, 2016).

[96] *Id.* at 84158–61.

authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) a cross-marketing or other similar agreement between the parties to cross-market the credit feature or the prepaid account, where 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 prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers.

As explained in the 2016 Final Rule, the Bureau believed that it was appropriate to consider a third party that can extend credit to be the prepaid account issuer's business partner in the above circumstances because such arrangements can be used to replicate overdraft programs on a prepaid account. Specifically, the Bureau believed that these types of relationships between the prepaid account issuer and the unaffiliated third party were likely to involve revenue sharing or payments between the two companies and the pricing structure of the two accounts may be related.[97]

However, the Bureau did not apply the rules related to hybrid prepaid-credit cards in situations where there is less of a connection between the person offering credit and the prepaid account issuer, such that the person offering credit may not be aware its credit feature is being used as an overdraft credit feature with respect to a prepaid account.[98] This could occur if the prepaid account issuer allows consumers to link their prepaid cards to credit card accounts offered by unrelated third-party card issuers.[99] Where the two parties do not have a business arrangement or where the prepaid card cannot be used from time to time to draw, transfer, or authorize a draw or transfer of credit in the course of a transaction with the prepaid account, the separate credit feature is deemed a ''non-covered separate credit feature'' as set forth in § 1026.61(a)(2)(ii) and does not trigger the Prepaid Accounts Rule's provisions governing hybrid prepaid-credit cards, although the separate credit feature generally will be subject to Regulation Z in its own right.

The 2016 Final Rule also set forth an exception in § 1026.61(a)(4) allowing prepaid account issuers to provide certain incidental forms of credit structured as a negative balance on the asset feature of prepaid accounts without triggering Regulation Z and the other protections for hybrid prepaid-credit cards. The Bureau created this exception to allow prepaid account issuers to provide certain forms of incidental credit to their customers, including situations where a negative balance results because a consumer completes transactions with his or her prepaid account while an incoming load of funds from an asset account is still being processed.[100] However, to limit evasion, the exception only would have applied where (1) the prepaid card cannot access credit from a covered separate credit feature accessible by a hybrid prepaid-credit card; (2) the prepaid account issuer has a general policy and practice of declining transactions that will take the account negative (at least outside of the situations involving incidental credit); and (3) the prepaid account issuer generally does not charge credit-related fees. If the conditions in § 1026.61(a)(4) are not met, the prepaid card is a hybrid prepaid-credit card with respect to the negative balance under § 1026.61(a)(3), and § 1026.61(b) prohibits the card issuer from structuring the overdraft credit feature as a negative balance on the asset feature of the prepaid account. In that case, the card issuer must structure the overdraft credit feature 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. This separate credit feature is a ''covered separate credit feature'' under § 1026.61(a)(2)(i) and is subject to the credit card rules in Regulation Z, as well as the targeted provisions in Regulations Z and E applicable to hybrid prepaid-credit cards. The Bureau believed that prohibiting negative balances on a prepaid account in the situations discussed above would promote transparency and compliance with the credit card requirements.[101]

Concerns Raised Related to Application of Credit Rules to Digital Wallets

Since issuance of the 2016 Final Rule, the Bureau has received feedback indicating digital wallet providers were concerned that application of the substantive credit rules in certain circumstances would create a number of unique challenges for their products. Unlike a GPR card, which is generally designed to be used as a standalone product similar to a checking account, a digital wallet is a product that by its nature is generally intended to facilitate the consumer's use of multiple payment options in online and mobile transactions, similar to a physical wallet holding credit and debit cards as well as cash. As set forth in Regulation E § 1005.2(b)(3) and comment 2(b)(3)(i)–6, the term ''prepaid account'' includes digital wallets that are capable of being loaded with funds; those that simply hold payment credentials for other accounts but that are incapable of having funds stored in them are not covered. Even where a digital wallet provides the ability to store funds directly, consumers also may want to store credentials for their existing credit, debit, and prepaid cards and deposit accounts so that they have a range of payment options available. These digital wallet providers may actively encourage consumers to use both functions, either by direct marketing to consumers or through joint arrangements with card issuers.

In response to the 2017 Effective Date Proposal, a digital wallet provider whose product can store funds (such that its digital wallet accounts are prepaid accounts under Regulation E § 1005.2(b)(3)) submitted a comment letter. That digital wallet provider raised several concerns about the account number for a digital wallet account becoming a hybrid prepaid-credit card where a consumer links a digital wallet account to credit card accounts that are offered by companies with which the digital wallet provider has cross-marketing or other agreements that would create a business partner relationship under the 2016 Final Rule's version of § 1026.61(a)(5)(iii).

This commenter especially was concerned about several targeted provisions of the Rule. First, the commenter pointed to a provision in § 1026.61(c) that generally requires a card issuer to wait 30 days after a prepaid account has been registered before soliciting or opening new credit features or linking existing credit features to the prepaid account that would be accessible by a hybrid prepaid-credit card. The commenter

[97] *Id.* at 84253.

[98] *See id.* at 84252–53.

[99] The unaffiliated third-party card issuer might not realize that its credit feature is accessible by a prepaid card in the course of transaction, so that the card issuer would have no reason to think that the provisions in the Prepaid Accounts Rule tailored to hybrid prepaid-credit cards would apply to its product. The Bureau was concerned that card issuers might try to mitigate compliance risk in ways that would make it harder for prepaid account consumers to access credit. *Id.* at 84253.

[100] Under the 2016 Final Rule, this exception extended to three types of incidental credit so long as the prepaid account issuer generally did not charge credit-related fees for the credit and the prepaid card could not access any covered separate credit feature: (1) 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.

[101] 81 FR 83934, 84264–65 (Nov. 22, 2016).

expressed concern that this requirement would delay a consumer's ability to link credit card accounts offered by its business partners to the digital wallet account, noting that where a digital wallet provider has a business partner relationship with Issuer A but not Issuer B, consumers could add Issuer B's credit card accounts to their digital wallet accounts immediately, but could not add Issuer A's credit card accounts until 30 days after the digital wallet accounts are registered because Issuer A is a business partner of the digital wallet provider. The commenter asserted that the policy concerns underlying the Bureau's decision to impose the 30-day waiting period are inapplicable to digital wallet accounts in these circumstances and that such a delay would likely lead to consumer confusion and reduced consumer choice.

Second, the commenter asserted that additional consumer confusion is likely to arise from the long form pre-acquisition disclosure requirements set forth in Regulation E § 1005.18(b)(4)(vii), which mandate that disclosures of key credit pricing terms set forth in § 1026.60(e)(1) be included on a prepaid account's long form disclosure if a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered to a consumer in connection with the prepaid account. The commenter indicated that these credit disclosures for each credit card product offered by each business partner would have to be provided to all new digital wallet account holders in the digital wallet account's long form disclosure even if many of the digital wallet account holders never hold, or apply for, credit card accounts offered by those business partners. The commenter indicated that such disclosures might be numerous depending on how many business partners the digital wallet provider has and how many credit card products are offered by each business partner and thus asserted that additional consumer confusion was likely to arise from the inclusion of those disclosures in the long form for its digital wallet accounts.

Third, the commenter raised concerns about the exception in the 2016 Final Rule's version of § 1026.61(a)(4) allowing prepaid account issuers to provide certain incidental forms of credit as a negative balance on the asset feature of prepaid accounts without triggering Regulation Z and the other protections for hybrid prepaid-credit cards. The commenter pointed out that it could not take advantage of this exception when a customer links a credit card account offered by one of its business partners. Rather, the 2016 Final Rule would prohibit a negative balance and instead would require that even incidental credit be obtained using a separate credit account or subaccount of the prepaid account that is subject to the full protections of Regulation Z. The commenter expressed concern that this could cause consumer confusion and increase the likelihood that consumers would be charged fees or interest because the incidental credit would be provided formally via the separate credit feature, rather than as a temporary negative balance on the asset account.

Overview of the Final Rule

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(5)(iii) below, in the June 2017 Proposal, the Bureau proposed to create a limited exception from the definition of ''business partner'' that would have excluded certain arrangements between card issuers and prepaid account issuers (including digital wallet providers) from the tailored provisions in the Prepaid Accounts Rule applicable to covered separate credit features accessible by hybrid prepaid-credit cards. As explained below, where the credit card accounts would already be subject to traditional credit card rules under Regulation Z and certain other safeguards are present, the Bureau believed that it might not be necessary to apply the Prepaid Accounts Rule's tailored provisions to such business arrangements. The Bureau is adopting this exception generally as proposed with some revisions as discussed in more detail in the section-by-section analyses of § 1026.61(a)(5)(iii) and (a)(5)(iii)(D)(*2*) and (*5*) below.

Also, as discussed in more detail in the section-by-section analysis of § 1026.61(a)(4) below, the Bureau is amending § 1026.61(a)(4) to allow a prepaid account issuer to provide certain forms of incidental credit structured as a negative balance on the asset feature of the prepaid account without triggering Regulation Z and the other protections for hybrid prepaid-credit cards in situations when a covered separate credit feature offered by a business partner is attached to the prepaid account, so long as the other conditions contained in § 1026.61(a)(4) are satisfied. The Bureau also is making changes to certain other provisions in Regulation Z for consistency with the changes to § 1026.61(a)(4). *See* final § 1026.61(a)(1)(iii) and (a)(3)(ii) and final comments 4(b)(11)–1.i and iii, 61(a)(3)(i)–1.ii, 61(a)(3)(ii)–1, and 61(a)(4)–1. The changes to these provisions are discussed in the section-by-section analysis of § 1026.61(a)(4) below.

61(a)(4) Exception for Credit Extended Through a Negative Balance

The Bureau's Proposal

As discussed in the section-by-section analysis of § 1026.61(a) above, the Bureau adopted § 1026.61(a)(4) in the 2016 Final Rule to allow prepaid account issuers to provide certain incidental forms of credit as a negative balance on the asset feature of prepaid accounts without triggering Regulation Z and the other protections for hybrid prepaid-credit cards. The exception only would have applied where (1) the prepaid card cannot access credit from a covered separate credit feature accessible by a hybrid prepaid-credit card; (2) the prepaid account issuer has a general policy and practice of declining transactions that will take the account negative (at least outside of the situations involving incidental credit); and (3) the prepaid account issuer generally does not charge credit-related fees. If the conditions of § 1026.61(a)(4) were met, the prepaid card is not a hybrid prepaid-credit card and the incidental credit is not subject to Regulation Z and the other protections in Regulations Z and E for hybrid prepaid-credit cards. Instead, this credit is regulated under Regulation E as credit incidental to the prepaid card transaction.

If the conditions of § 1026.61(a)(4) were not met, the prepaid card would be a hybrid prepaid-credit card with respect to the negative balance under § 1026.61(a)(3), and § 1026.61(b) prohibits the card issuer from structuring the overdraft credit feature as a negative balance on the asset feature of the prepaid account. In that case, the 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. This separate credit feature is a ''covered separate credit feature'' under § 1026.61(a)(2)(i) and is subject to the credit card rules in Regulation Z, as well as the targeted provisions in Regulations Z and E applicable to hybrid prepaid-credit cards.

As discussed in the section-by-section analysis of § 1026.61(a) above, in response to the 2017 Effective Date Proposal, one digital wallet provider expressed concern that it could not take advantage of the exception in the 2016 Final Rule's version of § 1026.61(a)(4)

permitting a negative balance on the asset feature of the prepaid account in situations in which a consumer links a credit card account offered by a business partner of the digital wallet provider. Rather, the 2016 Final Rule would prohibit negative balances and instead would require that even incidental credit be obtained using a separate credit account or subaccount of the prepaid account that is subject to the full protections of Regulation Z. The commenter expressed concern that this could cause consumer confusion and make it more likely that consumers would be charged fees or interest because the incidental credit would be provided formally via the separate credit feature, rather than as a temporary negative balance on the asset account.

In the June 2017 Proposal, the Bureau did not propose changes to § 1026.61(a)(4). The Bureau believed that the exception to the definition of ''business partner'' it proposed in § 1026.61(a)(5)(iii)(D) would address the commenter's concern by substantially narrowing the circumstances in which digital wallets would be likely to trigger these Regulation Z requirements. The Bureau also believed that when the exception in proposed § 1026.61(a)(5)(iii)(D) did not apply, the prepaid account issuer and the card issuer would have a substantial relationship such that the parties could avoid the concerns raised by the digital wallet provider by structuring the terms of the accounts to prevent consumers from being charged fees or interest when incidental credit was provided formally via the credit card account.[102]

Nevertheless, the Bureau solicited comment on whether it should permit incidental credit to be provided via a negative balance on a prepaid account even when a covered separate credit feature is connected to the prepaid account, as requested by the digital wallet commenter. The Bureau also solicited comment on whether prepaid account issuers or card issuers are likely to incur any significant difficulties in structuring the accounts to prevent consumers from being charged fees or interest when the incidental credit is provided formally via the credit card account, such as any significant difficulties in identifying for the card issuer which transactions on the prepaid account relate to incidental credit.

Comments Received

In response to the June 2017 Proposal, the digital wallet provider and an industry trade association requested that the Bureau revise § 1026.61(a)(4) to permit negative balances on a prepaid account even if a covered separate credit feature is attached to the prepaid account so long as the other conditions set forth in § 1026.61(a)(4) are met. The digital wallet provider indicated that consumers are likely to become confused if the digital wallet provider opens a separate credit account or subaccount in its digital wallet to avoid a negative balance when a credit card account issued by a business partner is linked to the digital wallet. The commenter indicated that this consumer confusion is particularly likely to arise for consumers who previously incurred negative balances in their prepaid accounts for incidental credit when their digital wallets were linked only to credit card accounts issued by card issuers that are not business partners. The commenter indicated that consumers may not understand why the incidental credit is now being provided through a separate credit account or subaccount (as opposed to a negative balance) and why they are receiving Regulation Z disclosures, including monthly statements, for this separate credit account or subaccount. The commenter also indicated that building systems to comply with Regulation Z to hold otherwise permissible negative balances in separate credit accounts or subaccounts when business partner credit card accounts are linked (and converting the accounts back if consumers subsequently remove such credit card accounts from their digital wallet accounts) would be a major technological and financial undertaking.

This commenter recognized that the rule did not prohibit a prepaid account issuer from charging incidental credit to the linked covered separate credit feature offered by the business partner. Nonetheless, this commenter indicated that such charges would not always be possible. For example, it said that the prepaid account issuer would not be able to charge the incidental credit to a linked credit card when doing so would cause the credit card account to exceed the credit limit set by the card issuer. Even when it is possible to charge the incidental credit to the linked covered separate credit feature, this commenter suggested that doing so likely would be financially detrimental to consumers. In particular, the commenter stated that incidental credit charged to the linked covered separate credit feature would likely be deemed a cash advance by the card issuer and thus is likely to subject the consumer to interest and fees. The commenter also indicated that it is not likely that card issuers would be willing to waive interest or fees when incidental credit (that would otherwise take the form of a negative balance in a digital wallet) is instead converted to an extension of credit through the linked covered separate credit feature. This commenter believed that it was much more likely that credit card issuers would impose interest and fees directly on the consumers for this credit or would expect digital wallet providers to incur those costs on behalf of their customers.

The trade association also raised similar concerns as discussed above related to consumer confusion and implementation burdens for digital wallet providers.

The Final Rule

For the reasons set forth herein, the Bureau is amending § 1026.61(a)(4) to allow a prepaid account issuer to take advantage of the exception permitting a negative balance on the asset feature of the prepaid account even if a covered separate credit feature offered by a business partner is attached, so long as the other conditions contained in § 1026.61(a)(4) are satisfied. As discussed above, the 2016 Final Rule's version of § 1026.61(a)(4) provided that a prepaid card is not a hybrid prepaid-credit card and thus is not a credit card under Regulation Z if three conditions were met: (1) The prepaid card cannot access credit from a covered separate credit feature accessible by a hybrid prepaid-credit card; (2) the prepaid account issuer has a general policy and practice of declining transactions that will take the account negative (at least outside of the situations involving incidental credit); and (3) the prepaid account issuer generally does not charge credit-related fees.

The Bureau is making several revisions to § 1026.61(a)(4). First, the Bureau is revising the lead-in paragraph to § 1026.61(a)(4) to provide that a prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account and is not a credit card for purposes of Regulation Z with respect to that credit if the conditions of § 1026.61(a)(4) are met. Second, the Bureau is adjusting the first condition in § 1026.61(a)(4)(i) to provide that the prepaid card cannot access credit from a covered separate credit feature, as described § 1026.61(a)(2)(i), that is offered by a prepaid account issuer or its affiliate. Third, the Bureau is modifying the heading for § 1026.61(a)(4) to make clear that this exception relates to credit extended through a negative balance on

[102] 82 FR 29630, 29650 (June 29, 2017).

the asset feature of the prepaid account. With these revisions, under final § 1026.61(a)(4), a prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account and is not a credit card for purposes of Regulation Z with respect to that credit, even if a covered separate credit feature offered by a business partner is attached to the prepaid account, so long as the other conditions contained in § 1026.61(a)(4) are satisfied. If the conditions in § 1026.61(a)(4) are met, the incidental credit extended through the negative balance is not subject to Regulation Z and the other protections in Regulations Z and E for hybrid prepaid-credit cards. *See* final comment 61(a)(4)–1.v. Instead, this credit is regulated under Regulation E as credit incidental to the prepaid card transaction.

If the conditions of final § 1026.61(a)(4) are not met, such as where the prepaid card can access a covered separate credit feature offered by the prepaid account issuer or its affiliate, the prepaid card is a hybrid prepaid-credit card under § 1026.61(a)(3) with respect to credit extended through the negative balance on the asset feature of the prepaid account. As a result, § 1026.61(b) prohibits the card issuer from structuring the overdraft credit feature as a negative balance on the asset feature of the prepaid account. In that case, the card issuer must structure the overdraft credit feature as a separate credit feature, such as a credit account or subaccount to the prepaid account that is separate from the asset feature of the prepaid account. This separate credit feature is a ''covered separate credit feature'' under § 1026.61(a)(2)(i) and is subject to the credit card rules in Regulation Z, as well as the targeted provisions in Regulations Z and E applicable to hybrid prepaid-credit cards.

The Bureau notes that the exception in final § 1026.61(a)(4) only applies to credit extended through the negative balance on the prepaid account's asset feature in compliance with that provision. However, if the prepaid card is *also* attached to a covered separate credit feature that is offered by a business partner, the prepaid card is a hybrid prepaid-credit card with respect to that covered separate credit feature pursuant to § 1026.61(a)(2)(i). In contrast, where a prepaid card is not attached to any type of covered separate credit feature, the prepaid card is not a hybrid prepaid-credit card in any respect. *See* final comment 61(a)(4)–1.ii.

The Bureau also is amending comment 61(a)(4)–1 and several other provisions in Regulation Z to reflect the revised exception in final § 1026.61(a)(4) and to make other clarifications consistent with final § 1026.61(a)(4). *See* final § 1026.61(a)(1)(iii) and (a)(3)(ii) and final comments 4(b)(11)–1.i and iii, 61(a)(3)(i)–1.ii, 61(a)(3)(ii)–1, and 61(a)(4)–1. The revisions to comment 61(a)(4)–1 are discussed in more detail below.[103]

To facilitate compliance with TILA, the Bureau believes it is necessary and proper to exercise its exception authority under TILA section 105(a) so that a prepaid card that accesses credit structured as a negative balance on the prepaid account is excluded from the definition of ''credit card'' under TILA section 103(*l*)[104] and Regulation Z § 1026.2(a)(15)(i) (as amended by the 2016 Final Rule), even if a covered separate credit feature offered by a business partner is attached to the prepaid account, so long as the other conditions set forth in § 1026.61(a)(4) are met. For the reasons discussed below, the Bureau is therefore making this exception to § 1026.61(a)(4).

The Bureau recognizes that when a covered separate credit feature offered by a business partner is attached to a prepaid account, it may not always be possible to charge incidental credit to the linked covered separate credit feature when doing so would cause the account to exceed the credit limit set by the card issuer. In addition, even when it is possible to charge the incidental credit to the linked covered separate credit feature, the card issuer may not be willing to waive interest and fees on that credit. To avoid having a negative balance in the asset feature of the prepaid account and thus violating § 1026.61(b), the prepaid account issuer could open a separate credit account or subaccount in the digital wallet in those cases where a covered separate credit feature issued by a business partner is linked.

The Bureau also agrees with the industry commenters that, absent its exception to § 1026.61(a)(4), this aspect of the Prepaid Accounts Rule likely would create significant operational burdens for prepaid account issuers. A prepaid account issuer would need to build Regulation Z-compliant systems to hold otherwise permissible negative balances in separate accounts or subaccounts when consumers link business partner credit card accounts (and, the Bureau presumes, convert the account back when such accounts are removed). The Bureau also is persuaded that this approach could be confusing to consumers, especially in the context of digital wallets and how consumers have historically used them.

When discussing their concerns about § 1026.61(a)(4), the industry commenters generally focused on situations that arise when a covered separate credit feature offered by a business partner is linked to a prepaid account. The Bureau does not believe that these same concerns arise when a covered separate credit feature is offered by the prepaid account issuer or its affiliate (as opposed to a business partner) and thus is not amending § 1026.61(a)(4) to allow a negative balance on the prepaid account when a covered separate credit feature offered by the prepaid account issuer or its affiliate is attached to the prepaid account. Among other things, the prepaid account issuer or its affiliate, in these cases, would already offer Regulation Z-compliant covered separate credit features. The Bureau believes when the prepaid account issuer itself or an affiliated party offer both the prepaid account and the covered separate credit feature, it will

[103] In addition to revisions to comment 61(a)(4)–1, the Bureau is making conforming changes to the following provisions for consistency with final § 1026.61(a)(4). As revised:

(1) Section 1026.61(a)(1)(iii) provides that with respect to a credit feature structured as a negative balance on the asset feature of the prepaid account as described in § 1026.61(a)(3), a prepaid card is not a hybrid prepaid-credit card or a credit card for purposes of Regulation Z if the conditions set forth in § 1026.61(a)(4) are met;

(2) Section 1026.61(a)(3)(ii) provides that 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 with respect to that credit as described in § 1026.61(a)(4);

(3) Comment 4(b)(11)–1.i provides that the rules for classification of fees or charges as finance charges with respect to a covered separate credit feature are specified in § 1026.4(b)(11) and related commentary;

(4) Comment 4(b)(11)–1.iii provides that if the prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account pursuant to § 1026.61(a)(4), with regard to that credit, fees charged on the asset feature of the prepaid account in accordance with § 1026.61(a)(4)(ii)(B) are not finance charges;

(5) Comment 61(a)(3)(i)–1.ii provides that unless the credit extended through a negative balance on the asset feature of the prepaid account meets the requirements of § 1026.61(a)(4), such a product structure would violate the rules under § 1026.61(b); and

(6) Comment 61(a)(3)(ii)–1 provides that unless § 1026.61(a)(4) applies, a card issuer would violate § 1026.61(b) if it structures a credit feature as a negative balance on the asset feature of the prepaid account and provides that 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 with respect to that credit as described in § 1026.61(a)(4).

[104] 15 U.S.C. 1602(*l*).

encounter fewer difficulties in charging the incidental credit to the covered separate credit feature, or waiving interest and fees on the incidental credit when it is charged to the covered separate credit feature if desired.

Revisions to comment 61(a)(4)–1. The Bureau is making several revisions to comment 61(a)(4)–1 for consistency with the changes noted above to § 1026.61(a)(4). Specifically, the Bureau is amending comment 61(a)(4)–1.i to explain that a prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account if: (1) The card cannot access credit from a covered separate credit feature under § 1026.61(a)(2)(i) that is offered by the prepaid account issuer or its affiliate, though it is permissible for it to access credit from a covered separate credit feature offered by a business partner or from a non-covered separate credit feature as described under § 1026.61(a)(2)(ii); and (2) 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).

The Bureau also is adding a new comment 61(a)(4)–1.ii to provide additional guidance on circumstances when a prepaid card accesses both a negative balance on the asset feature of the prepaid account that meets the conditions of § 1026.61(a)(4) and other credit features. Specifically, consistent with final § 1026.61(a)(4), new comment 61(a)(4)–1.ii explains that if the conditions of § 1026.61(a)(4) are met and the prepaid card can access credit from a covered separate credit feature, as defined in § 1026.61(a)(2)(i), that is offered by a business partner, the prepaid card is a hybrid prepaid-credit card with respect to the covered separate credit feature pursuant to § 1026.61(a)(2)(i) but it is not a hybrid prepaid-credit card with respect to credit extended by a prepaid account issuer through a negative balance on the asset feature of the prepaid account that meets the conditions of § 1026.61(a)(4) or with respect to any non-covered separate credit feature pursuant to § 1026.61(a)(2)(ii). New comment 61(a)(4)–1.ii also explains that, if the conditions of § 1026.61(a)(4) are met and the prepaid card cannot access credit from any covered separate credit feature, as defined in § 1026.61(a)(2)(i), the prepaid card is not a hybrid prepaid-credit card with respect to credit extended by a prepaid account issuer through a negative balance on the asset feature of the prepaid account that meets the conditions of § 1026.61(a)(4) or with respect to any non-covered separate credit feature pursuant to § 1026.61(a)(2)(ii).

The 2016 Final Rule's version of comment 61(a)(4)–1.ii provided an example of when a prepaid card was not a hybrid prepaid-credit card because the conditions in § 1026.61(a)(4) had been met. The Bureau is renumbering this comment as final comment 61(a)(4)–1.iii and is revising it to be consistent with final § 1026.61(a)(4). Specifically, final comment 61(a)(4)–1.iii explains that a prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account in the following circumstances because the conditions set forth in § 1026.61(a)(4) have been met: (1) 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); and (2) the card can access credit from a non-covered separate credit feature as defined in § 1026.61(a)(2)(ii) and from a covered separate credit feature as defined in § 1026.61(a)(2)(i) offered by a business partner, but cannot access credit for a covered separate credit feature that is offered by a prepaid account issuer or its affiliate.

The 2016 Final Rule's version of comment 61(a)(4)–1.iii provided an example of when a prepaid card was a hybrid prepaid-credit card because the conditions of § 1026.61(a)(4) had not been met. The Bureau is renumbering this comment as final comment 61(a)(4)–1.iv and is revising it for consistency with the changes made to § 1026.61(a)(4). Specifically, final comment 61(a)(4)–1.iv makes clear that a prepaid account issuer does not qualify for the exception in § 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 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 or its affiliate during the authorization phase to complete the transaction so that credit is not extended on the asset feature of the prepaid account. In this case, the exception in final § 1026.61(a)(4) does not apply because the prepaid card can be used to draw, transfer, or authorize the draw or transfer of credit from a covered separate credit feature defined in § 1026.61(a)(2)(i) that is offered by the prepaid account issuer or its affiliate. Final comment 61(a)(4)–1.iv also explains that, in this example, the card is a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account pursuant to § 1026.61(a)(3) and with respect to the covered separate credit feature pursuant to § 1026.61(a)(2)(i). In that case, a card issuer has violated § 1026.61(b) because it has structured the credit feature as a negative balance on the asset feature of the prepaid account. *See* § 1026.61(a)(3)(ii) and (b).

The 2016 Final Rule's version of comment 61(a)(4)–1.iv provided guidance on how the regulation applied in cases where the prepaid card was not a hybrid prepaid-credit card. The Bureau is renumbering this comment as final comment 61(a)(4)–1.v and revising it for consistency with final § 1026.61(a)(4). Specifically, final comment 61(a)(4)–1.v provides that, in the case where a prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account because the conditions in § 1026.61(a)(4) are met, the prepaid account issuer is not a card issuer under § 1026.2(a)(7) with respect to the prepaid card when it accesses credit extended through the negative balance on the asset feature of the prepaid account. The prepaid account issuer also is not a creditor under § 1026.17(a)(iii) or (iv) because it is not a card issuer under § 1026.2(a)(7) with respect to the prepaid card when it accesses credit extended through the negative balance on the asset feature of the prepaid account. The prepaid account issuer also is not a creditor under § 1026.2(a)(17)(i) with respect to credit extended through the negative balance on the asset feature of the prepaid account as a result of imposing fees on the prepaid account because those fees are not finance charges with respect to that credit, as described in final comment 4(b)(11)–1.iii.

61(a)(5) Definitions

61(a)(5)(iii)

The Bureau's Proposal

As discussed in the section-by-section analysis of § 1026.61(a) above, overdraft credit features accessible by hybrid prepaid-credit cards are referred to as ''covered separate credit features'' in the Prepaid Accounts Rule, as set forth in § 1026.61(a)(2)(i). These covered separate credit features are subject to the traditional credit card rules in Regulation Z, as well as other tailored provisions established by the 2016 Final Rule in both Regulations Z and E. The rules for covered separate credit features

accessible by hybrid prepaid-credit cards apply regardless of whether the credit is offered by the prepaid account issuer itself, its affiliate, or its business partner. Specifically, the 2016 Final Rule's version of § 1026.61(a)(5)(iii) defined the term ''business partner'' as a person (other than the prepaid account issuer or its affiliate) that can extend credit through a separate credit feature where the person or its affiliate has an arrangement with the prepaid account issuer or its affiliate. Comment 61(a)(5)(iii)–1 explained that there were two types of arrangements that create a business partner relationship for purposes of § 1026.61(a)(5)(iii): (1) An agreement between the parties under which a prepaid card can from time to time draw, transfer, or authorize a draw or transfer of credit in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) a cross-marketing or other similar agreement between the parties to cross-market the credit feature or the prepaid account, where 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 prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers.

As discussed above, a digital wallet provider raised several concerns in its comment letter on the 2017 Effective Date Proposal about the account number for the digital wallet account becoming a hybrid prepaid-credit card when consumers link their digital wallet accounts to credit card accounts that are offered by companies with which the digital wallet provider has cross-marketing or other agreements that would create a business partner relationship under the 2016 Final Rule's version of § 1026.61(a)(5)(iii).

This commenter especially was concerned about several targeted provisions of the Prepaid Accounts Rule, as discussed above in detail in the section-by-section analysis of § 1026.61(a). In particular, it indicated that consumers would likely be confused if they had to wait 30 days after registering a prepaid account that is a digital wallet before linking a credit card account offered by a business partner to the digital wallet, but they could add a credit card account immediately after opening the digital wallet account if there was no business partner arrangement. The commenter expressed concern that additional consumer confusion would likely arise from the long form pre-acquisition disclosure requirements set forth in Regulation E § 1005.18(b)(4)(vii), which mandate that disclosures of key credit pricing terms set forth in § 1026.60(e)(1) be included on a prepaid account's long form disclosure if a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered to a consumer in connection with the prepaid account. The commenter indicated that these credit disclosures for each credit card product offered by each business partner, which could be numerous, would have to be provided to all new digital wallet account holders in the digital wallet account's long form disclosure even though many of the digital wallet account holders may never hold, or apply for, credit card accounts offered by those business partners.

In an effort to address these concerns, the Bureau proposed to narrow the definition of ''business partner'' in § 1026.61(a)(5)(iii) to exclude certain arrangements between prepaid account issuers and companies that offer products already subject to traditional credit card rules, provided that certain additional safeguards are in place. Under the proposed exception, the prepaid account issuer and the card issuer would not have been ''business partners'' under proposed § 1026.61(a)(5)(iii), and thus the prepaid card would not have been a hybrid prepaid-credit card under § 1026.61(a)(2)(i) with respect to the credit card account if certain conditions were met.

To effectuate this potential exception, the Bureau proposed several revisions to the definition of ''business partner'' in § 1026.61(a)(5)(iii). First, the Bureau proposed to move certain guidance on when there is an arrangement between business partners from comment 61(a)(5)(iii)–1 to the regulatory text itself in proposed § 1026.61(a)(5)(iii)(A) through (C), and to revise this language for clarity, as discussed in more detail below. In particular, this proposed change would have included moving the descriptions of the two types of arrangements that trigger coverage as business partners, as discussed above, to proposed § 1026.61(a)(5)(iii)(B) and (C).

Second, in response to concerns raised by the digital wallet provider, the Bureau proposed to add an exception, in § 1026.61(a)(5)(iii)(D), to the definition of business partner. Specifically, proposed § 1026.61(a)(5)(iii)(D) would have provided that a person that can extend credit through a credit card account is not a business partner of a prepaid account issuer with which it has an arrangement, as defined in proposed § 1026.61(a)(5)(iii)(A) through (C), with regard to such credit card account if all of the following conditions are met:

(1) The credit card account is a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card.

(2) The prepaid account issuer and the card issuer will not allow the prepaid card to draw, transfer, or authorize the draw or transfer of credit from the credit card account from time to time 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, except where the prepaid account issuer or the card issuer has received from the consumer a written request that is separately signed or initialized to authorize the prepaid card to access the credit card account, as described above.

(3) The prepaid account issuer and the card issuer do not condition the acquisition or retention of the prepaid account or the credit card account on whether a consumer authorizes the prepaid card to access the credit card account, as described above in proposed § 1026.61(a)(5)(iii)(D)(*2*).

(4) The prepaid account issuer applies the same terms, conditions, or features to the prepaid account when a consumer authorizes linking the prepaid card to the credit card account, as described above, in proposed § 1026.61(a)(5)(iii)(D)(*2*) as it applies to the consumer's prepaid account when the consumer does not authorize such a linkage. In addition, the prepaid account issuer applies the same fees to load funds from a credit card account that is linked to the prepaid account, as described above, as it charges for a comparable load on the consumer's prepaid account to access a credit feature offered by a person that is not the prepaid account issuer, its affiliate, or a person with which the prepaid account issuer has an arrangement.

(5) The card issuer applies the same specified terms and conditions to the credit card account when a consumer authorizes linking the prepaid card to the credit card account as described above in proposed § 1026.61(a)(5)(iii)(D)(*2*) as it applies to the consumer's credit card account when the consumer does not authorize such a linkage. In addition, the card issuer applies the same specified terms and conditions to extensions of credit from the credit card account made with the prepaid card as with the traditional credit card.

Each of these conditions is discussed in more detail in the section-by-section

analyses of § 1026.61(a)(5)(iii)(D)(*1*), (*2*), (*3*), (*4*), and (*5*) below, respectively.

Under proposed § 1026.61(a)(5)(iii)(D), a person that can extend credit through a credit card account that can be linked to a prepaid account would not be a business partner of the prepaid account issuer with which it has an arrangement, as defined in proposed § 1026.61(a)(5)(iii)(A) through (C), with respect to the credit card account. The credit feature would be subject to traditional credit card rules in its own right because one of the conditions for the proposed exception (proposed § 1026.61(a)(5)(iii)(D)(*1*)) is that the credit feature must be a credit card account under an open-end (not home-secured) consumer credit plan. The prepaid card that is linked to the credit card account, as described in proposed § 1026.61(a)(5)(iii)(D)(*2*), would not be a hybrid prepaid-credit card with respect to that credit card account, and thus the Prepaid Accounts Rule's tailored provisions applicable in connection with covered separate credit features accessible by hybrid prepaid-credit cards would not apply, such as the 30-day waiting period in § 1026.61(c) and the long form pre-acquisition disclosure requirements set forth in Regulation E § 1005.18(b)(4)(vii).[105] In addition, when the exception in proposed § 1026.61(a)(5)(iii)(D) were to apply, the fact that the prepaid card can access the credit card account would not prevent the prepaid account issuer from providing incidental credit through a negative balance on the linked prepaid account if the conditions of § 1026.61(a)(4) were met.

The Bureau did not propose to specifically tailor the proposed exception to digital wallet accounts because the Bureau believed that it may be difficult to distinguish these digital wallet accounts from other types of prepaid accounts, particularly those that operate without a physical access device. Nonetheless, the Bureau believed that the proposed exception would address most of the concerns raised by the digital wallet provider, as discussed above. While prepaid account issuers do not generally permit card-based prepaid accounts to be linked to credit card accounts in order to back up transactions where the prepaid account lacks sufficient funds, the Bureau believed that the potential risk to consumers if issuers were to do so would be minimal if the conditions in proposed § 1026.61(a)(5)(iii)(D) were met.

The Bureau did not propose to extend the exception to situations where the prepaid account issuer or its affiliate was the party offering the credit card account. The Bureau believed that ensuring separation and independence is more complicated when both accounts are issued by the same entity or entities under common control, particularly given that offset, security interests, and other types of linkages may be present. Therefore, the Bureau believed that the Prepaid Accounts Rule's tailored protections, including the 30-day waiting period, were warranted in such cases.

Comments Received

Industry commenters that provided specific feedback on the proposed exception to the definition of ''business partner'' generally supported the exception with some suggested modifications. For example, several industry commenters, including trade associations, program managers, and a prepaid issuer, requested that the Bureau expand the proposed exception in § 1026.61(a)(5)(iii)(D) to apply to credit card accounts that are offered by the prepaid account issuer or its affiliate, so long as the same conditions set forth in the proposed exception were met. These commenters asserted that such an approach would avoid what they called an unfair and differential impact to prepaid account issuers that also issue credit cards, and that a broader exception should not introduce new risks to the consumer nor undermine the important policy goals of the Bureau.

In addition, the digital wallet provider commenter discussed above suggested that the Bureau not adopt the proposed conditions that the parties do not vary certain terms and conditions based on whether the two accounts are linked as set forth in proposed § 1026.61(a)(5)(iii)(D)(*4*) and (*5*) to qualify for the exception, at least with respect to digital wallets. This commenter indicated that such conditions were likely to chill innovation and would limit digital wallet providers' and credit card issuers' abilities to offer consumer benefits that take advantage of synergies created by linked offerings. On the other hand, a group of consumer advocates commented in support of the proposed conditions. These commenters indicated that if a consumer can only get advantageous terms by linking accounts, the linkage is not voluntary.

The group of consumer advocates also requested that the Bureau require an additional condition to qualify for the exception. Specifically, they suggested that any credit card account arrangement that is excepted from the definition of hybrid prepaid-credit card under § 1026.61(a)(5)(iii)(D) should be required to comply with § 1026.12(d)(3)(ii), which permits a written plan authorizing periodic deductions from the prepaid account only if the deductions are no more frequent than once per calendar month, such as on the date disclosed on the credit card statement. They were concerned that the credit card accounts might only be marketed to prepaid account holders, and these consumers could be led easily to believe that linking the two accounts is required and to agree to automatic payments on a daily or weekly basis.

A prepaid issuer requested that the Bureau ensure that the language of the exception, including the commentary, is drafted to clearly apply to all types of prepaid accounts, rather than limiting its purported applicability and underlying rationale to digital wallets.

With respect to the condition contained in proposed § 1026.61(a)(5)(iii)(D)(*2*), several industry commenters, including program managers and a trade association, requested that the condition to obtain a written authorization not apply where the two accounts were linked prior to the effective date of the Prepaid Accounts Rule. They argued that requiring prepaid account issuers or card issuers to obtain a ''written request'' from consumers for accounts that are already linked prior to the effective date would likely prove to be an extremely expensive and burdensome condition for providers and consumers who have previously agreed to the linkage. The Bureau also received several other comments related to the specific conditions of the proposed exception, which are discussed in the section-by-section analyses of § 1026.61(a)(5)(iii)(D)(*1*), (*2*), and (*5*) below.

Several industry commenters, including trade associations, program

[105] Other provisions in Regulations Z and E setting forth additional protections that only apply to covered separate credit features accessible by hybrid prepaid-credit cards or to prepaid accounts that are connected to such credit features include:

(1) Restrictions in Regulation E § 1005.18(g) on account terms, conditions, and features imposed on the asset feature of the prepaid account and applicability of the fee restriction in § 1026.52(a) to certain fees imposed on the asset feature of the prepaid account;

(2) Repayment-related provisions applicable to covered separate credit features in §§ 1026.5(b)(2)(ii)(A), 1026.7(b)(11), 1026.12(d)(2) and (3), and Regulation E § 1005.10(e)(1);

(3) Applicability of the claims and defenses provision in § 1026.12(c); and

(4) Applicability of limits on liability for unauthorized use and error resolution provisions in §§ 1026.12(b) and 1026.13 and Regulation E § 1005.12(a).

managers, and an issuing bank, requested that the Bureau generally reconsider the 2016 Final Rule's extension of provisions of TILA and Regulation Z to overdraft services on prepaid accounts and instead apply those protections currently afforded consumers of deposit accounts under Regulation E, largely for reasons that the Bureau previously addressed in the 2016 Final Rule. In addition, another issuing bank requested that the Bureau evaluate and consider the need for further revisions to the Prepaid Accounts Rule's credit-related provisions that apply to digital wallets linked to traditional credit cards. This commenter indicated that the Prepaid Accounts Rule's credit related provisions, as applied to digital wallets, should be appropriately tailored to the unique functionality of digital wallets.

The Final Rule

For the reasons set forth herein, the Bureau is adopting § 1026.61(a)(5)(iii)(A) through (C) as proposed and is adopting the exception in § 1026.61(a)(5)(iii)(D) generally as proposed with certain revisions. Specifically, final § 1026.61(a)(5)(iii)(D)(*2*) provides guidance on how this condition applies as of April 1, 2019 (the new effective date of the Prepaid Accounts Rule, as discussed in part VI below), if the prepaid account is linked to the credit card account prior to that date, or prior to an arrangement between the prepaid account issuer and the card issuer as described in final § 1026.61(a)(5)(iii)(A) through (C), as discussed in more detail below. Final § 1026.61(a)(5)(iii)(D)(*3*) also provides guidance on how this condition applies as of April 1, 2019, if the prepaid account is linked to the credit card account prior to that date, as discussed in more detail below. The Bureau also is adopting § 1026.61(a)(5)(iii)(D)(*5*) and related commentary with modifications to clarify the intent of those provisions, as discussed in the section-by-section analysis of that provision below.

For the reasons discussed below, to facilitate compliance with TILA, the Bureau believes it is necessary and proper to exercise its exception authority under TILA section 105(a) so that a prepaid card that is linked to a credit card account meeting the conditions in final § 1026.61(a)(5)(iii)(D) is excluded from the definition of ''credit card'' under TILA section 103(*l*) [106] and Regulation Z § 1026.2(a)(15)(i) (as amended by the 2016 Final Rule).[107] The exception facilitates compliance by allowing the card issuer to comply with the rules in Regulation Z that already apply to the credit card account without also requiring the card issuer or the prepaid account issuer to comply with the tailored provisions in Regulations Z and E that were adopted in the 2016 Final Rule.

The Bureau believes that is appropriate and proper to use its exception authority under TILA section 105(a) for several reasons. First, the credit card account, even if not subject to the specific rules for hybrid prepaid-credit cards, is subject to the credit card rules in Regulation Z in its own right because it is a credit card account under an open-end (not home-secured) consumer credit plan that the consumer can access with a traditional credit card, pursuant to final § 1026.61(a)(5)(iii)(D)(*1*). Thus, the linked credit feature will still receive the protections in Regulation Z that generally apply to a credit card account under an open-end (not home-secured) consumer credit plan.

Second, the Bureau believes that the conditions a prepaid account issuer and a card issuer must satisfy to qualify for the exception create substantial safeguards to protect against the prepaid account and the credit card account being connected in a way that would pose the kinds of risks to consumers that motivated the Bureau's approach to the general rules for covered separate credit features accessible by hybrid prepaid-credit cards. For example, the 30-day waiting period in § 1026.61(c) was designed to ensure that consumers do not feel undue pressure to decide at the time that they purchase or register a prepaid account whether to link a covered separate credit feature to such account without having the opportunity to fully consider the terms of the prepaid account, the separate credit feature, and the consequences of linking the two.[108] The Bureau also carefully crafted rules to govern the pricing for prepaid accounts and covered separate credit features upon linkage via a hybrid prepaid-credit card, and the disclosure thereof, to better ensure that the consumer could understand the cost and consequences of linking credit to a prepaid account. The Bureau believes that these requirements are not necessary when the safeguards of the exception are met because those safeguards will help make consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure. In particular, the Bureau has tailored this exception to ensure that it is limited to traditional credit card accounts already covered by Regulation Z's open-end credit card rules and that the consumer could not be required to link the prepaid account and the credit card account to obtain or retain either account. In addition, to qualify for the exception, certain terms and conditions that apply to the credit card account and the prepaid account must be the same regardless of whether the two accounts are linked. Thus, the consequences to the consumer of linking the two accounts are less complex. As discussed in more detail below, the Bureau believes that when the conditions of the exception are met, it is not necessary to apply the 30-day waiting period in § 1026.61(c) or the other additional protections in Regulations Z and E that are applicable only to covered separate credit features or to prepaid accounts that are connected to covered separate credit features.

Additional guidance for accounts linked prior to April 1, 2019 or prior to an arrangement described in final § 1026.61(a)(5)(iii)(A) through (C). Based on comments received and its own analysis, the Bureau is adopting § 1026.61(a)(5)(iii)(D)(*2*) generally as proposed, with modifications to provide guidance on how this condition applies as of April 1, 2019 (the new effective date of the Prepaid Accounts Rule), if a prepaid account is linked to a credit card account prior to that date, or prior to an arrangement between the prepaid account issuer and the card issuer as described in final § 1026.61(a)(5)(iii)(A) through (C). Final § 1026.61(a)(5)(iii)(D)(*3*) also provides guidance on how this condition applies as of April 1, 2019 if the prepaid account is linked to the credit card account prior to that date.

Specifically, final § 1026.61(a)(5)(iii)(D)(*2*) states that if the credit card account is linked to the prepaid account prior to April 1, 2019 or prior to the arrangement between the prepaid account issuer and the card issuer as described in final § 1026.61(a)(5)(iii)(A) through (C), the prepaid account issuer and the card issuer will be deemed to have satisfied this condition even if they have not received from the consumer a written request as described in final § 1026.61(a)(5)(iii)(D)(*2*). The Bureau agrees with industry commenters that

[106] 15 U.S.C. 1602(*l*).

[107] For the same reasons, the Bureau declines to extend the additional tailored provisions of the Prepaid Accounts Rule authorized under TILA section 105(a), section 1032(a) of the Dodd-Frank Act, and EFTA section 904(c) to these cards that are excluded from coverage as hybrid prepaid-credit cards.

[108] 81 FR 83934, 84268 (Nov. 22, 2016).

requiring a prepaid account issuer or the card issuer to obtain a consumer's written request to link the two accounts in order to take advantage of the exception where the linkage occurred prior to the effective date of the Prepaid Accounts Rule could prove to be an extremely expensive and burdensome condition for digital wallet providers and consumers who have previously agreed to the linkage. The Bureau also recognizes that a linkage of the two accounts may occur after the effective date of the Prepaid Accounts Rule but prior to an arrangement between the prepaid account issuer and the card issuer as described in final § 1026.61(a)(5)(iii)(A) through (C). In this case, the Bureau believes that it may be burdensome for digital wallet providers to obtain a consumer's written request to link the two accounts in order to take advantage of the exception where the linkage occurred prior to the arrangement between the two parties as described in final § 1026.61(a)(5)(iii)(A) through (C). The Bureau believes that digital wallet providers currently receive a consumer's consent to link a credit card account to a digital wallet, and thus it is not necessary to require digital wallet providers to obtain a consumer's written request in accordance with final § 1026.61(a)(5)(iii)(D)(*2*) for accounts linked prior to the effective date of the Prepaid Accounts Rule or prior to the arrangement between the prepaid account issuer and card issuer as described in final § 1026.61(a)(5)(iii)(A) through (C).

In addition, the conditions in final § 1026.61(a)(5)(iii)(D)(*3*) through (*5*) specifically reference the condition in final § 1026.61(a)(5)(iii)(D)(*2*) that a consumer authorizes the prepaid card to access the credit card account as described in final § 1026.61(a)(5)(iii)(D)(*2*). Consistent with final § 1026.61(a)(5)(iii)(D)(*2*), for purposes of the conditions in final § 1026.61(a)(5)(iii)(D)(*3*) through (*5*), if the credit card account is linked to the prepaid account prior to April 1, 2019 or prior to the arrangement between the prepaid account issuer and the card issuer as described in final § 1026.61(a)(5)(iii)(A) through (C), a consumer will be considered to have authorized linking the prepaid card to the credit card account as described in final § 1026.61(a)(5)(iii)(D)(*2*), even if the consumer has not provided a written request that is separately signed or initialized to authorize the prepaid card to access the credit card account as described in final § 1026.61(a)(5)(iii)(D)(*2*).

The Bureau also believes that additional guidance is needed regarding how the condition in final § 1026.61(a)(5)(iii)(D)(*3*) applies as of April 1, 2019 if the prepaid account is linked to the credit card account prior to that date. Thus, final § 1026.61(a)(5)(iii)(D)(*3*) states that if the credit card account is linked to the prepaid account prior to April 1, 2019, this condition only applies to the retention of the prepaid account and the credit card account on or after April 1, 2019. This revision allows the prepaid account issuer and the card issuer to satisfy this condition as of the effective date of the Prepaid Accounts Rule even if the two accounts were linked prior to that date and the acquisition of the prepaid account or credit account was conditioned on the link, so long as the retention of the prepaid account and the credit card account are not conditioned on the link beginning on April 1, 2019.

The Bureau does not believe that similar guidance is needed with respect to how the conditions in final § 1026.61(a)(5)(iii)(D)(*1*), (*4*), and (*5*) apply as of April 1, 2019 if the two accounts are linked prior to that date. In order to qualify for the exception in final § 1026.61(a)(5)(iii)(D), the prepaid account issuer or the card issuer, as applicable, must meet the conditions of § 1026.61(a)(5)(iii)(D)(*1*), (*4*), and (*5*) as of April 1, 2019 with respect to the prepaid account or credit card account as applicable, even for accounts linked prior to that date.

Responses to Comments Received

The Bureau is not making additional revisions to the exception in final § 1026.61(a)(5)(iii)(D) as requested by some commenters (summarized in detail above), for the reasons discussed below.

Extend the exception to apply to credit card accounts offered by the prepaid account issuer or its affiliate. The Bureau is not extending the exception in final § 1026.61(a)(5)(iii)(D) to credit card accounts that are offered by the prepaid account issuer or its affiliate, even if the conditions in the exception are met, as requested by several industry commenters. The Bureau continues to believe that ensuring separation and independence is more complicated when both accounts are issued by entities under common control, particularly given that offset, security interests, and other types of linkages may be present. In addition, consumers' expectations that that these accounts must be linked in order to obtain or retain either account may be stronger if both accounts are issued by the same entity or entities under common control. Thus, the 30-day waiting period in § 1026.61(c) and other targeted protections may be more needed in that context to promote deliberative decision making without undue pressure.

Remove conditions in proposed § 1026.61(a)(5)(iii)(D)(4) and (5). The Bureau is not removing the conditions that the parties do not vary certain terms and conditions based on whether the two accounts are linked that were set forth in proposed § 1026.61(a)(5)(iii)(D)(*4*) and (*5*), as requested by one industry commenter. As discussed above, the Bureau believes that these conditions are critically important to ensuring that the targeted provisions in the 2016 Final Rule are not needed with respect to these credit card accounts. These conditions, along with the other conditions of the exception, provide important safeguards to help ensure that consumers' decisions about account acquisition, retention, and link authorization are simpler and less prone to undue pressure, such that it is not necessary to apply the 30-day waiting period in § 1026.61(c) or the other additional protections in Regulations Z and E that are applicable only to covered separate credit features or to prepaid accounts that are connected to covered separate credit features. In particular, these conditions help ensure that consequences to the consumer of linking the two accounts are less complex. The Bureau notes that card issuers generally are not prohibited from providing more favorable specified terms and conditions on the credit card account if the two accounts are linked. Nonetheless, in that case, the exception in final § 1026.61(a)(5)(iii)(D) does not apply and the prepaid card is a hybrid prepaid-credit card with respect to the credit card account.[109]

Add a condition related to repayment. At this time, the Bureau is not including an additional condition to qualify for the exception, as requested by the group of consumer advocates, that card issuers would need to comply with § 1026.12(d)(3)(ii), which permits a

[109] A prepaid account issuer, however, cannot provide more favorable terms and conditions on the prepaid account if a covered separate credit feature is attached. Specifically, under Regulation E § 1005.18(g), 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 such a credit feature, except the financial institution is permitted to charge 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.

written plan authorizing periodic deductions from the prepaid account only if the deductions are no more frequent than once per calendar month. The Bureau believes that the condition in final § 1026.61(a)(5)(iii)(D)(*5*) provides sufficient protections to consumers to prevent card issuers from manipulating repayment terms on the credit card account when the two accounts are linked. The condition in final § 1026.61(a)(5)(iii)(D)(*5*) prevents the card issuer from varying the repayment terms of the credit card account depending on whether the consumer has authorized linking the prepaid card to the credit card account, or depending on whether a particular credit extension from the credit card account is accessed by the prepaid card or by the traditional credit card. In addition, if the Bureau were to adopt this additional condition, in order to qualify for the exception in final § 1026.61(a)(5)(iii)(D), a card issuer that has an arrangement with the prepaid account issuer as described in final § 1026.61(a)(5)(iii)(A) through (C) would need to restrict automatic payments to once per calendar month on all its credit card accounts regardless of whether the prepaid account and credit card account are linked, given that the condition in final § 1026.61(a)(5)(iii)(D)(*5*) would restrict the card issuer from varying the repayment terms of the credit card account depending on whether the consumer has authorized linking the prepaid card to the credit card account. The Bureau does not believe that such a restriction on the ability of consumers to agree to automatic payments more frequent than once per month is needed to prevent evasion at this time. Nonetheless, the Bureau will continue to monitor the use of automatic payment plans in relation to the exception in final § 1026.61(a)(5)(iii)(D) to ensure that consumers retain control over the funds in their prepaid accounts even when credit card accounts that satisfy the conditions of the exception in final § 1026.61(a)(5)(iii)(D) are linked.

Clarify that the exception applies to prepaid accounts generally and not just digital wallets. The Bureau does not believe that it is necessary to modify the language of § 1026.61(a)(5)(iii)(D) or its associated commentary to clarify that the exception applies to all types of prepaid accounts, rather than just applying to digital wallets, as suggested by one industry commenter. The Bureau believes that the regulatory language of final § 1026.61(a)(5)(iii)(D) and its associated commentary is clear that the exception applies to all prepaid accounts that meet the conditions set forth in the provision, not just digital wallets. Those provisions use the term ''prepaid account'' and do not limit this exception to prepaid accounts that are digital wallets.

Reconsider applying TILA and Regulation Z to overdraft services. The Bureau believes that it is not appropriate at this time to generally reconsider the extension of provisions of TILA and Regulation Z to overdraft services on prepaid accounts, as requested by several industry commenters. This request is outside the scope of the proposed amendments in the June 2017 Proposal. In addition, for the reasons set forth in the section-by-section analysis of § 1026.61(a) above and in the 2016 Final Rule, the Bureau continues to believe that it is appropriate to apply traditional credit card rules to overdraft credit features accessible by hybrid prepaid-credit cards, as well as the tailored provisions established by the 2016 Final Rule.[110]

Add guidance for digital wallets. At this time, the Bureau is not including additional guidance related to how the 2016 Final Rule's credit-related provisions relate to digital wallets, as requested by one industry commenter. This commenter did not specify particular guidance that would be helpful. Nonetheless, the Bureau will continue to monitor whether additional guidance is needed with respect to the application of the 2016 Final Rule's credit-related provision to digital wallets.

61(a)(5)(iii)(A) Through (C)

The 2016 Final Rule's version of § 1026.61(a)(5)(iii) defined 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 affiliate) 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. The Bureau proposed generally to retain this language in proposed § 1026.61(a)(5)(iii) with a revision to reference the proposed exception in § 1026.61(a)(5)(iii)(D).

The 2016 Final Rule's version of comment 61(a)(5)(iii)–1 described the two types of business arrangements that created a business partnership for purposes of the rule, separately provided in paragraphs i and ii. The Bureau proposed to move most of this language into the regulatory text, with introductory language in proposed § 1026.61(a)(5)(iii)(A) and the two types of business arrangements described in proposed § 1026.61(a)(5)(iii)(B) and (C), respectively, with small revisions for clarity. The Bureau also proposed to consolidate the language regarding membership in card networks or payment networks that appeared in comments 61(a)(5)(iii)–1.i and ii as new proposed comment 61(a)(5)(iii)–1, which would have explained that a draw, transfer, or authorization of the draw or transfer from a credit feature may be effectuated through a card network or a payment network, but would have emphasized that for the purposes of proposed § 1026.61(a)(5)(iii), agreements to participate in a card network or payment network themselves do not constitute an ''agreement'' or a ''business, marketing, or promotional agreement or other arrangement'' described in proposed § 1026.61(a)(5)(iii)(B) or (C), respectively. The Bureau did not propose any changes to comment 61(a)(5)(iii)–2.

The Bureau did not receive any specific comments on this aspect of the proposal. The Bureau is adopting § 1026.61(a)(5)(iii)(A) through (C) and new comment 61(a)(5)(iii)–1 as proposed.

61(a)(5)(iii)(D)

The Bureau's Proposal

For the reasons explained above in the section-by-section analyses of § 1026.61(a) and (a)(5)(iii) above, the Bureau proposed to add an exception in proposed § 1026.61(a)(5)(iii)(D) to the definition of ''business partner.'' Specifically, proposed § 1026.61(a)(5)(iii)(D) would have provided that a person that can extend credit through a credit card account is not a business partner of a prepaid account issuer with which it has an arrangement as defined in proposed § 1026.61(a)(5)(iii)(A) through (C) with regard to such credit card account if certain conditions were met. The conditions were broadly designed to ensure that the credit card account would be subject to Regulation Z credit card requirements in its own right and that the acquisition, retention, and pricing terms of the prepaid account and credit card account would not depend on whether a consumer authorizes the linking of the two accounts to allow the prepaid card to access credit from time to time in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P

[110] 81 FR 83934, 84158–61 (Nov. 22, 2016).

transfers. Each of the proposed conditions is discussed in more detail in the section-by-section analyses of § 1026.61(a)(5)(iii)(D)(*1*), (*2*), (*3*), (*4*) and (*5*) below, respectively.

Proposed comment 61(a)(5)(iii)(D)–1 would have provided that if the exception in proposed § 1026.61(a)(5)(iii)(D) were to apply, a person that can extend credit through the credit card account would not be a business partner of a prepaid account issuer with which it has an arrangement as defined in proposed § 1026.61(a)(5)(iii)(A) through (C). Accordingly, in those cases where a consumer has authorized his or her prepaid card in accordance with proposed § 1026.61(a)(5)(iii)(D) to be linked to the credit card account in such a way as to allow the prepaid card to access the credit card account as described in proposed § 1026.61(a)(5)(iii)(D)(*2*), the linked prepaid card would not be a hybrid prepaid-credit card with respect to the linked credit card account. Rather, the linked credit card account would be a non-covered separate credit feature, as discussed in § 1026.61(a)(2)(ii). The proposed comment would have further noted that in this case, by definition, the linked credit card account would be subject to the credit card rules in Regulation Z in its own right because it would be a credit card account under an open-end (not home-secured) consumer credit plan, pursuant to the condition set forth in proposed § 1026.61(a)(5)(iii)(D)(*1*).

Comments Received

The Bureau received several comments on the proposed exception generally, which are discussed in the section-by-section analysis of § 1026.61(a)(5)(iii) above. In addition, the Bureau also received some comments related to specific proposed conditions, which are discussed in the section-by-section analyses of § 1026.61(a)(5)(iii)(D)(*1*), (*2*), (*3*), (*4*), and (*5*). The Bureau did not receive any specific comments on proposed comment 61(a)(5)(iii)(D)–1.

The Final Rule

For the reasons set forth in the section-by-section analysis of § 1026.61(a)(5)(iii) above, the Bureau is adopting the exception in § 1026.61(a)(5)(iii)(D) generally as proposed with several modifications as described in the section-by-section analyses of § 1026.61(a)(5)(iii) above and § 1026.61(a)(5)(iii)(D)(*2*) and (*5*) below. The Bureau is adopting comment 61(a)(5)(iii)(D)–1 as proposed.

61(a)(5)(iii)(D)(1)

The Bureau's Proposal

To satisfy the exception in proposed § 1026.61(a)(5)(iii)(D), under proposed § 1026.61(a)(5)(iii)(D)(*1*), the credit card account at issue would have to have been a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card. Proposed comment 61(a)(5)(iii)(D)(*1*)–1 would have explained that, for purposes of the proposed exception, the term ''traditional credit card'' would have meant a credit card that is not a hybrid prepaid-credit card. Thus, the condition in proposed § 1026.61(a)(5)(iii)(D)(*1*) would not have been satisfied if the only credit card that a consumer could use to access the credit card account under an open-end (not home-secured) consumer credit plan was a hybrid prepaid-credit card.

This proposed condition would have ensured that the exception only applies to credit features subject to the full protections of the credit card rules in Regulation Z that are applicable to credit card accounts under an open-end (not home-secured) consumer credit plan. As discussed in the 2016 Final Rule, these protections include a range of requirements governing pricing, restrictions on repayment terms, limits on liability for unauthorized use, and requirements that card issuers must assess the consumer's ability to pay the credit before opening the account. The pricing protections include restrictions on the fees that an issuer can charge during the first year after an account is opened, and limits on the amount of fees that issuers can charge when a consumer makes a late payment or exceeds his or her credit limit. The protections also restrict the circumstances under which issuers can increase interest rates on credit card accounts and establish procedures for doing so. As explained in the 2016 Final Rule, the Bureau believed that applying these protections to overdraft features in connection with prepaid accounts would promote transparent pricing for prepaid accountholders.[111]

Comments Received

A group of consumer advocate commenters requested that the Bureau revise the definition of ''traditional credit card'' contained in proposed comment 61(a)(5)(iii)(D)(*1*)–1. These commenters suggested that this definition was circular in that a card is not a hybrid prepaid-credit card if it is a traditional credit card, and it is a traditional credit card if it is not a hybrid prepaid-credit card. These commenters also stated that Regulation Z's definition of credit card is quite vague and could arguably apply to accounts that bear no resemblance to traditional credit cards. These commenters suggested that the Bureau define ''traditional credit card'' to mean a card, plate, or other single credit device that may be used from time to time to obtain consumer credit under an open-end credit plan and that is either: (a) Accepted by every merchant that participates in a widely accepted payment card network and is accepted upon presentation at multiple, unaffiliated merchants for goods or services, or (b) accepted solely for the bona fide purchase of goods or services at a particular retail merchant or group of merchants and not to access cash; and that the term ''traditional credit card'' does not include an overdraft line of credit that is accessed by a debit or prepaid card or an account number.

The Final Rule

For the reasons set forth herein, the Bureau is adopting § 1026.61(a)(5)(iii)(D)(*1*) and comment 61(a)(5)(iii)(D)(*1*)–1 as proposed. The Bureau does not believe that the definition of ''traditional credit card'' set forth in final comment 61(a)(5)(iii)(D)(*1*)–1 is circular, as suggested by the group of consumer advocates. A prepaid card cannot be a ''traditional credit card'' because it is either a hybrid prepaid-credit card or not a credit card at all, and thus can never be a traditional credit card. See comment 2(a)(15)–2.ii.D, which provides that a prepaid card is not a credit card if it is not a hybrid prepaid-credit card. Thus, the prepaid card described in final § 1026.61(a)(5)(iii)(D) will not be a traditional credit card. To satisfy final § 1026.61(a)(5)(iii)(D)(*1*), the credit card account must be accessed by another access device (other than the prepaid card) and that access device must be a traditional credit card.

The Bureau also does not believe that it is necessary to narrow the definition of ''traditional credit card,'' as suggested by the group of consumer advocate commenters, to prevent evasion. The Bureau believes that introducing additional concepts into the definition of ''traditional credit card'' like the fact that the credit card must be accepted at ''every'' merchant that participates in a widely accepted payment card network, or that the credit card must be accepted only for ''bona fide'' purchases of goods or services at a particular retail merchant or group of merchants, could complicate the definition and add to

[111] *Id.* at 84161.

compliance burden. The Bureau does not believe that adding these concepts is warranted at this time, particularly without the benefit of additional public comment, but will monitor market developments for risk of evasion.

61(a)(5)(iii)(D)(2)

The Bureau's Proposal

To satisfy the exception in proposed § 1026.61(a)(5)(iii)(D), under proposed § 1026.61(a)(5)(iii)(D)(*2*), the prepaid account issuer and the card issuer would have been prohibited from allowing the prepaid card to draw, transfer, or authorize the draw or transfer of credit from the credit card account from time to time 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, except where the prepaid account issuer or the card issuer has received from the consumer a written request that is separately signed or initialized to authorize the prepaid card to access the credit card account, as described above. To aid compliance with the proposed exception, proposed comment 61(a)(5)(iii)(D)(*2*)–1 would have explained that any accountholder on either the prepaid account or the credit feature may make the written request.

Comments Received

Several industry commenters, including program managers and a trade association, requested that the condition to obtain a written authorization not apply where the two accounts were linked prior to the effective date of the Prepaid Accounts Rule. They argued that requiring prepaid account issuers or card issuers to obtain a ''written request'' from consumers for accounts linked prior to the effective date would likely prove to be an extremely expensive and burdensome condition for providers and consumers who have previously agreed to the linkage. These comments are discussed in more detail in the section-by-section analysis of § 1026.61(a)(5)(iii) above.

In addition, several industry commenters, including program managers and a trade association, stated that section 101(a) of the E-Sign Act would apply to enable a signature or agreement obtained electronically to have the same effect if it were obtained in writing, and requested that the Bureau confirm this point in regulatory text or commentary. A group of consumer advocates requested that the written request should be required to be ''clear and readily understandable,'' just as written authorizations for preauthorized electronic fund transfers must be under Regulation E (*see* Regulation E § 1005.10(b) and comment 10(b)–6).

The Final Rule

For the reasons set forth herein, the Bureau is adopting § 1026.61(a)(5)(iii)(D)(*2*) as proposed with two modifications and is adopting comment 61(a)(5)(iii)(D)(*2*)–1 as proposed. First, the Bureau is modifying § 1026.61(a)(5)(iii)(D)(*2*) to provide guidance on how this condition applies as of April 1, 2019 (the new effective date of the Prepaid Accounts Rule) when the two accounts are linked prior to that date, or prior to an arrangement between the prepaid account issuer and the card issuer as described in § 1026.61(a)(5)(iii)(A) through (C). This revision is discussed in more detail in the section-by-section analysis of § 1026.61(a)(5)(iii) above. Second, as a technical modification, the Bureau is replacing the phrase ''will not'' in the first sentence of § 1026.61(a)(5)(iii)(D)(*2*) with the phrase ''do not'' for consistency with the phrase ''do not'' used in § 1026.61(a)(5)(iii)(D)(*3*).

In response to industry commenters' requests regarding the applicability of the E-Sign Act, the Bureau notes that the writing and signature conditions of final § 1026.61(a)(5)(iii)(D)(*2*) may be satisfied electronically if in accordance with the E-Sign Act. The Bureau does not believe that it is necessary to include this point in the regulation or commentary because the E-Sign Act is self-effectuating.

In response to the group of consumer advocate commenters' request to require that the written request be ''clear and readily understandable,'' the Bureau does not believe that it is necessary to specifically require this in the regulatory text or commentary at this time. The Bureau expects that, if a prepaid account issuer or card issuer provides language to consumers to sign or initialize to authorize the two accounts to be linked, the prepaid account issuer or card issuer will use language that is understandable to consumers so that the consumers are aware that they are making a request to link the two accounts. The Bureau will monitor the processes that prepaid account issuers or card issuers use to gain authorization to link the two accounts to ensure that the processes are understandable to consumers.

In adopting final § 1026.61(a)(5)(iii)(D)(*2*), the Bureau believes that this condition, in combination with others described further below, helps to ensure that consumers are not unduly pressured into linking the prepaid account and the credit card account so as to access credit from time to time in the course of transactions conducted with the prepaid card. In particular, it helps to underscore to consumers that the prepaid account and credit card account are not required to be linked in order for the consumer to obtain or retain the two accounts, and to ensure that consumers have made a deliberate, affirmative decision before authorizing such a link. Two of the tailored provisions adopted in the 2016 Final Rule—the 30-day waiting period in § 1026.61(c), and the requirement in Regulation E § 1005.18(b)(4)(vii) to provide certain credit disclosures in the prepaid long form disclosure—were similarly designed to promote deliberative decision making without undue pressure. The Bureau believes that it is not necessary to apply these tailored provisions to a credit card account when the conditions of the exception are met, given that detailed application and solicitation disclosures for the credit card account still are required under § 1026.60. In addition, the other conditions in final § 1026.61(a)(5)(iii)(D) make consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure and make the consequences of linking the two accounts less complex. Specifically, as described below, to satisfy the condition in final § 1026.61(a)(5)(iii)(D)(*3*), a prepaid account issuer and a card issuer could not condition the acquisition or retention of either account upon whether a consumer authorized linking the two accounts together, and final § 1026.61(a)(5)(iii)(D)(*4*) and (*5*) are designed to ensure that certain terms and conditions (including pricing) that apply to the two accounts are not dependent on whether they are linked.

61(a)(5)(iii)(D)(3)

The Bureau's Proposal

To satisfy the exception in proposed § 1026.61(a)(5)(iii)(D), under proposed § 1026.61(a)(5)(iii)(D)(*3*), the prepaid account issuer and the card issuer would not have been permitted to condition the acquisition or retention of the prepaid account or the credit card account on whether a consumer authorizes the prepaid card to access the credit card account, as described in proposed § 1026.61(a)(5)(iii)(D)(*2*).

Comments Received and the Final Rule

The Bureau did not receive any specific comments on this aspect of the proposal. For the reasons set forth herein, the Bureau is adopting

§ 1026.61(a)(5)(iii)(D)(*3*) generally as proposed with one revision to provide guidance on how this condition applies when the two accounts are linked prior to April 1, 2019 (the new effective date of the Prepaid Accounts Rule). This revision is discussed in more detail in the section-by-section analysis of § 1026.61(a)(5)(iii) above.

For the same reasons described above in connection with final § 1026.61(a)(5)(iii)(D)(*2*), the Bureau believes that the condition in final § 1026.61(a)(5)(iii)(D)(*3*) helps to ensure that consumers are not unduly pressured into linking the prepaid account and the credit card account. As described above, the Bureau believes that the prohibition on conditioning the acquisition or retention of the two accounts, in combination with the other conditions discussed above in connection with final § 1026.61(a)(5)(iii)(D)(*2*), helps to obviate the need for the tailored protections adopted in the 2016 Final Rule, including both the 30-day waiting period in § 1026.61(c) for linking a prepaid account to a covered separate credit feature, and the credit disclosures under Regulation E § 1005.18(b)(4)(vii).

61(a)(5)(iii)(D)(4)

The Bureau's Proposal

To satisfy the exception in proposed § 1026.61(a)(5)(iii)(D), under proposed § 1026.61(a)(5)(iii)(D)(*4*), the prepaid account issuer would have been required to apply the same terms, conditions, or features to the prepaid account when a consumer authorizes linking the prepaid card to the credit card account, as described in proposed § 1026.61(a)(5)(iii)(D)(*2*), as it applies to the consumer's prepaid account when the consumer does not authorize such a linkage. In addition, the prepaid account issuer would have needed to apply the same fees to load funds from a credit card account that is linked to the prepaid account, as described above, as it charges for a comparable load on the consumer's prepaid account to access a credit feature offered by a person that is not the prepaid account issuer, its affiliate, or a person with which the prepaid account issuer has an arrangement, as described in proposed § 1026.61(a)(5)(iii)(A) through (C). Each of these proposed conditions is discussed in more detail below.

Proposed comment 61(a)(5)(iii)(D)(*4*)–1 would have provided examples of the types of account terms, conditions, and features that would be subject to the conditions set forth in proposed § 1026.61(a)(5)(iii)(D)(*4*), underscoring that it would have applied both to pricing and to such items as account access devices, minimum balance requirements, and account features such as online bill payment services.

Same terms, conditions, and features on the prepaid account regardless of whether the prepaid account is linked to the credit card account. With respect to the first condition set forth in proposed § 1026.61(a)(5)(iii)(D)(*4*), proposed comment 61(a)(5)(iii)(D)(*4*)–2 would have provided an example of impermissible variations in account terms under this condition in proposed § 1026.61(a)(5)(iii)(D)(*4*). For example, a prepaid account issuer would not satisfy this proposed condition if it provides on a consumer's prepaid account reward points or cash back on purchases with the prepaid card where the consumer has authorized a link to the credit card account, as described in proposed § 1026.61(a)(5)(iii)(D)(*2*), while not providing such reward points or cash back on the consumer's account if the consumer has not authorized such a linkage.

Same load fees. Proposed § 1026.61(a)(5)(iii)(D)(*4*) also would have provided a standard for comparing load fees for credit extensions from the credit card account that is linked to the prepaid account, as described in proposed § 1026.61(a)(5)(iii)(D)(*2*). For these fees, to satisfy the conditions of proposed § 1026.61(a)(5)(iii)(D)(*4*), the prepaid account issuer must apply the same fees to load funds from the credit card account that is linked to the prepaid account, as described above, as it charges for a comparable load on the consumer's prepaid account to access a credit feature offered by a person that is not the prepaid account issuer, its affiliate, or a person with which the prepaid account issuer has an arrangement, as described in proposed § 1026.61(a)(5)(iii)(A) through (C). Proposed comment 61(a)(5)(iii)(D)(*4*)–3 would have provided an example to illustrate this proposed condition. Specifically, the proposed comment would have provided that a prepaid account issuer would not satisfy this condition if it charges on the consumer's prepaid account $0.50 to load funds in the course of a transaction from the credit card account offered by a card issuer with which the prepaid account issuer has an arrangement as discussed in proposed § 1026.61(a)(5)(iii)(A) through (C), but $1.00 to load funds in the course of a transaction from a credit card account offered by a card issuer with which it does not have such an arrangement.

Comments Received and the Final Rule

For the reasons set forth herein, the Bureau is adopting § 1026.61(a)(5)(iii)(D)(*4*) and comments 61(a)(5)(iii)(D)(*4*)–1 and 3 as proposed. The Bureau is adopting comment 61(a)(5)(iii)(D)(*4*)–2 as proposed with technical revisions to refer to ''rewards points'' instead of ''reward points.'' As discussed in the section-by-section analysis of § 1026.61(a)(5)(iii) above, a digital wallet provider commenter requested that the Bureau remove the condition in proposed § 1026.61(a)(5)(iii)(D)(*4*), while a group of consumer advocate commenters specifically requested that the Bureau retain this proposed condition. The Bureau is not removing this condition for the reasons discussed in the section-by-section analysis of § 1026.61(a)(5)(iii) above.

The Bureau believes that ensuring that the terms, conditions, and features of the consumer's prepaid account do not depend on whether the consumer authorizes a link with the credit card account, as provided for in final § 1026.61(a)(5)(iii)(D)(*2*), is important to address a number of policy concerns. First, as discussed in the section-by-section analysis of § 1026.61(a)(5)(iii)(D)(*2*) above, the fact that the prepaid account terms, conditions, and features cannot vary based on whether the consumer authorizes a linkage makes consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure and the consequences of linking the two accounts less complex, and thus, along with the other conditions, obviates the need for applying the 30-day waiting period in § 1026.61(c) and the long form pre-acquisition disclosure requirements in Regulation E § 1005.18(b)(4)(vii). Second, the condition helps to ensure that certain terms and conditions of the prepaid account and the credit card account operate independently of whether the two accounts are linked and restrict the kind of price restructuring that the Bureau observed with regard to overdraft service programs on checking accounts and that various provisions adopted in the 2016 Final Rule were designed to address.[112]

[112] With the 2016 Final Rule, the Bureau was concerned that prepaid account issuers might inflate fees imposed on prepaid accounts as a backdoor way to impose finance charges on draws from the covered separate credit feature without triggering certain restrictions on fees applicable to credit card accounts. 81 FR 83934, 84222–23 (Nov. 22, 2016). To prevent this, the 2016 Final Rule included in Regulation Z several provisions to ensure that where a fee imposed on the prepaid

Same terms, conditions, and features on the prepaid account regardless of whether the prepaid account is linked to the credit card account. To satisfy the exception in final § 1026.61(a)(5)(iii)(D), under final § 1026.61(a)(5)(iii)(D)(*4*), the prepaid account issuer must apply the same terms, conditions, or features to the prepaid account when a consumer authorizes linking the prepaid card to the credit card account as described in final § 1026.61(a)(5)(iii)(D)(*2*), as it applies to the consumer's prepaid account when the consumer does not authorize such a linkage. The Bureau believes that an appropriate comparison for purposes of final § 1026.61(a)(5)(iii)(D)(*4*) is between the terms of the consumer's prepaid account when the consumer has authorized a linkage between the two accounts and the terms of the consumer's prepaid account when the two accounts are not linked. This approach will ensure that the pre-acquisition disclosures for the prepaid account provided to the consumer reflect the same terms, conditions, and features regardless of whether the consumer decides to link the two accounts, which will make consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure and the consequences of linking the two accounts less complex. This standard also is consistent with the comparison standard adopted under final § 1026.61(a)(5)(iii)(D)(*5*), where the card issuer will compare the specified terms and conditions on the consumer's credit card account if there is a link to the prepaid account with the specified terms and conditions that apply to the consumer's account if there is no such link. The Bureau believes that this approach for the comparison of terms, conditions, and features on the consumer's prepaid account will aid compliance by ensuring that a consistent comparison approach can be used for both the prepaid account and the credit card account (which is addressed in final § 1026.61(a)(5)(iii)(D)(*5*), discussed below).[113]

Same load fees. Final § 1026.61(a)(5)(iii)(D)(*4*) also provides a standard for comparing load fees for credit extensions from the credit card account that is linked to the prepaid account, as described in final § 1026.61(a)(5)(iii)(D)(*2*). For these fees, to satisfy the conditions of final § 1026.61(a)(5)(iii)(D)(*4*), the prepaid account issuer must apply the same fees to load funds from the credit card account that is linked to the prepaid account (as described above) as it charges for a comparable load on the consumer's prepaid account to access a credit feature offered by a person that is not the prepaid account issuer, its affiliate, or a person with which the prepaid account issuer has an arrangement as described in final § 1026.61(a)(5)(iii)(A) through (C).

The Bureau believes that this standard provides an appropriate test with regard to comparing load fees by focusing specifically on what fees are charged on the consumer's prepaid account in a comparable load from a separate credit feature offered by a person that is not the prepaid account issuer, its affiliate, or a person with which the prepaid account issuer has an arrangement as described in final § 1026.61(a)(5)(iii)(A) through (C). The Bureau believes that this approach will facilitate compliance and is appropriate given that the Bureau expects that the exception in final § 1026.61(a)(5)(iii)(D) will most likely be used with respect to digital wallet accounts that consumers may choose to associate with multiple credit card accounts, including those offered by unaffiliated third parties.[114]

61(a)(5)(iii)(D)(5)

The Bureau's Proposal

To satisfy the exception in proposed § 1026.61(a)(5)(iii)(D), under proposed § 1026.61(a)(5)(iii)(D)(*5*), the card issuer would have been required to apply the same specified terms and conditions to the credit card account when a consumer authorizes linking the prepaid card to the credit card account, as described in proposed § 1026.61(a)(5)(iii)(D)(*2*), as it applies to the consumer's credit card account when the consumer does not authorize such a linkage. In addition, to satisfy proposed § 1026.61(a)(5)(iii)(D)(*5*), the card issuer would have been required to apply the same specified terms and conditions to extensions of credit from the credit card account made with the prepaid card as with the traditional credit card.

Proposed § 1026.61(a)(5)(iii)(D)(*5*) would have specifically defined ''specified terms and conditions'' to mean the terms and conditions required to be disclosed under § 1026.6(b), any repayment terms and conditions, and the limits on liability for unauthorized credit transactions that apply to the credit card account. Proposed comment 61(a)(5)(iii)(D)(*5*)–1 would have provided additional detail regarding this definition. Specifically, proposed comment 61(a)(5)(iii)(D)(*5*)–1.i would have explained that the terms and conditions required to be disclosed under § 1026.6(b) include: (a) Pricing terms, such as periodic rates, annual

account with a covered separate credit feature is higher than a comparable fee on a prepaid account without such a credit feature, the excess amount of the fee is subject to certain fee restrictions applicable to credit card accounts. *See, e.g.,* § 1026.52(a) and comments 6(b)(3)(iii)(D)–1 and 52(a)(2)–2. Final § 1026.61(a)(5)(iii)(D)(*4*) ensures that this type of activity does not occur when the exception applies.

[113] This approach for comparison of the terms, conditions, and features on the prepaid account differs from the approach used in the 2016 Final Rule for comparing the terms, conditions, and features of the prepaid account when a covered separate credit feature is connected with the prepaid account. *See* § 1026.4(b)(11) and Regulation E § 1005.18(g). For those provisions, the approach used is to compare the terms, conditions, and features of prepaid accounts held by different consumers in the same prepaid program. While these two approaches might yield similar results in comparing the terms, conditions, and features on the prepaid account, the Bureau believes that the approach set forth in the 2016 Final Rule would not be appropriate with respect to comparing specified terms and conditions on the credit card account because risk-based pricing might cause one consumer's pricing to differ from another consumer's pricing based on the consumers' creditworthiness. Thus, the Bureau is adopting an approach for comparing the terms, conditions, and features of the prepaid account that is consistent with the one adopted in final § 1026.61(a)(5)(iii)(D)(*5*) for comparing specified terms and conditions imposed on the credit card account. See the section-by-section analysis of § 1026.61(a)(5)(iii)(D)(*5*) below for a more detailed discussion on the approach for comparing specified terms and conditions imposed on the credit card account.

[114] This standard for comparing load fees set forth in final § 1026.61(a)(5)(iii)(D)(*4*) differs from the comparison for load fees adopted in the 2016 Final Rule with regard to covered separate credit features accessible by hybrid prepaid-credit cards. Specifically, as adopted in the 2016 Final Rule, Regulation E comment 18(g)–5.iii compares what fees are charged for a load from a covered separate credit feature accessible to a hybrid prepaid-credit card in the course of a transaction to the per transaction fee that is charged to access available funds in prepaid accounts in the same prepaid account program without a covered separate credit feature. Also, Regulation E comment 18(g)–5.iv compares what fees are charged for a load from a covered separate credit feature accessible by a hybrid prepaid-credit card outside the course of a transaction to the 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 in the same prepaid account program without a covered separate credit feature. The Bureau took this approach in the 2016 Final Rule because it believed that many prepaid accountholders who wish to use covered separate credit features may not have other asset or credit accounts from which they can draw or transfer funds, and was concerned that prepaid account issuers might therefore inflate such load fees as a backdoor way to impose finance charges on draws from the covered separate credit feature without triggering certain restrictions on fees applicable to credit card accounts. 81 FR 83934, 84187 (Nov. 22, 2016). In contrast, the Bureau believes that competitive pressures would discourage digital wallet providers seeking to qualify for the exception in final § 1026.61(a)(5)(iii)(D) from artificially inflating all load fees in this manner. Nonetheless, the Bureau will continue to monitor this issue to ensure that concerns discussed above do not occur in relation to the exception in final § 1026.61(a)(5)(iii)(D).

percentage rates (APRs), and fees and charges imposed on the credit account; (b) any security interests acquired under the credit account; (c) claims and defenses rights under § 1026.12(c); and (d) error resolution rights under § 1026.13. Proposed comment 61(a)(5)(iii)(D)(*5*)–1.ii would have explained that the repayment terms and conditions related to a credit card account include the length of the billing cycle, the payment due date, any grace period on the transactions on the account, the minimum payment formula, and the required or permitted methods for making conforming payments on the credit card account. The Bureau notes that the limits on liability for unauthorized use of a credit card are set forth in § 1026.12(b), and error resolution procedures applicable to unauthorized use of an open-end credit account are set forth in § 1026.13. Proposed comments 61(a)(5)(iii)(D)(*5*)–2 and 3 would have provided more detailed guidance on application of the two conditions, as discussed below.

Same specified terms and conditions regardless of whether the credit feature is linked to the prepaid account. As discussed above, to satisfy the condition set forth in proposed § 1026.61(a)(5)(iii)(D)(*5*), a card issuer would have been required to apply the same specified terms and conditions to the credit card account when a consumer authorizes linking the prepaid card to the credit card account as described in proposed § 1026.61(a)(5)(iii)(D)(*2*), as it applies to the consumer's credit card account when the consumer does not authorize such a linkage. Proposed comment 61(a)(5)(iii)(D)(*5*)–2 would have provided examples of the circumstances in which a card issuer would not meet the condition described above. Proposed comment 61(a)(5)(iii)(D)(*5*)–2.i would have provided that a card issuer would not satisfy this condition if the card issuer structures the credit card account as a ''charge card account'' (where no periodic rate is used to compute a finance charge on the credit card account) if the credit feature is linked to a prepaid card, as described in proposed § 1026.61(a)(5)(iii)(D)(*2*), but applies a periodic rate to compute a finance charge on the consumer's account (and thus does not use a charge card account structure) if there is no such link.[115] As another example, proposed comment 61(a)(5)(iii)(D)(*5*)–2.ii would have provided that a card issuer would not satisfy the condition if the card issuer imposes a $50 annual fee on a consumer's credit card account if the credit feature is linked as described in proposed § 1026.61(a)(5)(iii)(D)(*2*), but does not impose an annual fee on the consumer's credit card account if there is no such link.

Same specified terms and conditions regardless of whether credit is accessed by the prepaid card or the traditional credit card. For the proposed exception in proposed § 1026.61(a)(5)(iii)(D) to apply, proposed § 1026.61(a)(5)(iii)(D)(*5*) would have provided that the card issuer must apply the same specified terms and conditions to extensions of credit from the credit card account made with the prepaid card as with the traditional credit card. As discussed above, under proposed § 1026.61(a)(5)(iii)(D)(*1*), to qualify for the proposed exception, the credit feature must be a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card.[116]

Proposed comment 61(a)(5)(iii)(D)(*5*)–3 would have provided several examples illustrating the condition described above. Proposed comment 61(a)(5)(iii)(D)(*5*)–3.i would have set forth examples of circumstances in which a card issuer that has an arrangement with a prepaid account issuer would not meet the condition of proposed § 1026.61(a)(5)(iii)(D)(*5*) described above. For example, proposed comment 61(a)(5)(iii)(D)(*5*)–3.i.A would have provided that the card issuer would not meet this condition if it considers transactions using the traditional credit card to obtain goods or services from an unaffiliated merchant of the card issuer as purchase transactions with certain APRs, fees, and a grace period that applies to those purchase transactions, but treats transactions involving extensions of credit using the prepaid card to obtain goods or services from an unaffiliated merchant of the card issuer as a cash advance that is subject to different APRs, fees, grace periods, and other specified terms and conditions. As another example, proposed comment 61(a)(5)(iii)(D)(*5*)–3.i.B would have provided that the card issuer would not satisfy this condition if it generally treats one-time transfers of credit using the credit card account number to asset accounts as cash advance transactions with certain APRs and fees, but treats one-time transfers of credit using the prepaid card to the prepaid account as purchase transactions that are subject to different APRs and fees.

Proposed comment 61(a)(5)(iii)(D)(*5*)–3.ii would have provided guidance on how a card issuer would have been required to meet this condition in proposed § 1026.61(a)(5)(iii)(D)(*5*) with respect to the claims and defenses rights set forth in § 1026.61(c). These rights apply in certain circumstances to purchases of property or services made with a credit card. Proposed comment 61(a)(5)(iii)(D)(*5*)–3.ii would have explained that to satisfy this condition in proposed § 1026.61(a)(5)(iii)(D)(*5*) with respect to the claims and defenses rights in § 1026.12(c), the card issuer must treat the prepaid card when it is used to access credit from the credit card account to purchase property or services as if it is a credit card and provide the same rights under § 1026.12(c) as it applies to property or services purchased with the traditional credit card.

Proposed comment 61(a)(5)(iii)(D)(*5*)–3.iii would have provided guidance on how a card issuer must meet this condition in proposed § 1026.61(a)(5)(iii)(D)(*5*) with respect to limits on liability set forth in § 1026.12(b). Section 1026.12(b) sets forth certain limits on liability for unauthorized use of a credit card. Proposed comment 61(a)(5)(iii)(D)(5)–3.iii would have provided that to apply the same limits on liability for unauthorized extensions of credit from the credit card account using the prepaid card as it applies to unauthorized extensions of credit from the credit card account using the traditional credit card, the card issuer must treat the prepaid card as if it were an accepted credit card for purposes of the limits on liability for unauthorized extensions of credit set forth in § 1026.12(b) and impose the same liability under § 1026.12(b) as it applies to unauthorized transactions using the traditional credit card.

Comments Received

A digital wallet provider commenter requested that the Bureau remove the condition in proposed § 1026.61(a)(5)(iii)(D)(*5*), while a group of consumer advocates specifically requested that the Bureau retain this proposed condition.[117]

One trade association requested that the Bureau revise proposed § 1026.61(a)(5)(iii)(D)(*5*) to eliminate

[115] The term ''charge card'' is defined in § 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.

[116] As discussed above, for purposes of proposed § 1026.61(a)(5)(iii)(D), proposed comment 61(a)(5)(iii)(D)(*1*)–1 would define the term ''traditional credit card'' to mean a credit card that is not a hybrid prepaid-credit card.

[117] The Bureau is not removing this condition for the reasons discussed in the section-by-section analysis of § 1026.61(a)(5)(iii) above.

any suggestion that the prepaid card, as opposed to the credit card account, extends credit. This commenter also requested that the Bureau remove proposed comments 61(a)(5)(iii)(D)(*5*)–3.ii and iii, pertaining to the claims and defenses right in § 1026.12(c) and limits on liability for unauthorized use in § 1026.12(b) respectively. This commenter suggested that those provisions are confusing, do not reflect consumer expectations, and impose conditions that may not be feasible as a practical or technical matter in relation to overdraft credit features attached to prepaid accounts that may be offered in the future. This commenter noted that proposed comments 61(a)(5)(iii)(D)(*5*)–3.ii and iii require a credit card issuer to ''treat'' a prepaid card offered and maintained by another company as a credit card. The commenter indicated that a card issuer may not be able to treat the prepaid card as a credit card because the card issuer has no control over a product offered and controlled by a different company, even one with whom it may have a business arrangement for other purposes. In addition, this commenter indicated that the condition in proposed § 1026.61(a)(5)(iii)(D)(*5*) should not require that the rights in § 1026.12(c) be applied to transactions where the prepaid card was used to transfer credit to the prepaid account in the course of a transaction to purchase goods or services with the prepaid account. The commenter raised concerns about how the claims and defenses right in § 1026.12(c) would apply to split-tender transactions where the prepaid transaction for the purchase of property or services is paid partly for with prepaid account funds and partly with credit transferred from the credit card account. This commenter asserted that it would be difficult for customers and the card issuer to identify when credit is transferred in connection with prepaid account transaction to purchase property or services if credit is used for only a portion of the transaction, as the amount of the prepaid account transaction is different from the amount of the credit extension shown on the credit card account's monthly statement. This commenter also indicated that, in the case of a transaction made with a prepaid card to purchase property or services, a customer who has used the prepaid card or card number for the transaction and has a receipt reflecting the prepaid account number and the amount of the purchase transaction, will naturally address inquiries about the transaction to the prepaid account issuer.

The Final Rule

For the reasons set forth herein, the Bureau is adopting § 1026.61(a)(5)(iii)(D)(*5*) and accompanying commentary generally as proposed with several modifications to clarify the intent of the provisions. In final § 1026.61(a)(5)(iii)(D)(*5*), the Bureau is adopting the condition as proposed that a card issuer must apply the same specified terms and conditions to the credit card account regardless of whether the credit feature is linked to the prepaid account. In addition, the Bureau is adopting § 1026.61(a)(5)(iii)(D)(*5*) as proposed to define ''specified terms and conditions'' to mean terms and conditions required to be disclosed under § 1026.6(b), any repayment terms and conditions, and the limits on liability for unauthorized credit transactions. The Bureau also is adopting comments 61(a)(5)(iii)(D)(*5*)–1 and 2 as proposed. As discussed in more detail below, the Bureau is adopting the condition in § 1026.61(a)(5)(iii)(D)(*5*) requiring the same specified terms and conditions on the credit card account regardless of whether the credit is accessed by the prepaid card or the traditional credit card, and related comment 61(a)(5)(iii)(D)(*5*)–3, as proposed with some revisions to clarify the intent of the provisions.

Same specified terms and conditions regardless of whether the credit feature is linked to the prepaid account. In adopting final § 1026.61(a)(5)(iii)(D)(*5*), the Bureau believes that ensuring that the specified terms and conditions of the credit card account do not vary depending on whether the consumer authorizes a prepaid card to access the account is important to address a number of policy concerns. First, as discussed in the section-by-section analysis of § 1026.61(a)(5)(iii)(D)(*2*) above, the fact that the specified terms and conditions on the credit card account would not vary based on whether the consumer authorizes the prepaid card to access the credit card account will help simplify consumers' decisions about account acquisition, retention, and link authorization and make these decisions less prone to undue pressure and the consequences of linking the two accounts less complex; thus, along with the other conditions, this condition obviates the need for applying the 30-day waiting period in § 1026.61(c) and the long form pre-acquisition disclosure requirements in Regulation E § 1005.18(b)(4)(vii). Second, the condition helps to ensure that the specified terms and conditions of the prepaid account and the credit card account operate independently of whether the two accounts are linked, and restricts the kind of price restructuring that the Bureau observed with regard to overdraft service programs on checking accounts. Third, this condition prevents a card issuer from manipulating repayment terms on the credit card account when it is linked to the prepaid account to ensure that the consumer retains control over the funds in his or her prepaid account even if the two accounts are linked.[118]

The Bureau believes that an appropriate comparison standard for determining whether the same specified terms and conditions are provided to the consumer is to compare the specified terms and conditions on the consumer's account if there is a link to the prepaid account as described above with the specified terms and conditions that apply to the consumer's account if there is no such link. This approach ensures that the application and solicitation disclosures provided to the consumer under § 1026.60 with respect to the credit card account would reflect the same specified terms and conditions regardless of whether the consumer decides to link the two accounts, which will make consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure and the consequences of linking the two accounts less complex. In addition, the Bureau believes that this comparison approach captures situations when the specified terms and conditions vary based on whether there is a link, but it does avoid capturing situations where specified terms and conditions vary due to consumers' creditworthiness.[119]

In final § 1026.61(a)(5)(iii)(D)(*5*), the condition regarding credit card account

[118] As explained in the 2016 Final Rule, the Bureau was concerned that when a prepaid account was connected to a covered separate credit feature, the creditor may manipulate the repayment terms of the credit feature to better ensure repayment of the credit from the prepaid account funds. As a result, the 2016 Final Rule contained several provisions designed to prevent this type of manipulation. *See, e.g.,* §§ 1026.7(b)(11) and 1026.12(d)(3), comments 5(b)(2)(ii)–4.i and 12(d)(2)–1, and Regulation E § 1005.10(e)(1). The Bureau designed these provisions to ensure that consumers retain control over the funds in their prepaid accounts even when a covered separate credit feature becomes associated with that prepaid account. *See, e.g.,* 81 FR 83934, 83982, 84192, 84199, 84211, 84213 (Nov. 22, 2016). This condition ensures that the card issuer could not engage in this type of manipulation of repayment terms when the prepaid account is linked to the credit card account under the exception.

[119] See note 113 above for a discussion of how this approach differs from the approach for comparing terms, conditions, and features on the prepaid account in connection with a covered separate credit feature as adopted in the 2016 Final Rule.

terms and conditions is similar to the condition for prepaid account terms, conditions, and features set forth in final § 1026.61(a)(5)(iii)(D)(*4*), although it applies to a smaller set of account terms. Specifically, final § 1026.61(a)(5)(iii)(D)(*4*) applies to all account terms, conditions, and features on the prepaid account while final § 1026.61(a)(5)(iii)(D)(*5*) applies only to ''specified terms and conditions'' on the credit card account, which is defined to mean terms and conditions required to be disclosed under § 1026.6(b), any repayment terms and conditions, and the limits on liability for unauthorized credit transactions. This smaller set of account terms allows card issuers to adjust credit limits or other metrics (other than the specified terms and conditions) to account for any change in credit risk where a consumer has linked the two accounts. In addition, the Bureau recognizes that the merchants at which the prepaid card and the traditional credit card can be used might not necessarily be the same, and the smaller set of account terms to which the condition in final § 1026.61(a)(5)(iii)(D)(*5*) applies ensures that a card issuer would not lose the exception because of these or similar differences in account features depending on whether the credit is accessed using the prepaid card or the traditional credit card itself.

Thus, a card issuer can satisfy final § 1026.61(a)(5)(iii)(D)(*5*) even if it applies different terms or conditions to the linked credit card account than it would apply if the accounts were not linked, so long as the those terms or conditions are not ''specified terms and conditions,'' as defined in final § 1026.61(a)(5)(iii)(D)(*5*) and final comment 61(a)(5)(iii)(D)(*5*)–1. For example, a card issuer could offer different rewards points for purchases on the credit card account or offer a different credit limit on the credit card account, depending on whether the prepaid account is linked to the credit card account. Rewards points and the credit limit offered on the credit card account would not be ''specified terms and conditions'' because these terms are not required to be disclosed under § 1026.6(b), are not repayment terms or conditions, and are not limitations on liability for unauthorized use.

Same specified terms and conditions regardless of whether credit is accessed by the prepaid card or the traditional credit card. For the exception in proposed § 1026.61(a)(5)(iii)(D) to apply, proposed § 1026.61(a)(5)(iii)(D)(*5*) would have provided that the card issuer would have been required to apply the same specified terms and conditions to extensions of credit from the credit card account made with the prepaid card as with the traditional credit card. The Bureau is adopting this condition as proposed with slight adjustments to clarify that the credit is extended from the credit card account and the credit card account is accessed by the prepaid card or the traditional credit card. Specifically, for the exception in final § 1026.61(a)(5)(iii)(D) to apply, final § 1026.61(a)(5)(iii)(D)(*5*) provides that the card issuer must apply the same specified terms and conditions to extensions of credit from the credit card account accessed by the prepaid card as it applies to extensions of credit accessed by the traditional credit card. As discussed above, under final § 1026.61(a)(5)(iii)(D)(*1*), to qualify for the exception, the credit feature must be a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card. The Bureau believes that this condition is important to address the policy concerns described above by making consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure and the consequences of linking the two accounts less complex.[120]

Proposed comment 61(a)(5)(iii)(D)(*5*)–3 would have provided additional guidance on the condition described above and several examples illustrating the condition. The Bureau is adopting this comment as proposed with some modifications to clarify the intent of the provisions. Specifically, the Bureau is modifying the heading to comment 61(a)(5)(iii)(D)(*5*)–3 and a sentence in the lead-in paragraph to that comment to clarify that the credit is extended from the credit card account and the credit card account is accessed by the prepaid card or the traditional credit card. This sentence in final comment 61(a)(5)(iii)(D)(*5*)–3 now provides that for the exception in final § 1026.61(a)(5)(iii)(D) to apply, under final § 1026.61(a)(5)(iii)(D)(*5*), a card issuer must not vary the specified terms and conditions on the credit card account when a consumer authorizes linking the account with the prepaid card as described in § 1026.61(a)(5)(iii)(D)(*2*), depending on whether a particular credit extension from the credit card account is accessed by the prepaid card or by the traditional credit card.

Proposed comment 61(a)(5)(iii)(D)(*5*)–3.i would have set forth two examples of circumstances in which a card issuer that has an arrangement with a prepaid account issuer would not meet the condition of proposed § 1026.61(a)(5)(iii)(D)(*5*) described above. The Bureau is adopting comment 61(a)(5)(iii)(D)(5)–3.i as proposed with some modifications to the example in comment 61(a)(5)(iii)(D)(*5*)–3.i.A to clarify that it covers situations where the prepaid card is used to draw, transfer, or authorize the draw or transfer of credit from the linked credit card account in the course of completing transactions conducted with the prepaid card to purchase goods or services. Specifically, final comment 61(a)(5)(iii)(D)(*5*)–3.i.A provides that the card issuer would not meet the condition described above if it considers transactions using the traditional credit card to obtain goods or services from an unaffiliated merchant of the card issuer as purchase transactions with certain APRs, fees, and a grace period that applies to those purchase transactions, but treats credit extensions as cash advances that are subject to different APRs, fees, grace periods, and other specified terms and conditions where the prepaid card is used to draw, transfer, or authorize the draw or transfer of credit from the linked credit card account in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services from an unaffiliated merchant of the card issuer. The Bureau is adopting the example in comment 61(a)(5)(iii)(D)(*5*)–3.i.B as proposed.

Proposed comment 61(a)(5)(iii)(D)(*5*)–3.ii would have provided guidance on how a card issuer would be required to meet this condition in proposed § 1026.61(a)(5)(iii)(D)(*5*) with respect to the claims and defenses rights set forth in § 1026.61(c). These rights apply in certain circumstances to purchases of property or services made with a credit card. The Bureau is modifying comment 61(a)(5)(iii)(D)(*5*)–3.ii to clarify that it covers situations where the prepaid card is used to draw, transfer, or authorize the draw or transfer of credit from the

[120] In some cases, a card issuer may impose different terms and conditions to extensions of credit from a credit card account depending on how that credit is accessed. For example, a card issuer may impose a higher annual percentage rate on transactions made with a check that accesses the credit card account than it imposes on purchase transactions made with the credit card. In addition, the limits on liability for unauthorized use in § 1026.12(b) and the claims and defenses rights in § 1026.12(c) generally only apply to credit extended through use of a credit card, and they do not apply to credit accessed by use of a check. This condition ensures that a card issuer cannot vary the specified terms and conditions depending on whether the transactions are conducted with the linked prepaid card or the traditional credit card, which will make consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure and the consequences of linking the two accounts less complex.

linked credit card account in the course of completing transactions conducted with the prepaid card to purchase goods or services.

Specifically, final comment 61(a)(5)(iii)(D)(*5*)–3.ii provides that to apply the same rights under § 1026.12(c) regarding claims and defenses applicable to use of a credit card to purchase property or services, the card issuer must treat an extension of credit as a credit card transaction to purchase property or services where a prepaid card is used to draw, transfer, or authorize the draw or transfer of credit from the linked credit card account in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to purchase property or services and provide the same rights under § 1026.12(c) as it applies to property or services purchased with the traditional credit card. This includes situations where a consumer uses a prepaid card to make a purchase to obtain property or services from a merchant and credit is transferred from the linked credit card account in the course of authorizing, settling, or otherwise completing the prepaid transaction to make the purchase. For a transaction where a prepaid card is used to obtain property 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 linked credit card account, the amount of the purchase transaction that is funded by credit would be subject to this guidance. A card issuer is not required to provide the rights under § 1026.12(c) with respect to the amount of the transaction funded from the prepaid account.

The Bureau is not removing comment 61(a)(5)(iii)(D)(*5*)–3.ii, as requested by one industry commenter discussed above. The Bureau believes that final comment 61(a)(5)(iii)(D)(*5*)–3.ii, along with the other conditions set forth in the exception, is important to address the policy concerns described above by making consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure and the consequences of linking the two accounts less complex. The Bureau also does not believe that final comment 61(a)(5)(iii)(D)(*5*)–3.ii imposes significant operational burdens on digital wallet providers or card issuers in order to take advantage of the exception in final § 1026.61(a)(5)(iii)(D). The Bureau believes that with respect to digital wallet transactions, payment networks currently are identifying when credit is transferred from a linked credit card account to the digital wallet in the course of completing a transaction with the digital wallet to purchase goods or services, and card issuers currently are applying the claims and defenses rights in § 1026.12(c) to these credit transactions. Therefore, they should be able to comply with this provision with minimal additional burden.

Proposed comment 61(a)(5)(iii)(D)(*5*)–3.iii would have provided guidance on how a card issuer must meet the condition in proposed § 1026.61(a)(5)(iii)(D)(*5*) described above with respect to limits on liability set forth in § 1026.12(b). Section 1026.12(b) sets forth certain limits on liability for unauthorized use of a credit card. The Bureau has made modifications to this comment to clarify the intent of the provision. Specifically, final comment 61(a)(5)(iii)(D)(*5*)–3.iii provides that, to apply the same limits on liability for unauthorized extensions of credit from the credit card account using the prepaid card as it applies to unauthorized extensions of credit from the credit card account using the traditional credit card, the card issuer must treat an extension of credit accessed by the prepaid card as a credit card transaction for purposes of the limits on liability for unauthorized extensions of credit set forth in § 1026.12(b) and impose the same liability under § 1026.12(b) to this credit extension as it applies to unauthorized transactions using the traditional credit card.

The Bureau is not removing comment 61(a)(5)(iii)(D)(*5*)–3.iii, as requested by one industry commenter. The Bureau believes that final comment 61(a)(5)(iii)(D)(*5*)–3.iii, along with the other conditions set forth in the exception, is important to address the policy concerns described above by making consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure and the consequences of linking the two accounts less complex. The Bureau also does not believe that final comment 61(a)(5)(iii)(D)(*5*)–3.iii imposes significant operational burdens on digital wallet providers or card issuers in order to take advantage of the exception in final § 1026.61(a)(5)(iii)(D). The Bureau believes that, with respect to digital wallet transactions, payment networks currently are identifying when credit is transferred from a linked credit card account to the digital wallet, and card issuers currently are applying the limits on liability in § 1026.12(b) to these credit transactions.

Regulation Z Technical Corrections

The Bureau is making technical corrections to several provisions of the Prepaid Accounts Rule in Regulation Z, which are not intended to change the meaning of the Prepaid Accounts Rule. Specifically, the Bureau is correcting cross-references in comments 52(b)(2)(i)–7 (changing ''§ 1026.52(a)(2)(i)(B)(*1*)'' to ''§ 1026.52(b)(2)(i)(B)(*1*)''), 61(a)(3)(i)–1.ii (changing ''comment 61(a)(2)(i)–1.iv'' to ''comment 61(a)(3)(i)–1.iv''),[121] 61(a)(4)(ii)(A)–4 (changing ''§ 1026.61(a)(4)(iii)(A)'' to ''§ 1026.61(a)(4)(ii)(A)''), and 61(a)(4)(ii)(B)(*1*)–1.i.B and ii.A (changing ''§ 1026.61(a)(4)(A)(ii)(*2*)'' to ''§ 1026.61(a)(4)(ii)(A)(*2*)''); and correcting a typographical error in comments 6(b)(3)(iii)(D)–1 introductory text and 61(b)–2 (changing ''assessed'' to ''accessed''). The Bureau is also adding a heading in commentary for *Paragraph 61(a)(4)(ii).*

VI. Effective Date

As discussed below, the Bureau is extending the overall effective date of the Prepaid Accounts Rule to April 1, 2019, including the requirement to submit prepaid account agreements to the Bureau. This final rule adopting certain changes to the Prepaid Accounts Rule will become effective 30 days after publication in the **Federal Register**, prior to the previous April 1, 2018 effective date and consistent with section 553(d) of the Administrative Procedure Act.[122]

A. Effective Date of the Prepaid Accounts Rule

The Bureau's Proposal

While the Bureau did not propose a further extension of the effective date of the Prepaid Accounts Rule in the June 2017 Proposal, the Bureau solicited comment on whether a further delay of the effective date would be necessary and appropriate in light of the specific amendments proposed therein. The Bureau also solicited comment on which provisions in particular might cause financial institutions to need additional time, whether any further modifications to any of the particular amendments proposed therein would reduce or eliminate that need, and the appropriate length of such a further delay.

Comments Received

A group of consumer advocates urged the Bureau not to delay the effective date of the rule any further. These

[121] Conforming changes related to the expanded negative balance exception are also being made in comment 61(a)(3)(i)–1.ii. See note 103 in the section-by-section analysis of § 1026.61(a)(4) above.

[122] 5 U.S.C. 553(d).

commenters stated that the Prepaid Accounts Rule represents a long-awaited step towards ensuring consumer access to safe financial products, and argued that the Bureau had sufficiently solicited feedback and made accommodations to industry where it was necessary, specifically citing the changes the Bureau proposed in the June 2017 Proposal.

Industry commenters, including trade associations, issuing banks, program managers, and others, as well as a think tank, generally advocated for the Bureau to consider a further extension of the effective date. Some of these commenters suggested extensions of varying lengths, while others did not suggest a particular length of time in their comments. Of those that suggested a specific length, some recommended that the Bureau adopt a specific effective date, ranging from October 1, 2018 to January 1, 2020. Other commenters suggested that the new effective date should depend on the publication date of this final rule, generally arguing for an effective date of 12 to 18 months after publication.

Regardless of the specific length of time requested for an extension, commenters requesting an extension offered similar arguments in support of their request for more time. Generally speaking, these commenters argued that once the Bureau issued this final rule, industry would need to review and analyze it, coordinate with internal and external parties to create a compliance plan, and implement the plan. Some commenters suggested that the amendments proposed by the Bureau in the June 2017 Proposal diverged significantly from the requirements of the 2016 Final Rule and, if adopted, implementing them would require additional compliance time. Specifically, some commenters raised concerns that any required changes to retail packaging would take significant time to implement, given the significant number of vendors and other outside companies involved in that process. Several commenters also referenced the ''freeze'' period many prepaid account programs are subject to during the winter holiday season that would make it difficult to adopt the sorts of changes contemplated by the Prepaid Accounts Rule and the June 2017 Proposal during that time. The level of detail regarding the extent of these logistical challenges varied by commenter. One trade association and one program manager provided detailed timelines regarding implementation; these commenters requested that the Bureau extend the effective date to April 1, 2019.

A digital wallet provider specifically argued that, if the Bureau did not address certain issues relating to negative balances on prepaid accounts linked to credit cards, it would need additional time to develop systems to address those situations. As discussed in the section-by-section analysis of § 1026.61(a)(4) above, the Bureau believes that the final rule addresses those concerns such that this commenter would not need to modify its systems in the way described in its comment letter.

In addition, commenters raised other specific points that they contended warranted a further extension of the effective date. Two trade associations and a business advocacy group argued that, even if the Bureau had not proposed further changes to the Prepaid Accounts Rule, an effective date of April 1, 2018 still gave insufficient time for industry to implement the rule. One of the trade associations based its argument in part on an assertion that, notwithstanding the Bureau's decision to allow financial institutions to sell through packaging manufactured in the normal course of business prior to the effective date, continuing to sell prepaid accounts with out-of-date packaging and disclosures that no longer describe how the product will work could lead to consumer confusion or expose institutions to potential charges from the Federal Trade Commission or State attorneys general for unfair, deceptive, or abusive practices.[123] This commenter suggested that extending the effective date by an additional six months would allow institutions, who decide to pull and replace current stock, to exhaust and replenish their inventory.

A trade association representing technology companies suggested that the Bureau should take additional time to review the Prepaid Accounts Rule and make changes to the rule, particularly to exempt digital wallets from the rule. A trade association representing the prepaid industry argued that additional time was required to allow industry to implement additional changes necessitated by the Bureau's rule regarding pre-dispute arbitration agreements.[124]

Most commenters' requests for further extensions of the effective date were based on their estimates of how long it would take them to comply with the Prepaid Accounts Rule, as amended by this final rule. However, some commenters pointed to other factors. For example, one trade association argued that combining the rule's general effective date with the effective date of the requirement for prepaid account issuers to submit their agreements to the Bureau would reduce confusion arising from multiple dates, and suggested making both dates October 1, 2018. Several industry commenters, in requesting that the Bureau extend the effective date by another year, to April 1, 2019, argued that an April effective date would avoid disruption and the diversion of critical resources during the holiday period, during which, they said, it is often difficult for industry to make significant changes to prepaid account programs. Another trade association suggested that it would take until January 1, 2020 for the Bureau to address the issues raised in the June 2017 Proposal and for industry to comply with any resulting changes.

The Final Rule

For the reasons set forth herein, the Bureau believes it is necessary and appropriate to extend the general effective date of the Prepaid Accounts Rule by an additional 12 months, to April 1, 2019. The Bureau is likewise extending the effective date of § 1005.19(b) for the agreement submission requirement to April 1, 2019. The rule will thus have one effective date, April 1, 2019, for all of its provisions.

The Bureau acknowledges that the amendments regarding error resolution and limited liability protections on unverified prepaid accounts may require some financial institutions to change language on or in retail packaging. This may be particularly true for those financial institutions that will not offer error resolution and limited liability protections on unverified prepaid accounts but will allow consumers to use them.[125] These financial institutions may thus need to modify the initial disclosures contained in their retail packaging to include the revised model language in appendix A–

[123] It is unclear, based on this comment letter, whether the trade association or its members believe that this concern persists given the changes the Bureau proposed (and is finalizing) regarding error resolution and limited liability for unverified prepaid accounts.

[124] 82 FR 33210 (July 19, 2017). On November 1, 2017, the President signed a joint resolution passed by Congress disapproving the Arbitration Agreements Rule under the Congressional Review Act. *See* 82 FR 55500 (Nov. 22, 2017). Pursuant to the joint resolution, the Arbitration Agreements Rule has no force or effect. Public Law 115–74. This disapproval resolution was signed well before March 19, 2018, when compliance would have been required under the arbitration rule. Thus, the Bureau believes that this trade association should have no further concern that the Bureau's arbitration rule creates a need for a further delay of the Prepaid Accounts Rule's effective date.

[125] These concerns are discussed in detail in the section-by-section analysis of § 1005.18(e)(3) above.

7(c), and put that revised packaging into production by the Prepaid Accounts Rule's effective date. The Bureau appreciates that in some circumstances these changes may be difficult to accomplish by April 1, 2018, and thus believes that a further extension of the effective date is appropriate. The Bureau notes that these revisions do not require wholesale changes to the pre-acquisition disclosures required by the rule. Rather, they involve replacing one set of model disclosure language with another set of model disclosure language. Thus, the Bureau does not believe that these changes should require the multiple rounds of extensive legal review and redesign of packaging suggested by some commenters. However, the Bureau appreciates concerns raised by industry regarding the limited availability of retail packaging manufacturers, particularly during a period when a large number of financial institutions will be making design changes simultaneously. The Bureau believes that the new effective date will also significantly mitigate concerns expressed by commenters relating to potential charges of unfair, deceptive, or abusive practices, by allowing additional time to print compliant packaging material and sell through existing stock.

The Bureau notes that the other revisions to the Prepaid Accounts Rule adopted in this final rule do not generally impose new obligations on financial institutions and other participants in the prepaid industry. Rather, as discussed in detail in the section-by-section analysis of part V above, these amendments generally relieve burden, provide industry with additional flexibility in complying with the rule, or clarify provisions that were identified as being potentially ambiguous. Thus, the Bureau does not believe that these other revisions in the final rule should significantly increase the amount of time that industry will need to comply with the rule, even if some additional time is needed to modify systems for entities that wish to take full advantage of the additional flexibility provided by the amendments in this final rule.

However, given the concerns raised by industry regarding the time needed to comply with the Prepaid Accounts Rule, including the amendments finalized herein, the Bureau believes that a further extension of the effective date to April 1, 2019 is sufficient for industry to comply with the rule. Given the compliance concerns raised by commenters and the timing of this final rule, the Bureau is concerned that a six month extension of the effective date (to October 1, 2018) suggested by some commenters may not provide enough time, particularly as several commenters suggested that date assuming that this final rule would be issued in the fall of 2017. As noted by several commenters, an effective date during the winter holiday season would likely create significant complications for industry, given the common ''freeze'' period many prepaid account programs are subject to during that time of year. Thus, the Bureau believes that it is appropriate to provide an additional year for industry to comply with the Prepaid Accounts Rule, as amended by this final rule. Extending the effective date of the Prepaid Accounts Rule to April 1, 2019 will ensure that industry has sufficient time to implement the rule while also ensuring that consumers maintain access to prepaid accounts during the implementation period and after the rule's effective date.

To implement this effective date delay, the Bureau is making conforming changes in §§ 1005.18(b)(2)(ix)(D), (h), and 1005.19 and the commentary accompanying § 1005.18(b)(2)(ix)(D) and (E), and (h), and removing the commentary that accompanied § 1005.19(f).[126]

The Bureau will continue its efforts to support industry implementation of the Prepaid Accounts Rule, as amended by this final rule, including by monitoring industry's implementation efforts, and expects that continued engagement and dialogue will assist industry in complying with the rule.

B. Safe Harbor for Early Compliance

The Bureau's Proposal

In response to the 2017 Effective Date Proposal, two trade association commenters urged the Bureau to establish a safe harbor for financial institutions that comply with the Prepaid Accounts Rule (or portions of it) prior to the rule's effective date. These commenters were concerned that financial institutions may be exposed to potential liability if they comply early, suggesting the possibility that there may be some conflict between the Prepaid Accounts Rule and current requirements for payroll card accounts and government benefit accounts, though these commenters did not provide any specific examples. In response to those concerns, in the 2017 Effective Date Final Rule as well as the June 2017 Proposal, the Bureau noted its agreement that early compliance could benefit both industry and consumers, and stated that it was not aware of any conflicts between the requirements of the Prepaid Accounts Rule and current Federal regulations applying to accounts that will be covered by the rule.[127] Thus, while the Bureau did not propose language for a specific provision addressing early compliance with the Prepaid Accounts Rule, the Bureau sought comment on whether a specific provision addressing early compliance with the Prepaid Accounts Rule would be necessary and appropriate to address conflicts between the Prepaid Accounts Rule and current Federal requirements for accounts that will be covered by the rule.

Comments Received

Several industry trade association commenters and a think tank requested that the Bureau provide a safe harbor to ensure that early compliance with the Prepaid Accounts Rule will not expose financial institutions to liability, although commenters did not put forth specific theories of liability.[128] Two trade associations representing credit unions contended that, because the Prepaid Accounts Rule makes numerous changes to existing rules, compliance with the new rule in advance of the effective date could lead to financial institutions being targeted as non-compliant with the existing rules. A trade association representing the prepaid industry suggested that issuers could face potential liability stemming from a private action, alleging that financial institutions that change their disclosures to comply with the rule early would be noncompliant with the current version of Regulation E. The Bureau specifically solicited comment on whether specific provisions of current requirements for such accounts conflict with provisions of the Prepaid Accounts Rule; however, with one exception described below, commenters did not identify any specific provisions of current legal requirements for payroll card accounts, government benefit accounts, or any other types of prepaid accounts that they believed conflict

[126] See also the section-by-section analyses of §§ 1005.18(b)(2)(ix)(D), (h), and 1005.19(f) above for additional discussion regarding these changes.

[127] 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. *See* §§ 1005.18, 1005.15, and 1005.20, respectively. Regulations promulgated by the Department of the Treasury also require prepaid cards that are eligible to receive Federal payments to comply with the rules governing payroll card accounts, among other requirements. 31 CFR 210.5(b)(5)(i).

[128] With one exception described below, these commenters requested a safe harbor that would apply to all accounts covered by the Prepaid Accounts Rule, not just payroll card and government benefit accounts.

with provisions of the Prepaid Accounts Rule.[129]

One trade association identified what it described as inconsistencies between current rules for government benefit accounts under Regulation E and the Prepaid Accounts Rule, in cases where the government agency elects to take advantage of the respective provisions in the current rules and the Prepaid Accounts Rule allowing for an alternative to providing a periodic statement.[130] The trade association asserted that three specific provisions that apply to government agencies using the periodic statement alternative presented inconsistencies: Currently effective § 1005.15(d)(4) and revised § 1005.15(e)(4) in the Prepaid Accounts Rule, which pertain to error resolution time limits; [131] currently effective § 1005.15(d)(2) and revised § 1005.15(e)(2), which pertain to delivery of the annual error resolution notice; [132] and currently effective § 1005.15(d)(3) and revised § 1005.15(e)(3), which pertain to time limits for limitations on consumers' liability.[133] The commenter expressed concern that financial institutions and government agencies that comply with the Prepaid Accounts Rule's version of these provisions prior to the effective date would not be in compliance with current Regulation E, and thus argued that such financial institutions and government agencies should be provided with a safe harbor.

The Final Rule

The Bureau continues to believe that early compliance may benefit both industry and consumers. However, after having carefully considered the issue as described below, the Bureau does not believe that a specific provision for early compliance with the Prepaid Accounts Rule is warranted.

Specifically, the Bureau considered early compliance issues with regard to two separate types of products that will be subject to the Prepaid Accounts Rule: Those that are not currently covered by Regulation E, and those that are (namely, payroll card accounts and government benefit accounts, as well as cards receiving Federal payments via a Treasury rule that requires compliance with the payroll card rules in Regulation E).[134] For accounts not currently subject to Regulation E, a safe harbor for early compliance is neither necessary nor appropriate because current Federal law does not contain any obligations that conflict with the provisions of the Prepaid Accounts Rule. For accounts currently subject to Regulation E, neither commenters nor the Bureau have identified any affirmative requirements in current regulations that would conflict with affirmative requirements in the Prepaid Accounts Rule, and thus the Bureau does not believe that a safe harbor for early compliance is either necessary or appropriate for these products either.[135] This is consistent with the Bureau's approach in other rulemakings, where the Bureau has sometimes included in regulatory text specific provisions regarding early compliance in situations where compliance with a new regulation would cause a person to be noncompliant with a current regulation.[136] (For example, if a current rule requires a person to provide disclosure form A and only disclosure form A and a new rule requires disclosure form B, without a provision to address early compliance that person may be in violation of the current rule by providing disclosure form B in advance of the effective date.)

With respect to the examples offered by one commenter relating to government benefit accounts, the Bureau believes that agencies and other financial institutions that move to early compliance with the Prepaid Accounts Rule would only be out of compliance with existing rules in two extraordinarily narrow circumstances that could easily be avoided by appropriate action during the transition period.[137] Moreover, these are not

[129] The Bureau also solicited comment regarding whether a specific provision addressing early compliance should only be available to financial institutions that comply with the entire Prepaid Accounts Rule prior to its effective date, or whether it should also cover financial institutions that comply with portions of the Prepaid Accounts Rule prior to its effective date. The Bureau received no comments on this issue.

[130] Under currently effective § 1005.15(c), a government agency need not furnish the periodic statement required by § 1005.9(b) if the agency makes available to the consumer: The consumer's account balance, through a readily available telephone line and at a terminal; and 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 60 days preceding the date of a request by the consumer. Under the 2016 Final Rule's version of § 1005.15(d), a government agency need not furnish the periodic statement if the agency makes available to the consumer: The consumer's account balance, through a readily available telephone line and at a terminal; an electronic history of the consumer's account transactions, such as through a website, that covers at least 12 months preceding the date the consumer electronically accesses the account; and 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.

[131] With respect to error resolution time limits, the commenter noted that, under currently effective § 1005.15(d)(4), a government agency is required to comply with Regulation E's error resolution requirements 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 in which the error is first reflected. The 2016 Final Rule, in § 1005.15(e)(4), provides that an agency is required to comply with the error resolution requirements 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 electronically accesses the consumer's account (provided that the history made available reflects the error), or the agency sends a written history of the consumer's transactions in which the error is first reflected. Alternatively, an agency may comply by investigating any oral or written notice of error received within 120 days after the transfer allegedly in error was credited or debited to the consumer's account.

[132] The commenter noted that the 2016 Final Rule's version of § 1005.15(e)(2) allows agencies to provide on or with each electronic or written history a notice substantially similar to the abbreviated notice for periodic statements contained in appendix A–3(b), as an alternative to the current requirement of providing an annual notice concerning error resolution that is substantially similar to the notice contained in appendix A–5(b).

[133] With respect to limited liability, the issue raised by the commenter was essentially the same as for error resolution: Namely, the timelines that would apply for financial institutions that make use of the periodic statement alternative. Specifically, the commenter noted that under currently effective § 1005.15(d)(3), for purposes of § 1005.6(b)(3) (which generally provides 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 to avoid liability for subsequent transfers), the 60-day period begins with transmittal of a written account history or other account information provided to the consumer under § 1005.15(c). Under the 2016 Final Rule's version of § 1005.15(e)(3)(i), the commenter noted, the 60-day period begins on the earlier of the date the consumer electronically accesses the consumer's account, provided the electronic history made available reflects the unauthorized transfer; or the date the agency sends a written history in which the unauthorized transfer is first reflected. Section 1005.15(e)(3)(ii) further provides that an agency may comply with this provision by limiting the consumer's liability for any transfer reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account.

[134] 31 CFR 210.5(b)(5)(i).

[135] For example, the Bureau understands that many financial institutions currently offer error resolution and limited liability protections on prepaid accounts that are equivalent to or greater than the parallel provisions of Regulation E. They are thus in partial early compliance with the rule.

[136] For example, the Bureau provided for an optional early compliance period for amendments to its mortgage disclosure rules in part because the amendments clarified potential ambiguity in the rule, and the Bureau determined that some creditors may have already complied with the amendments, for various reasons. 82 FR 37656, 37763–64 (Aug. 11, 2017).

[137] If an agency chooses to implement the Prepaid Accounts Rule's version of the periodic statement alternative prior to the rule's effective date, it would be out of compliance with the currently-effective version of Regulation E only if a consumer reported an unauthorized transaction or other error on a government benefit account that was inside the currently effective rule's timelines but outside the Prepaid Accounts Rule's timelines, and the financial institution elected to reject the claim as outside the reporting timeframes. (This could happen if a disputed transaction occurs on a date that is more than 60 days after the consumer first accessed the electronic account transaction history

situations in which the Prepaid Accounts Rule requires entities to do something that is prohibited under the existing regulations; rather, compliance with the existing rule remains permissible under the Prepaid Accounts Rule, while the Prepaid Accounts Rule will provide certain additional compliance options that are not available under current regulations. Given how narrow the circumstances at issue are and how easy it would be for any agencies that choose to adopt early compliance to manage the transition period, the Bureau is not persuaded that a specific provision for early compliance with the Prepaid Accounts Rule's version of § 1005.15 is either necessary or appropriate.

The Bureau believes that rewriting the Prepaid Accounts Rule to allow industry to take advantage of the additional compliance options it permits in these two narrow circumstances before April 1, 2019 would be unduly complex, and that both industry and consumers will be best served by maintaining the same effective date for all prepaid accounts. In particular, to take advantage of the additional compliance options in the context of government benefit accounts, financial institutions would need to be in full compliance with the Prepaid Accounts Rule's periodic statement alternative (on which the modified timing requirements are based) as well; initial disclosures regarding access to account information and error resolution/limited liability protections would also be implicated. Providing a safe harbor in this instance would thus necessitate an earlier effective date for the portions of the rule governing government benefit accounts coupled with a subsequent mandatory compliance date; the Bureau believes such an approach would be complicated, cause industry confusion, and run contrary to the Bureau's intentions in further extending the Prepaid Accounts Rule's overall effective date to April 1, 2019.

At the same time, the Bureau does not believe that the lack of a specific provision for early compliance imposes a burden on financial institutions, including government agencies, as the only cost to those entities will be delaying the date on which they activate systems that permit error resolution and limited liability claims to be resolved under the new timeframes established by the Prepaid Accounts Rule and cease to send annual error resolution notices in lieu of providing electronic and written account histories with such notices.[138] Nothing in the current regulation will prevent institutions from making available electronic account transaction histories in advance of the Prepaid Accounts Rule's new effective date; the Bureau notes that, in fact, many government benefit account programs currently offer electronic account transaction histories.[139] Agencies and institutions simply may not resolve errors or limit liability using the Prepaid Accounts Rule's modified timelines based on accessing electronic account transaction history, or provide abbreviated error resolution notices on electronic and written account transaction histories in lieu of sending the annual notice, until the Prepaid Accounts Rule goes into effect. The Prepaid Accounts Rule's amendments to § 1005.15(d) and (e) were intended to more closely align the periodic statement alternative for government benefit accounts with the alternative for other prepaid accounts.[140] The Bureau does not believe that making significant revisions to the rule's effective date provisions to accommodate a rare and easily-avoided compliance concern would be in the best interest of industry or consumers.

As noted above, aside from this minor issue, the Bureau believes that early compliance with the Prepaid Accounts Rule may benefit both industry and consumers. The Bureau will continue its outreach to industry over the course of the implementation period to understand industry's ongoing experience in implementing the Prepaid Accounts Rule and monitor whether other concerns arise regarding perceived conflicts between current regulations and the Prepaid Accounts Rule.

VII. Section 1022(b)(2)(A) of the Dodd-Frank Act

In developing this final rule, the Bureau has considered the potential benefits, costs, and impacts as 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, including the potential reduction of consumer access 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 the objectives those agencies administer. The Bureau 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 they administer.

The baseline[141] for this discussion is the market for prepaid accounts as it would exist ''but for'' this final rule. That is, the Bureau evaluates the benefits, costs, and impacts of this final rule on consumers and covered persons relative to the baseline established by the Prepaid Accounts Rule.[142] The discussion below covers the major provisions in this final rule as well as certain alternatives that the Bureau considered.

The major provisions of this final rule addressed in this discussion include:

- Amending the Prepaid Accounts Rule to provide that Regulation E's error resolution and limited liability requirements do not extend to prepaid accounts that have not successfully completed the financial institution's consumer identification and verification process;
- Creating a limited exception to the credit-related provisions of the Prepaid Accounts Rule by narrowing the Prepaid

on which the error appeared, but which is less than 60 days after the date the agency sends to the consumer a written history of the consumer's account transactions at the consumer's request in which the error first appears.) Similarly, an agency may comply with both the existing and new annual error resolution notice requirements by sending an annual error resolution notice. It would be out of compliance with current Regulation E only if it failed to provide an annual error resolution notice under currently-effective § 1005.15(e)(2) prior to April 1, 2019.

[138] The Bureau notes that, to the extent government agencies have obtained the proper consent to deliver periodic statements electronically, government benefit accounts will be governed by the general limited liability and error resolution provisions of §§ 1005.6 and 1005.11, rather than the periodic statement alternative of currently effective § 1005.15.

[139] For example, all 65 of the government benefit account agreements reviewed by the Bureau in its 2014 Study of Prepaid Account Agreements indicated that at least 60 days of electronic access to account information was available. Study of Prepaid Account Agreements at 18 tbl. 5 and 19 tbl. 6 (Nov. 2014).

[140] 81 FR 83934, 84000 (Nov. 22, 2016).

[141] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits, costs, and impacts and an appropriate baseline.

[142] As discussed above, the Bureau refers to the 2016 Final Rule, as amended by the 2017 Effective Date Final Rule, as the Prepaid Accounts Rule. The Bureau previously considered the benefits, costs, and impacts of the major provisions of both the 2016 Final Rule and the 2017 Effective Date Final Rule. *See* 81 FR 83934, 84269 (Nov. 22, 2016); 82 FR 18975, 18979 (Apr. 25, 2017).

Accounts Rule's definition of ''business partner'' in Regulation Z so that it no longer includes certain arrangements between prepaid account issuers and credit card issuers that offer traditional credit card products; [143]

- No longer considering incidental credit extended through a negative balance on a prepaid account to be subject to Regulation Z where a covered separate credit feature offered by a business partner is attached to the prepaid account, provided certain conditions are met; and
- Extending the overall effective date of the Prepaid Accounts Rule to April 1, 2019.

In addition to these changes, the Bureau is making clarifications and minor adjustments to certain other discrete aspects of the Prepaid Accounts Rule. Like the major provisions discussed, these clarifications and minor adjustments will provide industry participants with additional options for compliance and should not increase burden on covered persons. In addition, the Bureau does not believe that this final rule's minor modifications to the Prepaid Accounts Rule's disclosure requirements will appreciably decrease transparency or have an adverse impact on informed consumer choice.[144]

In considering the relevant potential benefits, costs, and impacts of this final rule, the Bureau has applied its knowledge and expertise concerning consumer financial markets. Although the Bureau did not receive comments specific to its consideration of the benefits, costs, and impacts of the June 2017 Proposal, the Bureau has considered the comments on the substantive proposal in considering the relevant potential benefits, costs, and impacts of this final rule. Because the Prepaid Accounts Rule is not yet in effect and this final rule addresses potential impacts of the Prepaid Accounts Rule on some industry participants for a subset of their prepaid accounts, this discussion of the potential benefits, costs, and impacts on consumers and covered persons, evaluated relative to the baseline established by that rule, is largely qualitative.

This final rule generally decreases the burden incurred by industry participants and provides covered persons with more options for complying with the provisions of the Prepaid Accounts Rule. As described in more detail below, the Bureau does not believe that this final rule's provisions will reduce consumer access to consumer financial products and services. In particular, the provisions relating to error resolution and limited liability for unverified accounts may increase consumer access to consumer financial products and services relative to the baseline established by the Prepaid Accounts Rule.

Error resolution and limited liability for unverified accounts. The Bureau is revising §§ 1005.11(c)(2)(i), 1005.18(d)(1)(ii) and (e)(3), comments 18(e)–4 through 6, and appendix A–7(c) to provide that Regulation E's error resolution and limited liability requirements do not extend to prepaid accounts that have not successfully completed the financial institution's consumer identification and verification process (*i.e.,* accounts that have not concluded the process, accounts where the process is concluded but the consumer's identity could not be verified, and accounts in programs for which there is no such process).[145] The Bureau is also making related changes to model disclosure language. In addition, the Bureau is requiring that, for accounts in programs where there is no verification process, financial institutions either explain in their initial disclosures their error resolution process and limitations on consumers' liability for unauthorized transfers, or explain that there are no such protections, and that such institutions comply with the process (if any) that they disclose.

Covered persons will avoid the burdens associated with providing Regulation E's error resolution and limited liability protections for those prepaid accounts held by consumers who have not successfully completed the consumer identification and verification process.[146] The Bureau considered the costs associated with providing error resolution and limited liability protections in its section 1022(b)(2) discussion for the 2016 Final Rule.[147] Potential sources of burden include, among other things, receiving oral or written error claims, investigating error claims, providing consumers with investigation results in writing, responding to consumer requests for copies of the documents that the financial institution relied on in making its determination, and correcting any errors discovered within the required timeframes.

During the Bureau's outreach efforts to industry regarding implementation and in comments submitted on the June 2017 Proposal, industry participants expressed concern that offering error resolution and limited liability protections for holders of unverified accounts, in particular, would significantly increase fraud risk. These industry participants mentioned various changes in functionality or processes that could mitigate this risk. For example, commenters asserted that financial institutions would limit pre-verification functionality on accounts. In pre-proposal outreach, some financial institutions told the Bureau that they believed that they would need to replace retail packaging to accurately reflect this decreased functionality, notwithstanding the Bureau's decision to allow financial institutions to use non-compliant packaging manufactured in the normal course of business prior to the effective date. In pre-proposal outreach and in response to the June 2017 Proposal, industry representatives suggested that financial institutions may issue paper checks to consumers holding unverified accounts in various scenarios, including when a consumer fails the verification process (instead of allowing the consumer to spend down the balance) and when a transaction on an unverified account is disputed (to decrease the likelihood that further errors are asserted on the account).

In addition to the direct cost associated with investigating errors and providing funds in response to claims by holders of unverified accounts, covered persons, under the requirements of the 2016 Final Rule, would incur costs in changing account functionality or refund processes. By

[143] Although a credit card account is subject to the credit card provisions of Regulation Z in its own right if the account and the arrangement between the prepaid account issuer and credit card account issuer meet all conditions for this exception, it will not be subject to the provisions in Regulation Z that apply only to covered separate credit features accessible by a hybrid prepaid-credit card. In addition, the prepaid account with which it is linked will not be subject to the provisions in Regulation E that apply only to prepaid accounts connected to covered separate credit features.

[144] For example, revised § 1005.18(b)(1)(ii)(D) allows financial institutions offering prepaid accounts that qualify for the retail location exception in § 1005.18(b)(1)(ii) to satisfy the requirement that they provide the long form disclosure after acquisition by delivering such disclosure electronically without receiving consumer consent under the E-Sign Act in cases where the financial institution does not provide the long form disclosure inside the prepaid account packaging material and does not otherwise mail or deliver to the consumer written account-related communications within 30 days of obtaining the consumer's contact information.

[145] Given current business practices, the Bureau believes that this amendment will predominately affect financial institutions distributing prepaid accounts to consumers through the retail channel.

[146] Covered persons that choose not to offer Regulation E error resolution and limited liability protections for unverified prepaid accounts will need to disclose which protections they do offer or that they do not offer such protections, and comply with any such protections they disclose.

[147] 81 FR 83934, 84292 (Nov. 22, 2016).

amending the Prepaid Accounts Rule's requirement that financial institutions resolve errors and limit consumers' liability pursuant to Regulation E to exclude those prepaid accounts, other than payroll card accounts or government benefit accounts, for which the consumer identification and verification process has not been completed, this final rule will allow covered persons to avoid such costs.

Consumers holding or desiring to hold unverified prepaid accounts may both derive benefits and incur costs from this final rule's provisions relative to those benefits and costs they would experience were the baseline requirements established by the Prepaid Accounts Rule in force. Under this final rule, consumers holding unverified accounts will no longer be assured the benefits arising from the Prepaid Accounts Rule's error resolution and limited liability protections. However, if absent this final rule, financial institutions would have attempted to mitigate potential fraud losses by not offering unverified prepaid accounts, consumers desiring to hold unverified accounts would have lost access to such products altogether. In such a scenario, consumers desiring to hold unverified prepaid accounts would be forced to choose a less-desired alternative and would not have enjoyed any of the benefits arising from the Prepaid Accounts Rule's consumer protections (unless that alternative product was a verified prepaid account). Alternatively, if financial institutions would have responded to the Prepaid Accounts Rule's requirement that unverified prepaid accounts offer error resolution and limited liability protections by decreasing the functionality associated with such accounts, this final rule will enable current and future accountholders to retain current functionality on unverified accounts, though they will not enjoy the error resolution and limited liability protections of the Prepaid Accounts Rule. Therefore, as a result of this final rule, consumers holding unverified prepaid accounts (or those desiring to hold unverified accounts) may experience increased product access or functionality relative to the baseline.

In addition to these impacts on consumers holding or desiring to hold unverified prepaid accounts, consumers holding verified prepaid accounts may also benefit relative to the baseline established by the Prepaid Accounts Rule's requirement that financial institutions offer error resolution and limited liability protections for unverified accounts. Under the Prepaid Accounts Rule, financial institutions may have raised prices to account for forecasted or actual fraud resulting from providing error resolution and limited liability protections on unverified accounts. This final rule allows financial institutions to avoid such costs. Financial institutions may pass through some portion of the cost savings to holders of verified accounts by lowering prices, or they may invest cost savings into innovation efforts to create higher quality products.

In terms of alternatives, the Bureau considered applying error resolution and limited liability protections to pre-verification transactions for those accounts later verified. The Bureau also considered applying these protections to only those pre-verification transactions occurring within a specified time (such as 30 days) prior to account verification. Although those approaches would have decreased the risk that holders of unverified accounts would experience a loss of funds in the event of an unauthorized transaction or other error, covered persons would have incurred the burdens associated with providing these protections (including any attendant fraud losses) for pre-verification transactions. Commenters stated that financial institutions rely on verified consumer information to identify fraudulent transactions when they are attempted. Therefore, even if the accountholder's identity is verified later, the financial institution is unable to leverage verified consumer information to limit fraud exposure on pre-verification transactions, thereby driving up costs. The Bureau's approach provides more incentive for consumers to verify accounts upon acquisition and, by so doing, may increase investigation speed (and decrease the costs associated with conducting those investigations), relative to these alternatives. The Bureau's approach should decrease uncertainty regarding responsibilities and liabilities among industry participants.

''*Business partner*'' *redefined to exclude certain arrangements.* The Bureau is amending the definition of ''business partner'' in § 1026.6(a)(5)(iii) and related commentary to exclude business arrangements between prepaid account issuers and issuers of traditional credit cards from coverage under the Prepaid Accounts Rule's tailored provisions applicable to hybrid prepaid-credit cards, provided certain conditions are satisfied. The 2016 Final Rule had defined the term ''business partner'' to mean a person (other than the prepaid account issuer or its affiliate) 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 revised by this final rule, § 1026.61(a)(5)(iii)(D) now provides that a person that can extend credit through a credit card account is not a business partner of a prepaid account issuer with which it has an arrangement, as defined in § 1026.61(a)(5)(iii)(A) through (C), with regard to such a credit card account so long as certain conditions are met. For example, under these conditions, the credit card account remains subject to Regulation Z's credit card requirements in its own right, and both the credit card and prepaid accounts' pricing terms must be independent of whether the two accounts are linked. Thus, if certain conditions are met, this final rule provides that prepaid account issuers may enter into certain business arrangements with credit card issuers without being subject to the Prepaid Accounts Rule's tailored provisions applicable to hybrid prepaid-credit cards.

Although the Bureau believes that few industry participants will be impacted directly by the Prepaid Accounts Rule's credit-related provisions, this change will relieve burden for those industry participants that currently qualify for the exception and will decrease the cost incurred by industry participants entering into qualifying relationships in the future. For example, under the Prepaid Accounts Rule's prior definition of ''business partner,'' a provider of a digital wallet that could store funds that had a cross-marketing arrangement with a credit card issuer could have been subject to those provisions of the Prepaid Accounts Rule applicable to covered separate credit features accessible by a hybrid prepaid-credit card if the prepaid card from time to time could access credit from the credit card account in the course of a transaction to obtain goods or services, obtain cash, or conduct P2P transfers. Among other things, the digital wallet provider would have been required to wait 30 days after the digital wallet account was registered before allowing a consumer to add a credit card account issued by a ''business partner,'' though there would be no such required waiting period for credit card accounts offered by unaffiliated card issuers with whom there is no such relationship. Under the 2016 Final Rule, this requirement applied even if the credit card account was subject to the provisions of Regulation Z that apply to credit card accounts in its own right.

Because the Bureau narrowly tailored this amendment, consumers likely will not incur many costs as a result. For example, § 1026.61(a)(5)(iii)(D)(*1*)

provides that for the credit card account to be eligible for the exclusion, it must be a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card and thus subject to the applicable credit card provisions of Regulation Z in its own right. Therefore, consumers will still enjoy the credit card protections provided by Regulation Z with respect to the linked credit card account. In addition, the Bureau believes that when the conditions of the ''business partner'' exclusion in § 1026.61(a)(5)(iii)(D) are met, consumers will be further protected because of the provisions intended to help make the choice to acquire or retain a prepaid account independent of the choice of whether to link a credit feature to it. For example, § 1026.61(a)(5)(iii)(D)(*3*) generally prohibits both the prepaid account issuer and the credit card issuer from conditioning the acquisition or retention of either the prepaid or credit card account on whether the consumer authorizes their linkage. Also, under § 1026.61(a)(5)(iii)(D)(*4*) and (*5*), both the prepaid account issuer and card issuer generally are prohibited from varying the prepaid and credit card account terms and conditions based on whether the consumer chooses to link the accounts.[148] These provisions will help to ensure that the consumer's choice to acquire or retain a prepaid account or a credit card account is distinct from his or her choice to link a credit card account and a prepaid account. By preventing pricing structures from depending on the individual consumer's choice to link the accounts, this final rule's provisions help provide the consumer with an opportunity to independently identify and appreciate the costs associated with each product. In addition, § 1026.61(a)(5)(iii)(D)(*2*) generally requires that the consumer provide either the prepaid account issuer or the card issuer a written request that is separately signed or initialized authorizing the prepaid card to access the credit card account, thereby helping to ensure that any account linkages are transparent and represent the consumer's deliberate choice.

In addition, this change helps to decrease the likelihood of consumer confusion. Absent this final rule's amendment to the definition of ''business partner,'' there would be more instances in which the Prepaid Accounts Rule's provisions would apply to some, but not all, of the credit card accounts provisioned to a consumer's digital wallet. This uneven application could have resulted in increased consumer confusion relative to the approach taken in this final rule because credit card payment credentials stored within the same digital wallet would have been subject to different disclosure regimes and use restrictions with greater frequency than will be experienced under this final rule's approach. By helping to foster uniformity in application and therefore increasing transparency, this final rule's amendment to the definition of ''business partner'' will benefit these consumers.

As discussed above, the Bureau also considered changing the basis for qualifying for the exception in § 1026.61(a)(5)(iii)(D), including extending the exception to apply to credit card accounts offered by the prepaid account issuer or its affiliate as well as allowing providers to vary certain terms and conditions based on whether the prepaid account and the credit card account are linked. The Bureau did not adopt these changes in this final rule. The Bureau believes that the approach taken in this final rule more adequately ensures the separation and independence of linked prepaid and credit card accounts and thereby leads to better-informed consumer choice. The Bureau believes that conditioning the exception on the requirement that providers not vary terms and conditions based on whether the prepaid account and the credit card account are linked will help to ensure that consumers' decisions about account acquisition, retention, and link authorization are simpler and less prone to undue pressure (and thereby do not require the protections provided by the tailored provisions in Regulations Z and E applicable only to covered separate credit features and linked prepaid accounts). Nonetheless, the Bureau does not believe that these safeguards would be sufficient to protect consumers when the prepaid account and the credit card account are offered by entities under common control. The Bureau believes that ensuring separation and independence is more complicated when both accounts are issued by entities under common control, particularly given that offset, security interest, and other types of linkages may be present.

The Bureau also considered requiring that card issuers comply with § 1026.12(d)(3)(ii), which permits a written plan authorizing periodic deductions from the prepaid account only if the deductions are no more frequent than once per calendar month, to qualify for the exception, as suggested by consumer advocate commenters. The Bureau is not adopting such a requirement in this final rule. The Bureau believes that adding such a repayment provision, which would impose an additional burden on industry, is not necessary given the consumer protections already offered by limits on repayment terms.[149]

Treatment of negative balances. The Bureau is expanding the exception in § 1026.61(a)(4) that allows prepaid account issuers to provide certain incidental forms of credit structured as a negative balance on the asset feature of prepaid accounts, to include those situations where a covered separate credit feature offered by a business partner is attached to the prepaid account, provided the other requirements in § 1026.61(a)(4) are met. In these situations, the incidental credit structured as a negative balance on the prepaid account will not be subject to Regulation Z, although the business partner's separate credit feature will be subject to Regulation Z.

Broadening the exception in § 1026.61(a)(4) to include those situations where a covered separate credit feature offered by a business partner is attached to the prepaid account, provided the other requirements in § 1026.61(a)(4) are met, enables industry participants to avoid several operational costs that they might incur in preventing negative balances on the prepaid account when a covered separate credit feature offered by a business partner is attached. These costs would have included building Regulation Z-compliant systems to hold otherwise permissible negative balances

[148] More specifically, § 1026.61(a)(5)(iii)(D)(*4*) ensures that the prepaid account issuer applies the same terms, conditions, or features to the prepaid account regardless of whether a consumer authorizes linking the prepaid card to the credit card account offered by the card issuer subject to the exception. In addition, the prepaid account issuer is required to apply the same fees to load funds from a linked credit card account to the prepaid account as it charges for a comparable load from a credit feature offered by a person who is not the prepaid account issuer, its affiliate, or person with whom the prepaid account issuer has an arrangement. With respect to the credit card account, § 1026.61(a)(5)(iii)(D)(*5*) requires the card issuer to apply the same specified terms and conditions to the credit card account regardless of whether the consumer authorizes its linkage to the prepaid account and additionally requires that the issuer apply the same specified terms and conditions to extensions of credit accessed by the prepaid card from the credit card account as it applies to extensions of credit accessed by the traditional credit card.

[149] Final § 1026.61(a)(5)(iii)(D)(*5*) prevents the card issuer from varying the repayment terms of the credit card account based on whether the consumer has authorized linking the prepaid card to the credit card account or based on whether a particular credit extension from the credit card account is accessed by the prepaid card or by the traditional credit card.

in separate subaccounts when covered separate credit features issued by a business partner are linked or charging the incidental credit to the linked covered separate credit features. One commenter indicated that when a covered separate credit feature is offered by a business partner, it may not always be possible to charge the incidental credit to the linked covered separate credit feature if doing so could cause the account to exceed its credit limit.

Although the negative balance may be repaid from the next incoming deposit because the offset provisions in § 1026.12(d) will not apply in these cases, consumers may benefit from this provision relative to the baseline even though they may have less control of their funds. For example, one commenter indicated that incidental credit that is charged to the linked covered separate credit feature would likely be deemed a cash advance by the card issuer, subjecting the customer to interest and fees. This final rule's approach helps to avoid that outcome. Further, without the exception in § 1026.61(a)(4), it is possible that a prepaid account issuer would build Regulation Z-compliant systems to hold otherwise permissible negative balances in separate subaccounts when business partner credit cards are linked. Consumers could be confused by the presence of subaccounts, especially to the extent that the trigger for their creation (whether a linked credit card is issued by the prepaid account issuer's business partner) may not be transparent to the consumer.

The Bureau considered multiple alternative approaches to address the treatment of incidental credit structured as a negative balance. This final rule's approach is more permissive than that articulated in the June 2017 Proposal, which would not have permitted those situations where a covered separate credit feature offered by a business partner is attached to the prepaid account to qualify for the negative balance exception in § 1026.61(a)(4). As observed by commenters, the Bureau's approach in this final rule relieves operational burden for prepaid account issuers and avoids potential consumer confusion.

The Bureau also considered broadening the exception for incidental credit structured as a negative balance to include situations in which a covered separate credit feature offered by the prepaid issuer or its affiliate is attached to the prepaid account. However, the Bureau believes that the operational concerns that arise when a business partner offers a covered separate credit feature do not arise when the issuer or its affiliate offers the feature. In particular, the prepaid account issuer or its affiliate, in these cases, would already offer Regulation Z-compliant covered separate credit feature. The Bureau believes when the same or affiliated parties offer both the prepaid account and the covered separate credit feature, they will encounter fewer difficulties in charging the incidental credit to the covered separate credit feature or waiving interest and fees on the incidental credit when it is charged to the covered separate credit feature.

Extending the effective date to April 1, 2019. The Bureau is extending the overall effective date of the Prepaid Accounts Rule to April 1, 2019. The Bureau previously considered the benefits, costs, and impacts to consumers and covered persons of a six month effective date delay in the 2017 Effective Date Final Rule.[150] The Bureau acknowledges that the amendments regarding error resolution and limited liability protections on unverified accounts may require some financial institutions to change to language on or in retail packaging. The Bureau appreciates that in some circumstances these changes may be difficult to accomplish by April 1, 2018, and thus believes that a further extension of the effective date is appropriate. The Bureau believes that the other revisions to the Prepaid Accounts Rule adopted in this final rule do not generally impose new obligations on covered persons. Rather, these amendments generally relieve burdens, provide industry with additional flexibility in complying with the Prepaid Accounts Rule, or clarify provisions that were identified as being potentially ambiguous. Covered persons will benefit from receiving additional flexibility with respect to when they must be compliant with the provisions of the Prepaid Accounts Rule. However, consumers' realization of the benefits arising from the Prepaid Accounts Rule will be delayed by an additional year. Both consumers and covered persons may benefit from decreased disruption arising from the implementation of the Prepaid Accounts Rule that could result from this further delay.

Potential specific impacts of this final rule. The requirements of this final rule apply uniformly across covered financial institutions without regard to their asset size. The Bureau does not expect this final rule to have a differential 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. The Bureau solicited comment regarding the impact of the June 2017 Proposal's provisions on those depository institutions and credit unions with $10 billion or less in total assets and how those impacts may be distinct from those experienced by larger institutions. The Bureau did not receive any comments directly addressing this issue in response to that request.

The Bureau has no reason to believe that the additional flexibility offered to covered persons by this final rule will differentially affect consumers in rural areas. The Bureau requested comment regarding the impact of the June 2017 Proposal's provisions on consumers in rural areas and how those impacts may differ from those experienced by consumers generally. The Bureau did not receive any comments directly addressing this issue in response to that request.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act,[151] as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,[152] (RFA) 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.[153] 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.[154]

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 head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[155] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel

[150] 82 FR 18975, 18979 (Apr. 25, 2017).

[151] Public Law 96–354, 94 Stat. 1164 (1980).

[152] Public Law 104–21, section 241, 110 Stat. 847, 864–65 (1996).

[153] 5 U.S.C. 601 through 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 under 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).

[154] 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.*

[155] 5 U.S.C. 601 *et seq.*

to consult with small entity representatives prior to proposing a rule for which an IRFA is required.[156]

The Bureau's director certified that the June 2017 Proposal would not have a significant economic impact on a substantial number of small entities and that an IRFA was therefore not required.[157] Upon considering relevant comments as well as differences between this final rule and the June 2017 Proposal, the Bureau concludes that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, a FRFA is not required.[158]

As discussed above, this final rule amends certain provisions of the Prepaid Accounts Rule. Specifically, the Bureau is amending the Prepaid Accounts Rule so that it no longer requires financial institutions to resolve errors or limit consumers' liability on unverified prepaid accounts (other than payroll card accounts or government benefit accounts). In addition, the Bureau is creating a limited exception to the credit-related provisions of the Prepaid Accounts Rule by narrowing the Prepaid Accounts Rule's definition of ''business partner'' in Regulation Z so that it no longer includes certain arrangements between prepaid account issuers and credit card issuers that offer traditional credit card products.[159] Further, this final rule amends the Prepaid Accounts Rule so that it no longer considers incidental credit extended through a negative balance on a prepaid account to be subject to Regulation Z when a covered separate credit feature offered by a business partner is attached to the prepaid account, provided other requirements are satisfied. The Bureau also is extending the overall effective date of the Prepaid Accounts Rule to April 1, 2019, and is making clarifications or minor adjustments to certain other discrete aspects of the Prepaid Accounts Rule.

This final rule's amendments generally benefit small entities by providing additional flexibility with respect to their implementation of the Prepaid Accounts Rule and will not increase burden on small entities. In particular, the credit-related amendments address certain complications that arise when a covered separate credit feature is attached to a digital wallet, and the Bureau believes that, at present, few small entities will be affected by the relevant provisions of the Prepaid Accounts Rule or these amendments.

Error resolution and limited liability for unverified accounts. The Bureau is revising §§ 1005.11(c)(2)(i), 1005.18(d)(1)(ii) and (e)(3), comments 18(e)-4 through 6, and appendix A–7(c) to provide that Regulation E's error resolution and limited liability requirements do not extend to prepaid accounts that have not successfully completed the financial institution's consumer identification and verification process (*i.e.,* accounts that have not concluded the process, accounts where the process is concluded but the consumer's identity could not be verified, and accounts in programs for which there is no such process). The Bureau is adopting related changes to model language in appendix A–7(c) and is requiring that those financial institutions offering prepaid account programs that do not have a consumer identification and verification process disclose to consumers any error resolution and limited liability protections offered (or, if applicable, that no such protections are offered).

Those small entities offering unverified prepaid accounts will benefit from avoiding the burdens associated with providing Regulation E's error resolution and limited liability protections for prepaid accounts held by consumers who have not successfully completed the consumer identification and verification process. In addition, any increase in fraud risk arising from the Prepaid Accounts Rule's requirement that financial institutions offer error resolution and limited liability protections to consumers holding unregistered accounts may be avoided. However, these benefits will be limited if small entities tend not to distribute prepaid accounts that can be used before verification or that offer significant pre-verification functionality.

''*Business partner*'' *redefined to exclude certain arrangements.* The Bureau is amending the definition of ''business partner'' in § 1026.61(a)(5)(iii) and related commentary to exclude business arrangements between prepaid account issuers and issuers of traditional credit cards from coverage under the Prepaid Accounts Rule's tailored provisions applicable to hybrid prepaid-credit cards if certain conditions are satisfied. This amendment will facilitate compliance with the Prepaid Accounts Rule by digital wallet providers offering products that both offer the ability to store funds (such that the digital wallet is a prepaid account) and permit consumers to use the digital wallet account number from time to time to access stored credentials for credit card accounts in the course of a transaction. If the conditions described above are met, such products will be excepted from the tailored provisions in the Prepaid Accounts Rule applicable only to covered separate credit features and prepaid accounts with those features. Small entities offering products that qualify for the exception will be relieved of the burdens associated with complying with these tailored provisions as a result of this final rule.

Treatment of negative balances. The Bureau is amending § 1026.61(a)(4) to allow a prepaid account issuer to provide incidental forms of credit structured as a negative balance on the prepaid account when a covered separate credit feature offered by business partner is attached to the prepaid account.[160] In this case, the incidental credit structured as a negative balance on the prepaid account will not be subject to Regulation Z. As described above, this amendment will relieve small entities offering certain digital wallet products (those which store funds and to which a covered separate credit feature offered by a business partner may be attached) from the potential implementation burdens associated either with (1) constructing Regulation Z-compliant subaccounts to hold otherwise permissible negative balances; or (2) charging the incidental credit to the business partner's linked covered separate credit feature.

Extending the overall effective date to April 1, 2019. The Bureau is extending the overall effective date of the Prepaid Accounts Rule to April 1, 2019. This

[156] 5 U.S.C. 609.

[157] 82 FR 29630, 29661 (June 29, 2017). The June 2017 Proposal was the second rule proposed by the Bureau to amend the 2016 Final Rule, which created comprehensive consumer protections for prepaid accounts under Regulations E and Z. In the 2014 Proposal, the Bureau concluded that the rule would not have a significant economic impact on a substantial number of small entities and that an IRFA was therefore not required. 79 FR 77102, 77283 (Dec. 23, 2014). That conclusion remained unchanged for the 2016 Final Rule. 81 FR 83934, 84308 (Nov. 22, 2016). In addition, the Bureau determined that both the 2017 Effective Date Proposal and the 2017 Effective Date Final Rule, which extended the general effective date of the 2016 Final Rule by six months, likewise would not have a significant economic impact on a substantial number of small entities. 82 FR 13782, 13785 (Mar. 15, 2017); 82 FR 18975, 18979 (Apr. 25, 2017).

[158] 5 U.S.C. 605(b).

[159] Although a credit card account is subject to the credit card provisions of Regulation Z in its own right if the account and the arrangement between the prepaid account issuer and credit card account issuer meet all conditions for this exception, it will not be subject to the provisions in Regulation Z that apply only to covered separate credit features accessible by a hybrid prepaid-credit card. In addition, the prepaid account with which it is linked will not be subject to the provisions in Regulation E that apply only to prepaid accounts connected to covered separate credit features.

[160] As discussed above, the other prerequisites contained in § 1026.61(a)(4) must also be satisfied.

extension will relieve burden on small entities by providing additional time to comply with the provisions of the Prepaid Accounts Rule.

Other modifications. In addition to these provisions, the Bureau is making clarifications or minor adjustments to certain other discrete aspects of the Prepaid Accounts Rule. Similar to those provisions discussed, these clarifications or minor adjustments will provide additional options for compliance and will not increase burden on small entities.

In summary, this final rule will not increase costs incurred by small entities relative to the baseline established by the Prepaid Accounts Rule because this rulemaking's amendments provide additional flexibility to financial institutions with respect to how they may comply with the Prepaid Accounts Rule. Small entities retain the option of complying with the Prepaid Accounts Rule as it existed prior to these modifications. Therefore, small entities will not experience a significant economic impact as a result of this final rule.

Certification

Accordingly, the undersigned hereby certifies that this 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),[161] Federal agencies are generally required to seek Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. The collections of information related to the Prepaid Accounts Rule have been reviewed and approved by OMB previously in accordance with the PRA and assigned OMB Control Numbers 3170–0014 (Regulation E) and 3170–0015 (Regulation Z). Under the PRA, the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau did not receive any comments regarding its PRA discussion in the June 2017 Proposal. The Bureau has determined that this final rule amends the Prepaid Accounts Rule to provide firms with additional flexibility and clarity with respect to required disclosures; therefore, it will have only minimal impact on the industry-wide aggregate PRA burden relative to the baseline.

[161] 44 U.S.C. 3501 *et seq.*

X. Congressional Review Act

Pursuant to the Congressional Review Act,[162] the Bureau 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 the rule's published effective date. The Office of Information and Regulatory Affairs has designated this rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

12 CFR Part 1005

Automated teller machines, Banking, Banks, Consumer protection, Credit unions, Electronic fund transfers, National banks, Remittance transfers, 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 above, the Bureau is further amending 12 CFR parts 1005 and 1026, as amended November 22, 2016, at 81 FR 83934, and April 25, 2017, at 82 FR 18975, 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. Amend § 1005.2 by revising paragraph (b)(3)(ii)(D)(*3*) to read as follows:

§ 1005.2 Definitions.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(D) * * *

(*3*) A loyalty, award, or promotional gift card as defined in § 1005.20(a)(4), or that satisfies the criteria in § 1005.20(a)(4)(i) and (ii) and is excluded from § 1005.20 pursuant to § 1005.20(b)(4); or

* * * * *

[162] 5 U.S.C. 801 *et seq.*

■ 3. Amend § 1005.11 by revising paragraphs (c)(2)(i)(A) and (B) and removing 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; or

(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).

* * * * *

■ 4. Amend § 1005.18 by:

■ a. Revising paragraphs (b)(1)(i) and (ii).

■ b. Removing ''long form disclosures'' and adding in its place ''long form disclosure'' in the introductory text of paragraph (b)(1)(iii).

■ c. Revising paragraphs (b)(1)(iii)(C) and (b)(2)(ix)(C).

■ d. In paragraph (b)(2)(ix)(D):

■ i. Removing ''type'' and adding in its place ''types'' in the heading.

■ ii. Removing ''April 1, 2018'' everywhere it appears and adding in its place ''April 1, 2019''.

■ e. Removing ''disclosures'' and adding in its place ''disclosure'' in paragraphs (b)(2)(ix)(E)(*2*) and (*3*).

■ f. Removing ''additional fee types disclosures'' and adding in its place ''an additional fee types disclosure'' in paragraph (b)(2)(ix)(E)(*4*).

■ g. Removing ''customer'' everywhere it appears and adding in its place ''consumer'' in paragraph (b)(2)(xi).

■ h. Revising paragraphs (b)(6)(i)(B) and (C).

■ i. Removing ''long form disclosures'' and adding in its place ''a long form disclosure'' in paragraph (b)(6)(ii).

■ j. Removing ''disclosures'' and adding in its place ''disclosure'' in paragraph (b)(6)(iii)(A).

■ k. Removing ''preferred-'' and adding in its place ''preferred'' in paragraph (b)(6)(iii)(B)(*2*).

■ l. Revising paragraph (b)(7)(i)(B).

■ m. Removing ''Long form disclosures'' and adding in its place ''The long form disclosure'' in paragraph (b)(7)(ii)(C).

■ n. Revising paragraphs (b)(9)(i)(C), (d)(1)(ii), and (e)(3).

■ o. Removing ''April 1, 2018'' everywhere it appears and adding in its place ''April 1, 2019'' in paragraph (h).

The revisions read as follows:

§ 1005.18 Requirements for financial institutions offering prepaid accounts.

* * * * *

(b) * * *

(1) * * *

(i) *General.* Except as provided in paragraph (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. When a prepaid account is used for disbursing funds to a consumer, and the financial institution or third party making the disbursement does not offer any alternative means for the consumer to receive those funds in lieu of accepting the prepaid account, for purposes of this paragraph, the disclosures required by paragraph (b) of this section may be provided at the time the consumer receives the prepaid account.

(ii) *Disclosures for prepaid accounts acquired in retail locations.* A financial institution is not required to provide the long form disclosure 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 disclosure required by paragraph (b)(2) of this section is provided on or are visible through an outward-facing, external surface of a prepaid account access device's packaging material.

(C) The disclosure required by paragraph (b)(2) of this section includes 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 website.

(D) The long form disclosure required by paragraph (b)(4) of this section is provided after the consumer acquires the prepaid account. If a financial institution does not provide the long form disclosure inside the prepaid account packaging material, and it is not otherwise already mailing or delivering to the consumer written account-related communications within 30 days of obtaining the consumer's contact information, it may provide the long form disclosure pursuant to this paragraph in electronic form 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.*).

(iii) * * *

(C) The long form disclosure required by paragraph (b)(4) of this section is provided after the consumer acquires the prepaid account.

(2) * * *

(ix) * * *

(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; for disclosures other than for multiple service plans, it may, but is not required to, consolidate the fee variations into two categories and disclose the names of those two fee variation categories 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 paragraphs (b)(3)(i) and (b)(7)(ii)(B)(*1*) 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.

* * * * *

(6) * * *

(i) * * *

(B) *Electronic disclosures.* Unless provided in written form prior to acquisition pursuant to paragraph (b)(1)(i) of this section, 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 website or mobile application, and must be viewable across all screen sizes. The long form disclosure must be provided electronically through a website 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.* Unless provided in written form prior to acquisition pursuant to paragraph (b)(1)(i) of this section, 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 pursuant to the exception in paragraph (b)(1)(iii) of this section. For prepaid accounts acquired in retail locations or orally by telephone, the disclosure required by paragraph (b)(4) of this section provided by telephone pursuant to paragraph (b)(1)(ii)(C) or (b)(1)(iii)(B) of this section also must be made orally.

* * * * *

(7) * * *

(i) * * *

(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 statements 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 paragraph (b)(4)(vii) of this section, the financial institution includes the disclosures described in Regulation Z, 12 CFR 1026.60(e)(1), such disclosures must appear below the statements

required by paragraph (b)(4)(vi) of this section.

* * * * *

(9) * * *

(i) * * *

(C) The financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language. However, foreign language pre-acquisition disclosures are not required for payroll card accounts and government benefit accounts where the foreign language is offered by telephone via a real-time language interpretation service provided by a third party or by the employer or government agency on an informal or ad hoc basis as an accommodation to prospective payroll card account or government benefit account holders.

* * * * *

(d) * * *

(1) * * *

(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). Alternatively, for prepaid account programs for which the financial institution does not have a consumer identification and verification process, the financial institution must describe its error resolution process and limitations on consumers' liability for unauthorized transfers or, if none, state that there are no such protections.

* * * * *

(e) * * *

(3) *Limitations on liability and error resolution for unverified accounts.* (i) For prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to comply with the liability limits and error resolution requirements in §§ 1005.6 and 1005.11 for any prepaid account for which it has not successfully completed its consumer identification and verification process.

(ii) For purposes of paragraph (e)(3)(i) of this section, a financial institution has not successfully completed its consumer identification and verification process where:

(A) The financial institution has not concluded its consumer identification and verification process with respect to a particular prepaid account, provided that it has disclosed to the consumer the risks of not registering and verifying 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) The financial institution has concluded its consumer identification and verification process with respect to a particular prepaid account, but could not verify the identity of the consumer, provided that it has disclosed to the consumer the risks of not registering and verifying 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) The financial institution does not have a consumer identification and verification process for the prepaid account program, provided that it has made the alternative disclosure described in paragraph (d)(1)(ii) of this section and complies with the process it has disclosed.

(iii) *Resolution of errors following successful verification.* Once a financial institution successfully completes its consumer identification and verification process with respect to a prepaid account, the financial institution must limit the consumer's liability for unauthorized transfers and resolve errors that occur following verification in accordance with § 1005.6 or § 1005.11, or the modified timing requirements in this paragraph (e), as applicable.

* * * * *

■ 5. Amend § 1005.19 by:

■ a. Removing ''names of other relevant parties'' and adding in its place ''list of names of other relevant parties'' in paragraph (b)(1)(i).

■ b. Removing ''(b)(2)'' and adding in its place ''(b)(2)(i)'' in paragraph (b)(1)(iii).

■ c. Revising paragraphs (b)(2) and (b)(6)(ii) and (iii).

■ d. Removing ''(b)(2)'' and adding in its place ''(b)(2)(i)'' in paragraphs (c)(3) and (d)(2)(v).

■ e. Revising paragraph (f).

The revisions read as follows:

§ 1005.19 Internet posting of prepaid account agreements.

* * * * *

(b) * * *

(2) *Amended agreements*—(i) *Submission of amended agreements generally.* 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 becomes effective. If other identifying information about the issuer and its submitted agreements pursuant to paragraph (b)(1)(i) of this section previously submitted to the Bureau is amended, the issuer must submit updated information to the Bureau, in the form and manner specified by the Bureau, no later than 30 days after the change becomes effective.

(ii) *Submission of updated list of names of other relevant parties.* Notwithstanding paragraph (b)(2)(i) of this section, an issuer may delay submitting a change to the list of names of other relevant parties to a particular agreement until the earlier of:

(A) Such time as the issuer is otherwise submitting an amended agreement or changes to other identifying information about the issuer and its submitted agreements pursuant to paragraph (b)(1)(i) of this section; or

(B) May 1 of each year, for any updates to the list of names of other relevant parties for that agreement that occurred between the issuer's last submission of relevant party information and April 1 of that year.

* * * * *

(6) * * *

(ii) *Fee information.* Fee information must be set forth either in the prepaid account agreement or in addenda to that agreement that attach either or both 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 long form disclosure for the prepaid account pursuant to § 1005.18(b)(4). The agreement or addenda 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 addenda described in paragraph (b)(6)(ii) of this section). Changes in provisions or fee information must be integrated into the text of the agreement, or the optional fee information addenda, as appropriate.

* * * * *

(f) *Initial submission date.* The requirements of this section apply to prepaid accounts beginning on April 1, 2019. An issuer must submit to the Bureau no later than May 1, 2019 all prepaid account agreements it offers as of April 1, 2019.

■ 6. In appendix A to part 1005, revise Model Clause A–7 to read as follows:

Appendix A to Part 1005—Model Disclosure Clauses and Forms

* * * * *

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 unverified prepaid accounts (§ 1005.18(e)(3)).*

It is important to register your prepaid account as soon as possible. Until you register your account and we verify your identity, we are not required to research or resolve any errors regarding your account. To register your account, go to [internet address] or call us at [telephone number]. We will ask you for identifying information about yourself (including your full name, address, date of birth, and [Social Security Number] [government-issued identification number]), so that we can verify your identity.

* * * * *

■ 7. In supplement I to part 1005:

■ a. Under *Section 1005.2—Definitions,* revise *Paragraph 2(b)(3).*

■ b. Under *Section 1005.18—Requirements for Financial Institutions Offering Prepaid Accounts,* revise *18(a) Coverage, 18(b)(1) Timing of Disclosures, 18(b)(2) Short Form Disclosure Content, 18(b)(4) Long Form Disclosure Content, 18(b)(5) Disclosure Requirements Outside the Short Form Disclosure, 18(b)(6)(i) General, 18(b)(7)(ii) Prominence and Size, 18(b)(9) Prepaid Accounts Acquired in Foreign Languages, 18(c) Access to Prepaid Account Information, 18(e) Modified Limitations on Liability and Error Resolution Requirements,* and *18(h) Effective Date and Special Transition Rules for Disclosure Provisions.*

■ c. Under *Section 1005.19—Internet Posting of Prepaid Account Agreements:*

■ i. Revise *19(a) Definitions, 19(b)(1) Submissions on a Rolling Basis, 19(b)(2) Amended Agreements,* and *19(b)(6) Form and Content of Agreements Submitted to the Bureau.*

■ ii. Remove subsection *19(f) Effective Date.*

The revisions 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. *Product 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.

4. *Loyalty, award, or promotional gift cards.* Section 1005.2(b)(3)(ii)(D)(*3*) excludes loyalty, award, or promotional gift cards as defined in § 1005.20(a)(4); those cards are excluded from coverage under § 1005.20 pursuant to § 1005.20(b)(3). Section 1005.2(b)(3)(ii)(D)(*3*) also excludes cards that satisfy the criteria in § 1005.20(a)(4)(i) and (ii) and are excluded from coverage under § 1005.20 pursuant to § 1005.20(b)(4) because they are not marketed to the general public; such products are not required to set forth the disclosures enumerated in § 1005.20(a)(4)(iii) in order to be excluded pursuant to § 1005.2(b)(3)(ii)(D)(*3*).

* * * * *

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. If an access device for a prepaid account is provided on an unsolicited basis where the prepaid account is used for disbursing funds to a consumer, and the financial institution or third party making the disbursement does not offer any alternative means for the consumer to receive those funds in lieu of accepting the prepaid account, in order to satisfy § 1005.5(b)(2), the financial institution must inform the consumer that the consumer has no other means by which to initially receive the funds in the prepaid account other than by accepting the access device, as well as the consequences of disposing of the access device.

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

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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.

i. 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:

A. 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).

B. 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).

ii. Section 1005.18(b)(1)(i) permits delivery of the disclosures required by § 1005.18(b) at the time the consumer receives the prepaid account, rather than prior to acquisition, for prepaid accounts that are used for disbursing funds to consumers when the financial institution or third party making the disbursement does not offer any alternative means for the consumer to receive those funds in lieu of accepting the prepaid account. For example, a utility company refunds consumers' initial deposits for its utility services via prepaid accounts delivered to consumers by mail. Neither the utility company nor the financial institution that issues the prepaid accounts offer another means for a consumer to receive that refund other than by accepting the prepaid account. In this case, the financial institution may provide the disclosures required by § 1005.18(b) together with the prepaid account (*e.g.,* in the same envelope as the prepaid account); it is not required to deliver the disclosures separately prior to delivery of the prepaid account.

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 disclosure 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 disclosure 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 website 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 website 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. 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(b)(1)(ii)(D). A financial institution is able to contact the consumer when, for example, it has the consumer's mailing address or email address.

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.

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 comment 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.* Fee types 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.* Fee types 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 the 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 disclosed 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 has two options for the disclosure. The financial institution may 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*''. Alternatively, the financial institution may consolidate the fee variations into two categories, such as regular delivery and expedited delivery. In this case, the financial institution would make this disclosure on the short form as: ''Bill payment (regular or expedited delivery)'' and the fee amount as ''$0.50* or $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 April 1, 2019

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 April 1, 2019 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 April 1, 2019 must assess its additional fee types disclosure from data collected during a consecutive 24-month period that took place between October 1, 2014 and April 1, 2019. For example, an existing prepaid account program was first offered to consumers on January 1, 2012 and provides its first short form disclosure on April 1, 2019. 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 April 1, 2019 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 April 1, 2019, 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 April 1, 2019. For example, a financial institution begins offering to consumers a prepaid account program six months before April 1, 2019. Because the prepaid account program will not have 24 months of fee revenue data prior to April 1, 2019, 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 April 1, 2019. 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 disclosure, 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 April 1, 2019. Starting on April 1, 2021, 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 April 1, 2019. Starting on April 1, 2021, 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 July 1, 2021, 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 April 1, 2019. Starting on April 1, 2021, 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 April 1, 2018 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 April 1, 2020, it would use the data it collected over the previous 24 months (April 1, 2018 to March 31, 2020) and complete its reassessment and its update, if applicable, by July 1, 2020.

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 June 1, 2019 after having first assessed its additional fee types disclosure as of April 1, 2019, 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 June 1, 2021). 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 the additional fee types disclosure 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 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. *Consumer identification and verification processes.* For additional guidance on the timing of consumer identification and verification processes, and on prepaid account programs for which there is no consumer identification and verification process for any prepaid accounts within the prepaid account program, see § 1005.18(e)(3) and comments 18(e)–4 through 6.

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 website 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 website.* 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 website 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).

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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 consumer 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 consumer 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 consumer 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 statements 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 a written short form disclosure 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 access device's packaging material.

18(b)(6) Form of Pre-Acquisition Disclosures

18(b)(6)(i) General

1. *Written pre-acquisition disclosures.* If a financial institution provides the disclosures required by § 1005.18(b) in written form prior to acquisition pursuant to § 1005.18(b)(1)(i), they need not also be provided electronically or orally. For example, an employer distributes to new employees printed copies of the disclosures required by § 1005.18(b) for a payroll card account, together with instructions to complete the payroll card account acquisition process online if the employee wishes to be paid via a payroll card account. The financial institution is not required to provide the § 1005.18(b) disclosures electronically via the website because the consumer has already received the disclosures pre-acquisition in written form.

18(b)(6)(i)(B) Electronic Disclosures

1. *Providing pre-acquisition disclosures electronically.* Unless provided in written form prior to acquisition pursuant to § 1005.18(b)(1)(i), § 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 website 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 website 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 website 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)(i)(C) Oral Disclosures

1. *Disclosures for prepaid accounts acquired by telephone.* Unless it provides disclosures in written form prior to acquisition pursuant to § 1005.18(b)(1)(i), 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 pursuant to the exception in § 1005.18(b)(1)(iii). 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.

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18(b)(7) Specific Formatting Requirements for Pre-Acquisition Disclosures

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18(b)(7)(ii) Prominence and Size

1. *Minimum type size.* Section 1005.18(b)(7)(ii) sets forth minimum point/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 point/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.

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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) 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 website 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 website 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. (But see § 1005.18(b)(9)(i)(C), which limits the obligation to provide foreign language disclosures for payroll card accounts and government benefit accounts acquired orally by telephone in certain circumstances.)

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 website. On that website, 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. (But see § 1005.18(b)(9)(i)(C), which limits the obligation to provide foreign language disclosures for payroll card accounts and government benefit accounts acquired orally by telephone in certain circumstances.)

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.

D. A consumer calls a government agency to enroll in a government benefits program. The government agency does not offer through its telephone system an option for consumers to proceed in a foreign language. An employee of the government agency assists the consumer with the enrollment process, including helping the consumer acquire a government benefits account. The employee also happens to speak the foreign language in which the consumer is most comfortable communicating, and chooses to communicate with the consumer in that language to facilitate the enrollment process. In this case, the employee offered language interpretation assistance on an informal or ad hoc basis to accommodate the prospective government benefits account holder.

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 website 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 website 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 website 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 provide 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)(ii)(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 website, 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 website. 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 website, 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 website. 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 website 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)(i) provides that for prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to comply with the liability limits and error resolution requirements in §§ 1005.6 and 1005.11 for any prepaid account for which it has not successfully completed its 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. Section 1005.18(e)(3)(iii) provides that once a financial institution successfully completes its consumer identification and verification process with respect to a prepaid account, the financial institution must limit the consumer's liability for unauthorized transfers and resolve errors that occur following verification in accordance with § 1005.6 or § 1005.11, or the modified timing requirements in § 1005.18(e), as applicable. A financial institution is not required to limit a consumer's liability for unauthorized transfers or resolve errors that occur prior to the financial institution's successful completion of its consumer identification and verification process with respect to a prepaid account.

5. *Financial institution has not successfully completed verification.* Section 1005.18(e)(3)(ii)(A) states that, provided it discloses to the consumer the risks of not registering and verifying a prepaid account, a financial institution has not successfully completed its consumer identification and verification process where it has not concluded the process with respect to a particular prepaid account. For example, a financial institution initiates its consumer identification and verification process by collecting identifying information about a consumer, and attempts to verify the consumer's identity. The financial institution is unable to conclude the process because of conflicting information about the consumer's current address. The financial institution informs the consumer about the nature of the information at issue and requests additional documentation, but the consumer does not provide the requested documentation. 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 consumer 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 successfully 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 successfully completed its consumer identification and verification process with respect to those accounts.

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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 April 1, 2019. 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 April 1, 2019. 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 on, in, or with access devices or packaging materials that are manufactured, printed, or otherwise produced on or after April 1, 2019 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 requirements of § 1005.18(h)(2)(ii) 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 April 1, 2019.* 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 April 1, 2019. If, on April 1, 2019, 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 April 1, 2019 would provide 60 days of written account transaction history upon a consumer's request on April 1, 2019. If, on May 1, 2019, 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 April 1, 2020 and must fully comply with the written account transaction history requirement set forth in § 1005.18(c)(1)(iii) no later than April 1, 2021.

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 April 1, 2019. If, on April 1, 2019, 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 May 1, 2019 for the month of April, and the year-to-date fee total beginning on April 1, 2019, provided the financial institution discloses that it is displaying the year-to-date total beginning on April 1, 2019 rather than for the entire calendar year 2019. On January 1, 2020, financial institutions must begin displaying year-to-date fee totals for calendar year 2020.

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 list of names of other relevant parties, such as the employer for a payroll card program or the agency for a government benefit program. But see § 1005.19(b)(2)(ii) regarding the timing of submitting such changes to the Bureau.

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 website 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 make submissions of 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 websites.* 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 website, the issuer is deemed to maintain that website for purposes of § 1005.19. Such a website is deemed to be maintained by the issuer for purposes of § 1005.19 even where, for example, an unaffiliated entity designs the website and owns and maintains the information technology infrastructure that supports the website, consumers with prepaid accounts from multiple issuers can access individual account information through the same website, and the website is not labeled, branded, or otherwise held out to the public as belonging to the issuer. A partner institution's website is an example of a third-party website 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 website specifically related to prepaid accounts. However, consumers can access information about their individual accounts, such as an electronic account transaction history, through a website maintained by Program Manager. Program Manager designs the website and owns and maintains the information technology infrastructure that supports the website. The website is branded and held out to the public as belonging to Program Manager. Because consumers can access information about their individual accounts through this website, the website 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 website in accordance with § 1005.19(c) or (d)(1), respectively. Bank need not create and maintain a website 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 website 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)(i) 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)(i) 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 addenda described in § 1005.19(b)(6)), not provided as separate riders.

2. *Updates to the list of names of other relevant parties to an agreement.* Section 1005.19(b)(2)(ii) permits an issuer to delay making a submission to the Bureau regarding a change in the list of other relevant parties to a particular agreement until the earlier of such time as the issuer is otherwise submitting an amended agreement or changes to other identifying information about the issuer and its submitted agreements pursuant to § 1005.19(b)(1)(i); or May 1 of each year, for any updates to the list of names of other relevant parties that occurred between the issuer's last submission of relevant party information for that agreement and April 1 of that year. Section 1005.19(b)(2)(ii) thus ensures that the Bureau has a list of names of other relevant parties for all submitted agreements that is up-to-date as of April 1 of each year. The following examples illustrate these requirements:

i. An issuer first submits to the Bureau a payroll card agreement, along with a list of names of the other relevant parties (*i.e.,* employers) to that agreement, on May 1, 2019. On July 1, 2020, the issuer adds four new employers under the agreement. The issuer is not required to make a submission to the Bureau regarding the addition of other relevant parties to that agreement at that time.

ii. On January 1, 2020, a change to the payroll card agreement becomes effective reflecting a new feature and accompanying fee that the issuer has added to the program. The issuer is required, by January 31, 2020, to submit to the Bureau its entire revised agreement and an updated list of the names of other relevant parties to that agreement.

iii. If the issuer has not added any other employers to the agreement by April 1, 2020, the issuer is not required to submit to the Bureau an updated list of names of other relevant parties to that agreement, because the list it previously submitted to the Bureau remains current.

iv. If, however, on March 1, 2020, the issuer adds two new employers under the agreement but makes no other changes to the agreement, then as of April 1 there are new relevant parties to the agreement that the issuer has not submitted to the Bureau. The issuer is required, by May 1, 2020, to submit to the Bureau an updated list of names of other relevant parties to that agreement reflecting the two employers it added in March. Because the issuer has not made any other changes to the agreement since it was submitted in January, the issuer is not required to re-submit the agreement itself by May 1, 2020.

* * * * *

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)(i) 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 addenda that may be submitted as part of an agreement are the optional fee information addenda 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 addenda. 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 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 the optional addenda displaying variations in fee information.

* * * * *

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 8. 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 G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

■ 9. Amend § 1026.61 by revising paragraphs (a)(1)(iii), (a)(3)(ii), (a)(4) introductory text, (a)(4)(i), and (a)(5)(iii) to read as follows:

§ 1026.61 Hybrid prepaid-credit cards.

(a) * * *

(1) * * *

(iii) 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, a prepaid card is not a hybrid prepaid-credit card or a credit card for purposes of this regulation if the conditions set forth in paragraph (a)(4) of this section are met.

* * * * *

(3) * * *

(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 with respect to that credit as described in paragraph (a)(4) of this section.

(4) *Exception for credit extended through a negative balance.* A prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature

of the prepaid account and is not a credit card for purposes of this regulation with respect to that credit where:

(i) The prepaid card cannot access credit from a covered separate credit feature as described in paragraph (a)(2)(i) of this section that is offered by a prepaid account issuer or its affiliate; and

* * * * *

(5) * * *

(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 except as provided in paragraph (a)(5)(iii)(D) of this section.

(A) *Arrangement defined.* For purposes of paragraph (a)(5)(iii) of this section, a person 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 if the circumstances in either paragraph (a)(5)(iii)(B) or (C) of this section are met.

(B) *Arrangement by agreement.* A person that can extend credit through a separate credit feature or its affiliate has an arrangement with a prepaid account issuer or its affiliate if the parties have an agreement that allows the prepaid card from time to time to draw, transfer, or authorize a draw or transfer of 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.

(C) *Marketing arrangement.* A person that can extend credit through a separate credit feature or its affiliate has an arrangement with a prepaid account issuer or its affiliate if:

(*1*) The parties have a business, marketing, or promotional agreement or other arrangement which 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 separate credit feature offered by the person who can extend credit will be marketed to the holders of prepaid accounts offered by the prepaid account issuer (including any marketing to customers to encourage them to authorize the prepaid card to access the separate credit feature as described in paragraph (a)(5)(iii)(C)(*2*) of this section); and

(*2*) At the time of the marketing agreement or arrangement described in paragraph (a)(5)(iii)(C)(*1*) of this section, 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 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. This requirement is satisfied even if there is no specific agreement between the parties that the card can access the credit feature, as described in paragraph (a)(5)(iii)(B) of this section.

(D) *Exception for certain credit card account arrangements.* For purposes of paragraph (a)(5)(iii) of this section, a person that can extend credit through a credit card account is not a business partner of a prepaid account issuer with which it has an arrangement as defined in paragraphs (a)(5)(iii)(A) through (C) of this section with regard to such credit card account if all of the following conditions are met:

(*1*) The credit card account is a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card.

(*2*) The prepaid account issuer and the card issuer do not allow the prepaid card to draw, transfer, or authorize the draw or transfer of credit from the credit card account from time to time 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, except where the prepaid account issuer or the card issuer has received from the consumer a written request that is separately signed or initialized to authorize the prepaid card to access the credit card account as described above. If the credit card account is linked to the prepaid account prior to April 1, 2019, or prior to the arrangement between the prepaid account issuer and the card issuer as described in paragraphs (a)(5)(iii)(A) through (C) of this section, the prepaid account issuer and the card issuer will be deemed to have satisfied this condition even if they have not received from the consumer a written request that is separately signed or initialized to authorize the prepaid card to access the credit card account as described in this paragraph.

(*3*) The prepaid account issuer and the card issuer do not condition the acquisition or retention of the prepaid account or the credit card account on whether a consumer authorizes the prepaid card to access the credit card account as described in paragraph (a)(5)(iii)(D)(*2*) of this section. If the credit card account is linked to the prepaid account prior to April 1, 2019, this condition only applies to the retention of the prepaid account and the credit card account on or after April 1, 2019.

(*4*) The prepaid account issuer applies the same terms, conditions, or features to the prepaid account when a consumer authorizes linking the prepaid card to the credit card account as described in paragraph (a)(5)(iii)(D)(*2*) of this section as it applies to the consumer's prepaid account when the consumer does not authorize such a linkage. In addition, the prepaid account issuer applies the same fees to load funds from the credit card account that is linked to the prepaid account as described above as it charges for a comparable load on the consumer's prepaid account to access a credit feature offered by a person that is not the prepaid account issuer, its affiliate, or a person with which the prepaid account issuer has an arrangement as described in paragraphs (a)(5)(iii)(A) through (C) of this section.

(*5*) The card issuer applies the same specified terms and conditions to the credit card account when a consumer authorizes linking the prepaid card to the credit card account as described in paragraph (a)(5)(iii)(D)(*2*) of this section as it applies to the consumer's credit card account when the consumer does not authorize such a linkage. In addition, the card issuer applies the same specified terms and conditions to extensions of credit accessed by the prepaid card from the credit card account as it applies to extensions of credit accessed by the traditional credit card. For purposes of this paragraph, ''specified terms and conditions'' means the terms and conditions required to be disclosed under § 1026.6(b), any repayment terms and conditions, and the limits on liability for unauthorized credit transactions.

* * * * *

■ 10. In supplement I to part 1026:

■ a. Under *Section 1026.4—Finance Charge,* revise *Paragraph 4(b)(11).*

■ b. Under *Section 1026.6—Account-Opening Disclosures,* revise *Paragraph 6(b)(3)(iii)(D).*

■ c. Under *Section 1026.52—Limitations on Fees,* revise *52(b)(2)(i) Fees That Exceed Dollar Amount Associated With Violation.*

■ d. Under *Section 1026.61—Hybrid Prepaid-Credit Cards,* revise *61(a)(3) Prepaid Card Can Access Credit Extended Through a Negative Balance on the Asset Feature, 61(a)(4) Exception* (including the heading), *Paragraph 61(a)(5)(iii),* and *61(b) Structure of*

Credit Features Accessible by Hybrid Prepaid-Credit Cards.

The revisions read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Subpart A—General

* * * * *

Section 1026.4—Finance Charge

* * * * *

4(b) Examples of Finance Charges

* * * * *

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 with respect to the covered separate credit feature 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 with respect to credit extended through a negative balance on the asset feature of the prepaid account pursuant to § 1026.61(a)(4), with regard to that credit, 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 website 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.

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Subpart B—Open-End Credit

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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)(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 accessed 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.

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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

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52(b) Limitations on Penalty Fees

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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

1. *Late payment fees.* For purposes of § 1026.52(b)(2)(i), the dollar amount associated with a late payment is the amount of the required minimum periodic payment due immediately prior to assessment of the late payment fee. Thus, § 1026.52(b)(2)(i)(A) prohibits a card issuer from imposing a late payment fee that exceeds the amount of that required minimum periodic payment. For example:

i. Assume that a $15 required minimum periodic payment is due on September 25. The card issuer does not receive any payment on or before September 25. On September 26, the card issuer imposes a late payment fee. For purposes of § 1026.52(b)(2)(i), the dollar amount associated with the late payment is the amount of the required minimum periodic payment due on September 25 ($15). Thus, under § 1026.52(b)(2)(i)(A), the amount of that fee cannot exceed $15 (even if a higher fee would be permitted under § 1026.52(b)(1)).

ii. Same facts as above except that, on September 25, the card issuer receives a $10 payment. No further payments are received. On September 26, the card issuer imposes a late payment fee. For purposes of § 1026.52(b)(2)(i), the dollar amount associated with the late payment is the full amount of the required minimum periodic payment due on September 25 ($15), rather than the unpaid portion of that payment ($5). Thus, under § 1026.52(b)(2)(i)(A), the amount of the late payment fee cannot exceed $15 (even if a higher fee would be permitted under § 1026.52(b)(1)).

iii. Assume that a $15 required minimum periodic payment is due on October 28 and the billing cycle for the account closes on October 31. The card issuer does not receive any payment on or before November 3. On November 3, the card issuer determines that the required minimum periodic payment due on November 28 is $50. On November 5, the card issuer imposes a late payment fee. For purposes of § 1026.52(b)(2)(i), the dollar amount associated with the late payment is the amount of the required minimum periodic payment due on October 28 ($15), rather than the amount of the required minimum periodic payment due on November 28 ($50). Thus, under § 1026.52(b)(2)(i)(A), the amount of that fee cannot exceed $15 (even if a higher fee would be permitted under § 1026.52(b)(1)).

2. *Returned payment fees.* For purposes of § 1026.52(b)(2)(i), the dollar amount associated with a returned payment is the amount of the required minimum periodic payment due immediately prior to the date on which the payment is returned to the card issuer. Thus, § 1026.52(b)(2)(i)(A) prohibits a card issuer from imposing a returned payment fee that exceeds the amount of that required minimum periodic payment. However, if a payment has been returned and is submitted again for payment by the card issuer, there is no additional dollar amount associated with a subsequent return of that payment and § 1026.52(b)(2)(i)(B) prohibits the card issuer from imposing an additional returned payment fee. For example:

i. Assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the payment due date is the twenty-fifth day of the month. A minimum payment of $15 is due on March 25. The card issuer receives a check for $100 on March 23, which is returned to the card issuer for insufficient funds on March 26. For purposes of § 1026.52(b)(2)(i), the dollar amount associated with the returned payment is the amount of the required minimum periodic payment due on March 25 ($15). Thus, § 1026.52(b)(2)(i)(A) prohibits the card issuer from imposing a returned payment fee that exceeds $15 (even if a higher fee would be permitted under § 1026.52(b)(1)). Furthermore, § 1026.52(b)(2)(ii) prohibits the card issuer from assessing both a late payment fee and a returned payment fee in these circumstances. *See* comment 52(b)(2)(ii)–1.

ii. Same facts as above except that the card issuer receives the $100 check on March 31 and the check is returned for insufficient funds on April 2. The minimum payment due on April 25 is $30. For purposes of § 1026.52(b)(2)(i), the dollar amount associated with the returned payment is the amount of the required minimum periodic payment due on March 25 ($15), rather than the amount of the required minimum periodic payment due on April 25 ($30). Thus, § 1026.52(b)(2)(i)(A) prohibits the card issuer from imposing a returned payment fee that exceeds $15 (even if a higher fee would be permitted under § 1026.52(b)(1)). Furthermore, § 1026.52(b)(2)(ii) prohibits the card issuer from assessing both a late payment fee and a returned payment fee in these circumstances. *See* comment 52(b)(2)(ii)–1.

iii. Same facts as paragraph i above except that, on March 28, the card issuer presents the $100 check for payment a second time. On April 1, the check is again returned for insufficient funds. Section 1026.52(b)(2)(i)(B) prohibits the card issuer from imposing a returned payment fee based on the return of the payment on April 1.

iv. Assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the payment due date is the twenty-fifth day of the month. A minimum payment of $15 is due on August 25. The card issuer receives a check for $15 on August 23, which is not returned. The card issuer receives a check for $50 on September 5, which is returned to the card issuer for insufficient funds on September 7. Section 1026.52(b)(2)(i)(B) does not prohibit the card issuer from imposing a returned payment fee in these circumstances. Instead, for purposes of § 1026.52(b)(2)(i), the dollar amount associated with the returned payment is the amount of the required minimum periodic payment due on August 25 ($15). Thus, § 1026.52(b)(2)(i)(A) prohibits the card issuer from imposing a returned payment fee that exceeds $15 (even if a higher fee would be permitted under § 1026.52(b)(1)).

3. *Over-the-limit fees.* For purposes of § 1026.52(b)(2)(i), the dollar amount associated with extensions of credit in excess of the credit limit for an account is the total amount of credit extended by the card issuer in excess of the credit limit during the billing cycle in which the over-the-limit fee is imposed. Thus, § 1026.52(b)(2)(i)(A) prohibits a card issuer from imposing an over-the-limit fee that exceeds that amount. Nothing in § 1026.52(b) permits a card issuer to impose an over-the-limit fee if imposition of the fee is inconsistent with § 1026.56. The following examples illustrate the application of § 1026.52(b)(2)(i)(A) to over-the-limit fees:

i. Assume that the billing cycles for a credit card account with a credit limit of $5,000 begin on the first day of the month and end on the last day of the

month. Assume also that, consistent with § 1026.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. On March 1, the account has a $4,950 balance. On March 6, a $60 transaction is charged to the account, increasing the balance to $5,010. On March 25, a $5 transaction is charged to the account, increasing the balance to $5,015. On the last day of the billing cycle (March 31), the card issuer imposes an over-the-limit fee. For purposes of § 1026.52(b)(2)(i), the dollar amount associated with the extensions of credit in excess of the credit limit is the total amount of credit extended by the card issuer in excess of the credit limit during the March billing cycle ($15). Thus, § 1026.52(b)(2)(i)(A) prohibits the card issuer from imposing an over-the-limit fee that exceeds $15 (even if a higher fee would be permitted under § 1026.52(b)(1)).

ii. Same facts as above except that, on March 26, the card issuer receives a payment of $20, reducing the balance below the credit limit to $4,995. Nevertheless, for purposes of § 1026.52(b)(2)(i), the dollar amount associated with the extensions of credit in excess of the credit limit is the total amount of credit extended by the card issuer in excess of the credit limit during the March billing cycle ($15). Thus, consistent with § 1026.52(b)(2)(i)(A), the card issuer may impose an over-the-limit fee of $15.

4. *Declined access check fees.* For purposes of § 1026.52(b)(2)(i), the dollar amount associated with declining payment on a check that accesses a credit card account is the amount of the check. Thus, when a check that accesses a credit card account is declined, § 1026.52(b)(2)(i)(A) prohibits a card issuer from imposing a fee that exceeds the amount of that check. For example, assume that a check that accesses a credit card account is used as payment for a $50 transaction, but payment on the check is declined by the card issuer because the transaction would have exceeded the credit limit for the account. For purposes of § 1026.52(b)(2)(i), the dollar amount associated with the declined check is the amount of the check ($50). Thus, § 1026.52(b)(2)(i)(A) prohibits the card issuer from imposing a fee that exceeds $50. However, the amount of this fee must also comply with § 1026.52(b)(1)(i) or (b)(1)(ii).

5. *Inactivity fees.* Section 1026.52(b)(2)(i)(B)(*2*) prohibits a card issuer from imposing a fee with respect to a credit card account under an open-end (not home-secured) consumer credit plan based on inactivity on that account (including the consumer's failure to use the account for a particular number or dollar amount of transactions or a particular type of transaction). For example, § 1026.52(b)(2)(i)(B)(*2*) prohibits a card issuer from imposing a $50 fee when a credit card account under an open-end (not home-secured) consumer credit plan is not used for at least $2,000 in purchases over the course of a year. Similarly, § 1026.52(b)(2)(i)(B)(*2*) prohibits a card issuer from imposing a $50 annual fee on all accounts of a particular type but waiving the fee on any account that is used for at least $2,000 in purchases over the course of a year if the card issuer promotes the waiver or rebate of the annual fee for purposes of § 1026.55(e). However, if the card issuer does not promote the waiver or rebate of the annual fee for purposes of § 1026.55(e), § 1026.52(b)(2)(i)(B)(*2*) does not prohibit a card issuer from considering account activity along with other factors when deciding whether to waive or rebate annual fees on individual accounts (such as in response to a consumer's request).

6. *Closed account fees.* Section 1026.52(b)(2)(i)(B)(*3*) prohibits a card issuer from imposing a fee based on the closure or termination of an account. For example, § 1026.52(b)(2)(i)(B)(*3*) prohibits a card issuer from:

i. Imposing a one-time fee to consumers who close their accounts.

ii. Imposing a periodic fee (such as an annual fee, a monthly maintenance fee, or a closed account fee) after an account is closed or terminated if that fee was not imposed prior to closure or termination. This prohibition applies even if the fee was disclosed prior to closure or termination. *See also* comment 55(d)–1.

iii. Increasing a periodic fee (such as an annual fee or a monthly maintenance fee) after an account is closed or terminated. However, a card issuer is not prohibited from continuing to impose a periodic fee that was imposed before the account was closed or terminated.

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(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 are not covered by § 1026.52(b)(2)(i)(B)(*1*).

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Section 1026.61—Hybrid Prepaid-Credit Cards

61(a) Hybrid Prepaid-Credit Card

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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 credit extended through a negative balance on the asset feature of the prepaid account 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)(3)(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. Unless § 1026.61(a)(4) applies, a card issuer would violate § 1026.61(b) if it structures a credit feature as a negative balance on the asset feature of the prepaid account. 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 with respect to that credit as described in § 1026.61(a)(4).

61(a)(4) Exception for Credit Extended Through a Negative Balance

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)(4) with respect to credit extended through a negative balance on the asset feature of the prepaid account is not a credit card under this regulation with respect to that credit. A prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account if:

A. The card cannot access credit from a covered separate credit feature under § 1026.61(a)(2)(i) that is offered by the prepaid account issuer or its affiliate, though it is permissible for it to access credit from a covered separate credit feature offered by a business partner or 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. If the conditions of § 1026.61(a)(4) are met and the prepaid card can access credit from a covered separate credit feature as defined in § 1026.61(a)(2)(i) that is offered by a business partner, the prepaid card is a hybrid prepaid-credit card with respect to the covered separate credit feature pursuant to § 1026.61(a)(2)(i) but is not a hybrid prepaid-credit card with respect to credit extended by a prepaid account issuer through a negative balance on the asset feature of the prepaid account that meets the conditions of § 1026.61(a)(4) or with respect to any non-covered separate credit feature pursuant to § 1026.61(a)(2)(ii). If the conditions of § 1026.61(a)(4) are met and the prepaid card cannot access credit from any covered separate credit feature as defined in § 1026.61(a)(2)(i), the prepaid card is not a hybrid prepaid-credit card with respect to credit extended by a prepaid account issuer through a negative balance on the asset feature of the prepaid account that meets the conditions of § 1026.61(a)(4) or with respect to any non-covered separate credit feature pursuant to § 1026.61(a)(2)(ii).

iii. Below is an example of when a prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account 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) and from a covered separate credit feature as defined in § 1026.61(a)(2)(i) offered by a business partner, but cannot access credit for a covered separate credit feature that is offered by a prepaid account issuer or its affiliate.

iv. Below is an example of when a prepaid card is a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account because the conditions set forth in § 1026.61(a)(4) have not been met.

A. 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 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 or its affiliate during the authorization phase to complete the transaction so that credit is not extended on the asset feature of the prepaid account. The exception in § 1026.61(a)(4) does not apply because the prepaid card can be used to draw, transfer, or authorize the draw or transfer of credit from a covered separate credit feature defined in § 1026.61(a)(2)(i) that is offered by the prepaid account issuer or its affiliate. The card is a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account pursuant to § 1026.61(a)(3) and with respect to the covered separate credit feature pursuant to § 1026.61(a)(2)(i). In that case, a card issuer has violated § 1026.61(b) because it has structured the credit feature as a negative balance on the asset feature of the prepaid account. *See* § 1026.61(a)(3)(ii) and (b).

v. In the case where a prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account because the conditions set forth in § 1026.61(a)(4) are met:

A. The prepaid account issuer is not a card issuer under § 1026.2(a)(7) with respect to the prepaid card when it accesses credit extended through the negative balance on the asset feature of the prepaid account. 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 when it accesses credit extended through the negative balance on the asset feature of the prepaid account. The prepaid account issuer also is not a creditor under § 1026.2(a)(17)(i) with respect to credit extended through the negative balance on the asset feature of the prepaid account as a result of imposing fees on the prepaid account because those fees are not finance charges with respect to that credit. *See* comment 4(b)(11)–1.iii.

Paragraph 61(a)(4)(ii)

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)(ii)(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)(ii)(A)(*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)(ii)(A)(*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)(ii)(A)(*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. *Card network or payment network agreements.* A draw, transfer, or authorization of the draw or transfer from a credit feature may be effectuated through a card network or a payment network. However, for purposes of § 1026.61(a)(5)(iii), agreements to participate in a card network or payment network themselves do not constitute an ''agreement'' or a ''business, marketing, or promotional agreement or other arrangement'' described in § 1026.61(a)(5)(iii)(B) or (C), respectively.

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.

61(a)(5)(iii)(D) Exception for Certain Credit Card Account Arrangements

1. *When the exception applies.* If the exception in § 1026.61(a)(5)(iii)(D) applies, a person that can extend credit through the credit card account is not a business partner of a prepaid account issuer with which it has an arrangement as defined in § 1026.61(a)(5)(iii)(A) through (C). Accordingly, where a consumer has authorized his or her prepaid card in accordance with § 1026.61(a)(5)(iii)(D) to be linked to the credit card account in such a way as to allow the prepaid card to access the credit card account as described in § 1026.61(a)(5)(iii)(D)(*2*), the linked prepaid card is not a hybrid prepaid-credit card with respect to the linked credit card account. Rather, the linked credit card account is a non-covered separate credit feature as discussed in § 1026.61(a)(2)(ii). *See* comment 61(a)(2)–5. In this case, by definition, the linked credit card account will be subject to the credit card rules in this regulation in its own right because it is a credit card account under an open-end (not home-secured) consumer credit plan, pursuant to the condition set forth in § 1026.61(a)(5)(iii)(D)(*1*).

Paragraph 61(a)(5)(iii)(D)(1)

1. *Traditional credit card.* For purposes of § 1026.61(a)(5)(iii)(D), ''traditional credit card'' means a credit card that is not a hybrid prepaid-credit card. Thus, the condition in § 1026.61(a)(5)(iii)(D)(*1*) is not satisfied if the only credit card that a consumer can use to access the credit card account under an open-end (not home-secured)

consumer credit plan is a hybrid prepaid-credit card.

Paragraph 61(a)(5)(iii)(D)(2)

1. *Written request.* Under § 1026.61(a)(5)(iii)(D)(*2*), any accountholder on either the prepaid account or the credit card account may make the written request.

Paragraph 61(a)(5)(iii)(D)(4)

1. *Account terms, conditions, or features.* Account terms, conditions, and features subject to § 1026.61(a)(5)(iii)(D)(*4*) include, but are not limited to:

i. Interest paid on funds deposited into the prepaid account, if any;

ii. Fees or charges imposed on the prepaid account (see comment 61(a)(5)(iii)(D)(*4*)–3 for additional guidance on this element with regard to load fees);

iii. The type of access device provided to the consumer;

iv. Minimum balance requirements on the prepaid account; or

v. Account features offered in connection with the prepaid account, such as online bill payment services.

2. *The same terms, conditions, and features apply to the consumer's prepaid account.* For the exception in § 1026.61(a)(5)(iii)(D) to apply, under § 1026.61(a)(5)(iii)(D)(*4*), the prepaid account issuer must not vary the terms, conditions, and features on the consumer's prepaid account depending on whether the consumer has authorized linking the prepaid card to the credit card account as described in § 1026.61(a)(5)(iii)(D)(*2*). For example, a prepaid account issuer would not satisfy this condition of § 1026.61(a)(5)(iii)(D)(*4*) if it provides on a consumer's prepaid account rewards points or cash back on purchases with the prepaid card where the consumer has authorized a link to the credit card account as discussed above while not providing such rewards points or cash back on the consumer's account if the consumer has not authorized such a linkage.

3. *Example of impermissible variations in load fees.* For the exception in § 1026.61(a)(5)(iii)(D) to apply, under § 1026.61(a)(5)(iii)(D)(*4*), the prepaid account issuer must apply the same fees to load funds from the credit card account that is linked to the prepaid account as described in § 1026.61(a)(5)(iii)(D)(*2*) as it charges for a comparable load on the consumer's prepaid account to access a credit feature offered by a person that is not the prepaid account issuer, its affiliates, or a person with which the prepaid account issuer has an arrangement as described in § 1026.61(a)(5)(iii)(A) through (C). For example, a prepaid account issuer would not satisfy this condition of § 1026.61(a)(5)(iii)(D)(*4*) if it charges on the consumer's prepaid account $0.50 to load funds in the course of a transaction from a credit card account offered by a card issuer with which the prepaid account issuer has an arrangement, but $1.00 to load funds in the course of a transaction from a credit card account offered by a card issuer with which it does not have an arrangement.

Paragraph 61(a)(5)(iii)(D)(5)

1. *Specified terms and conditions.* For purposes of § 1026.61(a)(5)(iii)(D), ''specified terms and conditions'' on a credit card account means:

i. The terms and conditions required to be disclosed under § 1026.6(b), which include pricing terms, such as periodic rates, annual percentage rates, and fees and charges imposed on the credit card account; any security interests acquired under the credit account; claims and defenses rights under § 1026.12(c); and error resolution rights under § 1026.13;

ii. Any repayment terms and conditions, including the length of the billing cycle, the payment due date, any grace period on the transactions on the account, the minimum payment formula, and the required or permitted methods for making conforming payments on the credit feature; and

iii. The limits on liability for unauthorized credit transactions.

2. *Same specified terms and conditions regardless of whether the credit card account is linked to the prepaid account.* For the exception in § 1026.61(a)(5)(iii)(D) to apply, under § 1026.61(a)(5)(iii)(D)(*5*), the card issuer must not vary the specified terms and conditions on the consumer's credit card account depending on whether the consumer has authorized linking the prepaid card to the credit card account as described in § 1026.61(a)(5)(iii)(D)(*2*). The following are examples of circumstances in which a card issuer would not meet the condition described above:

i. The card issuer structures the credit card account as a ''charge card account'' (where no periodic rate is used to compute a finance charge on the credit card account) if the credit feature is linked to the prepaid card as described in § 1026.61(a)(5)(iii)(D)(*2*), but applies a periodic rate to compute a finance charge on the consumer's account (and thus does not use a charge card account structure) if there is no such link. See § 1026.2(a)(15)(iii) for the definition of ''charge card.''

ii. The card issuer imposes a $50 annual fee on a consumer's credit card account if the credit feature is linked to the prepaid card as described in § 1026.61(a)(5)(iii)(D)(*2*), but does not impose an annual fee on the consumer's credit card account if there is no such link.

3. *Same specified terms and conditions regardless of whether credit is accessed by the prepaid card or the traditional credit card.* To satisfy the condition of § 1026.61(a)(5)(iii)(D)(*1*), the credit card account must be a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card. As explained in comment 61(a)(5)(iii)(D)(*1*)–1, for purposes of § 1026.61(a)(5)(iii)(D), ''traditional credit card'' means a credit card that is not a hybrid prepaid-credit card. For the exception in § 1026.61(a)(5)(iii)(D) to apply, under § 1026.61(a)(5)(iii)(D)(*5*), a card issuer must not vary the specified terms and conditions on the credit card account when a consumer authorizes linking the account with the prepaid card as described in § 1026.61(a)(5)(iii)(D)(*2*) depending on whether a particular credit extension from the credit card account is accessed by the prepaid card or by the traditional credit card.

i. The following examples are circumstances in which a card issuer would not meet the condition of § 1026.61(a)(5)(iii)(D)(*5*) described above:

A. The card issuer considers transactions using the traditional credit card to obtain goods or services from an unaffiliated merchant of the card issuer as purchase transactions with certain annual percentage rates (APRs), fees, and a grace period that applies to those purchase transactions, but treats credit extensions as cash advances that are subject to different APRs, fees, grace periods, and other specified terms and conditions where the prepaid card is used to draw, transfer, or authorize the draw or transfer of credit from the linked credit card account in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services from an unaffiliated merchant of the card issuer.

B. The card issuer generally treats one-time transfers of credit using the credit card account number to asset accounts as cash advance transactions with certain APRs and fees, but treats one-time transfers of credit using the prepaid card to the prepaid account as purchase transactions that are subject to different APRs and fees.

ii. To apply the same rights under § 1026.12(c) regarding claims and defenses applicable to use of a credit card to purchase property or services, the card issuer must treat an extension of credit as a credit card transaction to purchase property or services where a prepaid card is used to draw, transfer, or authorize the draw or transfer of credit from the linked credit card account in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to purchase property or services and provide the same rights under § 1026.12(c) as it applies to property or services purchased with the traditional credit card. This includes situations where a consumer uses a prepaid card to make a purchase to obtain property or services from a merchant and credit is transferred from the linked credit card account in the course of authorizing, settling, or otherwise completing the prepaid transaction to make the purchase. For a transaction where a prepaid card is used to obtain property 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 linked credit card account, the amount of the purchase transaction that is funded by credit would be subject to this guidance. A card issuer is not required to provide the rights under § 1026.12(c) with respect to the amount of the transaction funded from the prepaid account.

iii. To apply the same limits on liability for unauthorized extensions of credit from the credit card account using the prepaid card as it applies to unauthorized extensions of credit from the credit card account using the traditional credit card, the card issuer must treat an extension of credit accessed by the prepaid card as a credit card transaction for purposes of the limits on liability for unauthorized extensions of credit set forth in § 1026.12(b) and impose the same liability under § 1026.12(b) to this credit extension as it applies to unauthorized transactions using the traditional credit card.

* * * * *

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 accessed 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.

* * * * *

Dated: January 9, 2018.

Mick Mulvaney,

Acting Director, Bureau of Consumer Financial Protection.

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