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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–15–0015; NOP–15–07]

RIN 0581–AD39

National Organic Program (NOP); Sunset 2015 Amendments to the National List

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule addresses recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) following their October 2014 meeting. These recommendations pertain to the 2015 Sunset Review of substances on the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List). Consistent with the recommendations from the NOSB, this final rule removes two nonorganic agricultural substances from the National List for use in organic handling, fortified cooking wines—marsala wine and sherry wine. This final rule also removes two listings for synthetic substances allowed for use in organic crop production on the National List, streptomycin and tetracycline, as their use exemptions expired on October 21, 2014.

DATES: *Effective Date:* This final rule is effective on December 14, 2015.

FOR FURTHER INFORMATION CONTACT: Robert Pooler, Standards Division, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2642–So., Ag Stop 0268, Washington, DC 20250–0268. *Telephone:* (202) 720–3252; *Fax:* (202) 205–7808.

SUPPLEMENTARY INFORMATION:

I. Background

The National Organic Program (NOP) is authorized by the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501–6522). The USDA Agricultural Marketing Service (AMS) administers the NOP. Final regulations implementing the NOP, also referred to as the USDA organic regulations, were published December 21, 2000 (65 FR 80548), and became effective on October 21, 2002. Through these regulations, the AMS oversees national standards for the production, handling, and labeling of organically produced agricultural products. Since becoming effective, the USDA organic regulations have been frequently amended, mostly for changes to the National List in 7 CFR 205.601–205.606.

This National List identifies the synthetic substances that may be used and the nonsynthetic substances that may not be used in organic production. The National List also identifies synthetic, nonsynthetic nonagricultural, and nonorganic agricultural substances that may be used in organic handling. The OFPA and the USDA organic regulations, as indicated in § 205.105, specifically prohibit the use of any synthetic substance in organic production and handling unless the synthetic substance is on the National List. Section 205.105 also requires that any nonorganic agricultural substance and any nonsynthetic nonagricultural substance used in organic handling appear on the National List.

As stipulated by the OFPA, recommendations to propose amendment of the National List are developed by the NOSB, operating under the Federal Advisory Committee Act (5 U.S.C. App. 2 *et seq.*), to assist in the evaluation of substances to be used or not used in organic production and handling, and to advise the Secretary on the USDA organic regulations. The OFPA also requires a sunset review of all substances included on the National List within five years of their addition to or renewal on the list. If a listed substance is not reviewed by the NOSB and renewed by the USDA within the five year period, its allowance or prohibition on the National List is no longer in effect. Under the authority of the OFPA, the Secretary can amend the National List through rulemaking based upon proposed amendments as recommended by the NOSB.

The NOSB's recommendations to continue existing exemptions and prohibitions include consideration of public comments and applicable supporting evidence that express a continued need for the use or prohibition of the substance(s) as required by the OFPA. Recommendations to either continue or discontinue an authorized exempted synthetic substance (7 U.S.C. 6517(c)(1)) are determined by the NOSB's evaluation of technical information, public comments, and supporting evidence that demonstrate that the substance is: (a) Harmful to human health or the environment; (b) no longer necessary for organic production due to the availability of alternative wholly nonsynthetic substitute products or practices; or (c) inconsistent with organic farming and handling practices.

This rule removes the expired listings of two substances, streptomycin and tetracycline, as their National List exemptions expired on October 21, 2014. After this expiration date, the use of streptomycin and tetracycline in organic production is prohibited. While USDA accredited certifying agents are enforcing the prohibition of streptomycin and tetracycline, delisting of these substances from the National List reduces the likelihood of noncompliant use by organic producers.

Following their October 2014 public meeting, the NOSB submitted their 2015 Sunset Review recommendations to the Secretary. This rule amends the National List to implement two NOSB recommendations to remove the substances, marsala wine and sherry wine, allowed as ingredients in or on processed products labeled as ''organic'' in § 205.606. The National List exemptions of these substances for use in organic production and handling that were considered by the NOSB during the 2015 Sunset Review process were evaluated according to the evaluation criteria specified on the OFPA (7 U.S.C. 6517–6518).

II. Overview of Amendments

The following provides an overview of the amendments made to designated sections of the National List regulations:

§ 205.601 Synthetic Substances Allowed for Use in Organic Crop Production

This final rule amends § 205.601 of the National List regulations by removing (1) the expired substance exemption for streptomycin, for fire blight control in apples and pears only until October 21, 2014, in § 205.601(i)(11), and (2) the expired substance exemption for tetracycline, for fire blight control in apples and pears only until October 21, 2014, in § 205.601(i)(12).

Streptomycin

This rule amends § 206.601 of the National List by removing the expired exemption for streptomycin, for fire blight control in apples and pears only until October 21, 2014. In 1995, streptomycin was recommended by the NOSB for addition as a plant disease control to the National List. The NOSB recommendation was accepted by the Secretary and streptomycin was included, as a plant disease control, in the initial final rule establishing the NOP that was published on December 21, 2000 (65 FR 80548). The listing for streptomycin was amended, as recommended by the NOSB, on June 6, 2012 (77 FR 33290) to add an expiration date to the streptomycin annotation: Streptomycin, for fire blight control in apples and pears only until October 21, 2014. This rule removes the listing for streptomycin that expired on October 21, 2014 from § 205.601. Since the prohibition against the use of streptomycin has been effective since October 21, 2014, removal of this exempted substance from the National List has no new regulatory effect.

Tetracycline

This rule amends § 206.601 of the National List by removing the expired exemption for tetracycline, for fire blight control in apples and pears only until October 21, 2014. Tetracycline was considered by the NOSB at their October 31–November 4, 1995, meeting. The NOSB recommendation was accepted by the Secretary and tetracycline was included, as a plant disease control, in the initial final rule establishing the NOP that was published on December 21, 2000 (65 FR 80548). Subsequently, as recommended by the NOSB, the listing for tetracycline was amended on August 2, 2012 (77 FR 45903) to add an expiration date to the tetracycline annotation: Tetracycline, for fire blight control in apples and pears only until October 21, 2014. This rule removes the exempted listing for tetracycline from § 205.601 that expired on October 21, 2014. Since the prohibition against the use of tetracycline has been effective since October 21, 2014, the removal of this exempted substance from the National List has no new regulatory effect.

Sec. 205.606 Nonorganically Produced Agricultural Products Allowed as Ingredients In or On Processed Products Labeled as ''Organic''

This final rule amends § 205.606 of the National List by removing two substance exemptions listed in § 205.606(g): Fortified cooking wines, (1) marsala, (2) sherry.

This rule implements two NOSB recommendations from their 2015 Sunset review that were submitted to the Secretary on October 30, 2014. During their 2015 Sunset Review, the NOSB determined that two substance exemptions for marsala wine and sherry wine included on § 205.606 of the National List are no longer necessary for organic handling.

Marsala Wine

The USDA organic regulations have included an exemption on the National List for fortified cooking wines as an ingredient for use in organic processed products at § 205.606(g) as follows: Fortified cooking wines, (1) Marsala. In 2007, marsala wine was petitioned for addition to § 205.606 because it was considered a key flavor ingredient that was not commercially available in organic form and quantity. As required by the OFPA, the exemption for marsala wine was considered during the NOSB's 2015 sunset review. During their sunset review deliberation, the NOSB received no public comments supporting the continued need for the use of nonorganic marsala wine in organic processed products. In addition, the NOSB considered evidence that only a few operations use marsala wine as an ingredient in organic processed products. Based upon this information, the NOSB determined that the exemption for marsala wine on § 205.606 is no longer necessary or essential for organic processed products and voted for the removal of marsala wine from the National List, effective on December 14, 2015.

Sherry Wine

The USDA organic regulations have included an exemption on the National List for fortified cooking wine, sherry wine, as an ingredient for use in organic processed products at § 205.606(g) as follows: Fortified cooking wines, (2) Sherry. In 2007, sherry wine was petitioned for addition to § 205.606 because it was considered a key flavor ingredient that was not commercially available in organic form or quantity. As required by the OFPA, the exemption for sherry wine was considered during the NOSB's 2015 sunset review. During their sunset review deliberation, the NOSB received no public comments supporting the continued need for the use of nonorganic sherry wine in organic processed products. In addition, the NOSB considered evidence that only a few operations use sherry wine as an ingredient in organic processed products. Based upon this information, the NOSB determined that the exemption for sherry wine as listed on § 205.606 is no longer necessary or essential for organic processed products and voted for the removal of sherry wine from the National List, effective on December 14, 2015.

This rule amends § 205.606 by redesignating paragraphs (h) through (z) as (g) through (y), respectively.

III. Related Documents

Two notices of public meeting with request for comments were published in **Federal Register** on March 10, 2014 (79 FR 13272) and on September 8, 2014 (79 FR 53162) to notify the public that the 2015 sunset review listings discussed in this proposed rule would expire on December 14, 2015, if not reviewed by the NOSB and renewed by the Secretary. The listing for both streptomycin and tetracycline was added to the National List by the final rule (65 FR 80548) published in the **Federal Register** on December 21, 2000. Subsequently, an expiration date of October 21, 2014 was added to the streptomycin and tetracycline annotations on June 6, 2012 (77 FR 33290) and on August 2, 2012 (77 FR 45903). The proposal to address the substances in this final rule was published in the **Federal Register** on July 30, 2015 (80 FR 45499).

IV. Statutory and Regulatory Authority

OFPA, as amended (7 U.S.C. 6501–6522), authorizes the Secretary to make amendments to the National List based on proposed recommendations developed by the NOSB. Sections 6518(k)(2) and 6518(n) of OFPA authorize the NOSB to develop proposed amendments to the National List for submission to the Secretary and establish a petition process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion on or deletion from the National List. The National List petition process is implemented under § 205.607 of the USDA organic regulations. The current petition process was published on January 18, 2007 (72 FR 2167) and

can be accessed through the NOP Web site at *http://www.ams.usda.gov/nop*. AMS published a revised sunset review process in the **Federal Register** on September 16, 2013 (78 FR 56811).

A. Executive Order 12866

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

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This final rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under OFPA from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in section 2115(b) of OFPA (7 U.S.C. 6514(b)). States are also preempted under section 2104 through 2108 of OFPA (7 U.S.C. 6503–6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of OFPA.

Pursuant to section 2108(b)(2) of OFPA (7 U.S.C. 6507(b)(2)), a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the purposes of OFPA, (b) not be inconsistent with OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to section 2120(f) of OFPA (7 U.S.C. 6519(f)), this rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601–624), the Poultry Products Inspection Act (21 U.S.C. 451–471), or the Egg Products Inspection Act (21 U.S.C. 1031–1056), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301–399), nor the authority of the Administrator of EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136–136(y)).

Section 2121 of OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Pursuant to the requirements set forth in the RFA, AMS performed an economic impact analysis on small entities in the final rule published in the **Federal Register** on December 21, 2000 (65 FR 80548). AMS has also considered the economic impact of this action on small entities. The impact on entities affected by this rule would not be significant. The effect of this rule would be to prohibit the use of two nonorganic agricultural products that may be available in organic form for use in organic processed products. AMS concludes that the economic impact of removing the nonorganic agricultural products, marsala wine and sherry wine, would be minimal to small agricultural firms since organic form of these agricultural products or organic forms of alternative agricultural products may be commercially available and, as such, their nonorganic forms are proposed to be removed from the National List under this rule. Accordingly, AMS certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Small agricultural service firms, which include producers, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000 and small agricultural producers are defined as those having annual receipts of less than $750,000.

According to USDA, National Agricultural Statistics Service (NASS), certified organic acreage exceeded 3.5 million acres in 2011.[1] According to NOP's Accreditation and International Activities Division, the number of certified U.S. organic crop and livestock operations totaled over 19,470 in 2014. The list of certified operations is available on the NOP Web site at *http://apps.ams.usda.gov/nop/*. AMS believes that most of these entities would be considered small entities under the criteria established by the SBA. U.S. sales of organic food and non-food have grown from $1 billion in 1990 to $39.1 billion in 2014, an 11.3 percent growth over 2013 sales.[2] In addition, the USDA has 80 accredited certifying agents who provide certification services to producers and handlers. A complete list of names and addresses of accredited certifying agents may be found on the AMS NOP Web site, at *http://www.ams.usda.gov/services/organic-certification/certifying-agents*. AMS believes that most of these accredited certifying agents would be considered small entities under the criteria established by the SBA. Certifying agents reported 27,810 certified operations worldwide in 2014.

D. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by this rule. Accordingly, OMB clearance is not required by section 350(h) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, Chapter 35, or OMB's implementing regulations at 5 CFR part 1320.

E. Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

[1] U.S. Department of Agriculture, National Agricultural Statistics Service. October 2012. 2011 Certified Organic Productions Survey.

[2] Organic Trade Association. 2014. Organic Industry Survey. *www.ota.com.*

F. Comments Received on Proposed Rule AMS–NOP–15–0015; NOP–15–07

AMS received two comments on proposed rule AMS–NOP–15–0015. Only one comment from a consumer addressed the 2015 Sunset review amendments to remove marsala and sherry wines from the National List. The second comment was from a California apple producer and it addressed removing the expired listings, streptomycin and tetracycline, from the National List.

The consumer who commented on removing marsala and sherry wines from the National List agreed with the proposed amendment to prohibit the use of these nonorganic ingredients in foods labeled as organic. During their sunset review of marsala and sherry, the NOSB did not receive comments supporting the continued use of these wines as nonorganic ingredients in organic products. Additionally, since no comments were received opposing the removal of marsala and sherry wines from the National List, AMS is finalizing these amendments as proposed through this final rule.

Additionally, the consumer who supported the removal of marsala and sherry wines also added that nonorganic ingredients should not be used in organic foods. AMS has considered this comment. The USDA organic regulations, in § 205.301(b), requires that a raw or processed agricultural product sold, labeled, or represented as ''organic'' must contain not less than 95 percent organically produced raw or processed agricultural products. Any remaining product ingredients must be organically produced, unless not commercially available in organic form, or must be nonagricultural substances as listed in § 205.605, or nonorganic agricultural products as listed in § 205.606 on the National List. In essence, the USDA organic regulations requires organic producers or organic handlers to maximize organic ingredients before using nonorganic nonagricultural or nonorganic agricultural that are included on the National List.

Changes Requested But Not Made

The commenter on the proposed removal of expired listings for streptomycin and tetracycline did not agree with this action and did not agree with the prohibition against the use of these antibiotics to control fire blight infestation in apple production. This commenter stated that the prohibition of streptomycin and tetracycline for use in apple production has had a significant impact on organic apple growers in California's central valley. According to this commenter, the alternatives to the use of streptomycin and tetracycline researched in the Pacific Northwest are ineffective in controlling fire blight in California's central valley. The commenter claims the amendment to prohibit the use of these antibiotics to control fire blight created a significant economic advantage for apple growers in the Pacific Northwest. The removal of the expired listings for streptomycin and tetracycline in the proposed rule is essentially a notice of a technical correction since the prohibition on the use of these two substances in organic crop production is already in effect.

The final rule that established the effective date of streptomycin's expiration date as listed in § 205.601(i)(11) was published in the **Federal Register** (77 FR 33290) on June 6, 2012. This final rule addressed comments received on the proposed rule to list streptomycin with an expiration date, including comments in support of or in opposition to the expiration date. AMS also addressed comments on commercially viable alternatives, including the efficacy of these alternatives, and addressed additional factors considered by the NOSB during their determination. Since the prohibition against the use of streptomycin has been in effect since October 22, 2014, AMS is finalizing this correction as noted in the proposed rule. Organic producers who have determined that there are no commercially available alternatives to streptomycin in controlling fire blight in apples or pear production for their region can submit a petition (*http://www.ams.usda.gov/rules-regulations/organic/national-list/filing-petition*) to add streptomycin back onto the National List.

The final rule that established the effective date of tetracycline's expiration date as listed in § 205.601(i)(12) was published in the **Federal Register** (77 FR 45903) on August 2, 2012. This final rule addressed comments received on the proposed rule to list tetracycline with an expiration date, including comments in support of or in opposition to the expiration date. AMS also addressed comments on commercially viable alternatives, including the efficacy of these alternatives, and addressed additional factors considered by the NOSB during their determination. Since the prohibition against the use of tetracycline has been in effect since October 22, 20014, AMS is finalizing this correction as noted in the proposed rule. Organic producers who have determined that there are no commercially available alternatives to tetracycline in controlling fire blight in apples or pear production for their region can submit a petition (*http://www.ams.usda.gov/rules-regulations/organic/national-list/filing-petition*) to add tetracycline back onto the National List.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agricultural commodities, Imports, Labeling, Livestock, Reporting and recordkeeping requirements, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205 is amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for 7 CFR part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

§ 205.601 [Amended]

■ 2. Section 205.601 is amended by removing paragraphs (i)(11) and (12).

§ 205.606 [Amended]

■ 3. Section 205.606 is amended by removing paragraph (g) and redesignating paragraphs (h) through (z) as (g) through (y).

Dated: December 8, 2015.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–31413 Filed 12–11–15; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–3321; Airspace Docket No. 15–ANM–17]

Establishment of Class E Airspace, Neah Bay, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at U. S. Coast Guard Station Neah Bay Heliport, Neah Bay, WA, to accommodate a new Standard Instrument Approach Procedure developed at the heliport. Controlled airspace is necessary for the safety and management of Instrument Flight Rules (IFR) operations at the heliport.

DATES: Effective 0901 UTC, February 4, 2016. 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 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, 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 and ATC Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 29591; 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 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Steve Haga, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA, 98057; telephone (425) 203–4563.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

On September 29, 2015, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace extending upward from 700 feet above the surface at U.S. Coast Guard Station Neah Bay Heliport, Neah Bay, WA (80 FR 58364). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface at U.S. Coast Guard Station Neah Bay Heliport, Neah Bay, WA. Establishment of a GPS approach has made this action necessary for the safety and management of IFR operations at the heliport. Class E airspace is established within a 1-mile radius of the U.S. Coast Guard Station Neah Bay Heliport, with a segment extending from the 1-mile radius to 2.5 miles northeast of the heliport.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that 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 qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM WA E5 U.S. Coast Guard Station Neah Bay Heliport, Neah Bay, WA [New]

U.S. Coast Guard Station Neah Bay Heliport, WA
(Lat. 48°22′14″ N., long. 124°35′53″ W.)

That airspace extending upward from 700 feet above the surface within a 1-mile radius of U.S. Coast Guard Station Neah Bay Heliport, and within 1 mile each side of the 055° bearing from the heliport extending from the 1-mile radius to 2.5 miles northeast of the heliport.

Issued in Seattle, Washington, on December 7, 2015.

Tracey Johnson,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2015–31274 Filed 12–11–15; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Amendments to Rules and Regulations

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board (NLRB) is issuing a final rule amending its Rules and Regulations to reflect the closure of the Atlanta, Georgia office of the Division of Judges.

DATES: The effective date is January 4, 2016.

FOR FURTHER INFORMATION CONTACT: Gary Shinners, Executive Secretary, 1015 Half Street SE., Washington, DC 20570. Telephone: (202) 273–1067.

SUPPLEMENTARY INFORMATION: The NLRB's Division of Judges (DOJ) currently has 34 administrative law judges, including the chief judge, deputy chief judge, and three associate chief judges, who hear, decide, and settle unfair labor practice cases nationwide. The judges are formally assigned to one of four offices in Washington, DC, New York, NY, San Francisco, CA, and Atlanta, GA, and receive their case assignments through those offices.

The NLRB has decided to close the Atlanta DOJ office and reassign the administrative law judges and clerical staff to other offices. It is doing so for several reasons. First, the office's longtime head, Associate Chief Judge William N. Cates, will be retiring at the end of the year. Second, of the four DOJ offices, the Atlanta office has the smallest number of nonsupervisory judges (four) and clerical employees (two). Third, although assigned to the Atlanta DOJ office, the four judges do not physically work out of that office. Like most NLRB administrative law judges, they telework and travel to the designated hearing sites from their states of residence (Virgina, Tennessee, Texas, and Florida). Fourth, closing the Atlanta DOJ office will save the NLRB the cost of renting that facility.

The four Atlanta DOJ administrative law judges will be reassigned to the Washington, DC DOJ office. They will continue to telework and perform their duties as before, but will receive their case assignments from the Chief Judge or Deputy Chief Judge, and be assisted by the clerical staff, in that office. One of the two administrative professional employees in the Atlanta DOJ office will be reassigned to assist the NLRB's nearby Regional Office in Atlanta. The other administrative professional employee will be relocated to the NLRB Atlanta Regional Office and will continue to provide assistance to the Division of Judges.

Accordingly, consistent with the foregoing, the NLRB is revising §§ 102.24, 102.25, 102.30(c), 102.34, 102.35(b), 102.36, 102.42, and 102.149 of its rules and regulations, and appendix A thereto, to delete the references to the Atlanta DOJ office and to reflect the current structure of the Agency's field organization. Appendix A to part 102 of the Board's Rules and Regulations, which includes a complete listing of the official office hours of the NLRB Headquarters, the Division of Judges, and the Regional and Subregional Offices, was last published in full at 57 FR 4158 (February 4, 1992). Since that time, the Board has published numerous individual amendments to its Statement of Organization and Functions, including 65 FR 53228, 65 FR 64723, 69 FR 31143, 69 FR 74541, 77 FR 72886, 78 FR 44602, 79 FR 69136, and 79 FR 72707. Accordingly, the Board is now publishing Appendix A to Part 102—NLRB Official Office Hours in its entirety because of the number of changes made to the field offices and the age of the last publication.

This action is not subject to the advance notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553), or the requirements of Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801). As indicated above, the action relates solely to agency organization, management, or personnel matters. It will have no adverse impact on the ability of the NLRB Judges Division to cover the trial docket in the southern region of the country or elsewhere. Nor will it impose any additional paperwork, reporting, or other costs, burdens, or responsibilities on parties, practitioners, or others who participate in hearings before the NLRB's administrative law judges.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

For the reasons set forth above, the NLRB amends part 102 as follows:

PART 102—RULES AND REGULATIONS, SERIES 8

■ 1. The authority citation for part 102 continues to read as follows:

Authority: Sections 1, 6, National Labor Relations Act (29 U.S.C. 151, 156). Section 102.117 also issued under section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)), and Section 102.117a also issued under section 552a(j) and (k) of the Privacy Act of 1974 (5 U.S.C. 552a(j) and (k)). Sections 102.143 through 102.155 also issued under section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

■ 2. Amend § 102.24 by revising paragraph (a) to read as follows:

§ 102.24 Motions; where to file; contents; service on other parties; promptness in filing and response; default judgment procedures; summary judgment procedures.

(a) All motions under §§ 102.22 and 102.29 made prior to the hearing shall be filed in writing with the Regional Director issuing the complaint. All motions for default judgment, summary judgment, or dismissal made prior to the hearing shall be filed in writing with the Board pursuant to the provisions of § 102.50. All other motions made prior to the hearing, including motions to reschedule the hearing under circumstances other than those set forth in § 102.16(a), shall be filed in writing with the chief administrative law judge in Washington, DC, with the associate chief judge in San Francisco, California, or with the associate chief judge in New York, New York, as the case may be. All motions made at the hearing shall be made in writing to the administrative law judge or stated orally on the record. All motions filed subsequent to the hearing, but before the transfer of the case to the Board pursuant to § 102.45, shall be filed with the administrative law judge, care of the chief administrative law judge in Washington, DC, the associate chief judge in San Francisco, or the associate chief judge in New York, as the case may be. Motions shall briefly state the order or relief applied for and the grounds therefor. All motions filed with a Regional Director or an administrative law judge as set forth in this paragraph shall be filed therewith by transmitting three copies thereof together with an affidavit of service on the parties. All motions filed with the Board, including motions for default judgment, summary judgment, or dismissal, shall be filed with the Executive Secretary of the Board in Washington, DC, by transmitting eight copies thereof together with an affidavit of service on the parties. Unless otherwise provided in this part, motions and responses thereto shall be filed promptly and within such time as not to delay the proceeding.

* * * * *

■ 3. Revise § 102.25 to read as follows:

§ 102.25 Ruling on motions.

An administrative law judge designated by the chief administrative

law judge in Washington, DC, by the associate chief judge in San Francisco, California, or by the associate chief judge in New York, New York, as the case may be, shall rule on all prehearing motions (except as provided in §§ 102.16, 102.22, 102.29, and 102.50), and all such rulings and orders shall be issued in writing and a copy served on each of the parties. The administrative law judge designated to conduct the hearing shall rule on all motions after opening of the hearing (except as provided in § 102.47), and any orders in connection therewith, if announced at the hearing, shall be stated orally on the record; in all other cases the administrative law judge shall issue such rulings and orders in writing and shall cause a copy of the same to be served on each of the parties, or shall make his ruling in his decision. Whenever the administrative law judge has reserved his ruling on any motion, and the proceeding is thereafter transferred to and continued before the Board pursuant to § 102.50, the Board shall rule on such motion. (49 Stat. 449; 29 U.S.C. 151–166, as amended by (61 Stat. 136; 29 U.S.C. Sup. 151–167), (65 Stat. 601; 29 U.S.C. 158, 159, 168), (73 Stat. 519; 29 U.S.C. 141–168), (88 Stat. 395–397; 29 U.S.C. 152, 158, 169, 183))

■ 4. Amend § 102.30 by revising paragraph (c) to read as follows:

§ 102.30 Examination of witnesses; deposition.

* * * * *

(c) At the time and place specified in said order the officer designated to take such deposition shall permit the witness to be examined and cross-examined under oath by all the parties appearing, and his testimony shall be reduced to type-writing by the officer or under his direction. All objections to questions or evidence shall be deemed waived unless made at the examination. The officer shall not have power to rule upon any objections but he shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer who shall attach his certificate stating that the witness was duly sworn by him, that the deposition is a true record of the testimony and exhibits given by the witness, and that said officer is not of counsel or attorney to any of the parties nor interested in the event of the proceeding or investigation. If the deposition is not signed by the witness because he is ill, dead, cannot be found, or refuses to sign it, such fact shall be included in the certificate of the officer and the deposition may then be used as fully as though signed. The officer shall immediately deliver an original and two copies of said transcript, together with his certificate, in person or by registered or certified mail to the Regional Director or the administrative law judge, care of the chief administrative law judge in Washington, DC, the associate chief judge in San Francisco, California, or the associate chief judge in New York, New York, as the case may be.

* * * * *

■ 5. Revise § 102.34 to read as follows:

§ 102.34 Who shall conduct; to be public unless otherwise ordered.

The hearing for the purpose of taking evidence upon a complaint shall be conducted by an administrative law judge designated by the chief administrative law judge in Washington, DC, by the associate chief judge in San Francisco, California, or by the associate chief judge in New York, New York, as the case may be, unless the Board or any Member thereof presides. At any time an administrative law judge may be designated to take the place of the administrative law judge previously designated to conduct the hearing. Such hearings shall be public unless otherwise ordered by the Board or the administrative law judge. (49 Stat. 449; 29 U.S.C. 151–166, as amended by (61 Stat. 136; 29 U.S.C. Sup. 151–167), (65 Stat. 601; 29 U.S.C. 158, 159, 168), (73 Stat. 519; 29 U.S.C. 141–168), (88 Stat. 395–397; 29 U.S.C. 152, 158, 169, 183))

■ 6. Amend § 102.35 by revising paragraph (b) introductory text to read as follows:

§ 102.35 Duties and powers of administrative law judges; stipulations of cases to administrative law judges or to the Board; assignment and powers of settlement judges.

* * * * *

(b) Upon the request of any party or the judge assigned to hear a case, or on his or her own motion, the chief administrative law judge in Washington, DC, the associate chief judge in San Francisco, California, or the associate chief judge in New York, New York may assign a judge who shall be other than the trial judge to conduct settlement negotiations. In exercising his or her discretion, the chief judge or associate chief judge making the assignment will consider, among other factors, whether there is reason to believe that resolution of the dispute is likely, the request for assignment of a settlement judge is made in good faith, and the assignment is otherwise feasible. Provided, however, that no such assignment shall be made absent the agreement of all parties to the use of this procedure.

* * * * *

■ 7. Revise § 102.36 to read as follows:

§ 102.36 Unavailability of administrative law judges.

In the event the administrative law judge designated to conduct the hearing becomes unavailable to the Board after the hearing has been opened, the chief administrative law judge in Washington, DC, the associate chief judge in San Francisco, California, or the associate chief judge in New York, New York, as the case may be, may designate another administrative law judge for the purpose of further hearing or other appropriate action. (49 Stat. 449; 29 U.S.C. 151–166, as amended by (61 Stat. 136; 29 U.S.C. Sup. 151–167), (65 Stat. 601; 29 U.S.C. 158, 159, 168), (73 Stat. 519; 29 U.S.C. 141–168), (88 Stat. 395–397; 29 U.S.C. 152, 158, 169, 183))

■ 8. Revise § 102.42 to read as follows:

§ 102.42 Filings of briefs and proposed findings with the administrative law judge and oral argument at the hearing.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which may include presentation of proposed findings and conclusions, and shall be included in the stenographic report of the hearing. In the discretion of the administrative law judge, any party may, upon request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge, who may fix a reasonable time for such filing, but not in excess of 35 days from the close of the hearing. Requests for further extensions of time shall be made to the chief administrative law judge in Washington, DC, to the associate chief judge in San Francisco, California, or to the associate chief judge in New York, New York, as the case may be. Notice of the request for any extension shall be immediately served on all other parties, and proof of service shall be furnished. Three copies of the brief or proposed findings and conclusions shall be filed with the administrative law judge, and copies shall be served on the other parties, and a statement of such service shall be furnished. In any case in which the administrative law judge believes that written briefs or proposed findings of fact and conclusions may not be necessary, he or she shall notify the parties at the opening of the hearing or as soon thereafter as practicable that he or she may wish to hear oral argument in lieu of briefs.

■ 9. Amend § 102.149 by revising paragraph (b) to read as follows:

§ 102.149 Filing of documents; service of documents; motions for extension of time.

* * * * *

(b) Motions for extensions of time to file motions, documents, or pleadings permitted by § 102.150 or by § 102.152 shall be filed with the chief administrative law judge in Washington, DC, the associate chief judge in San Francisco, California, or the associate chief judge in New York, New York, as the case may be, not later than 3 days before the due date of the document. Notice of the request shall be immediately served on all other parties and proof of service furnished.

■ 10. Revise appendix A to part 102 to read as follows:

Appendix A to Part 102—NLRB Official Office Hours

(Official Office Hours of the Regional and Subregional Offices are listed in numerical order except that Subregions appear directly under their respective Regions. Official office hours of the field offices also can be found on the NLRB Web site at *https://www.nlrb.gov/who-we-are/regional-offices.*)

NLRB Headquarters, Business Hours (Local Time):	
Washington, DC	8:30 a.m.–5:00 p.m.
Division of Judges, Business Hours (Local Time):	
Washington, DC	8:30 a.m.–5:00 p.m.
San Francisco	8:30 a.m.–5:00 p.m.
New York	8:30 a.m.–5:00 p.m.
Regional Office Business Hours (Local Time):	
1—Boston	8:30 a.m.–5:00 p.m.
Hartford	8:30 a.m.–5:00 p.m.
2—New York	8:45 a.m.–5:15 p.m.
3—Buffalo	8:30 a.m.–5:00 p.m.
Albany	8:30 a.m.–5:00 p.m.
4—Philadelphia	8:30 a.m.–5:00 p.m.
5—Baltimore	8:15 a.m.–4:45 p.m.
Washington, DC	8:15 a.m.–4:45 p.m.
6—Pittsburgh	8:30 a.m.–5:00 p.m.
7—Detroit	8:15 a.m.–4:45 p.m
Grand Rapids	8:15 a.m.–4:45 p.m.
8—Cleveland	8:15 a.m.–4:45 p.m.
9—Cincinnati	8:30 a.m.–5:00 p.m.
10—Atlanta	8:00 a.m.–4:30 p.m.
Winston-Salem	8:00 a.m.–4:30 p.m.
Birmingham	8:00 a.m.–4:30 p.m.
Nashville	8:00 a.m.–4:30 p.m.
12—Tampa	8:00 a.m.–4:30 p.m.
Miami	8:00 a.m.–4:30 p.m.
Puerto Rico	8:30 a.m.–5:00 p.m.
13—Chicago	8:30 a.m.–5:00 p.m.
14—St. Louis	8:00 a.m.–4:30 p.m.
Kansas City	8:15 a.m.–4:45 p.m.
Tulsa	8:15 a.m.–4:45 p.m.
15—New Orleans	8:00 a.m.–4:30 p.m.
Memphis	8:00 a.m.–4:30 p.m.
Little Rock	8:00 a.m.–4:30 p.m.
16—Fort Worth	8:15 a.m.–4:45 p.m.
Houston	8:00 a.m.–4:30 p.m.
San Antonio	8:00 a.m.–4:30 p.m.
18—Minneapolis	8:00 a.m.–4:30 p.m.
Milwaukee	8:00 a.m.–4:30 p.m.
19—Seattle	8:15 a.m.–4:45 p.m.
Portland	8:00 a.m.–4:30 p.m.
Anchorage	8:15 a.m.–4:45 p.m.
20—San Francisco	8:30 a.m.–5:00 p.m.
Honolulu	8:00 a.m.–4:30 p.m.
21—Los Angeles	8:30 a.m.–5:00 p.m.
San Diego	8:30 a.m.–5:00 p.m.
22—Newark	8:45 a.m.–5:15 p.m.
25—Indianapolis	8:30 a.m.–5:00 p.m.
Peoria	8:30 a.m.–5:00 p.m.
27—Denver	8:30 a.m.–5:00 p.m.
28—Phoenix	8:15 a.m.–4:45 p.m.
Albuquerque	8:15 a.m.–4:45 p.m.
Las Vegas	8:30 a.m.–5:00 p.m.
29—Brooklyn	9:00 a.m.–5:30 p.m.
31—Los Angeles	8:30 a.m.–5:00 p.m.
32—Oakland	8:30 a.m.–5:00 p.m.

Dated: December 2, 2015.

By direction of the Board.

William B. Cowen,

Solicitor, National Labor Relations Board.

[FR Doc. 2015–31339 Filed 12–11–15; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 34

RIN 1505–AC44

Department of the Treasury Regulations for the Gulf Coast Restoration Trust Fund

AGENCY: Office of the Fiscal Assistant Secretary, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury is issuing final regulations concerning the investment and use of amounts deposited in the Gulf Coast Restoration Trust Fund, which was established in the Treasury of the United States by the Resources and Ecosystem Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act).

DATES: *Effective date:* February 12, 2016.

FOR FURTHER INFORMATION CONTACT: Please send questions by electronic mail to *restoreact@treasury.gov,* or contact Janet Vail at the Office of Gulf Coast Restoration at 202–622–6873.

SUPPLEMENTARY INFORMATION:

I. Background

The RESTORE Act makes funds available for the restoration and protection of the Gulf Coast Region, and certain programs with respect to the Gulf of Mexico, through a trust fund in the Treasury of the United States, known as the Gulf Coast Restoration Trust Fund. The trust fund will contain 80 percent of the administrative and civil penalties paid after July 6, 2012 under the Federal Water Pollution Control Act in connection with the *Deepwater Horizon* oil spill. Amounts in the trust fund will be invested and made available through five components of the RESTORE Act.

The Direct Component, administered by Treasury, sets aside 35 percent of the penalties paid into the trust fund for eligible activities proposed by the State of Alabama, the State of Mississippi, the State of Texas, the State of Louisiana and 20 Louisiana parishes, and 23 Florida counties. The Comprehensive Plan Component sets aside 30 percent of the penalties, plus half of all interest earned on trust fund investments, to be managed by a new independent Federal entity called the Gulf Coast Ecosystem Restoration Council (Council). The Council includes members from six Federal agencies or departments and the five Gulf Coast States. One of the Federal members, the Secretary of Commerce, at this time serves as Chairperson of the Council. The Council will direct those funds to projects and programs for the restoration of the Gulf Coast Region, pursuant to a comprehensive plan that is being developed by the Council. Under the Spill Impact Component, entities representing the Gulf Coast States use an additional 30 percent of penalties in the trust fund for eligible activities pursuant to State Expenditure Plans approved by the Council. The remaining five percent of penalties, plus one-half of all interest earned on trust fund investments, will be divided equally between the NOAA RESTORE Act Science Program established by the National Oceanic and Atmospheric Administration (NOAA), an operating unit of the Department of Commerce, and the Centers of Excellence Research Grants Program, administered by Treasury.

On August 15, 2014, Treasury published a comprehensive interim final rule containing procedures for implementing the RESTORE Act. Among its provisions, the procedures allocated amounts to the five components, described the activities that could be funded and the entities entitled to apply for funds, and set forth compliance requirements. Treasury accepted public comment on the comprehensive interim final rule for thirty days. Treasury published a second interim final rule on October 10, 2014, which allocated amounts to Louisiana parishes under one RESTORE Act component, called the Direct Component. Both interim final rules took effect on October 14, 2014.

II. Public Comments and Summary of Changes From the Interim Final Rules

Treasury received 21 unique comment letters on the comprehensive interim final rule, and no comments on the interim final rule that allocated funds to the Louisiana parishes. Several commenters repeated suggestions made on the proposed rule issued in September 2013, and opined on matters discussed in the preamble to the comprehensive interim final rule, such as the application of the National Environmental Policy Act (NEPA) to RESTORE Act grant programs.

One commenter, a state, acknowledged the benefits of providing funds through grants, but encouraged Treasury to consider using a revenue sharing arrangement. The commenter raised a concern that grant processes are an inefficient means of disbursing funds to meet the goals of the RESTORE Act. Treasury addressed this comment when it published the comprehensive interim final rule. The RESTORE Act imposes conditions on how states use funds provided under the Act, requires Federal oversight, and authorizes Treasury to stop the flow of funds when there is noncompliance. These controls are characteristic of Federal grant programs. The controls required by Treasury's regulations and Federal laws and policies on grants hold recipients accountable to use the funds as required by the RESTORE Act. The public comments Treasury received on the proposed rule and comprehensive interim final rule overwhelmingly support the distribution of RESTORE Act funds through Federal grants. Accordingly, no change has been made in the final rule to address this comment.

Several commenters, particularly public interest groups, requested that Treasury exercise more authority over the selection of projects funded under the RESTORE Act. Some commenters asked Treasury to establish substantive criteria for evaluating project proposals, such as performance goals and preferences for certain kinds of activities. Other commenters proposed that Treasury adopt procedures, such as independent expert reviews, for evaluating synergies and potential conflicts between projects proposed under different components, or to address project proposals that may be controversial.

Treasury considered similar comments during its review of comments on the proposed rule. The Act does not impose uniform criteria for the selection of projects under the Direct Component, Comprehensive Plan Component, and Spill Impact Component, or require the coordination of projects across components. Each component has different eligibility criteria, different processes for selecting activities, and different entities responsible for selecting the activities to be funded. The final rule acknowledges these differences, while still requiring compliance with the Act and Federal laws and policies applying to grants. Under these policies, Federal awards will include an indication of the timing and scope of performance, and may include specific performance goals, indicators, milestones, and expected outcomes. The appropriate vehicle for addressing these project specific requirements is the Federal award agreement.

Beyond what the Act stipulates, Treasury cannot require the Council, NOAA, states, counties, or parishes to coordinate their selection of projects across components in order to achieve particular economic or environmental goals. Treasury encourages voluntary

efforts to coordinate work, and intends to facilitate these efforts by publishing Direct Component Multiyear Implementation Plans and other information related to the grant programs it administers.

Several public interest groups also asked Treasury to reconsider its views regarding the application of NEPA to Treasury's activities under the Direct Component and the Centers of Excellence Research Grants Program. In the preamble to the comprehensive interim final rule, we stated that ''Treasury does not anticipate that its review of Multiyear Implementation Plans or the issuance of individual grants will require a NEPA review. Other Federal actions connected with activities funded through a RESTORE Act grant, such as issuance of a permit, may require NEPA review by the agency issuing the permit.'' 79 FR 48039, 48051 (Aug. 15, 2014).

Treasury's view is based on its limited statutory role for the administration of Direct Component grants and the Centers of Excellence Research Grants Program. The Act gives Treasury no role in project selection or design for the Direct Component. The Act specifies the activities or disciplines that are eligible for funding, and does not explicitly authorize Treasury to reject an activity or discipline, or to require funding of an alternative design, when the activity otherwise complies with the Act and other Federal law. Also, Treasury neither approves nor disapproves Multiyear Implementation Plans. Accordingly, Treasury will review Multiyear Implementation Plans and grant applications to determine whether they satisfy financial and administrative requirements in the Act and these regulations, and apply requirements in the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (OMB's Uniform Guidance), 2 CFR part 200, in its review of grant applications.

Because Treasury has a limited role in reviewing Multiyear Implementation Plans and issuing grants, Treasury does not anticipate that its actions will require an Environmental Assessment or Environmental Impact Statement under NEPA. NEPA is designed to help federal agencies consider environmental consequences in their decision-making process. When an agency action is non-discretionary under a statute, the information that a NEPA review provides would not assist the agency's decision-makers. Several commenters urged Treasury to reconsider the application of NEPA to its RESTORE Act grant programs, but no commenter offered an analysis of the RESTORE Act or its legislative history showing where Treasury has the discretion to consider environmental consequences and project alternatives when making grants.

Treasury's limited role does not mean that NEPA will never apply to activities undertaken with funds provided through the Direct Component and Centers of Excellence Research Grants Program. As Treasury stated in the preamble to the comprehensive interim final rule, other Federal actions, such as the issuance of permits, may trigger NEPA review by the Federal regulatory agency. In addition, it is Treasury policy under Treasury Directive 75–02 to fully evaluate its actions to ensure compliance with NEPA requirements and regulations issued by the Council on Environmental Quality, where applicable. As necessary, Treasury will consider NEPA environmental documentation in the context of individual grant applications, if it is determined that Treasury has sufficient discretion to consider environmental consequences and project alternatives.

The final rule contains several technical edits, some of which were suggested by commenters. Substantive comments and changes to the comprehensive interim final rule are described below.

Section-by-Section Analysis

Section 34.2 (Definitions)

Treasury received several comments requesting a more clear definition of administrative costs. The final rule continues to define *administrative costs* as indirect costs for administration incurred by the Gulf Coast States, coastal political subdivisions, and coastal zone parishes that are allocable to activities authorized under the Act. Administrative costs do not include indirect costs that are identified specifically with, or readily assignable to, facilities. The final rule references the definition of *facilities* in OMB's Uniform Guidance at 2 CFR 200.414(a). To avoid confusion, Treasury has removed the list of activities that may result in administrative costs from the final rule.

The definition of *administrative costs* in the comprehensive interim final rule also included a statement that certain costs are direct costs. This statement was imprecise and Treasury has deleted it from the final rule. Grant applicants should look to OMB's Uniform Guidance for general information about direct and indirect costs. Questions about whether particular costs are direct or indirect costs should be addressed to the relevant Federal awarding agency.

One commenter asked Treasury to clarify the definition of *Gulf Coast Region.* The commenter contends that the geographic scope of watersheds in paragraph three of the definition is ambiguous. Treasury's comprehensive interim final rule defines the Gulf Coast Region to comprise four geographic areas:

(1) In the Gulf Coast States, the coastal zones defined under section 304 of the Coastal Zone Management Act of 1972 that border the Gulf of Mexico;

(2) Land within the coastal zones described in paragraph (1) that is held in trust by, or the use of which is by law subject solely to the discretion of, the Federal Government or officers or agents of the Federal Government;

(3) Any adjacent land, water, and watersheds, that are within 25 miles of the coastal zone described in paragraphs (1) and (2); and

(4) All Federal waters in the Gulf of Mexico.

Under paragraph 3, the Gulf Coast Region includes those parts of adjacent watersheds that extend up to, but no further than, 25 miles from the coastal zones. An activity is carried out in the Gulf Coast Region when, in the reasonable judgment of the entity applying for a grant, each severable part of the activity is primarily designed to restore or protect that geographic area. See 31 CFR 34.201–203.

Section 34.104 (Expenditures)

In the preamble to the comprehensive interim final rule, Treasury stated that it was deleting a sentence requiring grant recipients to minimize the time between receipt of funds and disbursement, because this requirement is addressed more completely in OMB's Uniform Guidance. A commenter noted that the sentence was not deleted from the rule. Treasury has corrected this inadvertent error in the final rule. Grant recipients with questions about the application of OMB's Uniform Guidance should direct them to the relevant Federal awarding agency.

Section 34.200 (General)

This section provides that a Gulf Coast State, coastal political subdivision, and coastal zone parish may use amounts available under the Direct Component and Spill Impact Component to satisfy the non-Federal cost-share of an activity that is eligible under §§ 34.201 and 34.203 and authorized by Federal law. Commenters questioned why a similar opportunity is not available for funds made available under the Comprehensive Plan Component and the Centers of Excellence Research Grants Program.

The Act does not allow Comprehensive Plan Component funds or Centers of Excellence Research Grant funds to be used for satisfying the non-Federal cost-share. Those allocations are subject to the general rule in OMB's Uniform Guidance, 2 CFR 200.306, which states that a non-Federal cost share cannot be met with funds paid by the Federal government under a Federal award.

Another commenter noted a provision in the Act stating that the use of trust fund amounts to satisfy the non-Federal share of an eligible activity ''shall not affect the priority in which other Federal funds are allocated or awarded.'' 33 U.S.C. 1331(t)(1)(N)(ii). The commenter requested that Treasury include this provision in its regulations. Treasury currently sees no need to elaborate on this statutory provision, which does not need a regulation to be effective. If a grant recipient believes that a Federal agency has allocated or awarded funds in violation of this provision, it should raise that concern with the agency providing assistance.

Section 34.201 (Eligible Activities for the Direct Component)

Treasury received several comments about whether particular activities are reimbursable under the Direct Component, such as costs for grant management staff and certain pre-award and planning activity costs. Grant applicants will find detailed information about allowable costs in OMB's Uniform Guidance. In addition, grant applicants can consult information posted on Treasury's RESTORE Act Web page, or contact Treasury's Office of Gulf Coast Restoration for information about particular costs at *restoreact@treasury.gov.* Other than a clarifying change to the description of planning assistance, there are no changes to this section.

Section 34.203 (Eligible Activities for the Spill Impact Component)

One commenter asserted that activities funded under the Spill Impact Component should focus primarily on ecosystem restoration. Treasury's rule closely tracks the statute. The Act clearly provides that funds are available under the Spill Impact Component ''for projects, programs, and activities that will improve the ecosystems or economy of the Gulf Coast region,'' subject to certain criteria that are included in Treasury's rule. Because Treasury's rule is consistent with the Act, no change is necessary.

Section 34.204 (Limitations on Administrative Costs and Administrative Expenses)

One commenter, a member of the Gulf Coast Ecosystem Restoration Council, requested clarification on how state members of the Council can access amounts set aside for the Council's administrative expenses. Treasury's rule does not address this issue. The Council determines how it allocates funds for administrative expenses. Questions about how the Council allocates its funds should be directed to the Council.

In a separate notice of proposed rulemaking, Treasury plans to propose an amendment to this section to change when the 3% limitation is applied to the Council. Under the Act, the Council cannot spend more than three percent of amounts it receives from the Trust Fund on administrative expenses. The current regulation states that the three percent limit is applied to the total amount of funds received by the Council under the Comprehensive Plan Component, beginning with the first fiscal year the Council receives funds through the end of the fourth, or most recent fiscal year, whichever is later. This approach limits the amounts available for administrative expenses to a percentage of amounts drawn down from the Trust Fund in a particular year, which may vary considerably. Because the Council requires more regular and predictable funding for its administrative expenses, Treasury will propose to cap the Council's administrative expenses at three percent of amounts the Council receives under the Comprehensive Plan Component before termination of the Trust Fund. The notice of proposed rulemaking will include a forty-five day comment period. The current rule will remain in effect pending review of the public comments.

Section 34.302 (Allocation of Funds—Direct Component)

Treasury amended this section to add the allocations for Louisiana parishes that Treasury published as an interim final rule at 79 FR 61236 (Oct. 10, 2014). The allocations did not change.

Section 34.303 (Application Procedure—Direct Component)

A commenter requested clarification about Treasury's application and disbursement process. Treasury published detailed guidance and application processes and posted materials on Treasury's RESTORE Act Web page, available at *http://www.treasury.gov/services/restore-act/Pages/default.aspx.* Treasury also provided on-site training to the Gulf Coast States, eligible Florida counties, and eligible Louisiana parishes. Applicants with questions about these matters should contact Treasury's Office of Gulf Coast Restoration at *restoreact@treasury.gov.*

One commenter, a state, requested clarification about the public review and comment process required in 31 CFR 34.303(b)(8). The commenter stated that it can provide adequate opportunities for public review and comment, but cannot guarantee that the public will fully participate in this process. Treasury's rule does not require a state to ensure full participation in the public comment process. The rule is clear that a state must make its Multiyear Implementation Plan available for public review and comment ''in a manner calculated to obtain broad-based participation from individuals, businesses, Indian tribes, and non-profit organizations. . . .'' Treasury cannot describe in detail the steps that will satisfy this requirement in every case, as the steps may vary for each state, county, or parish. For example, if a large segment of the affected population does not have Internet access, or does not speak English, a state may need to employ other methods to notify the affected population of its plans and the opportunity to provide comment, such as providing reasonable access to public meetings and presentations in language other than English.

One commenter requested guidance about whether modifications to a Multiyear Implementation Plan require a public review and comment period for Multiyear Implementation Plans. In response to this comment, the final rule now requires the same public review and comment period for material changes as for an accepted Multiyear Implementation Plan. Material modifications can only be adopted after consideration of meaningful public comment. Applicants with questions about which modifications are material should contact Treasury's Office of Gulf Coast Restoration.

Section 34.305 (Use of Funds—Direct Component)

One commenter requested that Treasury add a sentence to § 34.305, as well as other parts of the rule, requiring a written justification for all sole source procurements and preferences given to individuals and companies. The commenter also asked that Treasury incorporate preferences for small and minority owned businesses. OMB's Uniform Guidance has an extensive discussion on the procurement requirements applying to Federal grants,

including requirements for competition and language requiring affirmative steps to benefit small and minority owned businesses. 2 CFR 200.319–200.321. The procurement requirements in OMB's Uniform Guidance apply to RESTORE Act grants. Therefore, the final rule has not been amended to address this comment.

Some commenters discussed the need for activities that improve the resiliency of communities, such as funds for workforce development and job creation. While the Act does not require states, counties, or parishes to fund these activities, workforce development and job creation are eligible activities for funding under the Direct Component and the Spill Impact Component. The Act's legislative history explains that workforce development ''is intended to include non-profit, university, and community college-based workforce, career and technical training programs. This would also include the identification of projects, research, programs and partnerships with federal, state and local workforce agencies, industry and local stakeholders from economically and socially disadvantaged communities.'' S. Rep. No. 112–100, at 8 (2011). This list of activities, while not exclusive, describes the kinds of activities that are eligible for funding. Commenters with suggestions for specific projects should contact the states, counties, and parishes that are developing Multiyear Implementation Plans and Spill Impact State Expenditure Plans.

During implementation of the comprehensive interim final rule, Treasury received questions about the availability of funds for county and local parks. One eligible activity under the Direct Component and Spill Impact Component is ''Improvements to or on State parks located in coastal areas affected by the Deepwater Horizon oil spill.'' 33 U.S.C. 1321(t)(1)(B)(i)(V). Treasury does not interpret this provision to apply to county and local parks. However, improvements to county and local parks, such as activities that restore and protect natural resources under 33 U.S.C. 1321(t)(1)(B)(i)(I), may fall under other eligible activities.

Section 34.404 (Comprehensive Plan Component)

Treasury has made a clarifying change to this section to indicate that assignees must submit reports as prescribed by the Council or Treasury, and the Council must submit reports as prescribed by Treasury.

Section 34.405 (Recordkeeping—Comprehensive Plan Component)

Treasury has made a clarifying change to this section to add that the Council must make its records concerning the activities of assignees available to Treasury, including the Treasury Inspector General. This provision will assist Treasury in gathering the information it needs to carry out its supplemental compliance functions under 31 CFR 34.804.

Section 34.503 (State Expenditure Plans—Spill Impact Component)

A commenter requested clarification about the public review and comment processes for State Expenditure Plans described in § 34.503(g). The commenter, who submitted a similar comment on § 34.303, is concerned that a state cannot ensure that the public will fully participate in the public review and comment process. As described above, states are not expected to guarantee full public participation in the public review and comment process. Treasury's rule is clear that states must use methods ''calculated to obtain broad-based participation from individuals, businesses, Indian tribes, and non-profit organizations.'' Treasury cannot describe in detail the methods that will satisfy this requirement in every case, as they may depend on the state and the impacted region or population.

Another commenter asked Treasury to clarify the public review and comment requirements that apply to modifications of a State Expenditure Plan. The final rule now states that material modifications are subject to the same public review and comment requirements, as well as other requirements, that apply to the original plan. States with questions about which modifications are material should contact the Council for guidance.

Section 34.506 (Reports—Spill Impact Component)

Treasury has made a clarifying change to this section to indicate that the Council must submit reports as prescribed by Treasury, in order to assist Treasury in fulfilling its supplemental compliance functions under 31 CFR 34.804.

Section 34.507 (Recordkeeping—Spill Impact Component)

Consistent with changes made to section 34.405, Treasury has amended this section to add that the Council must make available its records concerning the activities of recipients to Treasury, including the Treasury Inspector General.

Section 34.703 (Application Procedure—Centers of Excellence Research Grants Program)

One state commenter asked Treasury to clarify that each state will receive its full allocation provided by the Act. Treasury's regulations are already clear that each state will receive an equal share of amounts made available under the Centers of Excellence Research Grants Program. To receive its share, each state will apply to Treasury for a grant and specify how the funds will be used, a standard requirement for all Federal grants. Requiring states to identify how they will use Federal funds is necessary to assist the Federal awarding agency in performing oversight, one of the grant management responsibilities described in OMB's Uniform Guidance.

During implementation of the comprehensive interim final rule, Treasury received questions about the public notice requirements applying to the rules and policies for the Centers of Excellence Research Grants Program. Treasury's regulation requires each state to describe the rules and policies for grants it will issue to subrecipients. Each state also must demonstrate the rules and policies that became effective after publication of the comprehensive interim final rule were available for public review and comment for a minimum of 45 days. Many states have longstanding rules and policies that generally apply to grant programs, including competitive project selection and conflict of interest policies. Treasury's regulation does not require states to seek public comment on rules and policies that were effective prior to publication of the comprehensive interim final rule.

Section 34.802—(Certifications)

One commenter, a state, noted that the certification in § 34.802(c) appears to require that each activity be selected after consideration of comments from a diverse cross-section of the public. The commenter stated that it can provide opportunities for public review and comment, but it cannot guarantee that all segments of the public will participate. Treasury agrees with this comment, and has amended the certification to be consistent with requirements in §§ 34.303(b)(8) and 34.503(g). The amended certification requires grant recipients to certify that each activity is part of a plan that was made available for public review and comment in a manner calculated to obtain broad-based participation from individuals, businesses, Indian tribes, and nonprofit organizations, and that

the activity was selected after consideration of meaningful input from the public, as described in the recipient's grant application.

Treasury has also amended the certification at § 34.803(a) to conform more closely to the language of the statute, and to make clear that the certification can apply to planning activities as well as activities that carry out the restoration or protection of the Gulf Coast Region.

Section 34.803 (Conditions)

In the preamble to the comprehensive interim final rule, Treasury stated that grants must conform to the requirements in OMB's Uniform Guidance and other Federal laws and policies on grants. These requirements include reports on how grants funds were used. To avoid any inconsistency between these requirements and the reporting requirements in § 34.803(e), Treasury is deleting certain details that were listed in the comprehensive interim final rule.

Section 34.804 (Noncompliance)

Two commenters suggested that Treasury impose penalties on Council members that violate the Act or Treasury regulations. Because the Act does not authorize Treasury to impose penalties, the final rule does not adopt this suggestion.

III. Procedural Requirements

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. In the preamble to the comprehensive interim final rule, Treasury certified that the rule will not have a significant economic impact on a substantial number of small entities. Small entities will incur costs to develop the plans and projects described in the rule, but these costs arise from requirements in the RESTORE Act and not Treasury regulations. Treasury did not receive any comments in response to the comprehensive interim rule on the impact to small entities and there are no changes in the final rule that warrant a change in this certification. Accordingly, Treasury certifies that the final rule will not have a significant impact on a substantial number of small entities, and no regulatory flexibility analysis is required.

B. Paperwork Reduction Act

The collections of information contained in the comprehensive interim final rule were submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and approved under control number 1505–0250. The final rule does not contain any new collections of information. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

C. Regulatory Planning and Review (Executive Orders 12866 and 13563)

The rule affects those entities in the five Gulf Coast States that are eligible to receive funding under the RESTORE Act, and is focused on the environmental restoration and economic recovery of the Gulf Coast Region in the aftermath of the *Deepwater Horizon* oil spill. The amounts made available from the trust fund will continue efforts that provide for the long-term health of the ecosystems and economy of this region. In accordance with Executive Order 12866, as supplemented by Executive Order 13563, OMB has reviewed this regulation. This rule finalizes without significant change a comprehensive interim final rule published on August 15, 2014 that was designated as economically significant for purposes of Executive Order 12866. The Department adopts without revision the regulatory impact assessment published with the comprehensive interim final rule at 79 FR 48052 because this final rule does not adopt changes that require updates in the analysis. In accordance with Executive Order 12866, as supplemented by Executive Order 13563, this rule is designated as significant and OMB has reviewed this regulation.

D. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is a ''major rule'' as defined by 5 U.S.C. 804(2) and will become effective 60 days after publication.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Act of 1995 (2 U.S.C. 1531–1538) requires federal agencies to assess the effects of their regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a state, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Treasury believes that the regulatory impact assessment referenced in this preamble provides the analysis required by the Unfunded Mandates Act.

List of Subjects in 31 CFR Part 34

Coastal zone, Fisheries, Grant programs, Grants administration, Intergovernmental relations, Marine resources, Natural resources, Oil pollution, Research, Science and technology, Trusts and trustees, Wildlife.

For the reasons set forth in the preamble, the Department of the Treasury amends 31 CFR subtitle A by revising part 34 to read as follows:

PART 34—RESOURCES AND ECOSYSTEMS SUSTAINABILITY, TOURIST OPPORTUNITIES, AND REVIVED ECONOMIES OF THE GULF COAST STATES

Subpart A—General Provisions

Sec.
34.1 Purpose.
34.2 Definitions.

Subpart B—Trust Fund

34.100 The Trust Fund.
34.101 Investments.
34.102 Interest earned.
34.103 Allocation of funds.
34.104 Expenditures.
34.105 Waiver.

Subpart C—Eligible Activities for the Section 311(t) Gulf RESTORE Program Components

34.200 General.
34.201 Eligible activities for the Direct Component.
34.202 Eligible activities for the Comprehensive Plan Component.
34.203 Eligible activities for the Spill Impact Component.
34.204 Limitations on administrative costs and administrative expenses.
34.205 Council's audited financial statements and audits.

Subpart D—Gulf RESTORE Program—Direct Component

34.300 General.
34.301 Responsibility for administration—Direct Component.
34.302 Allocation of funds—Direct Component.
34.303 Application procedure—Direct Component.
34.304 Grant award process—Direct Component.

34.305 Use of funds—Direct Component.
34.306 Reports—Direct Component.
34.307 Recordkeeping—Direct Component.
34.308 Audits—Direct Component.

Subpart E—Gulf RESTORE Program—Comprehensive Plan Component

34.400 General.
34.401 Responsibility for administration—Comprehensive Plan Component.
34.402 Grant administration—Comprehensive Plan Component.
34.403 Use of funds—Comprehensive Plan Component.
34.404 Reports—Comprehensive Plan Component.
34.405 Recordkeeping—Comprehensive Plan Component.
34.406 Audits—Comprehensive Plan Component.

Subpart F—Gulf RESTORE Program—Spill Impact Component

34.500 General.
34.501 Responsibility for administration—Spill Impact Component.
34.502 Allocation of funds—Spill Impact Component.
34.503 State Expenditure Plans—Spill Impact Component.
34.504 Grant administration—Spill Impact Component.
34.505 Use of funds—Spill Impact Component.
34.506 Reports—Spill Impact Component.
34.507 Recordkeeping—Spill Impact Component.
34.508 Audits—Spill Impact Component.

Subpart G—NOAA RESTORE Act Science Program

34.600 General.
34.601 Responsibility for administration—NOAA RESTORE Act Science Program.
34.602 Use of funds and eligible activities—NOAA RESTORE Act Science Program.
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Subpart A—General Provisions

§ 34.1 Purpose.

This part describes policies and procedures applicable to the following programs authorized under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act).

(a) The Gulf RESTORE Program is authorized under section 311(t) of the Federal Water Pollution Control Act (33 U.S.C. 1321(t)), as amended by the RESTORE Act, and includes the following components:

(1) Direct Component (subpart D of this part), administered by the Department of the Treasury.

(2) Comprehensive Plan Component (subpart E of this part), administered by the Gulf Coast Ecosystem Restoration Council.

(3) Spill Impact Component (subpart F of this part), administered by the Gulf Coast Ecosystem Restoration Council.

(b) NOAA RESTORE Act Science Program (subpart G of this part) is administered by the National Oceanic and Atmospheric Administration, and authorized by the RESTORE Act, section 1604, 33 U.S.C. 1321 note.

(c) Centers of Excellence Research Grants Program (subpart H of this part) is administered by the Department of the Treasury, and authorized by the RESTORE Act, section 1605, 33 U.S.C. 1321 note.

§ 34.2 Definitions.

As used in this part:

Act or *RESTORE Act* means the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012.

Activity means an activity, project, or program, including research and monitoring, eligible for funding under the Act.

Administrative costs means those indirect costs for administration incurred by the Gulf Coast States, coastal political subdivisions, and coastal zone parishes that are allocable to activities authorized under the Act. Administrative costs do not include indirect costs that are identified specifically with, or readily assignable to, facilities as defined in 2 CFR 200.414.

Administrative expenses means those expenses incurred for administration by the Council or NOAA, including expenses for general management functions, general ledger accounting, budgeting, human resource services, general procurement services, and general legal services. Administrative expenses do not include expenses that are identified specifically with, or readily assignable to:

(1) Facilities;

(2) Eligible projects, programs, or planning activities;

(3) Activities related to grant applications, awards, audit requirements, or post-award management, including payments and collections;

(4) The Council's development, publication, and implementation of the Comprehensive Plan and any subsequent amendments;

(5) The Council's development and publication of regulations and procedures for implementing the Spill Impact Component, and the review of State Expenditure Plans submitted under the Spill Impact Component;

(6) Preparation of reports required by the Act;

(7) Establishment and operation of advisory committees; or

(8) Collection and consideration of scientific and other research associated with restoration of the Gulf Coast ecosystem.

Alabama Gulf Coast Recovery Council means the entity identified in section 311(t)(1)(F)(i) of the Federal Water Pollution Control Act, as amended by the RESTORE Act.

Assignee means a member of the Gulf Coast Ecosystem Restoration Council who has been assigned primary authority and responsibility for a project or program included in the Comprehensive Plan through a grant or interagency agreement.

Best available science means science that maximizes the quality, objectivity, and integrity of information, including statistical information; uses peer-reviewed and publicly available data; and clearly documents and communicates risks and uncertainties in the scientific basis for such projects.

Centers of Excellence Research Grants Program means the program authorized by section 1605 of the Act.

Coastal political subdivision means any local political jurisdiction that is immediately below the state level of government, including a county, parish,

or borough, with a coastline that is contiguous with any portion of the United States Gulf of Mexico. The term includes any of the disproportionately affected counties and nondisproportionately impacted counties in Florida, as defined below.

Coastal zone parishes means the parishes of Ascension, Assumption, Calcasieu, Cameron, Iberia, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, and Vermilion in the State of Louisiana.

Comprehensive Plan Component means the component of the Gulf RESTORE Program authorized by section 311(t)(2) of the Federal Water Pollution Control Act, as added by section 1603 of the Act, in which funds are provided through the Council, in accordance with a plan developed by the Council, to entities to carry out the purposes of the Act.

Council means the Gulf Coast Ecosystem Restoration Council, an independent entity in the Federal Government whose members are the Governors of the Gulf Coast States; the Secretaries of Agriculture, the Army, Commerce, and the Interior; the head of the department in which the Coast Guard is operating, and the Administrator of the Environmental Protection Agency (or their designees at the level of Assistant Secretary or the equivalent).

Deepwater Horizon oil spill means the blowout and explosion of the mobile offshore drilling unit *Deepwater Horizon* that occurred on April 20, 2010, and resulting hydrocarbon releases into the environment.

Direct Component means the component of the Gulf RESTORE Program authorized by section 311(t)(1) of the Federal Water Pollution Control Act, as added by section 1603 of the Act, in which Gulf Coast States, coastal zone parishes, disproportionately affected counties, and nondisproportionately impacted counties are provided funds directly by Treasury through grants to carry out the purposes of the Act.

Disproportionately affected counties means the counties of Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, Wakulla, and Walton in the State of Florida.

Federal Water Pollution Control Act means 33 U.S.C. 1251 *et seq.*

Gulf Coast Region means:

(1) In the Gulf Coast States, the coastal zones defined under section 304 of the Coastal Zone Management Act of 1972 that border the Gulf of Mexico;

(2) Land within the coastal zones described in paragraph (1) of this definition that is held in trust by, or the use of which is by law subject solely to the discretion of, the Federal Government or officers or agents of the Federal Government;

(3) Any adjacent land, water, and watersheds, that are within 25 miles of the coastal zone described in paragraphs (1) and (2) of this definition; and

(4) All Federal waters in the Gulf of Mexico.

Gulf Coast State means any of the States of Alabama, Florida, Louisiana, Mississippi, and Texas.

Gulf Coast State entity means a party that carries out the duties of a state for the Centers of Excellence Research Grants Program under § 34.702.

Infrastructure means the public facilities or systems needed to support commerce and economic development. These installations and facilities span a wide range, including highways, airports, roads, buildings, transit systems, port facilities, railways, telecommunications, water and sewer systems, public electric and gas utilities, levees, seawalls, breakwaters, major pumping stations, and flood gates. Infrastructure encompasses new construction, upgrades and repairs to existing facilities or systems, and associated land acquisition and planning.

Multiyear Implementation Plan means the plan submitted by entities eligible for funding directly from Treasury under the Direct Component, and described at § 34.303.

NOAA means the National Oceanic and Atmospheric Administration.

NOAA RESTORE Act Science Program means the program authorized by section 1604 of the Act.

Nondisproportionately impacted counties means the counties of Charlotte, Citrus, Collier, Dixie, Hernando, Hillsborough, Jefferson, Lee, Levy, Manatee, Monroe, Pasco, Pinellas, Sarasota, and Taylor in the State of Florida.

Pass-through entity means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a program under the Act.

Planning assistance means data gathering, studies, modeling, analysis and other tasks required to prepare plans for eligible activities under § 34.201(a) through (i), including environmental review and compliance tasks and architectural and engineering studies. Planning assistance also means one-time preparations that will allow the recipient to establish systems and processes needed to review grant applications, award grants, monitor grants after award, and audit compliance with respect to eligible activities under § 34.201 in a Multiyear Implementation Plan or State Expenditure Plan.

Recipient means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under the Act. As used in these regulations, a recipient also includes a pass-through entity. The term recipient does not include subrecipients.

Spill Impact Component means the component of the Gulf RESTORE Program authorized by section 311(t)(3) of the Federal Water Pollution Control Act, as added by section 1603 of the Act, in which Gulf Coast States are provided funds by the Council according to a formula that the Council establishes by regulation, using criteria listed in the Act.

State Expenditure Plan means the plan that each Gulf Coast State must submit to the Council for the expenditure of amounts disbursed under the Spill Impact Component, and described at § 34.503.

Subrecipient means a non-Federal entity that receives a subaward from a recipient to carry out an activity under the Act.

Treasury means the U.S. Department of the Treasury, the Secretary of the Treasury, or his/her designee.

Trust Fund means the Gulf Coast Restoration Trust Fund.

Subpart B—Trust Fund

§ 34.100 The Trust Fund.

Treasury will deposit into the Trust Fund an amount equal to 80 percent of all administrative and civil penalties paid after July 6, 2012 by responsible parties in connection with the explosion on, and sinking of, the mobile offshore drilling unit *Deepwater Horizon* pursuant to a court order, negotiated settlement, or other instrument under section 311 of the Federal Water Pollution Control Act. After these administrative and civil penalties have been deposited into the Trust Fund, the Trust Fund will terminate on the date all amounts owed to the Trust Fund have been returned to the Trust Fund, and all amounts in the Trust Fund have been expended.

§ 34.101 Investments.

The Secretary of the Treasury will invest such amounts in the Trust Fund that are not, in the judgment of the Secretary, required to meet needs for current withdrawals. The Secretary may invest in interest-bearing obligations of the United States, having maturities

suitable to the needs of the Trust Fund as determined by the Secretary. These obligations will bear interest at rates described in 31 U.S.C. 9702, unless the Secretary determines that such rates are unavailable for obligations with suitable maturities. In that event, the Secretary will select obligations of the United States bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

§ 34.102 Interest earned.

Interest earned on Trust Fund investments will be available as described in § 34.103(b).

§ 34.103 Allocation of funds.

The amounts in the Trust Fund are allocated among the programs in § 34.1.

(a) Available funds in the Trust Fund, other than interest, are allocated as follows:

(1) Thirty-five percent in equal shares for the Gulf Coast States to be used for the Direct Component of the Gulf RESTORE Program. Section 34.302 describes the allocation for each Gulf Coast State.

(2) Thirty percent for the Council to be used for the Comprehensive Plan Component of the Gulf RESTORE Program.

(3) Thirty percent for formula distribution to Gulf Coast States to be used for the Spill Impact Component of the Gulf RESTORE Program.

(4) Two and one-half percent to be used for the NOAA RESTORE Act Science Program.

(5) Two and one-half percent in equal shares for the Gulf Coast States to be used for the Centers of Excellence Research Grants Program.

(b) Within ten days of the close of a Federal fiscal year, available funds equal to the interest earned on the Trust Fund investments will be allocated, as follows:

(1) Twenty-five percent to be used for the NOAA RESTORE Act Science Program.

(2) Twenty-five percent for the Centers of Excellence Research Grants Program.

(3) Fifty percent for the Comprehensive Plan Component of the Gulf RESTORE Program.

§ 34.104 Expenditures.

Subject to limitations in the Act and these regulations, amounts in the Trust Fund will be available for the direct and indirect expenses of eligible activities without fiscal year limitation.

§ 34.105 Waiver.

To the extent not inconsistent with applicable law, Treasury may waive or modify a requirement in the regulations in this part in a single case or class of cases if the Secretary determines, in his or her sole discretion, that the requirement is not necessary for the deposit of amounts into, or the expenditure of amounts from, the Trust Fund. Treasury will provide public notice of any waivers or modifications granted that materially change a regulatory requirement.

Subpart C—Eligible Activities for the Section 311(t) Gulf RESTORE Program Components

§ 34.200 General.

This subpart describes policies and procedures regarding eligible activities applicable to the Direct Component, Comprehensive Plan Component, and Spill Impact Component of the Gulf RESTORE Program. Subparts D, E, F, and I of this part describe additional requirements that must be met before an activity can receive funding.

(a) Trust Fund amounts may be used to carry out an activity in whole or in part only if the following requirements are met:

(1) Costs must comply with administrative requirements and cost principles in applicable Federal laws and policies on grants.

(2) The activity must meet the eligibility requirements of the Gulf RESTORE Program as defined in § 34.201, § 34.202, or § 34.203, according to component.

(3) Activities funded through the Direct Component, Comprehensive Plan Component, and Spill Impact Component must not be included in any claim for compensation presented after July 6, 2012, to the Oil Spill Liability Trust Fund authorized by 26 U.S.C. 9509.

(b) A Gulf Coast State, coastal political subdivision, and coastal zone parish may use funds available under the Direct Component or Spill Impact Component to satisfy the non-Federal cost-share of an activity that is eligible under §§ 34.201 and 34.203 and authorized by Federal law.

§ 34.201 Eligible activities for the Direct Component.

The following activities are eligible for funding under the Direct Component. Activities in paragraphs (a) through (g) of this section are eligible for funding to the extent they are carried out in the Gulf Coast Region. Direct Component activities are carried out in the Gulf Coast Region when, in the reasonable judgment of the entity applying to Treasury for a grant, each severable part of the activity is primarily designed to restore or protect that geographic area. Applicants must demonstrate that the activity will be carried out in the Gulf Coast Region when they apply for a grant. Activities designed to protect or restore natural resources must be based on the best available science. All Direct Component activities must be included in and conform to the description in the Multiyear Implementation Plan required by § 34.303.

(a) Restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast Region.

(b) Mitigation of damage to fish, wildlife, and natural resources.

(c) Implementation of a Federally-approved marine, coastal, or comprehensive conservation management plan, including fisheries monitoring.

(d) Workforce development and job creation.

(e) Improvements to or on state parks located in coastal areas affected by the *Deepwater Horizon* oil spill.

(f) Infrastructure projects benefitting the economy or ecological resources, including port infrastructure.

(g) Coastal flood protection and related infrastructure.

(h) Promotion of tourism in the Gulf Coast Region, including promotion of recreational fishing.

(i) Promotion of the consumption of seafood harvested from the Gulf Coast Region.

(j) Planning assistance. Eligible entities under § 34.302 may apply for planning assistance grants to fund preparation and amendment of the Multiyear Implementation Plan.

(k) Administrative costs.

§ 34.202 Eligible activities for the Comprehensive Plan Component.

The Council may expend funds that are available under the Comprehensive Plan Component for eligible activities under 33 U.S.C. 1321(t)(2) and (3), including the following:

(a) The Council may expend funds to carry out activities in the Gulf Coast Region that are included in the Comprehensive Plan, as described in 33 U.S.C. 1321(t)(2). An activity selected by the Council is carried out in the Gulf Coast Region when, in the reasonable judgment of the Council, each severable part of the activity is primarily designed to restore or protect that geographic area. The Council must document the basis for its judgment when it selects the activity.

(b) The Council may expend funds to develop and publish the proposed and initial Comprehensive Plans, and to implement, amend, and update the Comprehensive Plan as required by the Act or as necessary.

(c) The Council may expend funds to prepare annual reports to Congress, and other reports and audits required by the Act, these regulations, and other Federal law.

(d) The Council may expend funds to establish and operate one or more advisory committees as may be necessary to assist the Council.

(e) The Council may expend funds to collect and consider scientific and other research associated with restoration of the Gulf Coast ecosystem, including research, observation, and monitoring.

(f) Administrative expenses.

§ 34.203 Eligible activities for the Spill Impact Component.

Activities eligible for funding under the Spill Impact Component must meet the eligibility criteria in § 34.201(a) through (k), as well as the following:

(a) The activities must be included in and conform to the description in a State Expenditure Plan required in § 34.503 and approved by the Council. State entities may apply for a grant from the total amount allocated to that state under the Spill Impact Component before the Council has approved the State Expenditure Plan to fund eligible activities that are necessary to develop and submit that plan.

(b) The activities included in the State Expenditure Plan must contribute to the overall economic and ecological recovery of the Gulf Coast.

(c) Activities listed in § 34.201(a) through (g) are eligible for funding from the Spill Impact Component to the extent they are carried out in the Gulf Coast Region. For purposes of this component, an activity is carried out in the Gulf Coast Region when, in the reasonable judgment of the entity developing the State Expenditure Plan under § 34.503, each severable part of the activity is primarily designed to restore or protect that geographic area. State Expenditure Plans must include a demonstration that activities in the plan will be carried out in the Gulf Coast Region.

§ 34.204 Limitations on administrative costs and administrative expenses.

(a) Of the amounts received by a Gulf Coast State, coastal political subdivision, or coastal zone parish in a grant from Treasury under the Direct Component, or in a grant from the Council under the Comprehensive Plan Component or Spill Impact Component, not more than three percent may be used for administrative costs. The three percent limit is applied to the total amount of funds received by a recipient under each grant. The three percent limit does not apply to the administrative costs of subrecipients. All subrecipient costs are subject to the cost principles in Federal laws and policies on grants.

(b) Of the amounts received by the Council under the Comprehensive Plan Component, not more than three percent may be used for administrative expenses. The three percent limit is applied to the total amount of funds received by the Council, beginning with the first fiscal year the Council receives funds through the end of the fourth, or most recent fiscal year, whichever is later.

§ 34.205 Council's audited financial statements and audits.

(a) Not later than December 1, 2014, and each year thereafter, the Council must prepare and submit to the Secretary of the Treasury an audited financial statement for the preceding Federal fiscal year, covering all accounts and associated activities of the Council.

(b) Each audited financial statement under this section must reflect:

(1) The overall financial position of the accounts and activities covered by the statement, including assets and liabilities thereof.

(2) Results of operations of the Council.

(c) The financial statements must be prepared in accordance with the form and content of the financial statements prescribed by the Director of the Office of Management and Budget for executive agencies pursuant to 31 U.S.C. 3515, consistent with applicable accounting and financial reporting principles, standards, and requirements.

(d) The Treasury Inspector General may conduct audits and reviews of the Council's accounts and activities as the Inspector General deems appropriate.

Subpart D—Gulf RESTORE Program—Direct Component

§ 34.300 General.

This subpart describes the policies and procedures applicable to the Direct Component of the Gulf RESTORE Program. The funds made available under this subpart will be in the form of a grant.

§ 34.301 Responsibility for administration—Direct Component.

Treasury is responsible for awarding and administering grants and grant agreements under this subpart. Treasury will develop and apply policies and procedures consistent with the Act and Federal laws and policies on grants. Treasury also will establish and implement a program to monitor compliance with its grant agreements.

§ 34.302 Allocation of funds—Direct Component.

The amounts made available in any fiscal year from the Trust Fund and allocated to this component will be available in equal shares for the Gulf Coast States for expenditure on eligible activities. The following entities are eligible to receive Direct Component grants.

(a) The amounts available to Alabama will be provided directly to the Alabama Gulf Coast Recovery Council, or such administrative agent as it may designate. All administrative duties of the Alabama Gulf Coast Recovery Council must be performed by public officials and employees that are subject to the ethics laws of the State of Alabama.

(b) Of the amounts available to Florida, 75 percent of funding will be provided directly to the eight disproportionately affected counties. Each disproportionately affected county's share is as follows: Bay County, 15.101453044%; Escambia County, 25.334760043%; Franklin County, 8.441253238%; Gulf County, 6.743202296%; Okaloosa County, 15.226456794%; Santa Rosa County, 10.497314919%; Wakulla County, 4.943148294%; and Walton County, 13.712411372%.

(c) Of the amounts available to Florida, 25 percent of funding will be provided directly to the nondisproportionately impacted counties. Each nondisproportionately impacted county's share is as follows: Charlotte County, 5.162%; Citrus County, 4.692%; Collier County, 7.019%; Dixie County, 3.484%; Hernando County, 4.982%; Hillsborough County, 13.339%; Jefferson County, 3.834%; Lee County, 8.776%; Levy County, 3.894%; Manatee County, 6.809%; Monroe County, 8.297%; Pasco County, 7.079%; Pinellas County, 11.002%; Sarasota County, 7.248%; and Taylor County, 4.383%.

(d) Of the amounts available to Louisiana, 70 percent will be provided directly to the Coastal Protection and Restoration Authority Board of Louisiana, through the Coastal Protection and Restoration Authority of Louisiana.

(e) Of the amounts available to Louisiana, 30 percent will be provided directly to the coastal zone parishes. Each coastal zone parish's share is as follows: Ascension, 2.42612%; Assumption, 0.93028%; Calcasieu,

5.07063%; Cameron, 2.10096%; Iberia, 2.55018%; Jefferson, 11.95309%; Lafourche, 7.86746%; Livingston, 3.32725%; Orleans, 7.12875%; Plaquemines, 17.99998%; St. Bernard, 9.66743%; St. Charles, 1.35717%; St. James, 0.75600%; St. John the Baptist, 1.11915%; St. Martin, 2.06890%; St. Mary, 1.80223%; St. Tammany, 5.53058%; Tangipahoa, 3.40337%; Terrebonne, 9.91281%; and Vermilion, 3.02766%.

(f) No parish will receive funds until the parish chief executive has certified to the Governor of Louisiana, in a form satisfactory to the Governor or the Governor's designee, that the parish has completed a comprehensive land use plan that is consistent with, or complementary to, the most recent version of the state's Coastal Master Plan approved by the Louisiana legislature.

(g) The amounts available to Mississippi will be provided directly to the Mississippi Department of Environmental Quality.

(h) The amounts available to Texas will be provided directly to the Office of the Governor or to an appointee of the Office of the Governor.

§ 34.303 Application procedure—Direct Component.

The entities identified in § 34.302 are eligible to apply for their allocation as a grant. Treasury has developed an application process for grants available under this subpart that is consistent with the Act and Federal laws and policies on grants. The application process includes the following requirements:

(a) Before an eligible entity may receive a Direct Component activity grant, the grant applicant must submit a Multiyear Implementation Plan describing each activity for which it seeks funding under the Direct Component. Applications to fund preparation and amendment of the Multiyear Implementation Plan are exempt from this requirement.

(b) For each activity, the Multiyear Implementation Plan must include a narrative description demonstrating:

(1) The need for, purpose, and objectives of the activity;

(2) How the activity is eligible for funding and meets all requirements;

(3) Location of the activity;

(4) Budget for the activity;

(5) Milestones for the activity;

(6) Projected completion dates for the activity;

(7) Criteria the applicant will use to evaluate the success of each activity in helping to restore and protect the Gulf Coast Region impacted by the *Deepwater Horizon* oil spill;

(8) The plan was made available for public review and comment for a minimum of 45 days in a manner calculated to obtain broad-based participation from individuals, businesses, Indian tribes, and non-profit organizations; and

(9) Each activity in the plan was approved after consideration of meaningful input from the public. Treasury may require a standard format and additional information in the plans. Plans can be phased and incremental and may be modified later by the applicant. If the applicant has requested or anticipates requesting funding for any part of the activity from other sources, including other components in the Act, the applicant must identify the source, state the amount of funding, and provide the current status of the request. For the State of Louisiana parishes, the applicant must submit information demonstrating compliance with § 34.302(f).

(c) Material modifications to a Multiyear Implementation Plan are subject to all applicable requirements in paragraph (b) of this section.

(d) The applicant must include supporting information in each grant application that:

(1) Proposed activities meet the statutory requirements for eligibility; and

(2) Each activity designed to protect or restore natural resources is based on best available science.

(e) An applicant may satisfy some or all of the requirements in this section and § 34.802(a) through (e) if it can demonstrate in its application to Treasury that before July 6, 2012:

(1) The applicant established conditions to carry out activities that are substantively the same as the requirements in this section and § 34.802(a) through (e).

(2) The applicable activity qualified as one or more of the eligible activities in § 34.201.

§ 34.304 Grant award process—Direct Component.

Upon determining that the Multiyear Implementation Plan and the grant application meet the requirements of these regulations and the Act, Treasury will execute a grant agreement with the recipient that complies with subpart I of this part, the Act, and other Federal laws and policies on grants.

§ 34.305 Use of funds—Direct Component.

(a) An activity may be funded in whole or in part if the applicable requirements of subparts C and D of this part are met.

(b) When awarding contracts to carry out an activity under the Direct Component, a Gulf Coast State, coastal political subdivision, or coastal zone parish may give preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in the state of project execution consistent with Federal laws and policies on grants.

(c) A Gulf Coast State, coastal political subdivision, or coastal zone parish may propose to issue subawards for eligible activities. Recipients that propose to issue subawards must demonstrate their ability to conduct subrecipient monitoring and management, as required by Federal laws and policies on grants.

§ 34.306 Reports—Direct Component.

Recipients must submit reports as prescribed by Treasury.

§ 34.307 Recordkeeping—Direct Component.

Recipients must maintain records as prescribed by Treasury, and make the records available to Treasury, including the Treasury Inspector General.

§ 34.308 Audits—Direct Component.

Treasury, including the Treasury Inspector General, may conduct audits and reviews of recipient's accounts and activities relating to the Act as deemed appropriate by Treasury.

Subpart E—Gulf RESTORE Program—Comprehensive Plan Component

§ 34.400 General.

This subpart describes the policies and procedures applicable to the Comprehensive Plan Component. The Comprehensive Plan is developed by the Council in accordance with 33 U.S.C. 1321(t)(2) and will include activities the Council intends to carry out, subject to available funding. When selecting activities to carry out in the first three years, except for certain projects and programs that were authorized prior to July 6, 2012, the Council will give highest priority to projects meeting one or more of the criteria in 33 U.S.C. 1321(t)(2)(D)(iii).

§ 34.401 Responsibility for administration—Comprehensive Plan Component.

(a) After selecting Comprehensive Plan projects and programs to be funded, the Council must assign primary authority and responsibility for overseeing and implementing projects and programs to a Gulf Coast State or Federal agency represented on the Council, which are called *assignees* in these regulations. In assigning responsibility, the Council must enter

into a grant agreement with the Gulf Coast State or an interagency agreement with the Federal agency. Any grant agreement must be consistent with applicable Federal laws and policies on grants. The Council must specify whether any part of an assignee's responsibility may be further assigned to another entity and under what terms.

(b) When an assignee's grant or subaward to, or cooperative agreement with, a nongovernmental entity would equal or exceed ten percent of the total amount provided to the assignee for that activity, the Council must publish in the **Federal Register** and deliver to the following Congressional Committees at least 30 days prior to the assignee entering into an agreement the name of the recipient or subrecipient; a brief description of the activity, including its purpose; and the amount of the award.

(1) House of Representatives committees: Committee on Science, Space, and Technology; Committee on Natural Resources; Committee on Transportation and Infrastructure; Committee on Appropriations.

(2) Senate committees: Committee on Environment and Public Works; Committee on Commerce, Science, and Transportation; Committee on Energy and Natural Resources; Committee on Appropriations.

(c) The Council must establish and implement a program to monitor compliance with its grant agreements and interagency agreements.

§ 34.402 Grant administration—Comprehensive Plan Component.

The Council must publish policies and procedures for administration of Comprehensive Plan Component grants that are consistent with applicable Federal laws and policies on grants. These grant policies and procedures must include uniform guidelines for assignees to use when selecting subrecipients, awarding grants and subawards, and monitoring compliance. The Council must also establish and implement a program to monitor compliance with its grant agreements.

§ 34.403 Use of funds—Comprehensive Plan Component.

An activity may be funded in whole or in part if the applicable requirements of subparts C and E of this part are met.

§ 34.404 Reports—Comprehensive Plan Component.

Assignees must submit reports as prescribed by the Council or Treasury. In addition, the Council must submit reports as prescribed by Treasury.

§ 34.405 Recordkeeping—Comprehensive Plan Component.

Assignees must maintain records as prescribed by the Council and Treasury, and make the records available to the Council and Treasury, including the Treasury Inspector General. In addition, the Council must make its records concerning the activities of assignees available to Treasury, including the Treasury Inspector General.

§ 34.406 Audits—Comprehensive Plan Component.

The Council and Treasury, including the Treasury Inspector General, may conduct audits and reviews of assignee's accounts and activities relating to the Act as any of them deems appropriate.

Subpart F—Gulf RESTORE Program—Spill Impact Component

§ 34.500 General.

This subpart describes the policies and procedures applicable to the Spill Impact Component of the Gulf RESTORE Program. The funds made available under this subpart will be in the form of grants.

§ 34.501 Responsibility for administration—Spill Impact Component.

The Council is responsible for awarding and administering grants under this subpart.

§ 34.502 Allocation of funds—Spill Impact Component.

The Council will allocate amounts to the Gulf Coast States based on the Act and regulations promulgated by the Council. The Council will make allocated funds available through grants for activities described in a State Expenditure Plan approved by the Council.

§ 34.503 State Expenditure Plans—Spill Impact Component.

Each Gulf Coast State, through its Governor or the Governor's designee, must submit a State Expenditure Plan to the Council for its approval that describes each activity for which the state seeks funding. The Council must develop requirements for these plans, including the requirements below.

(a) The State Expenditure Plan must be developed by:

(1) In Alabama, the Alabama Gulf Coast Recovery Council.

(2) In Florida, a consortium of local political subdivisions that includes, at a minimum, one representative of each county affected by the *Deepwater Horizon* oil spill.

(3) In Louisiana, the Coastal Protection and Restoration Authority of Louisiana, as approved by the Board.

(4) In Mississippi, the Office of the Governor or an appointee of the Office of the Governor.

(5) In Texas, the Office of the Governor or an appointee of the Office of the Governor.

(b) The State Expenditure Plan must describe how it takes into consideration the Comprehensive Plan and is consistent with the goals and objectives of the Comprehensive Plan. In addition, the State Expenditure Plan must describe the processes used:

(1) To evaluate and select activities included in the plan;

(2) To assess the capability of third party entities that will implement activities in the plan;

(3) To prevent conflicts of interest in the development and implementation of the plan;

(4) To obtain public review and comment in accordance with paragraph (g) of this section; and

(5) To verify compliance with the requirements of § 34.203 and this subpart.

(c) For each activity in the State Expenditure Plan, the plan must include a narrative description demonstrating:

(1) The need for, purpose, and objectives of the activity;

(2) How the activity is eligible for funding and meets all requirements of § 34.203 and this subpart;

(3) Location of the activity;

(4) Budget for the activity;

(5) Milestones for the activity;

(6) Projected completion dates for the activity; and

(7) Criteria the applicant will use to evaluate the success of each activity in helping to restore and protect the Gulf Coast Region. Plans can be phased or incremental and may be modified with the Council's approval. If funding has been requested from other sources, including other components of the Act, the plan must identify the source, state how much funding was requested, and provide the current status of the request.

(d) The State Expenditure Plan must demonstrate how the activities in the plan will contribute to the overall economic and ecological recovery of the Gulf Coast, and how each activity that would restore and protect natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands or the economy of the Gulf Coast is based on the best available science.

(e) The State Expenditure Plan must demonstrate that activities described in § 34.201(a) through (g) will be carried out in the Gulf Coast Region, as described in § 34.203(c).

(f) No more than 25 percent of funding under the Spill Impact

Component is available to a Gulf Coast State under this subpart to pay for infrastructure, unless the Governor or the Governor's representative on the Council certifies that:

(1) The ecosystem restoration needs in the state will be addressed by the activities in the proposed plan; and

(2) Additional investment in infrastructure is required to mitigate the impacts of the *Deepwater Horizon* Oil Spill to the ecosystem or economy.

(g) Before being submitted to the Council for approval, a State Expenditure Plan must be available for public review and comment for a minimum of 45 days, in a manner calculated to obtain broad-based participation from individuals, businesses, Indian tribes, and non-profit organizations.

(h) If the Council disapproves a State Expenditure Plan, the Council must notify the impacted state in writing and consult with the state to address any identified deficiencies with the plan. If the Council fails to approve or take action within 60 days after the date on which the Council receives the plan, the state may obtain expedited judicial review within 90 days in a United States district court located in the state seeking the review.

(i) The Council must publish guidelines explaining when modifications to a State Expenditure Plan require the Council's approval. Material modifications to a State Expenditure Plan are subject to the requirements of paragraphs (b) through (g) of this section.

§ 34.504 Grant administration—Spill Impact Component.

The Council must publish policies and procedures for administration of the Spill Impact Component grants that are consistent with applicable Federal laws and policies on grants. The Council must also establish and implement a program to monitor compliance with its grant agreements.

§ 34.505 Use of funds—Spill Impact Component.

An activity may be funded in whole or in part if the applicable requirements of subparts C and F of this part are met.

§ 34.506 Reports—Spill Impact Component.

Recipients must submit reports as prescribed by the Council or Treasury. In addition, the Council must submit reports as prescribed by Treasury.

§ 34.507 Recordkeeping—Spill Impact Component.

Recipients must maintain records as prescribed by the Council and make the records available to the Council, and Treasury, including the Treasury Inspector General. In addition, the Council must make its records concerning the activities of recipients available to Treasury, including the Treasury Inspector General.

§ 34.508 Audits—Spill Impact Component.

The Council and Treasury, including the Treasury Inspector General, may conduct audits and reviews of a recipient's accounts and activities relating to the Act as any of them deem appropriate.

Subpart G—NOAA RESTORE Act Science Program

§ 34.600 General.

This subpart describes policies and procedures applicable to the NOAA RESTORE Act Science Program. The program's purpose is to carry out research, observation, and monitoring to support, to the maximum extent practicable, the long-term sustainability of the ecosystem, fish stocks, fish habitat, and the recreational, commercial, and charter fishing industries in the Gulf of Mexico.

§ 34.601 Responsibility for administration—NOAA RESTORE Act Science Program.

NOAA is responsible for establishing and administering this program, in consultation with the United States Fish and Wildlife Service. NOAA must develop, publish, and apply policies and procedures for the NOAA RESTORE Act Science Program consistent with the Act, this subpart, and Federal laws and policies on grants. NOAA must monitor compliance with its grant agreements, cooperative agreements, contracts, and agreements funded through the Trust Fund. NOAA and the United States Fish and Wildlife Service will consult with the Regional Gulf of Mexico Fishery Management Council and the Gulf States Marine Fisheries Commission in carrying out the program.

§ 34.602 Use of funds and eligible activities—NOAA RESTORE Act Science Program.

(a) Amounts made available to NOAA may be expended to carry out a program comprised of activities described in section 1604 of the Act. These activities include coordination of science and technology programs and stakeholder engagement, in accordance with section 1604(f) of the Act, as well as the following activities with respect to the Gulf of Mexico:

(1) Marine and estuarine research.

(2) Marine and estuarine ecosystem monitoring and ocean observation.

(3) Data collection and stock assessments.

(4) Pilot programs for fishery independent data and reduction of exploitation of spawning aggregations.

(5) Cooperative research.

(b) NOAA may also expend amounts made available from the Trust Fund for administrative expenses connected with the program. All funds must be expended in compliance with the Act, these regulations, and other applicable law.

§ 34.603 Limitations on activities—NOAA RESTORE Act Science Program.

None of the Trust Fund amounts may be used for the following activities:

(a) For any existing or planned research led by NOAA, unless agreed to in writing by the grant recipient.

(b) To implement existing regulations or initiate new regulations promulgated or proposed by NOAA.

(c) To develop or approve a new limited access privilege program (as that term is used in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1853(a)]) for any fishery under the jurisdiction of the South Atlantic, Mid-Atlantic, New England, or Gulf of Mexico Fishery Management Councils.

§ 34.604 Limitations on administrative expenses—NOAA RESTORE Act Science Program.

(a) Of the amounts received by NOAA under the NOAA RESTORE Act Science Program, not more than three percent may be used for administrative expenses.

(b) The three percent limit is applied to the total amount of funds received by NOAA, beginning with the first fiscal year it receives funds through the end of the fourth, or most recent fiscal year, whichever is later.

(c) NOAA may seek reimbursement of administrative expenses incurred after the first deposit into the Trust Fund, to the extent permitted by Federal law. Administrative expenses incurred prior to the first deposit into the Trust Fund are not reimbursable.

§ 34.605 Reports—NOAA RESTORE Act Science Program.

NOAA must submit reports as prescribed by Treasury.

§ 34.606 Recordkeeping—NOAA RESTORE Act Science Program.

Recipients and other entities receiving funds under the NOAA RESTORE Act Science Program must maintain records as prescribed by NOAA and make the records available to NOAA.

§ 34.607 Audits—NOAA RESTORE Act Science Program.

NOAA and the Treasury Inspector General may conduct audits and reviews of recipient's accounts and activities relating to the Act as either of them deems appropriate.

Subpart H—Centers of Excellence Research Grants Program

§ 34.700 General.

This subpart describes the policies and procedures applicable to the Centers of Excellence Research Grants Program. The program's purpose is to establish centers of excellence to conduct research only on the Gulf Coast Region. The funds made available to the Gulf Coast States under this subpart will be in the form of a grant.

§ 34.701 Responsibility for administration—Centers of Excellence Research Grants Program.

Treasury is responsible for awarding grants to the Gulf Coast States, which will use the amounts made available to award grants to nongovernmental entities and consortia in the Gulf Coast Region for the establishment of Centers of Excellence. Treasury will develop and apply policies and procedures consistent with this Act and Federal laws and policies on grants. Each Gulf Coast State entity issuing grants must establish and implement a program to monitor compliance with its subaward agreements.

§ 34.702 Allocation of funds—Centers of Excellence Research Grants Program.

An equal share of funds will be available to each Gulf Coast State to carry out eligible activities. The duties of a Gulf Coast State will be carried out by the following entities:

(a) In Alabama, the Alabama Gulf Coast Recovery Council, or such administrative agent as it may designate.

(b) In Florida, the Florida Institute of Oceanography.

(c) In Louisiana, the Coastal Protection and Restoration Authority Board of Louisiana, through the Coastal Protection and Restoration Authority of Louisiana.

(d) In Mississippi, the Mississippi Department of Environmental Quality.

(e) In Texas, the Office of the Governor or an appointee of the Office of the Governor.

§ 34.703 Application procedure—Centers of Excellence Research Grants Program.

Treasury has developed an application process for grants available to the Gulf Coast States under this subpart that is consistent with the Act and Federal laws and policies on grants. The process includes the following requirements:

(a) Each Gulf Coast State must describe the competitive process that the state will use to select one or more Centers of Excellence. The competitive process must allow nongovernmental entities and consortia in the Gulf Coast Region, including public and private institutions of higher education, to compete. The process must give priority to entities and consortia that demonstrate the ability to establish the broadest cross-section of participants in the grant with interest and expertise in science, technology, and monitoring in the discipline(s) on which the proposal is focused. The process must also guard against conflicts of interest.

(b) Each Gulf Coast State must describe in its application the state rules and policies applying to subawards it will issue under this subpart. At a minimum, these state rules and policies must include the competitive selection process and measures to guard against conflicts of interest.

(c) Each Gulf Coast State must demonstrate in its application that the state rules and policies applying to subawards it will issue under this subpart were published and available for public review and comment for a minimum of 45 days, and that they were approved after consideration of meaningful input from the public, including broad-based participation from individuals, businesses, Indian tribes, and non-profit organizations. These requirements do not apply to state statutes and regulations, or to policies that were in effect prior to August 15, 2014.

(d) Each application must state the amount of funding requested and the purposes for which the funds will be used.

§ 34.704 Use of funds and eligible activities—Centers of Excellence Research Grants Program.

(a) A Gulf Coast State receiving funds under this subpart must establish a grant program that complies with the Act and Federal laws and policies on grants.

(b) Gulf Coast States may use funds available under this subpart to award competitive subawards for the establishment of Centers of Excellence that focus on science, technology, and monitoring in at least one of the following disciplines:

(1) Coastal and deltaic sustainability, restoration, and protection, including solutions and technology that allow citizens to live in a safe and sustainable manner in a coastal delta in the Gulf Coast Region.

(2) Coastal fisheries and wildlife ecosystem research and monitoring in the Gulf Coast Region.

(3) Offshore energy development, including research and technology to improve the sustainable and safe development of energy resources in the Gulf of Mexico.

(4) Sustainable and resilient growth and economic and commercial development in the Gulf Coast Region.

(5) Comprehensive observation, monitoring, and mapping of the Gulf of Mexico.

§ 34.705 Ineligible activities—Centers of Excellence Research Grants Program.

Any activity that is not authorized under the provisions of § 34.704 is ineligible for funding under this subpart.

§ 34.706 Reports—Centers of Excellence Research Grants Program.

Each Gulf Coast State entity must submit the following reports:

(a) An annual report to the Council in a form prescribed by the Council that includes information on subrecipients, subaward amounts, disciplines addressed, and any other information required by the Council. When the subrecipient is a consortium, the annual report must also identify the consortium members. This information will be included in the Council's annual report to Congress.

(b) Reports as prescribed by Treasury.

§ 34.707 Recordkeeping—Centers of Excellence Research Grants Program.

Recipients must maintain records as prescribed by Treasury and make the records available to Treasury, including the Treasury Inspector General.

§ 34.708 Audits—Centers of Excellence Research Grants Program.

Treasury, including the Treasury Inspector General, may conduct audits and reviews of each recipient's accounts and activities relating to the Act as deemed appropriate by Treasury.

Subpart I—Agreements

§ 34.800 General.

This subpart describes procedures applicable to grant agreements used by Treasury, the Council (including Federal agencies carrying out responsibilities for the Council), NOAA, Gulf Coast States, coastal political subdivisions, and coastal zone parishes in making awards under subparts D, E, F, G, and H of this part. It also describes Treasury's authority to inspect records and the Treasury Inspector General's authority under the Act.

§ 34.801 Grant agreements.

The grant agreements used must conform to the Act and Federal laws and policies on grants, including audit requirements.

§ 34.802 Certifications.

At a minimum, grant applications and agreements for the Direct Component, Comprehensive Plan Component, and Spill Impact Component must contain the following certifications. The certification must be signed by an authorized senior official of the entity receiving grant funds who can legally bind the organization or entity, and who has oversight for the administration and use of the funds in question. The certification in paragraph (c) of this section does not apply to planning assistance funds for the preparation and amendment of the Multiyear Implementation Plan.

(a) I certify that each activity funded under this Agreement has been designed to plan for or undertake activities to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, or economy of the Gulf Coast Region.

(b) I certify that each activity funded under this Agreement is designed to carry out one or more of the eligible activities for this component.

(c) I certify that each activity funded under this Agreement was part of a plan made available for public review and comment in a manner calculated to obtain broad-based participation from individuals, businesses, Indian tribes, and nonprofit organizations, and that the activity was selected after consideration of meaningful input from the public, as described in the grant application.

(d) I certify that each activity funded under this Agreement that protects or restores natural resources is based on the best available science, as that term is defined in 31 CFR part 34.

(e) I certify that this recipient has procedures in place for procuring property and services under this award that are consistent with the procurement standards applying to Federal grants. This recipient agrees that it will not request funds under this award for any contract unless this certification remains true and accurate.

(f) I certify that a conflict of interest policy is in effect and covering each activity funded under this Agreement.

(g) I make each of these certifications based on my personal knowledge and belief after reasonable and diligent inquiry, and I affirm that this recipient maintains written documentation sufficient to support each certification made above, and that this recipient's compliance with each of these certifications is a condition of this recipient's initial and continuing receipt and use of the funds provided under this Agreement.

§ 34.803 Conditions.

At a minimum, each grant agreement under subparts D, E, F, G, and H of this part must contain the following conditions:

(a) The recipient must immediately report any indication of fraud, waste, abuse, or potentially criminal activity pertaining to grant funds to Treasury and the Treasury Inspector General.

(b) The recipient must maintain detailed records sufficient to account for the receipt, obligation, and expenditure of grant funds. The recipient must track program income.

(c) Prior to disbursing funds to a subrecipient, the recipient must execute a legally binding written agreement with the entity receiving the subaward. The written agreement will extend all the applicable program requirements to the subrecipient.

(d) The recipient must use the funds only for the purposes identified in the agreement.

(e) The recipient must report at the conclusion of the grant period, or other period specified by the Federal agency administering the grant, on the use of funds pursuant to the agreement.

(f) Trust Fund amounts may only be used to acquire land or interests in land by purchase, exchange, or donation from a willing seller.

(g) None of the Trust Fund amounts may be used to acquire land in fee title by the Federal Government unless the land is acquired by exchange or donation or the acquisition is necessary for the restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast Region and has the concurrence of the Governor of the state in which the acquisition will take place.

§ 34.804 Noncompliance.

(a) If Treasury determines that a Gulf Coast State, coastal political subdivision, or coastal zone parish has expended funds received under the Direct Component, Comprehensive Plan Component, or Spill Impact Component on an ineligible activity, Treasury will make no additional funds available to that recipient from any part of the Trust Fund until the recipient has deposited in the Trust Fund an amount equal to the amount expended for an ineligible activity, or Treasury has authorized the recipient to expend an equal amount from the recipient's own funds for an activity that meets the requirements of the Act.

(b) If Treasury determines that a Gulf Coast State, coastal political subdivision, or coastal zone parish has materially violated a grant agreement under the Direct Component, Comprehensive Plan Component, or Spill Impact Component, Treasury will make no additional funds available to that recipient from any part of the Trust Fund until the recipient corrects the violation.

(c) As a condition of receiving funds, recipients and subrecipients shall make available their records and personnel to Treasury in order to carry out the purposes of this section.

§ 34.805 Treasury Inspector General.

In addition to other authorities available under the Act, the Office of the Inspector General of the Department of the Treasury is authorized to conduct, supervise, and coordinate audits and investigations of activities funded through grants under the Act.

David A. Lebryk,

Fiscal Assistant Secretary.

[FR Doc. 2015–31431 Filed 12–11–15; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–1066]

Drawbridge Operation Regulation; Hoquiam River, Hoquiam, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Simpson Avenue Bridge across the Hoquiam River, mile 0.5, at Hoquiam, WA. The deviation is necessary to accommodate Washington State Department of Transportation's (WSDOT) extensive maintenance and restoration efforts on this bridge. This deviation allows WSDOT to open one leaf of the double leaf bascule bridge when at least two hours of notice is given. The vertical clearance will be reduced to approximately 25 feet at mean high tide, and the horizontal clearance will be reduced to 52 feet.

DATES: This deviation is effective from 6 a.m. on December 11, 2015 to 11:59 p.m. on December 31, 2015.

ADDRESSES: The docket for this deviation, [USCG–2015–1066] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email the Bridge Administrator, Coast Guard Thirteenth District; telephone 206–220–7282 email *d13-pf-d13bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION: WSDOT has requested a temporary deviation from the operating schedule for the Simpson Avenue Bridge crossing the Hoquiam River, mile 0.5, at Hoquiam, WA. WSDOT requested to only open one leaf of the double leaf bascule bridge when at least two hours of notice is given. WSDOT also requested to reduce the vertical clearance from 35 feet to approximately 25 feet at mean high tide, and reduce the horizontal navigation clearance from 125 feet to 52 feet while operating single leaf.

The normal operating schedule for the Simpson Avenue Bridge operates in accordance with 33 CFR 117.1047, which states the bridge shall open on signal if at least one hour notice is given. Simpson Avenue Bridge is a double leaf bascule bridge and provides 35 feet of vertical clearance above mean high water elevation while in the closed-to-navigation position.

This deviation allows the Simpson Avenue Bridge at mile 0.5 crossing the Hoquiam River, to operate in single leaf, half of the span, to maritime traffic from 6 a.m. on December 11, 2015 to 11:59 p.m. on December 31, 2015. The bridge shall operate in accordance to 33 CFR 117.1047 at all other times.

Vessels able to pass through the bridge in the closed-to-navigation position may do so at anytime. Scaffolding will be erected below the bridge for personnel to work from reducing the vertical clearance to approximately 25 feet while the bridge is in the closed-to-navigation position. The bridge will not be able to open for vessels engaged in emergency response operations during this closure period without a two hour notice.

Waterway usage on this part of the Hoquiam River ranges from tug and barge to small pleasure craft. WSDOT has examined bridge opening logs, and contacted all waterway users that have requested bridge openings throughout the last year. The input WSDOT received from waterway users indicated that this deviation will have no impact on the known users. No immediate alternate route for vessels to pass is available on this part of the river. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridges must return to their regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 8, 2015.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2015–31388 Filed 12–11–15; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2012–0205; FRL–9940–03–Region 6]

Approval and Promulgation of Implementation Plans; Texas; El Paso Particulate Matter Contingency Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving under the Federal Clean Air Act (the Act) State Implementation Plan (SIP) revisions submitted by the State of Texas. These revisions pertain to contingency measures for particulate matter in the City of El Paso. The affected contingency measures are the paving of alleys and sweeping of streets.

DATES: This final rule is effective on January 13, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2012–0205. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Jeffrey Riley, 214–665–8542, *riley.jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

The background for today's action is discussed in detail in our August 19, 2015 proposal (80 FR 50248). In that notice, we proposed to approve revisions to the Texas SIP pertaining to contingency measures for controlling particulate matter (PM) with an aerodynamic diameter less than or equal to a nominal ten micrometers (PM_{10}) in the City of El Paso. We did not receive any comments regarding our proposal.

II. Final Action

We are approving revisions to the Texas SIP pertaining to PM_{10} dust control contingency measures in the City of El Paso. The State's revisions submitted on March 7, 2012 amend rule 30 TAC section 111.147(1)(E) by removing the requirement to pave alleys at the rate of 15 miles/year, and replace it with the following requirements:

(1) All new alleys must be paved;

(2) Unpaved alleys may not be used for residential garbage and recycling collection; and

(3) The use of recycled asphalt product as defined in section 111.145 and section 111.147(1) may be used as an alternate means of particulate matter control for alleys.

We are also approving revisions to 30 TAC section 111.147(1) that define reclaimed asphalt pavement, and 30 TAC section 111.147(2) that changes the sweeping frequency requirement from four to three times per year in the city limits and from six to four times per week in the El Paso central business district. This action is being taken under section 110 of the Act.

III. Incorporation by Reference

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the revisions to the Texas regulations as described in the Final Action section above. We have made, and will continue to make, these documents generally available electronically through

www.regulations.gov and/or in hard copy at the EPA Region 6 office.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 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 Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 12, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposed of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: November 19, 2015.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart SS—Texas

■ 2. In § 52.2270:

■ a. In paragraph (c), the table titled ''EPA Approved Regulations in the Texas SIP'' is amended by revising the entry for Section 111.147.

■ b. In paragraph (e), the second table titled ''EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' is amended by adding an entry at the end for ''Revision to El Paso PM_{10} Attainment Demonstration SIP''.

The revision and addition read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
*	*	*	*	*	*	*
Chapter 111 (Reg 1)—Control of Air Pollution From Visible Emissions and Particulate Matter				
Subchapter A: Visible Emissions and Particulate Matter				

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
* *	*	*	* *	*
Division 4: Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots				
* *	*	*	* *	*
Section 111.147	Roads, Streets, and Alleys	1/25/2012	12/14/2015 [Insert FEDERAL REGISTER citation].	
* *	*	*	* *	*

* * * * * (e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Comments
* *	*	*	* *	*
Revision to El Paso PM_{10} Attainment Demonstration SIP (dust control contingency measures).	El Paso, TX	3/7/2012	12/14/2015 [Insert FEDERAL REGISTER citation].	

[FR Doc. 2015–31310 Filed 12–11–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0769; FRL–9937–22]

Naphthalene Acetates; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of the naphthalene acetate group in or on pomegranate. Interregional Research Project Number 4 (IR–4) requested the tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 14, 2015. Objections and requests for hearings must be received on or before February 12, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0769, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2014–0769 in the subject line on the first page of your submission. All objections and requests for a hearing

must be in writing, and must be received by the Hearing Clerk on or before February 12, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2014–0769, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of February 11, 2015 (80 FR 7559) (FRL–9921–94), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4E8310) by IR–4, IR–4 Project Headquarters, 500 College Road East, Suite 201 W, Princeton, NJ. The petition requested that 40 CFR 180.155 be amended by establishing tolerances for residues of a family of plant growth regulators, the naphthalene acetates, in or on pomegranate at 0.05 parts per million (ppm). That document referenced a summary of the petition prepared by AMVAC Chemical Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the naphthalene acetates including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with the naphthalene acetates follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

In this regulatory action, 1-naphthaleneacetic acid is a species of chemical that includes several similar compounds: Naphthaleneacetamide (NAA acetamide), naphthaleneacetic acid, potassium naphthaleneacetate (NAA potassium salt), ammonium naphthaleneacetate (ammonium NAA), sodium naphthaleneacetate (NAA sodium salt), and ethyl naphthaleneacetate (NAA ethyl ester). These chemicals are assessed as a single group and are collectively referred to as the naphthalene acetates (NAA). Hereafter, NAA will be used to refer to the entire naphthalene acetate group. These chemical compounds are structurally related, metabolized to the acid form (by both plants and animals), and are eliminated from the body as glycine and glucuronic acid conjugates within 36 to 48 hours after exposure. EPA has concluded that toxicity testing on any of these compounds should serve for all members of this group of chemicals.

In general, NAA sodium salt was the most toxic form in sub-chronic and chronic studies. Repeated exposure in oral toxicity studies resulted in decreased body weights and body weight gains accompanied by decreased food consumption. The major target organs of sub-chronic and chronic oral exposure were the liver, stomach, and lung. Others symptoms of toxicity from oral exposure included decreased hematocrit and hemoglobin, reduced red blood cell (RBC) count in rats and dogs, and hypocellularity of the bone marrow in dogs. In contrast to oral exposures, NAA ethyl ester was the most toxic chemical species when administered dermally, inducing epidermal hyperplasia and hyperkeratosis, sebaceous gland hyperplasia, and dermal inflammation. The NAA sodium salt required a 10-fold higher dose to elicit similar dermal effects and no dermal effects were noted in the NAA acetamide exposure. Systemic toxicity was not a consequence of dermal exposure to any of the tested naphthalene acetates.

Developmental and offspring toxicity was linked to NAA sodium salt exposure but was not a common observation for the entire naphthalene acetate group. Developing rats exhibited decreased fetal weight and minor skeletal changes and were more susceptible to NAA sodium salt toxicity than the maternal rats. Skeletal defects and variants were observed in rabbit fetuses after exposure to NAA sodium salt in the developmental rabbit study; however these effects only occurred at doses that also compromised maternal health. Offspring toxicity from NAA sodium salt manifested as reduced litter survival and pup weight throughout lactation in two generations. These effects coincided with reduced body weight in both parental generations indicating the adults and their young were equally susceptible to NAA sodium salt.

Carcinogenicity studies of NAA acetamide in mice and NAA sodium salt in rats and mice are considered adequate for the evaluation of the oncogenicity of the NAA group. In these three studies the tested NAA

compounds were not carcinogenic in mice or rats.

Specific information on the studies received and the nature of the adverse effects caused by NAA as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document, ''Naphthalene Acetate. Human Health Risk Assessment for a Proposed New Use on Pomegranate'' at pp. 31 in docket ID number EPA–HQ–OPP–2014–0769.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which the NOAEL and the LOAEL are identified. Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for NAA used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR NAA FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including infants and children).	An acute RfD for the general population or any population subgroups was not selected because no effect attributable to a single exposure was observed in animal studies.		
Chronic dietary (All populations)	NOAEL = 25 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.25 mg/kg/day. cPAD = 0.25 mg/kg/day	Co-critical Dog Studies with NAA Na salt: Subchronic Toxicity. Chronic Toxicity. Subchronic.[1] LOAEL = 150 mg/kg/day based on GI tract lesions and hypocellularity of the bone marrow. Subchronic NOAEL = 25 mg/kg/day. Chronic LOAEL = 75 mg/kg/day based on stomach lesions in 75% of the males and slight sinusoidal histiocytosis in the liver of 50% of the males.
Adult Oral Short-term (1–30 Days).	NOAEL = 25 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC = 100	Co-critical Dog Studies with NAA Na salt: Subchronic Toxicity. Chronic Toxicity. Subchronic LOAEL = 150 mg/kg/day based on GI tract lesions and hypocellularity of the bone marrow. Subchronic NOAEL = 25 mg/kg/day. Chronic LOAEL = 75 mg/kg/day based on stomach lesions in 75% of the males and slight sinusoidal histiocytosis in the liver of 50% of the males. Chronic NOAEL = 15 mg/kg/day.
Inhalation Short-Term (1–30 days).	NOAEL = 25 mg/kg/day[2] UF_A = 10x UF_H = 10x FQPA SF = 10x[3]	LOC = 1000	Co-critical Dog Studies with NAA Na salt: Subchronic Toxicity. Chronic Toxicity. Subchronic LOAEL = 150 mg/kg/day based on GI tract lesions and hypocellularity of the bone marrow. Subchronic NOAEL = 25 mg/kg/day. Chronic LOAEL = 75 mg/kg/day based on stomach lesions in 75% of the males and slight sinusoidal histiocytosis in the liver of 50% of the males. Chronic NOAEL = 15 mg/kg/day.
Cancer	Not carcinogenic based on rats and mice bioassays. Not mutagenic.		

LOC = level of concern. Point of Departure (POD) = A data point or an estimated point that is derived from observed dose-response data and used to mark the beginning of extrapolation to determine risk associated with lower environmentally relevant human exposures. Mg/kg/day = milligram/kilogram/day. NOAEL = no observed adverse effect level. LOAEL = lowest observed adverse effect level. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (c = chronic). RfD = reference dose.

[1] The NOAEL/LOAEL used to set endpoints for the co-critical dog studies are in bold.

[2] Inhalation absorption is assumed to be equivalent to oral absorption.

[3] FQPA SF for inhalation accounts for the lack of an inhalation study.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to NAA, EPA considered exposure under the petitioned-for tolerance as well as all existing NAA tolerances in 40 CFR 180.155. EPA assessed dietary exposure to NAA in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for NAA; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID), Version 3.16, which incorporates 2003–2008 food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). DEEM default processing factors were used to modify the tolerance values. As to NAA residues levels in food, tolerance-level residues and 100 percent crop treated (PCT) assumptions were applied for all affected crops.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that NAA does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for NAA. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening-level water exposure models in the dietary exposure analysis and risk assessment for NAA in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of NAA. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Tier 1 (Rice Model) Estimated Drinking Water Concentrations (EDWCs) in surface and groundwater for NAA were used in the dietary exposure assessment. The EDWCs were calculated using the Tier 1 surface water aquatic model First Index Reservoir Screening tool (FIRST) and the Tier I/II groundwater model Pesticide Root Zone Model Ground Water (PRZM GW), in Tier I mode. Accordingly, the EDWCs of NAA for chronic exposures for non-cancer assessments are estimated to be 65.1 parts per billion (ppb) for surface water and 646 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration value of 646 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

NAA is currently registered for root dip and sprout inhibition applications to ornamentals, which could result in residential exposures. There is a potential for short-term oral and inhalation exposures to residential handlers, resulting from loading and applying NAA. Though there is potential for dermal exposures for residential handlers, no dermal endpoint was selected due to the lack of systemic toxicity up to the limit dose (1,000 milligram/kilogram/day (mg/kg/day)). There are no residential uses for NAA that result in incidental dermal or oral exposure to children. The rooting compounds are applied by holding the plant and dipping the roots into solution. Very little exposure is expected from this use. Sprout inhibitors are applied by spray or paint brush/roller after pruning trees, or by spraying near the base of the tree after pruning root suckers. There is very little potential for post-application exposure to NAA for adults or children based on the residential use pattern; therefore, residential post-application exposure is not expected, nor is intermediate- or long-term exposure based on the intermittent nature of applications by homeowners.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found NAA to share a common mechanism of toxicity with any other substances, and NAA does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that NAA does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/culmative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor (FQPA SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is low concern and no residual uncertainty for pre- and/or postnatal toxicity resulting from exposure to the naphthalene acetates. Clear NOAELs and LOAELs were established for the developmental and offspring effects and the points of departure selected for all exposure scenarios are protective of these effects.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X for the oral and dermal routes of exposure but retained a 10X for the inhalation route of exposure. That decision is based on the following findings:

i. The toxicity database for NAA is complete, except for a subchronic inhalation toxicity study. EPA is

retaining a 10X FQPA SF for the inhalation route of exposure however, as discussed in Unit III.C.3, the EPA only expects short-term inhalation exposures to residential handlers, resulting from loading and applying NAA. Therefore, there is no concern for increased susceptibility in infants and children via the inhalation route. EPA waived the requirements for the acute and subchronic neurotoxicity studies.

ii. There is no indication that NAA is a neurotoxic chemical based on the available studies in the database, and EPA determined that there is no need for acute and subchronic developmental neurotoxicity studies or additional UFs to account for neurotoxicity.

iii. The endpoints selected from the co-critical dog studies are protective of the effects observed in the rat developmental, rabbit developmental, and rat reproduction studies. Therefore, the potential for increased susceptibility in infants and children is low.

iv. There are no residual uncertainties identified in the exposure databases. The chronic dietary food exposure assessment was performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to NAA in drinking water. Based on the discussion in Unit III.C.3., regarding limited residential use patterns, exposure to residential handlers is very low and EPA does not anticipate post-application exposure to children or incidental dermal or oral exposures to toddlers resulting from use of NAA in residential settings. These assessments will not underestimate the exposure and risks posed by NAA.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, NAA is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to NAA from food and water will utilize 15% of the cPAD for infants <1 year old the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of NAA is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Using the exposure assumptions described in this unit for short-term exposures, short-term aggregate risk was estimated for combined oral and inhalation exposure in adults applying naphthalene acetate products with a paint-airless sprayer. This is considered the worst case scenario for the aggregate risk assessment. Endpoints selected for the short-term adult oral exposure and inhalation exposure were based on common effects and could therefore be combined in the aggregate assessment.

The EPA calculated an aggregated risk indices (ARI) to combine inhalation and oral exposures to adults. This resulted in an ARI greater than 1. An ARI value greater than 1 is not of concern to EPA, therefore, aggregate exposure to residential handlers is acceptable.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because no intermediate-term adverse effect was identified, NAA is not expected to pose an intermediate-term risk.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, NAA is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to NAA residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology, a high performance liquid chromatography (HPLC) method using fluorescence detection (Method NAA–AM–001) and a similar method (Method NAA–AM–002), is available to enforce the tolerance expression for NAA in plant commodities.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

There is no established Codex MRL for NAA use on pomegranate.

V. Conclusion

Therefore, a tolerance is established for residues of NAA in or on pomegranate at 0.05 ppm.

VI. Statutory and Executive Order Reviews

This action establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the

Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 3, 2015.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.155, add to the table in alphabetical order an entry for ''pomegranate'' to read as follows:

§ 180.155 1-Naphthaleneacetic acid; tolerance for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Pomegranate	0.05
* * * * *	

* * * * *

[FR Doc. 2015–31309 Filed 12–11–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0451; FRL–9939–28]

Polyamide Ester Polymers; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of several polyamide ester polymers as listed in this final rule. Spring Trading Co. on behalf of Croda, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of the listed chemicals on food or feed commodities.

DATES: This regulation is effective December 14, 2015. Objections and requests for hearings must be received on or before February 12, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0451, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. Can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2015–0451 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 12, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2015–0451, by one of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Background and Statutory Findings

In the **Federal Register** of Wednesday, August 26, 2015 (80 FR 51763) (FRL–9931–74), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP IN–10834) filed by Spring Trading Co., 203 Dogwood Trl., Magnolia, TX 77354 (on behalf of Croda, Inc., 315 Cherry Ln., New Castle, DE 19720). The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of the following polyamide ester polymers: Fatty acids, C_{18}-unsatd., dimers, polymers with ethylenediamine and stearyl alcohol (CAS Reg. No. 363162–42–9); fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with ethylenediamine, neopentyl glycol and stearyl alcohol (CAS Reg. No. 678991–29–2); fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with ethylenediamine and stearyl alcohol (CAS Reg. No. 951153–32–5); Fatty acids, C_{18}-unsatd., dimers, polymers with 1-docosanol and ethylenediamine (CAS Reg. No. 1699751–19–3); Fatty acids, C_{18}-unsatd., dimers, polymers with cetyl alcohol., neopentyl glycol and trimethylenediamine (CAS Reg. No. 1699751–23–9); fatty acids, C_{18}-unsatd., dimers, polymers with hexamethylenediamine and stearyl alcohol (CAS Reg. No. 1699751–24–0); fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with cetyl alcohol and ethylenediamine (CAS Reg. No. 1699751–25–1); fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with neopentyl glycol, stearyl alcohol and trimethylenediamine (CAS Reg. No. 1699751–28–4); fatty acids, C_{18}-unsatd., dimers, polymers with 1-docosanol and trimethylenediamine (CAS Reg. No. 1699751–29–5); fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with 1-docosanol, hexamethylenediamine and neopentyl glycol (CAS Reg. No. 1699751–31–9) and fatty acids, C_{18}-unsatd., dimers, polymers with docosanoic acid, 1,3-propanediol and sorbitol (CAS Reg. No. 1685271–04–8).

That document included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. No comments were received by the Agency in response to the notice of filing.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and use in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . .'' and specifies factors EPA is to consider in establishing an exemption.

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d).

The polyamide ester polymers listed in this final rule conform to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

7. The polymer does not contain certain perfluoroalkyl moieties consisting of a CF3- or longer chain length as specified in 40 CFR 723.250(d)(6).

Thus, polyamide ester polymers listed in this final rule (*i.e.,* fatty acids, C_{18}-unsatd., dimers, polymers with ethylenediamine and stearyl alcohol; fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with ethylenediamine, neopentyl glycol and stearyl alcohol; fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with ethylenediamine and stearyl alcohol; fatty acids, C_{18}-unsatd., dimers, polymers with 1-docosanol and ethylenediamine; fatty acids, C_{18}-unsatd., dimers, polymers with cetyl alcohol., neopentyl glycol and trimethylenediamine; fatty acids, C_{18}-unsatd., dimers, polymers with hexamethylenediamine and stearyl alcohol; fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with cetyl alcohol and ethylenediamine; fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with neopentyl glycol, stearyl alcohol and trimethylenediamine; fatty acids, C_{18}-unsatd., dimers, polymers with 1-docosanol and trimethylenediamine; fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with 1-docosanol, hexamethylenediamine and neopentyl glycol; and fatty acids, C_{18}-unsatd., dimers, polymers with docosanoic acid, 1,3-propanediol and sorbitol) meet the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on their conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation or dermal exposure to these polymers.

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that these polymers could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The minimum number average MW (in amu) of each of these polymers is 1,400 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since these polymers conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found these polymers to share a common mechanism of toxicity with any other substances, and these polymers does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that these polymers does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of these polymers, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of fatty acids, C_{18}-unsatd., dimers, polymers with ethylenediamine and stearyl alcohol; fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with ethylenediamine, neopentyl glycol and stearyl alcohol; fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with ethylenediamine and stearyl alcohol; fatty acids, C_{18}-unsatd., dimers, polymers with 1-docosanol and ethylenediamine; fatty acids, C_{18}-unsatd., dimers, polymers with cetyl alcohol, neopentyl glycol and trimethylenediamine; fatty acids, C_{18}-unsatd., dimers, polymers with hexamethylenediamine and stearyl alcohol; fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with cetyl alcohol and ethylenediamine; fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with neopentyl glycol, stearyl alcohol and trimethylenediamine; fatty acids, C_{18}-unsatd., dimers, polymers with 1-docosanol and trimethylenediamine; fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with 1-docosanol, hexamethylenediamine and neopentyl glycol; and fatty acids, C_{18}-unsatd., dimers, polymers with docosanoic acid, 1,3-propanediol and sorbitol.

VIII. Other Considerations

A. Existing Exemptions From a Tolerance

Not applicable.

B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program,

and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for fatty acids, C_{18}-unsatd., dimers, polymers with ethylenediamine and stearyl alcohol; fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with ethylenediamine, neopentyl glycol and stearyl alcohol; fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with ethylenediamine and stearyl alcohol; fatty acids, C_{18}-unsatd., dimers, polymers with 1-docosanol and ethylenediamine; fatty acids, C_{18}-unsatd., dimers, polymers with cetyl alcohol, neopentyl glycol and trimethylenediamine; fatty acids, C_{18}-unsatd., dimers, polymers with hexamethylenediamine and stearyl alcohol; fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with cetyl alcohol and ethylenediamine; fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with neopentyl glycol, stearyl alcohol and trimethylenediamine; fatty acids, C_{18}-unsatd., dimers, polymers with 1-docosanol and trimethylenediamine; fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with 1-docosanol, hexamethylenediamine and neopentyl glycol; or fatty acids, C_{18}-unsatd., dimers, polymers with docosanoic acid, 1,3-propanediol and sorbitol.

IX. Conclusion

Accordingly, EPA finds that exempting residues of fatty acids, C_{18}-unsatd., dimers, polymers with ethylenediamine and stearyl alcohol; fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with ethylenediamine, neopentyl glycol and stearyl alcohol; fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with ethylenediamine and stearyl alcohol; fatty acids, C_{18}-unsatd., dimers, polymers with 1-docosanol and ethylenediamine; fatty acids, C_{18}-unsatd., dimers, polymers with cetyl alcohol, neopentyl glycol and trimethylenediamine; fatty acids, C_{18}-unsatd., dimers, polymers with hexamethylenediamine and stearyl alcohol; fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with cetyl alcohol and ethylenediamine; fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with neopentyl glycol, stearyl alcohol and trimethylenediamine; fatty acids, C_{18}-unsatd., dimers, polymers with 1-docosanol and trimethylenediamine; fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with 1-docosanol, hexamethylenediamine and neopentyl glycol; and fatty acids, C_{18}-unsatd., dimers, polymers with docosanoic acid, 1,3-propanediol and sorbitol from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This action establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

XI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 30, 2015.

G. Jeffrey Herndon,

Director Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.960, alphabetically add the following polymers to the table to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * * * * * *	
Fatty acids, C_{18}-unsatd., dimers, polymers with ethylenediamine and stearyl alcohol, minimum number average molecular weight (in amu) 1,400	363162–42–9
Fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with ethylenediamine, neopentyl glycol and stearyl alcohol, minimum number average molecular weight (in amu) 1,400	678991–29–2
Fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with ethylenediamine and stearyl alcohol, minimum number average molecular weight (in amu) 1,400	951153–32–5
Fatty acids, C_{18}-unsatd., dimers, polymers with 1-docosanol and ethylenediamine, minimum number average molecular weight (in amu) 1,400	1699751–19–3
Fatty acids, C_{18}-unsatd., dimers, polymers with cetyl alcohol, neopentyl glycol and trimethylenediamine, minimum number average molecular weight (in amu) 1,400	1699751–23–9
Fatty acids, C_{18}-unsatd., dimers, polymers with hexamethylenediamine and stearyl alcohol, minimum number average molecular weight (in amu) 1,400	1699751–24–0
Fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with cetyl alcohol and ethylenediamine, minimum number average molecular weight (in amu) 1,400	1699751–25–1
Fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with neopentyl glycol, stearyl alcohol and trimethylenediamine, minimum number average molecular weight (in amu) 1,400	1699751–28–4
Fatty acids, C_{18}-unsatd., dimers, polymers with 1-docosanol and trimethylenediamine, minimum number average molecular weight (in amu) 1,400	1699751–29–5
Fatty acids, C_{18}-unsatd., dimers, polymers with 1-docosanol, hexamethylenediamine and neopentyl glycol, minimum number average molecular weight (in amu) 1,400	1699751–31–9
Fatty acids, C_{18}-unsatd., dimers, polymers with docosanoic acid, 1,3-propanediol and sorbitol, minimum number average molecular weight (in amu) 1,400	1685271–04–8
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[FR Doc. 2015–30924 Filed 12–11–15; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 150121066–5717–02]

RIN 0648–XE327

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason General category bluefin tuna quota transfer and retention limit adjustment.

SUMMARY: NMFS is transferring 24.3 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the General category December 2016 subquota period to the January 2016 subquota period (from January 1 through March 31, 2016, or until the available subquota for this period is reached, whichever comes first). NMFS also is adjusting the Atlantic tunas General category BFT daily retention limit for the January 2016 subquota period to three large medium or giant BFT from the default retention limit of one. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels when fishing commercially for BFT.

DATES: The quota transfer is effective January 1, 2016. The General category retention limit adjustment is effective January 1, 2016, through March 31, 2016.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014). NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

Inseason Transfer to the General Category

Earlier this year, NMFS implemented a final rule that increased the U.S. BFT quota and subquotas per ICCAT Recommendation 14–05 (80 FR 52198, August 28, 2015). The base quota for the General category is 466.7 mt. See § 635.27(a). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a portion of the annual General category quota. Although it is called the ''January'' subquota, the regulations allow the General category fishery under this quota to continue until the subquota is reached or March 31, whichever comes first. Based on the General category base quota of 466.7 mt, the subquotas for each time period are as follows: 24.7 mt for January; 233.3 mt for June through August; 123.7 mt for September; 60.7 mt for October through November; and 24.3 mt for December. Any unused General category quota rolls forward within the fishing year, which coincides with the calendar year, from one time period to the next, and is available for use in subsequent time periods.

Quota Transfer

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after

considering determination criteria provided under § 635.27(a)(8), including five new criteria recently added in Amendment 7. The determination criteria are: The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; the estimated amounts by which quotas for other gear categories of the fishery might be exceeded; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds; optimizing fishing opportunity; accounting for dead discards, facilitating quota monitoring, supporting other fishing monitoring programs through quota allocations and/or generation of revenue; and support of research through quota allocations and/or generation of revenue.

NMFS has considered the determination criteria regarding inseason adjustments and their applicability to the General category fishery for the January 2016 subquota period, including, but not limited to, the following: Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock, biological samples collected from BFT landed by General category fishermen and provided by tuna dealers continue to provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT would support the collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date (including during the winter fishery in the last several years), and the likelihood of closure of that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; and the estimated amounts by which quotas for other gear categories of the fishery might be exceeded. General category landings in the winter BFT fishery are highly variable and depend on availability. Commercial-sized BFT tuna are typically available in January and may continue to be through March.

Without a quota transfer from December 2016 to January 2016 for the General category at this time, the quota available for the January through March 2016 period would be 24.7 mt (5.3 percent of the General category quota), and participants would have to stop BFT fishing activities once that amount is met, while commercial-sized BFT may remain available in the areas where General category permitted vessels operate. Transferring the 24.3-mt quota available for December 2016 (5.2 percent of the General category quota) would result in 49 mt (10.5 percent of the General category quota) being available for the January subquota period. This quota transfer would provide additional opportunities to harvest the U.S. BFT quota without exceeding it, while preserving the opportunity for General category fishermen to participate in the winter BFT fishery.

Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and Amendment 7, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations. This transfer would be consistent with the quotas recently established and analyzed in the BFT quota final rule (80 FR 52198, August 28, 2015), and with objectives of the 2006 Consolidated HMS FMP and amendments, and is not expected to negatively impact stock health or to affect the stock in ways not already analyzed in those documents.

NMFS also anticipates that some underharvest of the 2015 adjusted U.S. BFT quota will be carried forward to 2016 to the Reserve category, in accordance with the regulations implementing Amendment 7. This, in addition to the fact that any unused General category quota will roll forward to the next subperiod within the calendar year, makes it possible that General category quota will remain available through the end of 2016 for December fishery participants, even with the quota transfer. NMFS also may choose to transfer unused quota from the Reserve or other categories, inseason, based on consideration of the determination criteria, as NMFS did for late 2015 (80 FR 68265, November 4, 2015; 80 FR 74997, December 1, 2015). Therefore, NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General category quota. Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds, consider the expected increases in available 2016 quota later in the year, and provide a reasonable opportunity to harvest the full U.S. BFT quota.

Based on the considerations above, NMFS is transferring 24.3 mt of General category quota allocated for the December 2016 period to the January 2016 period, resulting in a subquota of 49 mt for the January 2016 period and a subquota of 0 mt for the December period. NMFS will close the General category January fishery when the adjusted January period subquota of 49 mt has been reached, or it will close automatically on March 31, 2016, whichever comes first, and it will remain closed until the General category fishery reopens on June 1, 2016.

Adjustment of General Category Daily Retention Limit

Unless changed, the General category daily retention limit starting on January 1 would be the default retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel per day/trip (§ 635.23(a)(2)). This default retention limit would apply to General category permitted vessels and to HMS Charter/Headboat category permitted vessels when fishing commercially for BFT. For the 2015 fishing year, NMFS adjusted the daily retention limit from the default level of one large medium or giant BFT to three large medium or giant BFT for the January subquota period (79 FR 77943, December 29, 2014), which closed March 31, 2015; four large medium or giant BFT for the June through August period (80 FR 27863, May 15, 2015) as well as September 1 through November 27, 2015 (80 FR 51959, August 27, 2015); and three large medium or giant BFT for November 28 through December 31, 2015, or until the available General category quota is reached, whichever comes first (80 FR 74997, December 1, 2015).

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8), and listed above. NMFS

has considered the relevant criteria and their applicability to the General category BFT retention limit for the January 2016 subquota period. These considerations include, but are not limited to, the following:

As described above with regard to the quota transfer, additional opportunity to land BFT would support the collection of a broad range of data for the biological studies and for stock monitoring purposes. Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock, additional opportunity to land BFT would support the collection of a broad range of data for the biological studies and for stock monitoring purposes. Regarding the effects of the adjustment on BFT rebuilding and overfishing and the effects of the adjustment on accomplishing the objectives of the fishery management plan, as this action would be taken consistent with the previously implemented and analyzed quotas, and it is not expected to negatively impact stock health or otherwise affect the stock in ways not previously analyzed. It is also supported by the Environmental Analysis for the 2011 final rule regarding General and Harpoon category management measures, which increased the General category maximum daily retention limit from three to five fish (76 FR 74003, November 30, 2011).

Regarding the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made, in 2012, 2013, and 2014, the available January subquota (23.1 mt) was reached on January 22, February 15, and March 21, respectively, under a limit of two large medium or giant BFT, and in each of these years the General category did not reach its available quota by the end of the year. For 2015, the adjusted January subquota of 45.7 (reflecting the first of the inseason actions described above as well as implementation of the final BFT quota rule) was not met under a daily retention limit of three large medium or giant BFT.

As noted above, commercial-sized BFT are typically available in January and may continue to be through March. Considering this information and the transfer of the December 2016 subquota to the quota for the January 2016 time period (for an adjusted total of 49 mt), the default one-fish limit likely would be overly restrictive. Increasing the daily retention limit from the default may mitigate rolling an excessive amount of unused quota from one time-period subquota to the next and thus help maintain an equitable distribution of fishing opportunities. Although NMFS has the authority to set the daily retention limit to up to five fish, the rate of harvest of the January subquota could be accelerated under a high limit (and higher fish availability), and result in a relatively short fishing season. A short fishing season may preclude or reduce fishing opportunities for some individuals or geographic areas because of the migratory nature and seasonal distribution of BFT.

Based on these considerations, NMFS has determined that a three-fish General category retention limit is warranted for the January 2016 subquota. It would provide a reasonable opportunity to harvest the U.S. quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities, help optimize the ability of the General category to harvest its full quota, allow collection of a broad range of data for stock monitoring purposes, and be consistent with the objectives of the 2006 Consolidated HMS FMP and amendments. Therefore, NMFS increases the General category retention limit from the default limit (one) to three large medium or giant BFT per vessel per day/trip, effective January 1, 2016, through March 31, 2016, or until the 49-mt January subquota is harvested, whichever comes first.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example, during the January 2016 subquota period, whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the day/trip limit of three fish applies and may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeted fishing for BFT, and applies to those vessels permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. General, HMS Charter/Headboat, Harpoon, and Angling category vessel owners are required to report the catch of all BFT retained or discarded dead, within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov.* Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustment or closure is necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281–9260, or access *hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement the quota transfer and daily retention limit for the January 2016 subquota time period is impracticable. NMFS could not have proposed these actions earlier, as it needed to consider and respond to updated data and information from the 2015 General category fishery, including during late 2015, in deciding to transfer the December 2016 quota to the January 2016 subquota period and selecting the appropriate retention limit for the January 2016 subquota period. If NMFS was to offer a public comment period now, after having appropriately considered that data, it would preclude fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria, and/or could result in selection of a retention limit inappropriately high for the amount of quota available for the period.

Delays in increasing the daily retention limit would adversely affect those General and HMS Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day/trip and may exacerbate the problem of low catch rates and quota rollovers. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the designated time periods. Adjustment of the retention limit needs to be effective January 1, 2016, or as soon as possible thereafter, to minimize any unnecessary disruption in fishing patterns, to allow the

impacted sectors to benefit from the adjustment, and to provide fishing opportunities for fishermen in geographic areas with access to the fishery only during this time period. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under §§ 635.23(a)(4) and 635.27(a)(9), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 9, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–31384 Filed 12–11–15; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 140703553–5999–02]

RIN 0648–BE29

Fisheries off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Trawl Rationalization Program; Midwater Trawl Requirements

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

ACTION: Final rule.

SUMMARY: This final rule clarifies the regulatory requirements for vessels using midwater trawl gear in the Pacific Coast Groundfish Fishery Shorebased Individual Fishing Quota Program. This action is needed to eliminate inconsistencies and reduce confusion in the current regulations. For vessels targeting Pacific whiting, the action clarifies that the retention of prohibited and protected species is allowed until landing. The disposition of prohibited and protected species is specified consistent with the Pacific Coast Groundfish Fishery Management Plan (groundfish FMP), the Pacific Coast Salmon Fishery Management Plan (salmon FMP), and other applicable law.

DATES: Effective January 13, 2016.

ADDRESSES: NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is summarized in the Classification section of this final rule. NMFS also prepared an Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule (Published in the **Federal Register** on August 27, 2015; 80 FR 52015). Copies of the IRFA, FRFA and the Small Entity Compliance Guide are available from William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; or by phone at 206–526–6150. Copies of the Small Entity Compliance Guide are available on the West Coast Region's Web site at *www.westcoast.fisheries.noaa.gov/.*

FOR FURTHER INFORMATION CONTACT: Becky Renko, 206–526–6110; (fax) 206–526–6736; *becky.renko@noaa.gov.*

SUPPLEMENTARY INFORMATION: This action amends the Pacific Coast groundfish fishery regulations to eliminate redundancies and inconsistencies relating to the use of midwater trawl gear in the Shorebased Individual Fishing Quota Program (Shorebased IFQ Program). The action is consistent with policy decisions that the Pacific Fishery Management Council (Council) made during the implementation of a trawl catch share program under Amendment 20 to the groundfish FMP.

Midwater trawl gear has primarily been used to target Pacific whiting, but can also be used to target other groundfish species. Since implementation of the Shorebased IFQ Program in 2011, midwater trawl gear has been increasingly used to target non-whiting groundfish north of 40°10′ north latitude. South of 40°10′ north latitude midwater trawling has been allowed year round in waters deeper than 150 fathoms (fm) for all target species.

In anticipation of the trawl catch share program, groundfish regulations were restructured on October 1, 2010 (75 FR 60868). When the Shorebased IFQ Program was implemented, the midwater Pacific whiting shorebased fishery and the bottom trawl fishery were merged to create a single Shorebased IFQ fishery. Many of the pre-IFQ fishery management measures relating to time and area management were retained in the regulations for use in the Shorebased IFQ Program. However, integrating pre-IFQ regulations with new regulations for the Shorebased IFQ Program resulted in inconsistencies and numerous unclear and confusing management restrictions relating to the use of midwater trawl gear.

This final rule revises groundfish regulations to clarify that midwater trawl gear is required for vessels targeting Pacific whiting during the primary season north of 40°10′ north latitude, and that midwater trawl gear is allowed for vessels targeting non-whiting species during the Pacific whiting Shorebased IFQ Program primary season. Restrictions that allow midwater trawl to only be used by vessels participating in the Pacific whiting Shorebased IFQ fishery are removed. The regulations are revised to clarify that vessels using midwater trawl gear, regardless of the target species, are exempt from the trawl Rockfish Conservation Area (RCA) restrictions in the area north of 40°10′ north latitude during the dates of the Pacific whiting primary season. These changes allow vessels using midwater trawl gear north of 40°10′ north latitude to declare either ''limited entry midwater trawl, non-whiting shorebased IFQ'' or ''limited entry midwater trawl, Pacific whiting shorebased IFQ'' consistent with the target strategy. This action is expected to add clarity to the regulations.

This action also revises the definition of ''Pacific whiting IFQ trip'' consistent with Appendix E of the groundfish FMP, which details the Final Preferred Alternative adopted under Amendment 20, and which is consistent with the Environmental Impact Statement analysis conducted in support of Amendment 20. Appendix E defines non-whiting landings as those with less than 50 percent Pacific whiting by weight.

Groundfish management includes restrictions on the retention of certain non-groundfish species, including prohibited and protected species. Prohibited species include all salmonids, Pacific halibut, and Dungeness crab off Oregon and Washington. Protected species include marine mammals, seabirds, sea turtles, and species such as green sturgeon and eulachon, which are listed under the Endangered Species Act (ESA). Generally, prohibited species must be returned to the sea as soon as practicable with a minimum of injury. An exception to the retention restrictions is made for tagged fish, or when retention is authorized by other applicable law. Pacific halibut may be retained until landing by vessels in the Pacific whiting fishery that do not sort the catch at sea only pursuant to NMFS donation regulations. Amendment 10 to the groundfish FMP and Amendment 12 to the salmon FMP were revised to allow salmon bycatch to be retained until landing in cases where the Council determines it is beneficial to the

management of the groundfish and salmon resources. Under a program approved by the Council and NMFS, salmon remain a prohibited species; and, at a minimum, the requirements must allow for accurate monitoring of the retained salmon and must not provide incentives for fishers to increase salmon bycatch or allow salmon to reach commercial markets.

With implementation of the Shorebased IFQ Program, a maximized retention provision was added to the groundfish regulations for vessels in the Pacific whiting IFQ fishery. However, the provision did not address the retention of prohibited species other than Pacific halibut, nor did it establish handling and disposition requirements for prohibited species. For consistency with the salmon FMP and Pacific halibut regulations, provisions for the retention and disposition of prohibited species are added by this final rule. In addition, general definitions at 50 CFR 660.11 are revised to add a definition for protected species, and handling and disposition requirements are established in the regulations.

Minor changes, as detailed in the preamble of the proposed rule, are made throughout the regulations. These minor changes are being made for consistency between the different subparts of groundfish regulations, for clarity, and to remove redundant regulatory text.

Response to Comments

NMFS received one comment letter on the proposed rule (80 FR 52015, August 27, 2015) from a business representing fishermen engaged in the whiting and non-whiting midwater trawl fisheries. The comment is addressed here:

Comment 1: The commenter indicated that the scope of action was too narrow and should be expanded to allow the use of midwater trawl gear to harvest non-whiting species within the Rockfish Conservation Area (RCA) south of 40°10′ north latitude. Target species for midwater trawling (widow and yellowtail rockfish) are found in the area south of 40°10′ north latitude. The commenter indicated that the current prohibition on non-whiting midwater trawling within or shoreward of the RCA south of 40°10′ north latitude is an artifact of old management regulations and is no longer necessary.

Response: Regulatory provisions to allow non-whiting midwater trawl gear south of 40°10′ north latitude were implemented in 2005. The intent of the allowance was to provide for a chilipepper rockfish fishery without impacting bocaccio, an overfished species. At its September 2015 meeting, the Council considered updating the gear regulations for the Shorebased IFQ program, including allowing non-whiting midwater trawl gear south of 40°10′ north latitude. Further consideration of gear changes is scheduled for the Council's March 2016 meeting. Because this action revises regulations consistent with policy decisions made during the implementation of the trawl catch share program under Amendment 20 to the groundfish FMP, revisions to update gear provisions are not within the scope considered and are therefore inappropriate for this action and best addressed through future Council action.

Changes From the Proposed Rule

There are no changes to the regulatory text from the proposed rule.

Classification

Pursuant to section 304(b)(1)(A) and 305(d) of the MSA, NMFS has determined that this final rule is consistent with the Groundfish FMP, the Magnuson-Stevens 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, NMFS' response to those comments, relevant analysis contained in the action and its EA, and a summary of the analyses in this rule. A copy of the analyses and the EA are available from NMFS (see **ADDRESSES**). A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in the preamble to the proposed rule and this final rule and is not repeated here.

The rule modifies midwater trawl restrictions for vessels participating in the Shorebased IFQ Program under the authority of the groundfish FMP and the Magnuson-Stevens Act. The rule would amend the regulations to remove redundancies and inconsistencies relative to the use of midwater trawl gear, and would add provisions to fully implement ''maximized retention'' allowances for vessels targeting Pacific whiting. Maximized retention encourages full retention of all catch while recognizing that minor discard events may occur. Only one comment was received on the proposed rule (See Response to Comments section above.) That comment did not raise any issues or concerns related to the IRFA or economic issues more generally. No changes were made to this final rule as a result of the comment.

Two alternatives, each with sub-options, were considered.

Alternative 1—No Action

- North of 40°10′ north latitude midwater trawl gear may be used by vessels with a ''Limited entry midwater trawl, Pacific whiting shorebased IFQ'' declaration after the start of the primary season. Vessels may use midwater trawl gear to target Pacific whiting and non-whiting if the vessel also fishes in the Pacific whiting fishery.
- There is no requirement to target or land Pacific whiting on a Pacific whiting IFQ trip.
- Vessels with a ''Limited entry midwater trawl, Pacific whiting shorebased IFQ'' declaration may fish within the RCAs after the start of the primary season.
- Other than Pacific Halibut, prohibited species and protected species retention until landing is prohibited.
- Vessels North of 40°10′ north latitude may carry multiple types of midwater gear and both whiting and non-whiting target strategies are allowed on the same trip, however the vessel must have a valid ''Limited entry midwater trawl, Pacific whiting shorebased IFQ'' declaration.

Alternative 2 (Preferred)—Eliminate Redundancies and Inconsistencies in Regulations Regarding the Use of Midwater Trawl Gear

- Midwater trawl gear will be allowed for all target species with a valid declaration for either ''limited entry midwater trawl, non-whiting shorebased IFQ'' or ''limited entry midwater trawl, Pacific whiting shorebased IFQ.'' Non-whiting vessels would not be obligated to also target Pacific whiting.
- A Pacific whiting IFQ trip must be 50 percent or more whiting by weight at landing.
- Midwater trawl gear will be allowed within the trawl RCAs and EFH conservation areas for all target species.
- For vessels targeting Pacific whiting on ''maximized retention'' trips, prohibited and protected species must be retained until landing.
- The disposition of salmon would be specified such that it is consistent with salmon FMP.
- The disposition of Pacific halibut and Dungeness crab would be specified

so they are consistent with Pacific halibut regulations and state regulations.

• The disposition of protected species would be consistent with the current biological opinions.

• North of 40°10′ north latitude, vessels will be allowed to carry multiple types of midwater gear, but:

Alternative 2 Sub-option A (preferred): Allow only one target strategy (whiting or non-whiting) on a trip.

Alternative 2 Sub-option B: Allow both whiting and non-whiting target strategies on the same trip. However, ''maximized retention'' would not be allowed if the landed catch was greater than 50 percent non-whiting species.

Under No Action, it is unclear whether vessels using midwater trawl north of 40°10′ north latitude must submit a declaration for ''limited entry midwater trawl, Pacific whiting shorebased IFQ'' even if they intend to target non-whiting species. Alternative 2 results in a low positive impact over No Action as it removes the prohibition that restricts midwater trawl to the Pacific whiting fishery north of 40°10′ north latitude and allows for the use of either midwater trawl declaration. Alternative 2 would improve tracking of activity relative to time/area restrictions and the specific target strategy. Aligning the declaration with the activity could allow for a more surgical management response that can be clearly understood by harvesters.

Under No Action, Pacific whiting trips would not be defined. Alternative 2 defines Pacific whiting trips as trips with landings that are 50 percent or more Pacific whiting by weight. Alternative 2 is not expected to have a measureable effect on the vast majority of midwater trawl trips targeting Pacific whiting. Only a small number of vessels may have reduced flexibility under Alternative 2 sub-option A (one target strategy per trip) because a vessel operator cannot change the target fishing strategy after they leave port. However, sub-option A is most similar to how harvesters currently operate. Either sub-option provides clarity and eliminates inconsistencies, making the regulations less complicated for harvesters and easier to enforce. Revising the groundfish regulations for clarity under Alternative 2 is expected to provide more equitable opportunity for non-whiting vessels north of 40°10′ north latitude as it is clear they do not need to also fish for Pacific whiting.

Time/Area restrictions under No Action include Rockfish Conservation Areas (RCAs), Klamath River conservation zone, Columbia River conservation zone, Ocean Salmon Conservation Zones (OSCZs), Bycatch Reduction Areas (BRAs), the Eureka area 100 fm restriction, prohibition on night fishing south of 42°00′ north latitude, and the Pacific whiting primary seasons. These restrictions were initially implemented to reduce incidental catch of Chinook salmon in the Pacific whiting fisheries. The Klamath River conservation zone, Columbia River conservation zone, OSCZs, and the prohibition on night fishing are specific to the targeting of Pacific whiting and would remain linked to the targeting of whiting under both No Action and Alternative 2. The impacts of No Action on the closed areas are neutral as no changes would be made to reduce the confusion by fishermen or enforcement about prohibited or allowed activities. Because widow rockfish were historically targeted at night with low bycatch, Alternative 2 revisions would clearly state that the prohibition on night fishing does not apply to non-whiting targeting. BRAs have evolved since their initial implementation in 2007 when they applied specifically to the targeting of whiting. Since 2013, the BRAs have been considered a tool for use in the Pacific whiting sectors (all midwater trawl). Alternative 2 revisions would clearly state that the BRAs and RCA exemptions apply to all midwater trawl. Providing clarification on how time/area restrictions relate to specific target fishing activity under Alternative 2 is expected to reduce regulatory complexity and eliminate contradictory regulations. Changes under Alternative 2 are expected to be beneficial to the harvesters, managers, and enforcement.

Maximized retention is allowed under No Action. However, supporting regulations would not be added to reduce confusion regarding the landing of maximized retention catch for non-whiting target strategies. Provisions would not be added to allow the retention of prohibited species under No Action. The socio-economic impacts of managing under No Action are neutral, providing that restrictions on the retention of prohibited species continue to be unenforced. Alternative 2 would revise the regulations to clearly state that maximized retention would only be allowed for trips targeting Pacific whiting, consistent with the provisions of Amendment 20. Because of relatively low bycatch by vessels targeting Pacific whiting, maximized retention allows sorting to be delayed until landing. Because whiting flesh deteriorates rapidly once the fish are caught, whiting must be minimally handled and immediately chilled to maintain the flesh quality. Allowing Pacific whiting shoreside vessels to retain unsorted catch benefits harvesters by enabling whiting quality to be maintained. Under Alternative 2, provisions would be added to allow Pacific whiting vessels to retain otherwise prohibited species until landing. Non-whiting vessels would have to continue to sort prohibited and protected species at sea. Some non-whiting landings under maximized retention have had a greater variety in bycatch than is typically seen in Pacific whiting landings and have been landed at first receivers with only one catch monitor. Long offloads associated with sorting and weighing non-whiting maximized retention catch has resulted in offload time exceeding the catch monitor's allowed work hours in a 24 hour period. Alternative 2 would also provide clarification on the disposition of protected species for maximized retention landings. Revisions to the maximized retention requirements under Alternative 2 are expected to reduce regulatory complexity and eliminate contradictory regulations, benefiting harvesters.

Under No Action, Pacific whiting trips would continue to be undefined and no protocols for handling or disposing of prohibited or protected species would be defined. The impacts of No Action are neutral, as first receivers would use current methods to identify maximized retention deliveries and determine how to handle and dispose of prohibited and protected species. Defining Pacific whiting trips under Alternative 2 should make it easier for first receivers/processors to identify which trips are classified as ''maximized retention'' such that it would be more clear which groundfish regulations apply. Alternative 2 specifies handling and disposition of prohibited and protected species. Clear protocols for the disposition of prohibited catch should reduce complexity and confusion for first receivers/processors. Currently, provisions that affect the disposition of prohibited or protected species exist in various federal regulations, non-groundfish FMPs, and ESA biological opinions. Clarifying these provisions in the groundfish regulations will reduce complexity in the requirements for disposition and handling of maximized retention catch and result in a low positive benefit to first receivers/processors. First receivers are currently taking salmon and grinding and processing the fish into fish meal and/or providing edible fish to food pantries, soup kitchens, or other non-profit

organizations. In some states, state agencies have assisted in the transfer of fish to food banks, but this assistance is being withdrawn. However, NMFS concludes that these new regulations do not impose any significant burden on first receivers as they are consistent with current first receiver practices and with prior practices established under the 2007–2010 whiting EFPs.

This action will clarify the regulatory requirements for vessels using midwater trawl gear in the Pacific Coast Groundfish Fishery Shorebased Individual Fishery Quota Program. This action is needed to eliminate inconsistencies and confusion in the current regulations. For vessels targeting Pacific whiting, the action would clarify that the retention of prohibited and protected species is allowed until landing. The disposition of prohibited and protected species would be specified consistent with the Pacific Coast Groundfish Fishery Management Plan, the Pacific Coast Salmon Fishery Management Plan, and other applicable law.

The NMFS Guidelines for Economic Analysis of Fishery Management Actions suggest two criteria to consider in determining the significance of regulatory impacts, namely, disproportionality and profitability. As this final rule is intended to clarify the regulations, available information does not indicate that there will be a significant impact in terms of disproportionality and profitability when comparing small versus large businesses. Copies of the Small Entity Compliance Guide prepared for this final rule are available on the West Coast Region's Web site at *http://www.westcoast.fisheries.noaa.gov/.*

This final rule contains a new collection of information requirement subject to review under the Paperwork Reduction Act (PRA) which was approved by OMB under collection 0648–0619. The public reporting burden for first receivers to retain records showing the disposition of prohibited and protected species is estimated to average 1 minute per response.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Pursuant to Executive Order 13175, this action is consistent with policy decisions that the Council made during the implementation of Amendment 20 to the Pacific Coast Groundfish Fishery Management Plan, which was developed after meaningful consultation and collaboration with tribal officials from the area covered by the groundfish FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. The proposed regulations do not have a direct effect on the tribes. This rule eliminates redundancies and inconsistencies with state law relative to the use of midwater trawl gear and does not have a direct effect on tribes.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: December 7, 2015.

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 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.11:

■ a. Add in alphabetical order a definition for ''Protected species'';

■ b. Remove the definition of ''Trawl fishery''; and

■ c. Add in alphabetical order a definition for ''Trawl fishery or Limited entry trawl fishery''.

The additions read as follows:

§ 660.11 General definitions.

* * * * *

Protected species means those species, other than prohibited species, that are protected under Federal law, including species listed under the Endangered Species Act, marine mammals protected under the Marine Mammal Protection Act, and bird species protected under the Migratory Bird Treaty Act. Species that are both protected and prohibited are considered prohibited species for purposes of this part.

* * * * *

Trawl fishery or Limited entry trawl fishery means the groundfish limited entry trawl fishery referred to in subparts C and D, which is composed of vessels registered to a limited entry permit with a trawl endorsement and vessels registered to an MS permit. The trawl fishery is comprised of the following sectors: Catcher/Processor, Mothership, and Shorebased IFQ. The trawl fishery does not include the non-groundfish trawl fisheries, which are all within the open access fishery.

* * * * *

■ 3. In § 660.12, revise paragraphs (a)(1), (10), and (11) to read as follows:

§ 660.12 General groundfish prohibitions.

* * * * *

(a) * * *

(1) Retain any prohibited or protected species caught by means of fishing gear authorized under this subpart, unless otherwise authorized. Except as otherwise authorized, prohibited and protected species must be returned to the sea as soon as practicable with a minimum of injury when caught and brought on board.

* * * * *

(10) Transfer fish to another vessel at sea unless the vessel transferring fish is participating in the MS Coop or C/P Coop Programs.

(11) Fail to remove all fish from the vessel at landing (defined in § 660.11) and prior to beginning a new fishing trip, except for processing vessels participating in the MS Coop or C/P Coop Programs.

* * * * *

■ 4. In § 660.55, revise paragraphs (c)(1)(i)(A) through (C) to read as follows:

§ 660.55 Allocations.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) *Darkblotched rockfish.* Allocate 9 percent or 25 mt, whichever is greater, of the total trawl allocation of darkblotched rockfish to the Pacific whiting fishery (MS sector, C/P sector, and Shorebased IFQ sectors). The distribution of allocation of darkblotched to each of these sectors will be done pro rata relative to the sector's allocation of the commercial harvest guideline for Pacific whiting. After deducting allocations for the Pacific whiting fishery, the remaining trawl allocation is allocated to the Shorebased IFQ sector.

(B) *Pacific Ocean Perch (POP).* Allocate 17 percent or 30 mt, whichever is greater, of the total trawl allocation of POP to the Pacific whiting fishery (MS sector, C/P sector, and Shorebased IFQ sector). The distribution of POP to each sector will be done pro rata relative to the sector's allocation of the commercial harvest guideline for Pacific whiting. After deducting allocations for the Pacific whiting fishery, the remaining

trawl allocation is allocated to Shorebased IFQ sector.

(C) *Widow rockfish.* Allocate 52 percent of the total trawl allocation of widow rockfish to the Pacific whiting fishery if the stock is under rebuilding, or 10 percent of the total trawl allocation or 500 mt of the trawl allocation, whichever is greater, if the stock is rebuilt. The distribution of the trawl allocation of widow to each sector will be done pro rata relative to the sector's allocation of the commercial harvest guideline for Pacific whiting. After deducting allocations for the Pacific whiting sectors, the remaining trawl allocation is allocated to Shorebased IFQ sector.

* * * * *

■ 5. In § 660.60, revise paragraphs (c)(3)(i) and (d) and remove and reserve paragraph (e).

The revisions read as follows:

§ 660.60 Specifications and management measures.

* * * * *

(c) * * *

(3) * * *

(i) *Depth-based management measures.* Depth-based management measures, particularly closed areas known as Groundfish Conservation Areas, may be implemented in any fishery sector that takes groundfish directly or incidentally. Depth-based management measures are set using specific boundary lines that approximate depth contours with latitude/longitude waypoints found at §§ 660.70 through 660.74. Depth-based management measures and closed areas may be used for the following conservation objectives: To protect and rebuild overfished stocks; to prevent the overfishing of any groundfish species by minimizing the direct or incidental catch of that species; or to minimize the incidental harvest of any protected or prohibited species taken in the groundfish fishery. Depth-based management measures and closed areas may be used for the following economic objectives: To extend the fishing season; for the commercial fisheries, to minimize disruption of traditional fishing and marketing patterns; for the recreational fisheries, to spread the available catch over a large number of anglers; to discourage target fishing while allowing small incidental catches to be landed; and to allow small fisheries to operate outside the normal season. BRAs may be implemented as an automatic action in the Pacific whiting fishery consistent with paragraph (d)(1) of this section. BRAs may be implemented as a routine action for vessels using midwater groundfish trawl gear consistent with the purposes for implementing depth-based management and the setting of closed areas as described in this paragraph.

* * * * *

(d) *Automatic actions.* Automatic management actions may be initiated by the NMFS Regional Administrator or designee without prior public notice, opportunity to comment, or a Council meeting. These actions are nondiscretionary, and the impacts must have been taken into account prior to the action. Unless otherwise stated, a single notice will be published in the **Federal Register** making the action effective if good cause exists under the APA to waive notice and comment.

(1) Automatic actions are used to:

(i) Close the MS or C/P sector when that sector's Pacific whiting allocation is reached, or is projected to be reached. The MS sector non-coop fishery may be closed by automatic action when the Pacific whiting or non-whiting allocation to the non-coop fishery has been reached or is projected to be reached.

(ii) Close one or both MS and C/P sectors when a non-whiting groundfish species with allocations is reached or projected to be reached.

(iii) Reapportion unused allocations of non-whiting groundfish species between the MS and C/P sectors.

(iv) Reapportion the unused portion of the tribal allocation of Pacific whiting to the MS sector, C/P sector, and Shorebased IFQ sector.

(v) Implement the Ocean Salmon Conservation Zone, described at § 660.131, when NMFS projects the Pacific whiting fishery and the tribal whiting fishery combined will take in excess of 11,000 Chinook within a calendar year.

(vi) Implement BRAs, described at § 660.131, when NMFS projects a sector-specific allocation will be reached before the sector's whiting allocation.

(2) Automatic actions are effective when actual notice is sent by NMFS identifying the effective time and date. Actual notice to fishers and processors will be by email, Internet *www.westcoast.fisheries.noaa.gov/publications/fishery_management/groundfish/public_notices/recent_public_notices.html*), phone, letter, or press release. Allocation reapportionments will be followed by publication in the **Federal Register**, in which public comment will be sought for a reasonable period of time thereafter.

* * * * *

■ 6. In § 660.100, revise the first sentence to read as follows:

§ 660.100 Purpose and scope.

This subpart applies to the Pacific coast groundfish limited entry trawl fishery. * * *

■ 7. In § 660.111:

■ a. Remove the definition for ''Catcher/Processor Coop Program or C/P Coop Program'';

■ b. Add definition for ''Catcher/Processor Coop Program or C/P Coop sector'';

■ c. Add in alphabetical order a definition for ''Maximized retention'';

■ d. Revise the definition for ''Mothership Coop Program or MS Coop Program'';

■ e. Add a definition for ''Mothership Coop Program or MS Coop sector'';

■ f. Add in alphabetical order a definition for ''Pacific whiting fishery''; and

■ g. Revise the definitions for ''Pacific whiting IFQ fishery,'' ''Pacific whiting IFQ trip,'' and ''Shorebased IFQ Program''.

The revisions and additions read as follows:

§ 660.111 Trawl fishery—definitions.

* * * * *

Catcher/Processor (C/P) Coop Program or C/P sector, refers to the fishery described at § 660.160, subpart D. The C/P Coop Program is composed of vessels registered to a limited entry permit with a C/P endorsement and a valid declaration for limited entry, midwater trawl, Pacific whiting catcher/processor sector.

* * * * *

Maximized retention means a vessel retains all catch from a trip until landing, subject to the specifications of this subpart.

* * * * *

Mothership (MS) Coop Program or MS sector refers to the fishery described at § 660.150, subpart D, and includes both the coop and non-coop fisheries. The MS Coop Program is composed of motherships with MS permits and catcher vessels registered to a limited entry permit with an MS/CV endorsement and a valid declaration for limited entry, midwater trawl, Pacific whiting mothership sector. The MS Coop Program also includes vessels registered to a limited entry permit without an MS/CV endorsement if the vessel is authorized to harvest the MS sector's allocation and has a valid declaration for limited entry, midwater trawl, Pacific whiting mothership sector.

* * * * *

Pacific whiting fishery refers to the Pacific whiting primary season fisheries described at § 660.131. The Pacific

whiting fishery is composed of vessels participating in the C/P Coop Program, the MS Coop Program, or the Pacific whiting IFQ fishery.

Pacific whiting IFQ fishery is composed of vessels on Pacific whiting IFQ trips.

Pacific whiting IFQ trip means a trip in which a vessel uses midwater groundfish trawl gear during the dates of the Pacific whiting primary season to target Pacific whiting, and Pacific whiting constitutes 50 percent or more of the catch by weight at landing as reported on the state landing receipt. Vessels on Pacific whiting IFQ trips must have a valid declaration for limited entry midwater trawl, Pacific whiting shorebased IFQ.

* * * * *

Shorebased IFQ Program or Shorebased IFQ sector, refers to the fishery described at § 660.140, subpart D, and includes all vessels on IFQ trips.

* * * * *

■ 8. In § 660.112, revise paragraphs (a)(2), (b)(1)(viii) through (x), and (b)(2)(ii) to read as follows:

§ 660.112 Trawl fishery—prohibitions.

* * * * *

(a) * * *

(2) *Sorting, retention, and disposition.* (i) Fail to sort, retain, discard, or dispose of catch consistent with the requirements specified at §§ 660.130(d), 660.140 (b)(2)(iii) and (viii), 660.140(g), and 660.140(j)(2).

(ii) Fail to sort, retain, discard, or dispose of prohibited and protected species from maximized retention landings consistent with the requirements specified at § 660.140(g)(3).

(iii) Retain for personal use or allow to reach commercial markets any part of any prohibited or protected species.

* * * * *

(b) * * *

(1) * * *

(viii) Fish on a Pacific whiting IFQ trip with a gear other than midwater groundfish trawl gear.

(ix) Fish on a Pacific whiting IFQ trip without a valid declaration for limited entry midwater trawl, Pacific whiting shorebased IFQ.

(x) Use midwater groundfish trawl gear Pacific whiting IFQ fishery primary season dates as specified at § 660.131(b).

* * * * *

(2) * * *

(ii) Fail to sort or dispose of catch received from an IFQ trip in accordance with the requirements of §§ 660.130(d) and 660.140(g)(3).

* * * * *

■ 9. In § 660.130:

■ a. Revise paragraphs (a), (c)(3), and (c)(4)(i)(A) through (E);

■ b. Remove paragraph (c)(4)(i)(F);

■ c. Revise paragraphs (d)(2)(i), (d)(3), (e) introductory text, and (e)(4)(i) and (ii); and

■ d. Add paragraphs (e)(6) and (7).

The revisions and additions read as follows:

§ 660.130 Trawl fishery—management measures.

(a) *General.* This section applies to the limited entry trawl fishery. Most species taken in the limited entry trawl fishery will be managed with quotas (see § 660.140), allocations or set-asides (see § 660.150 or § 660.160), or cumulative trip limits (see trip limits in Tables 1 (North) and 1 (South) of this subpart), size limits (see § 660.60 (h)(5), subpart C), seasons (see Pacific whiting at § 660.131(b), subpart D), gear restrictions (see paragraph (b) of this section) and closed areas (see paragraph (e) of this section and §§ 660.70 through 660.79, subpart C). The limited entry trawl fishery has gear requirements and harvest limits that differ by the type of groundfish trawl gear on board and the area fished. Groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph (e)(1) of this section and § 660.70, subpart C). The trip limits in Tables 1 (North) and 1 (South) of this subpart applies to vessels participating in the limited entry trawl fishery and may not be exceeded. Federal commercial groundfish regulations are not intended to supersede any more restrictive state commercial groundfish regulations relating to federally-managed groundfish.

* * * * *

(c) * * *

(3) *Fishing with midwater groundfish trawl gear.* (i) North of 40°10′ N. lat., midwater groundfish trawl gear is required for Pacific whiting fishery vessels; midwater groundfish trawl gear is allowed for vessels targeting non-whiting species during the Pacific whiting primary season for the Pacific whiting IFQ fishery. Also see restrictions on the use of midwater groundfish trawl gear within the RCAs north of 40°10′ N. lat. at § 660.130(e)(4)(i).

(ii) South of 40°10′ N. lat., midwater groundfish trawl gear is prohibited shoreward of the RCA boundaries and permitted seaward of the RCA boundaries.

(4) * * *

(i) * * *

(A) A vessel may not have both groundfish trawl gear and non-groundfish trawl gear onboard simultaneously. A vessel may not have both bottom groundfish trawl gear and midwater groundfish trawl gear onboard simultaneously. A vessel may have more than one type of limited entry bottom trawl gear on board, either simultaneously or successively, during a cumulative limit period. A vessel may have more than one type of midwater groundfish trawl gear on board, either simultaneously or successively, during a cumulative limit period.

(B) If a vessel fishes exclusively with large or small footrope trawl gear during an entire cumulative limit period, the vessel is subject to the small or large footrope trawl gear cumulative limits and that vessel must fish seaward of the RCA boundaries during that limit period.

(C) If a vessel fishes exclusively with selective flatfish trawl gear during an entire cumulative limit period, then the vessel is subject to the selective flatfish trawl gear-cumulative limits during that limit period, regardless of whether the vessel is fishing shoreward or seaward of the RCA boundaries.

(D) If more than one type of bottom groundfish trawl gear (selective flatfish, large footrope, or small footrope) is on board, either simultaneously or successively, at any time during a cumulative limit period, then the most restrictive cumulative limit associated with the bottom groundfish trawl gear on board during that cumulative limit period applies for the entire cumulative limit period, regardless of whether the vessel is fishing shoreward or seaward of the RCA.

(E) If a vessel fishes both north and south of 40°10′ N. lat. with any type of small footrope gear onboard the vessel at any time during the cumulative limit period, the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear (See crossover provisions at § 660.120.)

* * * * *

(d) * * *

(2) * * *

(i) *First receivers.* Fish landed at IFQ first receivers (including shoreside processing facilities and buying stations that intend to transport catch for processing elsewhere) must be sorted, prior to first weighing after offloading from the vessel and prior to transport away from the point of landing, with the following exception: Catch from a Pacific whiting IFQ trip may be sorted after weighing as specified at § 660.140(j)(2).

* * * * *

(3) *Sorting requirements for the MS Coop and the C/P Coop Programs.* (i)

Processing vessels in the MS and C/P Coop Programs may use a bulk weighing scale in compliance with the equipment requirement at § 660.15(b) to derive an accurate total catch weight prior to sorting. Immediately following weighing of the total catch, the catch must be sorted to the species groups specified in paragraph (d)(1) of this section and all catch of-groundfish and non-groundfish species must be accurately accounted for and the weight of all catch other than a single predominant species deducted from the total catch weight to derive the weight of a single predominant species.

(ii) If sorting occurs on a catcher vessel in the MS Coop Program, the catch must not be discarded from the vessel and the vessel must not mix catch from hauls until the observer has sampled the catch.

(e) *Groundfish conservation areas (GCAs) applicable to trawl vessels.* A GCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude. The latitude and longitude coordinates of the GCA boundaries are specified at §§ 660.70 through 660.74. A vessel that is fishing within a GCA listed in this paragraph (e) with trawl gear authorized for use within a GCA may not have any other type of trawl gear on board the vessel. The following GCAs apply to vessels participating in the limited entry trawl fishery. Additional closed areas that specifically apply to vessels using midwater groundfish trawl gear are described at § 660.131(c).

* * * * *

(4) * * *

(i) Operating a vessel with groundfish trawl gear onboard within a trawl RCA is prohibited, except for the purpose of continuous transit, or under the following conditions when the vessel has a valid declaration for the allowed fishing:

(A) Midwater groundfish trawl gear may be used within the RCAs north of 40°10′ N. lat. by vessels targeting Pacific whiting or non-whiting during the applicable Pacific whiting primary season.

(B) Vessels fishing with demersal seine gear between 38° N. lat. and 36° N. lat. shoreward of a boundary line approximating the 100 fm (183 m) depth contour as defined at § 660.73, subpart C, may have groundfish trawl gear onboard.

(ii) Trawl vessels may transit through an applicable GCA, with or without groundfish on board, provided all groundfish trawl gear is stowed either: Below deck; or if the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; or remaining on deck uncovered if the trawl doors are hung from their stanchions and the net is disconnected from the doors. These restrictions do not apply to vessels allowed to fish within the trawl RCA under paragraph (e)(4)(i) of this section.

* * * * *

(6) *Bycatch reduction areas (BRAs).* Vessels using midwater groundfish trawl gear during the applicable Pacific whiting primary season may be prohibited from fishing shoreward of a boundary line approximating the 75 fm (137 m), 100 fm (183 m) or 150 fm (274 m) depth contours.

(7) *Eureka management area midwater trawl trip limits.* No more than 10,000-lb (4,536 kg) of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished with midwater groundfish trawl gear in the fishery management area shoreward of the 100 fm (183 m) depth contour in the Eureka management area.

■ 10. In § 660.131, revise paragraphs (a), (b)(1), (b)(2) introductory text, (b)(2)(i) and (ii), (b)(2)(iii) introductory text, (b)(3) introductory text, (b)(3)(ii), (c) introductory text, (c)(4), (d), and (h)(2) to read as follows:

§ 660.131 Pacific whiting fishery management measures.

(a) *General.* This section applies to the MS sector, the C/P sector, the Pacific whiting IFQ fishery, and Shorebased IFQ vessels targeting Pacific whiting under trip limits outside the Pacific whiting primary season.

(b) *Pacific whiting primary seasons and Pacific whiting trip limits*—(1) *Pacific whiting fishery primary seasons.* (i) For the Pacific whiting IFQ fishery, the primary season is the period(s) of the large-scale Pacific whiting target fishery conducted after the primary season start date.

(ii) For the C/P sector, the primary season is the period(s) when catching and at-sea processing are allowed (after the season closes, at-sea processing of any fish already on board the processing vessel is allowed to continue).

(iii) For vessels delivering to motherships, the primary season is the period(s) when catching and at-sea processing is allowed for the MS sector (after the season closes, at-sea processing of any fish already on board the processing vessel is allowed to continue).

(2) *Different primary season start dates.* North of 40°30′ N. lat., different primary season starting dates may be established for the C/P Coop Program, the MS Coop Program, and the Pacific whiting IFQ fishery for vessels delivering to IFQ first receivers north of 42° N. lat. and vessels delivering to IFQ first receivers between 42° and 40°30′ N. lat.

(i) *Procedures.* The Pacific whiting primary seasons north of 40°30′ N. lat. generally will be established according to the procedures of the PCGFMP for developing and implementing harvest specifications and apportionments. The season opening dates remain in effect unless changed.

(ii) *Criteria.* The start of a Pacific whiting primary season may be changed based on a recommendation from the Council and consideration of the following factors, if applicable: Size of the harvest guidelines for whiting and bycatch species; age/size structure of the whiting population; expected harvest of bycatch and prohibited species; availability and stock status of prohibited species; expected participation by catchers and processors; the period between when catcher vessels make annual processor obligations and the start of the fishery; environmental conditions; timing of alternate or competing fisheries; industry agreement; fishing or processing rates; and other relevant information.

(iii) *Primary whiting season start dates and duration.* After the start of a primary season for a sector of the Pacific whiting fishery, the primary season remains open for that sector until the sector allocation of whiting or non-whiting groundfish (with allocations) is reached or projected to be reached and the primary season for that sector is closed by NMFS. The starting dates for the primary seasons are as follows:

* * * * *

(3) *Pacific whiting trip limits.* For Shorebased IFQ Program vessels targeting Pacific whiting outside the primary season, the ''per trip'' limit for whiting is announced in Table 1 of this subpart. The per-trip limit is a routine management measure under § 660.60(c). This trip limit includes any whiting caught shoreward of 100 fm (183 m) in the Eureka management-area. The per-trip limit for other groundfish species are announced in Table 1 (North) and Table 1 (South) of this subpart and apply as follows:

* * * * *

(ii) If a vessel on a Pacific whiting IFQ trip harvests a groundfish species other than whiting for which there is a midwater trip limit, then that vessel may also harvest up to another footrope-specific limit for that species during any

cumulative limit period that overlaps the start or close of the primary season.

(c) *Closed areas.* Vessels fishing during the Pacific whiting primary seasons shall not target Pacific whiting with midwater groundfish trawl gear in the following portions of the fishery management area:

* * * * *

(4) *Bycatch reduction areas (BRAs).* Bycatch reduction area closures specified at § 660.130(e) may be implemented inseason through automatic action when NMFS projects that a Pacific whiting sector will exceed an allocation for a non-whiting groundfish species specified for that sector before the sector's whiting allocation is projected to be reached.

(d) *Eureka management area trip limits.* Trip landing or frequency limits may be established, modified, or removed under § 660.60 or this paragraph, specifying the amount of Pacific whiting that may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100 fathom (183 m) contour in the Eureka management area. Unless otherwise specified, no more than 10,000-lb (4,536 kg) of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100 fm (183 m) contour in the Eureka management area.

* * * * *

(h) * * *

(2) The reapportionment of surplus whiting will be made by actual notice under the automatic action authority provided at § 660.60(d)(1).

* * * * *

■ 11. In § 660.140, revise paragraph (a) introductory text, (b)(2)(i) through (iii), (g), and (j)(2)(viii) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(a) *General.* The regulations in this section apply to the Shorebased IFQ Program. The Shorebased IFQ Program includes a system of transferable QS for most groundfish species or species groups, IBQ for Pacific halibut, and trip limits or set-asides for the remaining groundfish species or species groups. NMFS will issue a QS permit to eligible participants and will establish a QS account for each QS permit owner to track the amount of QS or IBQ and QP or IBQ pounds owned by that owner. QS permit owners may own QS or IBQ for IFQ species, expressed as a percent of the allocation to the Shorebased IFQ Program for that species. NMFS will issue QP or IBQ pounds to QS permit owners, expressed in pounds, on an annual basis, to be deposited in the corresponding QS account. NMFS will establish a vessel account for each eligible vessel owner participating in the Shorebased IFQ Program, which is independent of the QS permit and QS account. In order to use QP or IBQ pounds, a QS permit owner must transfer the QP or IBQ pounds from the QS account into the vessel account for the vessel to which the QP or IBQ pounds is to be assigned. Harvests of IFQ species may only be delivered to an IFQ first receiver with a first receiver site license. In addition to the requirements of this section, the Shorebased IFQ Program is subject to the following groundfish regulations of subparts C and D:

* * * * *

(b) * * *

(2) * * *

(i) Ensure that all catch removed from a vessel making an IFQ delivery is weighed on a scale or scales meeting the requirements described in § 660.15(c).

(ii) Ensure that all catch is landed, sorted, and weighed in accordance with a valid catch monitoring plan as described in § 660.140(f)(3)(iii).

(iii) Ensure that all catch is sorted, prior to first weighing, as specified at § 660.130(d) and consistent with § 660.140(j)(2)(viii).

* * * * *

(g) *Retention and disposition requirements*—(1) *General.* Shorebased IFQ Program vessels may discard IFQ species/species groups, provided such discards are accounted for and deducted from QP in the vessel account. With the exception of vessels on Pacific whiting IFQ trips engaged in maximized retention, prohibited and protected species must be discarded at sea; Pacific halibut must be discarded as soon as practicable and the discard mortality must be accounted for and deducted from IBQ pounds in the vessel account. Non-IFQ species and non-groundfish species may be discarded at sea. The sorting of catch, the weighing and discarding of any IBQ and IFQ species, and the retention of IFQ species must be monitored by the observer.

(2) *Maximized retention for Pacific whiting IFQ trips.* Vessels on Pacific whiting IFQ trips may engage in maximized retention. Maximized retention allows for the discard minor operational amounts of catch at sea if the observer has accounted for the discard. Vessels engaged in maximized retention must retain prohibited species until landing. Protected species may be retained until landing except as provided under paragraph (g)(3) of this section. Pacific halibut must be accounted for and deducted from IBQ pounds in the vessel account.

(3) *Disposition of prohibited species and protected species in maximized retention landings*—(i) *Prohibited species handling and disposition.* To ensure compliance with fishery regulations at 50 CFR part 300, subparts E and F, and part 600, subpart H; with the Pacific Salmon Fishery Management Plan; and with the Pacific Halibut Catch Share Plan; the handling and disposition of all prohibited species in maximized retention landings are the responsibility of the first receiver and must be consistent with the following requirements:

(A) Any prohibited species landed at first receivers must not be transferred, processed, or mixed with another landing until the catch monitor has: recorded the number and weight of salmon by species; inspected all prohibited species for tags or marks; and, collected biological data, specimens, and genetic samples.

(B) No part of any prohibited species may be retained for personal use by a vessel owner or crew member, or by a first receiver or processing crew member. No part of any prohibited species may be allowed to reach commercial markets.

(C) Prohibited species suitable for human consumption at landing must be handled and stored to preserve the quality. Priority in disposition must be given to the donation to surplus food collection and distribution system operated and established to assist in bringing donated food to nonprofit charitable organizations and individuals for the purpose of reducing hunger and meeting nutritional needs.

(D) The first receiver must report all prohibited species landings on the electronic fish ticket and is responsible for maintaining records verifying the disposition of prohibited species. Records on catch disposition may include, but are not limited to: Receipts from charitable organizations that include the organization's name and amount of catch donated; cargo manifests setting forth the origin, weight, and destination of all prohibited species; or disposal receipts identifying the recipient organization and amount disposed. Any such records must be maintained for a period not less than three years after the date of disposal and such records must be provided to OLE upon request.

(ii) *Protected Species handling and disposition.* All protected species must be abandoned to NMFS or the US Fish and Wildlife Service or disposed of

consistent with paragraphs (g)(3)(ii)(A) and (B) of this section. No part of any protected species may be retained for personal use by a vessel owner or crew member, or by a first receiver or processing crew member. No part of any protected species may be allowed to reach commercial markets.

(A) *Eulachon and green sturgeon.* Must be sorted and reported by species on electronic fish tickets and state landing receipts and may not be reported in unspecified categories. Whole body specimens of green sturgeon must be retained, frozen, stored separately by delivery, and labeled with the vessel name, electronic fish ticket number, and date of landing. Arrangements for transferring the specimens must be made by contacting NMFS Southwest Fisheries Science Center at 831–420–3903 within 72 hours after the completion of the offload.

(B) *Seabirds, marine mammals, and sea turtles.* Albatross must reported to the U.S. Fish and Wildlife Service 541–867–4558 extension 237 or 503–231–6179) as soon as possible and directions for surrendering must be followed. Marine mammals and sea turtles must be reported to NMFS as soon as possible (206–526–6550) and directions for surrendering or disposal must be followed. Whole body specimens must labeled with the vessel name, electronic fish ticket number, and date of landing. Whole body specimens must be kept frozen or on ice until arrangements for surrendering or disposing are completed. Unless directed otherwise, after reporting is completed, seabirds, marine mammals, and sea turtles may be disposed by incinerating, rendering, composting, or returning the carcasses to sea.

* * * * *

(j) * * *

(2) * * *

(viii) *Pacific whiting IFQ trips.* Immediately following weighing of the total catch and prior to processing or transport away from the point of landing, the catch must be sorted to the species groups specified at § 660.130(d) and all catch other than the target species (groundfish and non groundfish species) must be accurately weighed and the weight of non-target species deducted from the total catch weight to derive the weight of a single predominant species. Catch from a Pacific whiting IFQ trip may be sorted after weighing and the weight of a single predominant species determined by deducting the weight of all other species from the total weight of the landing, provided that:

(A) The unsorted catch is weighed on a bulk weighing scale in compliance with equipment requirements at § 660.15(c);

(B) All catch (groundfish and non-groundfish species) in the landing other than the single predominant species is reweighed on a scale in compliance with equipment requirements at § 660.15(c) and the reweighed catch is deducted from the total weight of the landing;

(C) The catch is sorted to the species groups specified at § 660.130(d) prior to processing or transport away from the point of landing; and

(D) Prohibited species are sorted by species, counted, and weighed.

* * * * *

■ 12. In § 660.405, revise paragraph (a) introductory text to read as follows:

§ 660.405 Prohibitions.

(a) In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following, except as otherwise authorized under this part:

* * * * *

[FR Doc. 2015–31363 Filed 12–11–15; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 140918791–4999–02]

RIN 0648–XE354

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Central Regulatory Area of the Gulf of Alaska Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from catcher vessels using trawl gear to vessels using pot gear in the Central Regulatory Area of the Gulf of Alaska management area (GOA). This action is necessary to allow the 2015 total allowable catch of Pacific cod in the Central Regulatory Area of the GOA to be harvested.

DATES: Effective December 10, 2015, through 2400 hours, Alaska local time (A.l.t.), December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

The 2015 Pacific cod total allowable catch (TAC) specified for catcher vessels using trawl gear in the Central Regulatory Area of the GOA is 18,933 metric tons (mt), as established by the final 2015 and 2016 harvest specifications for groundfish in the GOA (80 FR 10250, February 25, 2015). The Administrator, Alaska Region (Regional Administrator) has determined that catcher vessels using trawl gear in the Central Regulatory Area of the GOA will not be able to harvest 2,000 mt of the 2015 Pacific cod TAC allocated to those vessels under § 679.20(a)(12)(i)(B).

In accordance with § 679.20(a)(12)(ii)(B), the Regional Administrator has also determined that vessels using pot gear in the Central Regulatory Area of the GOA currently have the capacity to harvest this excess allocation and reallocates 2,000 mt to vessels using pot gear.

The harvest specifications for Pacific cod in the Central Regulatory Area of the GOA included in the final 2015 harvest specifications for groundfish in the GOA (80 FR 10250, February 25, 2014) are revised as follows: 16,933 mt for catcher vessels using trawl gear and 14,660 mt for vessels using pot gear.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified from catcher vessels using trawl gear in the Central Regulatory Area of the GOA to vessels using pot

gear in the Central Regulatory Area of the GOA. Since the fishery is currently ongoing, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 8, 2015.

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

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

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

Dated: December 9, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–31386 Filed 12–9–15; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 80, No. 239
Monday, December 14, 2015

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Doc. No. AMS–FV–15–0038; FV15–983–1 PR]

Pistachios Grown in California, Arizona, and New Mexico; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Administrative Committee for Pistachios (Committee) to increase the assessment rate established for the 2015–16 and subsequent production years from $0.0005 to $0.0035 per pound of assessed weight pistachios handled under the marketing order for pistachios grown in California, Arizona, and New Mexico. The Committee locally administers the order and is comprised of producers and handlers of pistachios operating within the area of production. Assessments upon pistachio handlers are used by the Committee to fund reasonable and necessary expenses of the program. The production year begins on September 1 and ends August 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by December 29, 2015.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Peter Sommers, Marketing Specialist, or Martin Engeler, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or Email: *PeterR.Sommers@ams.usda.gov* or *Martin.Engeler@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 983, as amended (7 CFR part 983), regulating the handling of pistachios grown in California, Arizona, and New Mexico, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 13175.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California, Arizona, and New Mexico pistachio handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable pistachios beginning on September 1, 2015, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule would increase the assessment rate for the 2015–16 and subsequent production years from $0.0005 to $0.0035 per pound of assessed weight pistachios.

The California, Arizona, and New Mexico pistachio marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California, Arizona, and New Mexico pistachios. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2011–12 and subsequent production years, the Committee recommended, and the USDA approved, an assessment rate that would continue in effect from production year to production year unless modified, suspended, or terminated by USDA based upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on July 9, 2015 and October 20, 2015 and unanimously recommended 2015–16 production year expenditures of $1,056,402 and an assessment rate of $0.0035 per pound of assessed weight pistachios handled to

fund Committee expenses. This represents an increase over the prior year's budget and assessment rate. In comparison, last year's budgeted expenditures were $1,001,400. The assessment rate of $0.0035 is $0.0030 higher than the rate currently in effect. The Committee's recommended 2015–16 expenditures are $55,002 higher than last year's budgeted expenditures. The reasons for the proposed increase include a significant increase in budgeted expenses in 2015 over actual expenses in 2014, a significantly smaller crop estimate in 2015, and allocation of funds for Sterile Insect Technology/Navel Orange Worm (SIT/NOW) research. When applied to the Committee's crop estimate for the 2015–16 production year of 265 million pounds, the current assessment rate of $0.0005 would not generate sufficient income to cover anticipated expenses. The proposed assessment rate of $0.0035 per pound of assessed weight pistachios would generate assessment income of $927,500. Anticipated assessment income combined with financial reserves and other income would provide sufficient revenue for the Committee to meet its budgeted expenses while maintaining its financial reserve within the limit authorized under the order.

The major expenditures recommended by the Committee for the 2015–16 production year include $560,000 for SIT/NOW research, $92,402 for administrative expenses, $314,000 for salary and related employee expenses, $10,000 for compliance expenses, and $80,000 for a contingency fund. Budgeted expenses in 2014–15 were $360,000 for Technical Assistance Specialty Crop (TASC) Program research, $125,000 for other research, $117,400 for administrative expenses, $314,000 for salary and related employee expenses, $10,000 for compliance expenses, and $75,000 for a contingency fund. Actual expenses in 2014–15 were significantly lower, at $547,199, as the TASC research was not funded.

The assessment rate recommended by the Committee was derived by considering anticipated expenses and production levels of California, Arizona, and New Mexico pistachios, and other pertinent factors. As mentioned earlier, pistachio production levels are estimated at 265 million pounds, which should generate $927,500 in assessment income. Anticipated assessment income derived from handler assessments, along with other income and financial reserves would provide sufficient revenue for the Committee to meet its budgeted expenses while maintaining its financial reserve within the limit authorized under the order. The significant increase in the assessment rate is due to a significant increase in budgeted expenses in 2015 over actual expenses in 2014, and also a significantly smaller crop estimate in 2015. The financial reserve is estimated to be $239,994 at the end of the 2015–16 production year.

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA based upon a recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each production year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public, and interested persons may express their views at these meetings. USDA would evaluate the Committee's recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2015–16 budget and those for subsequent production years would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,152 producers of pistachios in the production area and approximately 19 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000 (13 CFR 121.201).

Based on Committee data, it is estimated that about 47 percent of the handlers annually ship less than $7,000,000 worth of pistachios, and it is also estimated that 68 percent of the producers have annual receipts less than $750,000. Thus, the majority of handlers in the production area may be classified as large entities, and the majority of producers may be classified as small entities.

This proposal would increase the assessment rate collected from handlers for the 2015–16 and subsequent production years from $0.0005 to $0.0035 per pound of assessed weight pistachios. The Committee unanimously recommended 2015–16 expenditures of $1,056,402 and an assessment rate of $0.0035 per pound of assessed weight pistachios. The proposed assessment rate of $0.0035 is $0.0030 higher than the 2014–15 rate. The quantity of assessable pistachios for the 2015–16 production year is estimated at 265 million pounds. Thus, the $0.0035 rate should provide $927,500 in assessment income. Anticipated assessment income derived from handler assessments, along with other income and financial reserves would provide sufficient revenue for the Committee to meet its budgeted expenses while maintaining its financial reserve authorized under the order which is approximately two production years' budgeted expenses.

The major expenditures recommended by the Committee for the 2015–16 production year include $560,000 for SIT/NOW research, $92,401 for administrative expenses, $314,000 for salary and related employee expenses, $10,000 for compliance expenses, and $80,000 for a contingency fund. Budgeted expenses in 2014–15 were $360,000 for TASC Program research, $125,000 for other research, $117,400 for administrative expenses, $314,000 for salary and related employee expenses, $10,000 for compliance expenses, and $75,000 for a contingency fund. The reasons for the proposed increase include a significant increase in budgeted expenses in 2015 over actual expenses in 2014, a significantly smaller crop estimate in 2015, and allocation of funds for Sterile Insect Technology/Navel Orange Worm (SIT/NOW) research.

Prior to arriving at this budget and assessment rate, the Committee considered alternative expenditure levels but ultimately determined that 2015–16 expenditures of $1,056,402 were appropriate and that the current assessment rate would generate

insufficient revenue to meet its expenses.

According to data from the National Agricultural Statistics Service, the season average producer price was $3.48 per pound of assessed weight pistachios in 2013 and $3.10 per pound in 2014. A review of historical information and preliminary information pertaining to the upcoming production year indicates that the producer price for the 2015–16 production year could range between $3.48 and $3.10 per pound of assessed weight pistachios. Therefore, the estimated assessment revenue for the 2015–16 production year as a percentage of total producer revenue could range between 0.10 and 0.11 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. These costs would be offset by the benefits derived from the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the California, Arizona, and New Mexico pistachio industry, and all interested persons were invited to attend and participate in Committee deliberations on all issues. Like all Committee meetings, the July 9, 2015, and October 20, 2015, meetings were public and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0215. No changes in those requirements are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California, Arizona, and New Mexico pistachio handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2015–16 production year began on September 1, 2015, and the marketing order requires that the rate of assessment for each production year apply to all assessable pistachios handled during such production year; (2) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; and (3) handlers are aware of this action, which was unanimously recommended by the Committee at a public meeting.

List of Subjects in 7 CFR Part 983

Marketing agreements, Pistachios, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 983 is proposed to be amended as follows:

PART 983—PISTACHIOS GROWN IN CALIFORNIA, ARIZONA, AND NEW MEXICO

■ 1. The authority citation for 7 CFR part 983 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Revise § 983.253(a) to read as follows:

§ 983.253 Assessment rate.

(a) On and after September 1, 2015, an assessment rate of $0.0035 per pound is established for California, Arizona, and New Mexico pistachios.

* * * * *

Dated: December 8, 2015.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–31371 Filed 12–11–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–6550; Directorate Identifier 2013–NM–162–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 90–11–05 for certain Airbus Model A300 series airplanes and Model A300 B4–600 series airplanes. AD 90–11–05 currently requires repetitive detailed inspections for cracking in the aft hinge brackets of the outer shroud box that is located in the outer wing box, and related investigative and corrective actions if necessary. Since we issued AD 90–11–05, we have determined that a change to certain compliance times is needed. This proposed AD would continue to require doing repetitive detailed inspections for cracking in the hinge brackets of the forward and aft outer shroud boxes that are located in the outer wing box, and related investigative and corrective actions if necessary; and would add airplanes to the applicability. We are proposing this AD to detect and correct cracking of the aft hinge brackets of the outer shroud box; such cracking could affect the structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by January 28, 2016.

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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36

96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–6550; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–6550; Directorate Identifier 2013–NM–162–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On May 4, 1990, we issued AD 90–11–05, Amendment 39–6603 (55 FR 20129, May 15, 1990). AD 90–11–05 requires actions intended to address an unsafe condition on certain Airbus Model A300 series airplanes and Model A300 B4–600 series airplanes.

Since we issued AD 90–11–05, Amendment 39–6603 (55 FR 20129, May 15, 1990), we have determined that a change to certain compliance times is needed.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2013–0818R1, dated August 20, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Model A300 series airplanes and Model A300 B4–600 series airplanes. The MCAI states:

> In the past, aft hinge brackets of the outer wing box were found cracked. Fracture of a bracket would allow vertical movement of the inner shroud box structure, which could result in damage to the top skin of the inboard flap. In addition, the loads carried by the brackets will be transferred to the remaining supports, which may also crack and cause extensive structural damage.
>
> This condition, if not detected and corrected, could affect the structural integrity of the aeroplane.
>
> To address this potential unsafe condition, DGAC [Direction Générale de l'Aviation Civile] France issued AD 1998–449–265(B) (later revised) to require repetitive inspections of the hinge bracket of the outer box and, depending on findings, corrective action(s).
>
> Since that [DGAC] AD was issued, a fleet survey and updated Fatigue and Damage Tolerance analysis were performed in order to substantiate the A300 Extended Service Goal (ESG) and A300–600 Extended Service Goal (ESG2) exercise.
>
> The results of these analyses led to a change in the inspection thresholds and intervals in Flight Cycles (FC) and the introduction of Flight Hours (FH) limits.
>
> For the reasons described above, this [EASA] AD retains the requirements of DGAC France AD 1998–449–265(B)R1, which is superseded, but requires those actions within the new thresholds and intervals given by Airbus Service Bulletin (SB) A300–57–0142 Revision 04 or A300–57–6010 Revision 05, as applicable to aeroplane model.
>
> Revision 1 of this [EASA] AD is issued to add model A300B4–203 aeroplanes to the applicability and compliance time tables. This model is covered by Airbus SB A300–57–0142, but was mistakenly omitted from the original [EASA] AD issue.

The corrective action for a hinge bracket that is cracked or fractured is replacing the damaged hinge bracket with a new bracket.

For airplanes on which a crack is found in one half bracket or both half brackets, related investigative actions include a general visual inspection for secondary damage (*e.g.,* cracks, wear damage, pitting, and gouging) in the following areas:

- The inner shroud-box forward attachments and the attachment brackets at the inboard end.
- The inner and outer shroud-box structure, adjacent to the fractured bracket.
- The top skin of the inboard flap.

The corrective action for damage findings during the related investigative action is repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA Design Organization Approval (DOA).

The compliance time for related investigative actions and corrective actions is before further flight.

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–2015–6550.

Related Service Information Under 1 CFR Part 51

We reviewed the following service information.

- Airbus Service Bulletin A300–57–0142, Revision 04, dated March 30, 2011, which describes procedures for doing an inspection of the forward and aft hinge brackets on the outer shroud box.
- Airbus Service Bulletin A300–57–6010, Revision 05, dated February 21, 2011, which describes procedures for doing an inspection of the forward and aft hinge brackets on the outer shroud box.
- Airbus Service Bulletin A300–57–6011, Revision 2, dated July 10, 1989, which describes procedures for replacing the aft aluminum alloy brackets on the outer shroud box with new steel brackets.

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 NPRM.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

Although the MCAI or service information allows further flight after cracks are found during compliance with the required action, paragraph (g) of this proposed AD would require replacement of any cracked hinge bracket of the outer shroud box before further flight. This replacement before further flight is due to the safety implications and consequences of such cracking.

Costs of Compliance

We estimate that this proposed AD affects 3 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	8 work-hours × $85 per hour = $680 per inspection cycle.	$0	$680 per inspection cycle.	$2,040 per inspection cycle.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	27 work-hours × $85 per hour = $2,295	$25,650	$27,945

We have received no definitive data that would enable us to provide cost estimates for the on-condition related investigative and corrective actions specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 90–11–05, Amendment 39–6603 (55 FR 20129, May 15, 1990), and adding the following new AD:

Airbus: Docket No. FAA–2015–6550; Directorate Identifier 2013–NM–162–AD.

(a) Comments Due Date

We must receive comments by January 28, 2016.

(b) Affected ADs

This AD replaces AD 90–11–05, Amendment 39–6603 (55 FR 20129, May 15, 1990).

(c) Applicability

This AD applies to Airbus Model A300 B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes; Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; and Model A300 B4–605R airplanes; certificated in any category; except airplanes on which Airbus Modification Number 6661 has been embodied during production.

(d) Subject

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

(e) Reason

This AD was prompted by reports of cracks in the aft hinge brackets of the outer shroud box that is located in the outer wing box, which were found during routine maintenance checks, and our subsequent determination that a change in inspection compliance times is needed. We are issuing this AD to detect and correct cracking of the aft hinge brackets of the outer shroud box; such cracking could affect the structural integrity of the airplane.

(f) Compliance

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

(g) Repetitive Inspections

At the applicable compliance time specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD: Do a detailed inspection for cracks and fractures of the hinge brackets of the forward and aft outer shroud boxes, in

accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–0142, Revision 04, dated March 30, 2011; or Airbus Service Bulletin A300–57–6010, Revision 05, dated February 21, 2011; as applicable. Repeat the inspection thereafter at the applicable interval specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–0142, Revision 04, dated March 30, 2011; or Airbus Service Bulletin A300–57–6010, Revision 05, dated February 21, 2011; as applicable. Doing the replacement specified in paragraph (j) of this AD terminates the repetitive inspections required by this paragraph.

(1) For Model A300B4–601, B4–603, B4–605R, B4–620, B4–622, B4–2C, and B4–203 airplanes: Do the inspection at the later of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD. Repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles or 2,000 flight hours, whichever occurs first.

(i) Before the accumulation of 5,000 flight cycles or 10,400 flight hours since first flight, whichever occurs first.

(ii) Within 100 flight cycles after the effective date of this AD.

(2) For Model A300B2–1C, B2–203, and B2K–3C airplanes: Do the inspection at the later of the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD. Repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles or 1,000 flight hours, whichever occurs first.

(i) Before the accumulation of 5,000 flight cycles or 5,400 flight hours since first flight, whichever occurs first.

(ii) Within 100 flight cycles after the effective date of this AD.

(3) For Model A300B4–103 airplanes: Do the inspection the later of the times specified in paragraphs (g)(3)(i) and (g)(3)(ii) of this AD. Repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles or 1,300 flight hours, whichever occurs first.

(i) Before the accumulation of 5,000 flight cycles or 6,600 flight hours since first flight, whichever occurs first.

(ii) Within 100 flight cycles after the effective date of this AD.

(h) Corrective Action

If any crack or fracture is found during any inspection required by paragraph (g) of this AD: Before further flight, replace the damaged hinge bracket with a new bracket, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–143, Revision 2, dated July 10, 1989 (for Model A300 series airplanes); or A300–57–6011, Revision 2, dated July 10, 1989 (for Model A300 B4–600 series airplanes); as applicable.

(i) Related Investigative and Corrective Actions

If any crack or fracture is found during any inspection required by paragraph (g) of this AD: Before further flight, do a general visual inspection for secondary damage (*e.g.,* cracks, wear damage, pitting, and gouging) in the areas specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–0142, Revision 04, dated March 30, 2011; or Airbus Service Bulletin A300–57–6010, Revision 05, dated February 21, 2011; as applicable. If any damage is found, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA Design Organization Approval (DOA).

(1) The inner shroud-box forward attachments and the attachment brackets at the inboard end.

(2) The inner and outer shroud-box structure, adjacent to the fractured bracket.

(3) The top skin of the inboard flap.

(j) Optional Terminating Action for Inspection Requirements of Paragraph (g) of this AD

(1) Replacement of the hinge bracket, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–143, Revision 2, dated July 10, 1989 (for Model A300 series airplanes); or A300–57–6011, Revision 2, dated July 10, 1989 (for Model A300 B4–600 series airplanes); as applicable, terminates the inspection requirements of paragraph (g) of this AD.

(2) Replacement of a hinge bracket before the effective date of this AD, as described in the applicable service information listed in paragraphs (j)(2)(i) through (j)(2)(iv) of this AD, terminates the repetitive inspections required by paragraph (g) of this AD, provided that after the hinge bracket replacement, but before further flight after the effective date of this AD, a one-time detailed inspection of the forward and aft outer shroud box has been done with no cracking found, in accordance with paragraph (g) of this AD. The following service information is not incorporated by reference in this AD.

(i) Airbus Service Bulletin A300–57–143, dated December 17, 1986.

(ii) Airbus Service Bulletin A300–57–143, Revision 1, dated March 19, 1987.

(iii) Airbus Service Bulletin A300–57–6011, dated December 17, 1986.

(iv) Airbus Service Bulletin A300–57–6011, Revision 1, dated March 19, 1987.

(k) Credit for Previous Actions

(1) This paragraph provides credit for inspections required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using any of the applicable service information listed in paragraphs (k)(1)(i) through (k)(1)(viii) of this AD, which are not incorporated by reference in this AD.

(i) Airbus Service Bulletin A300–57–142, dated December 17, 1986.

(ii) Airbus Service Bulletin A300–57–142, Revision 1, dated April 9, 1990.

(iii) Airbus Service Bulletin A300–57–142, Revision 2, dated January 16, 1991.

(iv) Airbus Service Bulletin A300–57–0142, Revision 03, dated February 22, 1999.

(v) Airbus Service Bulletin A300–57–6010, Revision 1, dated December 14, 1990.

(vi) Airbus Service Bulletin A300–57–6010, Revision 02, dated March 30, 1998.

(vii) Airbus Service Bulletin A300–57–6010, Revision 03, dated September 16, 1998.

(viii) Airbus Service Bulletin A300–57–6010, Revision 04, dated February 22, 1999.

(2) This paragraph provides credit for replacement of the hinge bracket as specified in paragraph (j)(2) of this AD, if the replacement was performed before the effective date of this AD, using any of the applicable service information listed in paragraphs (k)(2)(i) through (k)(2)(iv) of this AD, which is not incorporated by reference in this AD.

(i) Airbus Service Bulletin A300–57–143, dated December 17, 1986.

(ii) Airbus Service Bulletin A300–57–143, Revision 1, dated March 19, 1987.

(iii) Airbus Service Bulletin A300–57–6011, dated December 17, 1986.

(iv) Airbus Service Bulletin A300–57–6011, Revision 1, dated March 19, 1987.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149. 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. The AMOC approval letter must specifically reference this AD.

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

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013–0181R1, dated August 20, 2013, 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–2015–6550.

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

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

Issued in Renton, Washington, on December 4, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–31306 Filed 12–11–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–3773; Airspace Docket No. 15–ANM–22]

Proposed Amendment of Class E Airspace; Deer Lodge, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace extending upward from 700 feet above the surface at Deer Lodge-City-County Airport, Deer Lodge, MT. After a review, the FAA found it necessary to amend the airspace area for the safety and management of standard instrument approach procedures for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before January 28, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2015–3773; Airspace Docket No. 15–ANM–22, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Z, 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 and ATC Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, 29591; 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 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Steve Haga, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4563.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at Deer Lodge-City-County Airport, Deer Lodge, MT.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2015–3773; Airspace Docket No. 15–ANM–22.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

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

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

Availability and Summary of Documents Proposed for Incorporation by Reference

This document would amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Deer Lodge-City-County Airport, Deer Lodge, MT. After a review of the airspace, the FAA found modification necessary for the safety and management of standard instrument approach procedures for IFR operations at the airport. Class E airspace extending upward from 700 feet above the surface would be decreased to within a 6-mile radius of Deer Lodge-City-County Airport.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9Z, dated August 6, 2015 and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ANM MT E5 Deer Lodge, MT [Modified]

Deer Lodge-City-County Airport, MT
(Lat. 46°23′16″ N., long. 112°45′54″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Deer Lodge-City-County Airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 46°41′00″ N., long. 114°08′00″ W.; to lat. 47°03′00″ N., long. 113°33′00″ W.; to lat. 46°28′00″ N., long. 112°15′00″ W.; to lat. 45°41′00″ N., long. 112°13′00″ W.; to lat. 45°44′00″ N., long. 113°03′00″ W.; thence to the point of origin.

Issued in Seattle, Washington, on December 7, 2015.

Tracey Johnson,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2015–31273 Filed 12–11–15; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 7 and 9

[EPA–HQ–OA–2013–0031, FRL–9933–69–OA]

RIN 2090–AA39

Nondiscrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to amend its regulations with regard to compliance information, post-award compliance reviews, and complaint investigations. This proposed rule will improve the EPA's ability to ensure that recipients of federal financial assistance comply with their affirmative obligation under the Civil Rights Act of 1965 and other nondiscrimination statutes not to discriminate, while also ensuring that the EPA has sufficient flexibility and discretion to carry out its nondiscrimination compliance work.

DATES: Comments must be received on or before February 12, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OA–2013–0031, to the *Federal eRulemaking Portal: 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: Jeryl Covington or Helena Wooden-Aguilar, U.S. Environmental Protection Agency, Office of Civil Rights, (Mail Code 1201A), 1200 Pennsylvania Ave. NW., Washington, D,C. 20460, telephone (202) 564–7272, (202) 564–7713 or (202) 564–0792.

SUPPLEMENTARY INFORMATION:

I. Background Information

The EPA is proposing to amend its regulations implementing title VI of the Civil Rights Act of 1964 (''Title VI''), section 504 of the Rehabilitation Act of 1973 (''Section 504''), section 13 of the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92–500), and the Age Discrimination Act of 1975 (''Age Discrimination Act'') in order to enable it to create a model civil rights program which can nimbly and effectively enforce civil rights statutes in the environmental context. Together, these statutes prohibit discrimination on the basis of race, color, national origin, (including discrimination based on language ability or limited English proficiency), disability, sex, and age in programs or activities that receive federal financial assistance. This rulemaking proposes to amend subpart D (Requirements for Applicants and Recipients) and subpart E (Agency Compliance Procedures) provisions regarding compliance information, post-award compliance reviews, and complaint investigations. This rulemaking also proposes to make a technical correction to subpart D to

remove citations to expired Office of Management and Budget (OMB) control numbers and to place the current OMB control number for information collection requests under 40 CFR part 7 in the consolidated list of OMB approvals under the Paperwork Reduction Act in 40 CFR part 9.

Applicants for and recipients of EPA assistance already are obligated to comply with Title VI and other nondiscrimination statutes as a condition of receiving EPA assistance. This proposed rule is consistent with the broad discretion that, as recognized by the Supreme Court, has been afforded all federal agencies with regard to the enforcement of federal nondiscrimination obligations,[1] and is part of a package of efforts intended to improve EPA's civil rights program. One effort, for example, is the draft External Compliance and Complaints Program Strategic Plan, which was published for comment on September 10, 2015 (*http://www.epa.gov/ocr/external-compliance-title-vi-new-developments*). This package, as a whole, will increase transparency and accountability and move EPA closer to its goal of establishing a model civil rights program. This proposed rule—another part of the package—will assist the EPA in continuing to be more proactive in monitoring and enforcing recipients' compliance with Title VI and other nondiscrimination statutes.

The EPA has sought to improve its External Compliance and Complaints Program. In 2009, EPA made a commitment to strengthen and revitalize EPA's civil rights program. In addition to increasing staff, securing additional training and improving processes, as part of that effort, in 2010, EPA funded an independent in-depth evaluation of its civil rights program by the firm Deloitte Consulting LLP. Following receipt of the evaluation, the Administrator established an internal Civil Rights Executive Committee to review Deloitte's evaluation, and other sources of information, and make recommendations for building a model civil rights program for EPA. The Executive Committee posted its draft report for public review in February 2012, and the Administrator approved the final report and recommendations on April 13, 2012.

One of the Executive Committee's recommendations was for the EPA to be more proactive in terms of achieving compliance with Title VI and other nondiscrimination obligations by, in part, analyzing data and information obtained from recipients and developing consistent processes. Accordingly, as part of its efforts to create a robust pre- and post- award compliance program (as identified in the EPA Draft EJ 2014 Plan Supplement dated April 12, 2012), the EPA began the process of reevaluating its regulations to identify what data and information it currently obtains from recipients. The EPA first looked to other federal agencies for their best practices in terms of an External Compliance and Complaints Program. Specifically, the EPA evaluated its External Compliance and Complaints Program by comparing its Title VI and other nondiscrimination regulations to those of over twenty other federal agencies. The EPA found that the other agencies' regulations were the same or extremely similar, while the EPA's regulations were different. Many of these other agencies have successful external compliance programs because, in part, their regulations provide for a robust compliance program, (including routine access to recipient data through compliance reports and compliance reviews), and explicitly affirm the agency's discretion to appropriately tailor complaint resolution paths based on the nature and complexity of the allegations presented. While some aspects of EPA's External Compliance and Complaints Program will continue to have unique characteristics that are tailored to EPA's needs, the EPA, recipients, complainants, and industry will benefit from the predictability, consistency and familiarity arising from this effort to conform these aspects of the EPA's regulations with regulations promulgated by other federal agencies with a record of proven success and with the Department of Justice's Coordination Regulations at 28 CFR part 42, subpart F. Thus, this proposed rule will give the EPA a similar level of flexibility and discretion as is afforded to other federal agencies when collecting compliance information, conducting post-award compliance reviews, and investigating complaints.

Finally, these amendments recognize that the EPA's current, self-imposed regulatory deadlines are impracticable given the inherent scientific complexity associated with determining which and how populations are impacted by environmental pollutants; the number of discrimination allegations and theories that may be asserted in any one complaint under Title VI or the other nondiscrimination statutes; and the volume of the complaints received. Indeed, there are several examples of the analytical and logistical complexity of discrimination complaints historically filed with the EPA on its Web site. For instance, in one case alleging disparate health impacts, the EPA developed a pesticide exposure analysis to predict daily air concentrations of a specific pesticide at different distances from an application site, based on information concerning the amount of the pesticide applied during a seven-year period. In order to conduct such an analysis, the EPA had to gather and enter the available raw data into a database and then have the appropriate scientific models created that took into account several factors including, time of day, location, wind speed, proximity and temperature. Next, this analysis was peer reviewed before the EPA was ultimately able to resolve the complaint. The EPA recognizes that not every administrative complaint will require this same level of scientific analysis to determine who is potentially exposed to a particular pollutant. Also, the EPA recognizes that there may be several potential resolution paths, including informal resolution and Alternative Dispute Resolution, even for those cases raising disparate health claims, which the EPA will pursue, when appropriate. By eliminating arbitrary deadlines, the EPA will be better positioned to strategically manage its administrative complaint docket by identifying the specific aspects of individual complaints, such as complaints that present the potential for high-impact resolution. Further, the EPA will be able to explore the best resolution option for those complaints, including tailored goals and benchmarks for specific phases of the individual case, rather than a cookie-cutter approach that assumes all cases should follow the same approach, resolution strategy, and timeframes. Tailoring the appropriate resolution path to each complaint based on the unique factual pattern and legal issues presented, will further allow the EPA to dedicate the appropriate amount of time and resources to resolve each individual complaint.

It is important to note that even with the elimination of the arbitrary deadlines, the EPA must promptly process and investigate complaints. Removal of deadlines will not allow the EPA to unreasonably delay its resolution of complaints because, in part, the definition of a prompt investigation and resolution turns on the factual context of the complaint. Indeed, the language in the proposed rule is subject to judicial review and is consistent with judicial precedent that recognizes that any investigatory timeframe may be affected by the

[1] *See Alexander* v. *Choate*, 469 U.S. 287, 293–294 (1985); *FCC* v. *Pottsville Broadcasting Co.*, 309 U.S. 134 (1940).

breadth and complexity of the issues in the complaint.

Thus, based on the entire proposed regulatory amendments that will conform the EPA's regulations to those of more than twenty other federal agencies, the EPA will take another step in its journey to continue to create a model Civil Rights Program. In light of the flexibility, discretion, and accountability for individual cases affirmed by this proposed rule, the EPA will be better able to strategically implement its external civil rights enforcement program to ensure prompt, effective and efficient complaint docket management and to enhance its proactive compliance program.

The EPA is subject to the Department of Justice's Coordination Regulations describing specific implementation, compliance, and enforcement obligations of federal funding agencies under Title VI and similar provisions in federal grant statutes. *See* 28 CFR 42.401 through 42.415. In accordance with 28 CFR 42.403, the EPA submitted this proposed rule to the Assistant Attorney General, Civil Rights Division, Department of Justice, and received her approval. The final rule will be submitted to the Attorney General through the Assistant Attorney General for final approval pursuant to 28 CFR 42.403(c)(3).

II. Overview of This Proposed Rulemaking

A. Sub-Part D: Compliance Information Requirements for Recipients of EPA Financial Assistance

The EPA proposes to amend § 7.85(b) by deleting the following text describing when additional information will be sought from recipients—''where there is reason to believe that discrimination may exist in a program or activity receiving EPA assistance.'' In this same regulatory section, the EPA also proposes deleting ''and shall be accompanied by a written statement summarizing the complaint or setting forth the basis for the belief that discrimination may exist.'' These changes reaffirm the agency's existing authority to use compliance reviews to identify and resolve compliance concerns with recipients of EPA financial assistance to prevent costly investigations and litigation. Compliance reviews are an important part of the implementation of all EPA programs and essential to the functioning of comprehensive compliance and enforcement efforts. EPA will work with states and other recipients of financial assistance to ensure that compliance reviews are focused on a review of data and information that is relevant to determining compliance. EPA solicits comments on how to schedule and conduct compliance reviews in ways that minimize unnecessary burdens to both EPA and the recipients.

Further, the revised language is consistent with the regulatory provisions of more than twenty other federal agencies with regard to the routine collection of data and information from recipients. Several of those federal agencies have successful compliance review programs that have been well-established for many years, so the concept of conducting compliance reviews is something with which EPA's external stakeholders should already have a great deal of familiarity based on engagement with those other federal agencies. In other words, this proposed rule is not a significant change, as it affords the EPA the same discretion and flexibility granted to those agencies in their compliance reviews. Such routine collection is also considered a best practice for Title VI programs as reflected in the Department of Justice's Coordination Regulations, which require federal agencies to ''provide for the collection of data and information from applicants for and recipients of federal assistance sufficient to permit effective enforcement of Title VI,'' 28 CFR 42.406(a). Thus, this proposed rule is intended to clarify the EPA's ability to access such information under the current regulations, while providing the flexibility to establish a successful compliance review program and improve the EPA's External Compliance and Complaints Program. The EPA is requesting comment on EPA's proposed modifications to its compliance review regulations; especially its proposed phased-approach to conducting compliance reviews that is discussed in the accompanying cost analysis.

Additionally, this proposed rule gives the EPA discretion to require recipients to submit compliance reports. This proposed rule would, as demonstrated by the successful compliance report programs of sister agencies, be an invaluable tool in prioritizing complaint investigations, selecting recipients for compliance reviews, and conducting targeted outreach to provide technical assistance. Currently, § 7.85 of the regulation imposes an obligation ''to collect, maintain, and on request . . . provide'' specific information to the EPA. Similarly, § 7.115 notifies recipients that the EPA may request ''data and information'' pertaining to any recipient's programs or activities receiving EPA assistance. Consistent with § 7.35, recipients of EPA assistance are also responsible for collecting such reports from any entity through which a recipient operates the program and activity receiving EPA financial assistance, including sub-recipients, licensees, or contractors. In other words, recipients already have a regulatory obligation to collect and maintain relevant information. With this proposed rule, recipients may be asked to submit a report containing the relevant and current information. Adding this proposed rule allows the EPA to more proactively enforce Title VI and other nondiscrimination obligations. This proposed modification makes clear that compliance reports would be required at such times and in such form and containing such information as the EPA may determine to be necessary to enable the EPA to ascertain whether the recipient has complied or is complying with 40 CFR part 7. The proposed regulation, however, does not identify or prescribe the exact content of such reports. The EPA is requesting written comment on the content, frequency and prioritization of which recipients will be expected to submit compliance reports. During the notice and comment period, the EPA will also engage stakeholders through listening sessions in order to explore the compliance reports process and their content. At this time, the EPA's estimate of the potential burden associated with compliance with this proposed regulation is based on assumptions about what type of information a recipient will be required to include in such a report—from involving the compilation or gathering of pre-existing information, including information specifically identified in the current regulations and Standard Form 4700–4, to including information related to public involvement, limited English proficiency, or data and information demonstrating that the program or activity receiving the EPA assistance complies with its nondiscrimination obligations.

The EPA understands that stakeholders may have questions about what specific information should be contained in such reports. Accordingly, the EPA may continue to request compliance reports related to information gathering in the context of compliance reviews and complaint investigations conducted under §§ 7.110, 7.115, and 7.120. However, the EPA does not intend to request compliance reports, unrelated to compliance reviews and complaint investigations, from recipients any sooner than 90 days after it has drafted guidance about such reports, sought

stakeholder input on the guidance, put the guidance out for notice and comment, and finalized the guidance. This process will allow the EPA, recipients, and other stakeholders to work collaboratively to improve the EPA's External Compliance and Complaints Program.

B. Sub-Part E: Agency Compliance Procedures

1. Post-Award Compliance

Under the current regulations, on-site reviews for post-award compliance may occur when the Office of Civil Rights (OCR) ''has reason to believe that discrimination may be occurring in such programs or activities.'' For the reasons set forth above, the EPA proposes amending 40 CFR 7.110(a) and 7.115(a), to affirm the OCR's flexibility and discretion to structure how it conducts pre-award and post-award compliance reviews. This modification is consistent with the Title VI regulations of more than twenty other federal agencies.

Additionally, the EPA proposes to remove the provision to provide post-review notice to a recipient within 180 calendar days from the start of a compliance review or complaint investigation pursuant to 40 CFR 7.115(c)(1). Instead of this calendar deadline, the EPA proposes to conform to the regulations of over twenty other federal agencies that state that complaints will be ''promptly'' investigated. The EPA proposes to adopt this language because it has found that this self-imposed, inflexible deadline is impracticable given the inherent scientific complexity associated with determining which and how populations are impacted by environmental pollutants; the number of discrimination allegations and theories that may be asserted in any one complaint under Title VI or the other nondiscrimination statutes; and the volume of the complaints received. Without the burden of an unrealistic, self-imposed deadline, the EPA will be in a better position to improve the entire External Compliance and Complaints Program, including the compliance review and reports efforts discussed above. Even without this deadline, the EPA still must promptly investigate complaints.

2. Complaint Investigations

This proposed rule removes the introductory text of 40 CFR 7.120 concerning the investigation of ''all complaints'' and to adopt language, substantially similar to the regulations of other federal agencies, requiring investigation of complaints that ''indicate a possible failure to comply.'' This change will allow the EPA to prioritize and dedicate resources to complaints that—after an initial review—reveal a possible failure to comply. Yet, the proposed rule does not alter the reasons for rejecting or closing a complaint upon which the EPA and other agencies have relied. Instead, the proposed regulatory language clarifies the agency's discretion to pursue a path to resolution in light of the particular facts of each case. The EPA seeks to conform to the regulatory text of its sister agencies in order to affirm that it will not seek to impose a one-size fits all approach to resolution. In other words, the proposed rule is intended to reflect that a path to resolution must be tailored to the specific facts of the case and such a path may not be identical for every complaint. Not every complaint, for example, will require the completion of a costly and time-consuming investigation in order to resolve it.

This proposed rule also removes the deadline for notifying complainants and recipients of receipt of a complaint against the recipient and for reviewing a complaint for acceptance, rejection, or referral to the appropriate federal agency. Currently, the EPA's notification regulation requires the EPA to notify the complainant and the recipient of receipt of a complaint within five calendar days under 40 CFR 7.120(c). The current regulations also require the EPA to initiate complaint processing procedures by conducting a jurisdictional review to determine whether to accept, reject, or refer a complaint within twenty calendar days of acknowledgement of the complaint.

The current regulatory provisions imposing a deadline on complaint notification and jurisdictional review are unique to the EPA. This proposed rule removes these deadlines and, as with complaint investigations, it proposes that the EPA will ''promptly'' acknowledge receipt of a complaint and issue a decision on whether a complaint is accepted, rejected, or referred. The substitution of ''promptly'' for specific deadlines ensures EPA has the flexibility to improve its External Compliance and Complaints Program. The EPA believes this removal is not only reasonable, but will provide EPA with the flexibility and time necessary to complete a comprehensive and thorough initial review to identify the most appropriate path to resolve the complaint. Although, as reflected in the regulations of more than twenty other federal agencies, it is not common practice to include specific deadlines, the EPA is fully committed to processing complaints and compliance reviews expeditiously. In fact, the EPA intends, like other federal agencies, to create internal procedures and policies to provide guidance to staff, including the expectation that a determination of what constitutes reasonably prompt action varies based on the stage of administrative processing. For instance, a purely administrative task, (such as, issuing an acknowledgment of a correspondence), will take significantly less time than the more complex and nuance evaluation associated with conducting jurisdictional reviews, investigations and compliance reviews. Nonetheless, as discussed above with complaint investigations, because of the volume and complexity of the complaints that the EPA receives, these self-imposed regulatory deadlines have proven to be impracticable, even at these early stages.

C. Paperwork Reduction Act Technical Correction

The EPA proposes to remove the reference to expired OMB control number 2000–0006 which currently appears after the text of 40 CFR 7.80 and 7.85. The OMB control number for the collection of information under the EPA's 40 CFR part 7 regulations is OMB control number 2030–0020. Because no person is required to respond to an information collection request regulated by the Paperwork Reduction Act unless a valid control number assigned by OMB is displayed in 40 CFR part 9, another part of the Code of Federal Regulations, a valid **Federal Register** notice, or by any other appropriate means, the EPA proposes to add the citation for the OMB control no. 2030–0020 and the provisions in 40 CFR part 7 under which the OCR collects information from applicants and recipients to the table located in 40 CFR part 9. These technical corrections will provide clarity to applicants and recipients of EPA assistance regarding which Information Collection Request control number applies to the EPA's requests for information under 40 CFR part 7.

III. Statutory and Executive Orders Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review. The EPA prepared an analysis of the potential costs and benefits associated with this

action. A copy of the analysis is available in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This proposed rule will allow the EPA to enforce civil rights laws. It therefore falls under the exemption to the Paperwork Reduction Act found at 44 U.S.C. 3518(e) that exempts agencies from Paperwork Reduction Act requirements when they are exercising their substantive enforcement authority regarding civil rights laws. Even though this action is covered by the section 3518(e) exemption, this action is covered by an Information Collection Request that was approved by the Office of Management and Budget in June 2015. The information collection request contained in the existing regulations at 40 CFR part 7 was assigned OMB control number 2030–0020. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. The deadline and technical amendments being proposed are not expected to have a direct impact on any grant recipients. The direct cost to any particular entity under a compliance review will not increase because they already are potentially subject to compliance reviews under the existing regulations. The impact of the proposed amendments related to compliance report requirements for any particular entity would only be the cost of assembling data and information that it already must collect and maintain under the existing regulations. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, the EPA nonetheless has tried to reduce the impact of this proposed rule on small entities. (See Economic Analysis in the docket for this rulemaking for more detailed information on potential impacts.)

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues relating to such impacts.

D. Unfunded Mandates Reform Act

This action does not contain any mandate as described in UMRA, 2 U.S.C. 1531 through 1538, and does not significantly or uniquely affect small governments. Because this proposed rule enforces statutory rights that prohibit discrimination as described in the exception at 2 U.S.C. 1503(2), it is not subject to the requirements of section 202 or 205 of the UMRA.

E. Executive Order 13132: Federalism

This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed rule from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule does not directly impose any new obligations on the federally recognized tribes that receive or apply for EPA financial assistance. Moreover, the proposed rule would not impose compliance costs on tribes or preempt tribal law. Therefore, consultation under Executive Order 13175 is not required.

However, EPA welcomes the views of tribes and is interested in considering any comments that tribes may offer on the proposed rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This proposed rule does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA believes that improving its External Compliance and Complaints Program will have a positive impact on the agency's efforts to advance environmental justice. More precisely, by bringing the EPA's regulations into alignment with the regulations of more than twenty other agencies, the EPA will have the regulatory tools necessary to exercise its discretion to make the complex determination of what sorts of disparate impacts upon communities constitute ''sufficiently significant social problems,'' and are ''readily enough remediable, to warrant altering the practices of the federal grantees that had produced those impacts.'' *Alexander* v. *Choate* 469 U.S. 287, 293–294 (1985). Such regulatory tools also will improve the EPA's External Compliance and Complaints Program by forging an appropriate path to resolution tailored to the specific facts and circumstances of each matter. However, the EPA welcomes comments from minority, low-income or indigenous populations about these proposed regulatory modifications.

List of Subjects

40 CFR Part 7

Environmental protection, Administrative practice and procedure, Age discrimination, Civil rights, Equal employment opportunity, Individuals with disabilities, Reporting and

recordkeeping requirements, Sex discrimination.

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: December 1, 2015.

Gina McCarthy,

Administrator.

For the reasons set out in the preamble, the EPA proposes to amend title 40, chapter I of the Code of Federal Regulations as follows:

PART 7—NONDISCRIMINATION IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL ASSISTANCE FROM THE ENVIRONMENTAL PROTECTION AGENCY

■ 1. The Authority citation for part 7 continues to read as follows:

Authority: 42 U.S.C. 2000d to 200d–7 and 6101 *et seq.;* 29 U.S.C. 794; 33 U.S.C. 1251nt.

Subpart D—Requirements for Applicants and Recipients

§ 7.80 [Amended]

■ 2. Section 7.80 is amended by removing the parenthetical citation ''(Approved by the Office of Management and Budget under control number 2000–0006)'' following paragraph (c)(3).

■ 3. Section 7.85 is amended by:

■ a. Revising paragraph (b);

■ b. Redesignating paragraphs (f) and (g) as paragraphs (g) and (h) respectively, and adding a new paragraph (f); and

■ c. Removing the parenthetical citation ''(Approved by the Office of Management and Budget under control number 2000–0006)'' following the newly redesignated paragraph (h).

The revisions and additions read as follows:

§ 7.85 Recipients.

* * * * *

(b) *Additional compliance information.* If necessary, the OCR may require recipients to submit data and information specific to certain programs or activities to determine compliance or to investigate a complaint alleging discrimination in a program or activity receiving EPA assistance. Requests shall be limited to data and information which is relevant to determining compliance.

* * * * *

(f) *Compliance reports.* Each recipient shall keep such records and submit to the OCR timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the OCR may determine to be necessary to enable the OCR to ascertain whether the recipient has complied or is complying with this subpart. In general, recipients should have available for the Agency the racial composition of affected neighborhoods. In the case in which a primary recipient extends federal financial assistance to any other recipient or subcontracts with any other person or group, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this Subpart.

* * * * *

Subpart E—Agency Compliance Procedures

§ 7.110 [Amended]

■ 4. Section 7.110 paragraph (a), fourth sentence is amended by removing ''only when it has reason to believe that discrimination may be occurring in a program or activity which is the subject of the application''.

§ 7.115 Postaward compliance.

■ 5. Amend § 7.115 by revising paragraphs (a) and (c)(1) to read as follows:

(a) *Periodic review.* The OCR may periodically conduct compliance reviews of any recipient's programs or activities receiving EPA assistance, including the request of data and information, and may conduct on-site reviews.

* * * * *

(c) * * * (1) The OCR will notify the recipient in writing by certified mail, return receipt requested, of:

* * * * *

■ 6. Amend § 7.120 by revising the introductory text and paragraphs (c) and (d)(1)(i) to read as follows:

§ 7.120 Complaint investigations.

The OCR will make a prompt investigation whenever a complaint indicates a possible failure to comply.

* * * * *

(c) *Notification.* The OCR will notify the complainant and the recipient of the agency's receipt of the complaint.

(d) * * *

(1) * * * (i) After the acknowledgment, the OCR will promptly review the complaint for acceptance, rejection, or referral to the appropriate Federal agency.

* * * * *

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

■ 7. The Authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 8. In § 9.1, the table is amended by adding the heading titled ''Nondiscrimination in Programs or Activities Receiving EPA Assistance'' and entries 7.80, 7.85, 7.110, and 7.115 above the heading ''Protection of Human Subjects'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Nondiscrimination in Programs or Activities Receiving EPA Assistance	
7.80	2030–0020
7.85	2030–0020
7.110	2030–0020
7.115	2030–0020
* * * * *	

* * * * *

[FR Doc. 2015–31050 Filed 12–11–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 10 and 11

[PS Docket No. 15–91; FCC 15–154]

Improving Wireless Emergency Alerts and Community-Initiated Alerting

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes revisions to Wireless Emergency Alert (WEA) rules designed to improve the clarity of WEA messages, ensure that WEA alerts reach only those individuals to whom a WEA alert is relevant, and establish a WEA testing program that will improve the effectiveness of the system for public safety officials and the public. This document also seeks comment on issues necessary to ensure that WEA keeps pace with evolving technologies and thus empowers communities to initiate these life-saving alerts. By this action, the Commission

affords interested parties an opportunity to submit comments on these proposed rule changes. Through this action, the Commission hopes to empower state and local alert originators to participate more fully in WEA, and to enhance the utility of WEA as an alerting tool.

DATES: Comments are due on or before January 13, 2016 and reply comments are due on or before February 12, 2016. Written Paperwork Reduction Act (PRA) comments on the proposed information collection requirements contained herein must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before February 12, 2016.

ADDRESSES: You may submit comments, identified by PS Docket No. 15–91, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. In addition to filing comments with the Secretary, a copy of any PRA comments on the proposed information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via email to *nfraser@omb.eop.gov* or via fax at 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Lisa Fowlkes, Deputy Bureau Chief, Public Safety and Homeland Security Bureau, at (202) 418–7452, or by email at *Lisa.Fowlkes@fcc.gov.* For additional information concerning the information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Nicole Ongele, Office of Managing Director, Performance Evaluation and Records Management, 202–418–2991, or by email to *Nicole.Ongele@fcc.gov.* To view or obtain a copy of this information collection request (ICR) submitted to OMB: (1) Go to this OMB/GSA Web page: *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR as shown in the Supplementary Information section below (or its title if there is no OMB control number) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in PS Docket No. 15–91, FCC 15–154, released on November 19, 2015. The document is available for download at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db1119/FCC-15-154A1.pdf.* The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

This document contains proposed new and modified information collection requirements. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat 163 (1995). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by the PRA. Public and agency comments on the PRA proposed information collection requirements are due February 12, 2016. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1126.

Title: Testing and Logging Requirements for Wireless Emergency Alerts (WEA).

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for–profit entities.

Number of Respondents and Responses: 146 Respondents; 1,752 responses.

Estimated Time per Response: 0.000694 hours (2.5 seconds).

Frequency of Response: Monthly and on occasion recordkeeping requirements and reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C.s 151, 154(i) and (o), 201, 303(r), 403 and 606 of the Communications Act of 1934, as amended, as well as by sections 602(a), (b), (c), (f), 603, 604 and 606 of the WARN Act.

Total Annual Burden: 1.22 hours (rounded to 2 hours).

Total Annual Cost: No Cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission seeks comment on the extent to which alert logs should be made accessible to entities other than the Participating CMS Provider that generates the log, and on whether to treat test reports as presumptively confidential.

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for

comments on the Notice provided in Section IV of the Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

2. With this Notice, the Commission takes another step towards strengthening Wireless Emergency Alerts (WEA) by proposing revisions to the WEA rules to empower alert originators to participate more fully in WEA, and by enhancing the utility of WEA as an alerting tool. The Commission's proposals fall into three categories, improving WEA messaging, geo-targeting, and testing and proficiency training. With respect to WEA messaging, in this Notice, the Commission proposes to expand the maximum character length of WEA messages from 90 to a maximum of 360 characters; create a new class of WEA alerts for Emergency Government Information; and remove the prohibition on embedded references to allow the provision of phone numbers and URLs in WEA alerts. The Commission also seeks comment on technically feasible approaches to supplement WEA alerts with multimedia, and with the capability to offer alerts in languages other than English. With respect to geo-targeting the Commission proposes to require Participating Commercial Mobile Service (CMS) Providers to distribute WEA messages to a geographic area that more accurately matches the target area provided by the alert originator. With respect to WEA testing, the Commission proposes to establish requirements and procedures for state and local WEA testing, and on alert logging requirements for Participating CMS Provider Alert Gateways, and seeks comment on test reporting requirements based, in part, upon the data produced by this logging function. The Commission seeks comment on methods of increasing participation in WEA by both consumers and CMS Providers. The Commission proposes to amend the WEA rules to allow use of the emergency alerting attention signal for Public Service Announcements (PSAs) designed to raise public awareness about Wireless Emergency Alerts (WEA). The Commission seeks comment on whether it should begin to test the broadcast back-up to the C-interface. Finally, the Commission seeks comment on whether it should amend the Commission's WEA prioritization rules such that WEA alerts take priority over all mobile device functions except certain voice and data sessions.

3. This Notice represents another step towards achieving one of the Commission's highest priorities—''to ensure that all Americans have the capability to receive timely and accurate alerts, warnings and critical information regarding disasters and other emergencies.'' This Notice also is consistent with the Commission's obligation under Executive Order 13407 to ''adopt rules to ensure that communications systems have the capacity to transmit alerts and warnings to the public as part of the public alert and warning system,'' and the Commission's mandate under the Communications Act to promote the safety of life and property through the use of wire and radio communication. The Commission takes these steps as part of an overarching strategy to advance the nation's alerting capability, which includes both WEA and the Emergency Alert System (EAS), to keep pace with evolving technologies and to empower communities to initiate life-saving alerts.

B. Legal Basis

4. Authority for the actions proposed in the Notice may be found in sections 1, 4(i) and (o), 201, 303(r), 403, and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (o), 201, 303(r), 403, and 606, as well as sections 602(a), (b), (c), (f), 603, 604 and 606 of the WARN Act.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the 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 governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

6. Nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA. In addition, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2007 indicate that there were 89,476 local governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 88,761 entities may qualify as ''small governmental jurisdictions.'' Thus, the Commission estimates that most governmental jurisdictions are small.

7. *Wireless Telecommunications Carriers (except Satellite).* As noted, the SBA has developed a small business size standard for small businesses in the category ''Wireless Telecommunications Carriers (except satellite).'' Under that SBA category, a business is small if it has 1,500 or fewer employees. Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. This category is the best fit to describe common-carrier paging providers and cellular radiotelephone services subject to the Commission's rules. For the category of Wireless Telecommunications Carriers (except Satellite), census data for 2007 shows that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more. Since all firms with fewer than 1,500 employees are considered small, given the total employment in the sector, the Commission estimates that the vast majority of wireless firms are small.

8. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a ''small business'' for C- and F-Block licenses as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For F-Block licenses, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved

small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks. On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

9. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

10. *Narrowband Personal Communications Service.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards.

11. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions.

12. *700 MHz Guard Band Licensees.* In 2000, in the 700 MHz Guard Band Order, the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

13. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—''entrepreneur''—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

14. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.* An auction of 700 MHz licenses commenced January 24, 2008 and closed on March 18, 2008, which included, 176 Economic Area licenses in the A Block, 734 Cellular Market Area licenses in the B Block, and 176 EA licenses in the E Block. Twenty winning bidders, claiming small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years) won 49 licenses. Thirty three winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) won 325 licenses.

15. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping

licenses in the C Block, and one nationwide license in the D Block. The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

16. *Advanced Wireless Services. AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3)).* For the AWS–1 bands, the Commission has defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. For AWS–2 and AWS–3, although the Commission does not know for certain which entities are likely to apply for these frequencies, it notes that the AWS–1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS–2 or AWS–3 bands but proposes to treat both AWS–2 and AWS–3 similarly to broadband PCS service and AWS–1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

17. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

18. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

19. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,436 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, the Commission estimates that at least 2,336 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use the most current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2007, there were a total of 996 firms in this category that operated for the entire year. Of this total, 948 firms had annual receipts of under $10 million, and 48 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small. In the Paging *Third Report and Order,* the Commission developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. Also, according to Commission data, 365 carriers reported that they were engaged in the provision of paging and messaging services. Of those, the Commission estimates that 360 are small, under the SBA-approved small business size standard.

20. *Wireless Communications Service.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A ''small business'' is an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area

licenses in the WCS service. In the auction, there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity.

21. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for firms in this category, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2010, there were a total of 810 establishments in this category that operated for the entire year. Of this total, 787 had employment of fewer than 500, and an additional 23 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

22. *Software Publishers.* Since 2007 these services have been defined within the broad economic census category of Custom Computer Programming Services; that category is defined as establishments primarily engaged in writing, modifying, testing, and supporting software to meet the needs of a particular customer. The SBA has developed a small business size standard for this category, which is annual gross receipts of $25 million or less. According to data from the 2007 U.S. Census, there were 41,571 establishments engaged in this business in 2007. Of these, 40,149 had annual gross receipts of less than $10,000,000. Another 1,422 establishments had gross receipts of $10,000,000 or more. Based on this data, the Commission concludes that the majority of the businesses engaged in this industry are small.

23. *NCE and Public Broadcast Stations.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' The SBA has created a small business size standard for Television Broadcasting entities, which is: such firms having $13 million or less in annual receipts. According to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States had revenues of $12 (twelve) million or less. The Commission notes, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by the Commission's action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

24. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the Commission's estimates of small businesses to which they apply may be over-inclusive to this extent. There are also 2,117 low power television stations (LPTV). Given the nature of this service, the Commission will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

25. The Commission has, under SBA regulations, estimated the number of licensed NCE television stations to be 380. The Commission notes, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by the Commission's action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

26. This Notice proposes new or modified reporting or recordkeeping requirements. Any changes to the Part 10 WEA technical rules, including message and geo-targeting requirements, may result in modified reporting and recordkeeping requirements necessary to satisfy the statutory requirements of the WARN Act (1) that Commission receive notice of election by all CMS providers concerning whether they will participate in the WEA; (2) CMS providers electing not to transmit, in part or in whole, in the WEA must provide clear and conspicuous notice, which takes into account the needs of persons with disabilities, to new subscribers of its non-election or partial election at the point of sale; and (3) CMS providers electing not to transmit WEA Alert messages, in part or in whole, must also provide clear and conspicuous notice, which takes into account the needs of persons with disabilities, to existing subscribers of its non-election or partial election by means of an announcement amending the existing subscriber's service agreement. Although the Notice does not propose revising the existing election procedures, the Commission notes that the CSRIC IV recommends that the Commission modify the current election procedures and provide Participating CMS Providers an opportunity to revise previous WEA election to comply only with the WEA rules that existed at the time of their initial election, and not those adopted subsequently. Moreover, amending the Commission's rules to require Participating CMS Providers to log the receipt of alerts and report the results of State/Local WEA Tests to the Commission may result in increasing the reporting and recordkeeping costs and burdens approved under OMB Control No. 3060–1113, ICR Reference No. 201404–3060–021. Test reporting and alert logging requirements may require small businesses to contract with engineers in order to make modifications to Participating CMS Provider Alert Gateways and mobile devices.

27. Additionally, any changes to the existing WEA testing regime to require Participating CMS Providers to support State and Local testing will entail some form of recordkeeping that will be used by the Commission to satisfy the statutory requirement of the WARN Act that the Commission ''shall require by regulation technical testing for commercial mobile service providers

that elect to transmit emergency alerts and for the devices and equipment used by such providers for transmitting such alerts.'' Specifically, amending the Commission's rules to require Participating CMS Providers to participate in State/Local WEA testing as well as maintaining a log of RMT results and generating reports will require a modification to the cost and hours burdens approved by OMB under OMB Control Number 3060–1126, ICR Reference No. 201502–3060–020. The proposals set forth in the Notice are intended to advance the Commission's public safety mission and establish an effective WEA in a manner that imposes minimal regulatory burdens on affected entities.

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

28. The RFA requires an agency to describe any significant alternatives that it has considered in developing its 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.''

29. As noted in paragraph 1 above, this Notice initiates a rulemaking to update the rules governing the WEA system by which Participating CMS providers may elect to transmit emergency alerts to the public, a goal mandated by the WARN Act and consistent with the Commission's obligation to protect the lives and property of the public. Primarily, this Notice seeks comment on three general categories of proposed rule changes: messaging, geo-targeting and testing.

30. With regard to WEA messaging and geo-targeting, this Notice seeks comment on a number of options to minimize the economic impact on small entities. First, the Notice proposes to expand the maximum character length of WEA messages from 90 to 360 characters and also seeks comment on alternatives such as rendering 140 character WEA alerts. The Notice also seeks comment on the extent Participating CMS Providers can leverage existing technology and best practices to minimize costs. Additionally, the Notice seeks comment on whether existing software is capable of rendering 360-character WEA alerts. Further, the Notice seeks comment on developing an appropriate timeframe for Participating CMS Providers to begin rendering longer WEA alerts in order to mitigate costs.

31. Second, the Notice proposes to create a new class of WEA alerts for Emergency Government Information. In that connection, the Notice seeks comment on measures to mitigate costs, including the utility of providing alert originators training and guidelines to minimize burdens. Further, the Notice seeks comment on developing an appropriate timeframe for Participating CMS Providers to begin rendering Emergency Government Information alerts in order to mitigate costs.

32. Third, the Notice proposes to allow the provision of phone numbers and URLs in WEA alerts. The Notice seeks comment, in the alternative, on whether embedded references should be allowed only in AMBER Alerts. The Notice seeks comment on developing an appropriate timeframe for Participating CMS Providers to begin rendering embedded phone numbers and URLs in WEA alerts in order to mitigate costs. Additionally, the Notice seeks comment on leveraging existing technology to supplement WEA alerts with multimedia.

33. Fourth, the Notice proposes to require Participating CMS Providers to geo-target WEA messages more precisely. The Notice seeks comment on leveraging existing technology and best practices, including network-side enhancement already voluntarily undertaken by Participating CMS Providers, to more precisely geo-target WEA alerts. The Notice also seeks comment on alternatives such as allowing Participating CMS Providers to render geo-targeted WEA alerts to the area that approximates the alert target area. The Notice also seeks comment on the extent ''device-assisted'' geo-targeting solutions already exist and can be implemented to ''filter'' WEA alerts based on coordinates as well as the extent that third party developers might create applications to improve geo-targeting. Further, the Notice seeks comment on developing an appropriate timeframe for Participating CMS Providers to begin geo-targeting WEA alerts in order to mitigate costs.

34. With respect to WEA testing and proficiency training, this Notice proposes to establish requirements and procedures governing Participating CMS Provider support for state and local WEA testing, and seeks comment on alert logging requirements for Participating CMS Provider Alert Gateways and test reporting requirements based, in part, upon the data produced by this logging function. First, in order to minimize the costs associated with supporting state and local testing, the Notice seeks comment on (1) leveraging the existing RMT testing protocol and (2) the use of best practices and standards developed through a public/private partnership including geo-targeting tests to localized areas and providing an opportunity for volunteers to participate in WEA tests. Second, the Notice seeks comment on how to minimize the costs associated with testing reporting requirements for state and local tests, including leveraging existing logging functionality and best practices, as well as relying on an informal approach to reporting test results and the extent that third-party developers may automate the proposed test filing procedures. The Notice seeks comment on the appropriate timeframe within which Participating CMS Providers should comply with the proposed testing requirements.

35. In commenting on these questions, commenters are invited to propose steps that the Commission may take to minimize any significant economic impact on small entities. For example, the Notice seeks comment on whether the benefits of extending liability protection to these proposals sufficiently outweigh the costs to Participating CMS Providers for participating in WEA. The Notice also seeks comment on the feasibility of its messaging, geo-targeting and testing proposals as well as an appropriate transition period from the current technical and testing requirements to the proposed rule changes contained in the Notice. When considering proposals made by other parties, commenters are invited to propose significant alternatives that serve the goals of these proposals.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

36. None

Synopsis of the Notice of Proposed Rulemaking

II. Notice of Proposed Rulemaking

A. WEA Messaging

1. Increasing Maximum WEA Character Length

1. Under the Commission's rules, WEA messages are currently limited to a maximum length of 90 characters. In the *First Report and Order* the Commission concluded that adopting a 90-character text message protocol

would serve the public interest because it would allow Participating CMS Providers to transmit WEA messages without requiring technical changes to their underlying infrastructure, and because 90-character messages were considered to be of sufficient length to get the consumer's attention, so they could then seek out other media for confirmation of the alert and for further information. Importantly, the Commission envisioned that Participating CMS Providers would eventually deploy technologies capable of messages longer than 90 characters.

2. In its recent report CSRIC IV finds that the majority of commercial mobile wireless networks and network technologies, such as GSM, UMTS, and LTE, can support messages with a larger number of characters. Moreover, CSRIC IV recommends that the Commission expand the character limit for WEA messages sent using 4G LTE-based infrastructure and devices to a maximum of 280 characters, pending confirmation by the Alliance for Telecommunications Industry Solutions (ATIS), and the Telecommunications Industry Association (TIA) (jointly, ATIS/TIA) that such an increase of the character length is feasible. CSRIC IV recommends that the necessary modifications to industry standards supporting the coexistence of 90- and 280-character alerts can be completed within one year of the issuance of an appropriate report and order. Subsequent to CSRIC IV's recommendations, ATIS/TIA released its *Feasibility Study for LTE WEA Message Length* in October 2015, and confirms that extending WEA message character length is feasible. The *Feasibility Study for LTE WEA Message Length* recommends a maximum WEA message length of 360 characters, where a minimum of 280 and a maximum of 372 characters can be included in two transmission segments. The study also notes, however, that additional WEA enhancements, such as improved geo-targeting and support for multimedia and multilingual alerts, may decrease their maximum recommended character length, pending further study.

3. Consistent with the CSRIC IV recommendations and the recent ATIS/TIA study, the Commission propose to amend section 10.430 of its rules to expand the maximum permissible length of WEA messages from 90 to 360 characters of alphanumeric text. Specifically, the Commission proposes to extend the character limit for those networks and devices for which it is technically feasible to deliver and process 360-character messages, as discussed in greater detail below, while continuing to allow the delivery of 90-character messages on 2G and 3G networks and devices. In this regard, the Commission seeks to balance the capabilities of 4G LTE networks with the limitations of legacy networks. The Commission seeks comment on this proposal, and the extent to which it would serve the needs of state and local governments to provide more detailed alert information to the public sufficient to motivate appropriate and swift action to save lives and protect property.

4. Expanding the maximum character length for WEA messages to 360 characters could address alert originators' concerns that they are unable to motivate the public to take appropriate protective action using messages limited to 90 characters. According to the National Center for Missing and Exploited Children (NCMEC), ''[i]t can be extremely difficult to fit sufficient descriptive information within a 90-character limit in a meaningful and understandable manner that doesn't confuse the public.'' The National Weather Service (NWS) states that increasing the maximum WEA message length ''would improve the ability of NWS and non-weather alerting authorities to convey critical life-saving information over WEA, such as spelling out key terms which are not abbreviated and may not be well understood.'' CSRIC IV and START concur that longer alert messages make it easier for the public to understand the nature of an emergency and the responsive action alert originators advise them to take. For example, according to the *START Report,* longer alert messages improve message interpretation, reduce ''milling'' by personalizing alert messages, and hasten a protective response. FEMA also strongly supports increasing the character length of WEA messages. The Commission seeks comment on whether expanding WEA messages to 360 characters would be likely to promote public understanding and swifter action in response to an emergency. The Commission also seeks comment on how an increase in the length of WEA messages would affect the accessibility of such messages by individuals with disabilities, senior citizens, and persons with limited English proficiency. The Commission seeks comment on how to quantify the potential life-saving benefits of increasing the maximum character length of WEA messages, as well as of the rules the Commission proposes today.

5. If the Commission expands the maximum character length for WEA messages, it seeks comment on whether 360 characters is the optimal maximum. The Commission seeks comment on the number of characters necessary to provide the public with sufficiently detailed information about the emergency situations that WEA is designed to address, and to encourage swift and effective public action in response to such emergencies. For example, the *START Report's* finding that longer alerts improve public response was based on 1,380 character messages. Is such a message length technically feasible? Would a 1,380 character message would better serve the public interest? The *START Report* also found that some alert originators expressed a preference for 140-character messages, based on their view that the public may be unlikely to read longer messages. In this regard, the Commission observes that the social media service Twitter uses messages limited to 140 characters in order to disseminate information about socially relevant phenomena, including emergency alerts and warnings. What can the Commission learn about the way that people use Twitter and other social media platforms that can inform the Commission's policymaking with respect to the length of WEA messages?

6. The Commission seeks comment on the technical feasibility of supporting WEA messages longer than 90 characters. As confirmed by ATIS/TIA, CSRIC IV states that 4G LTE networks and devices are capable of delivering 360-character alerts, and the Commission anticipate that future network iterations will continue to support messages with a maximum character length of at least 360 characters. The Commission observes that the nation's four largest CMS Providers have all but completed their transition to 4G technologies. In addition to the nation's largest CMS Providers, smaller Participating CMS Providers are also transitioning to 4G technologies; for example, more than 93 percent of U.S. Cellular's customers have access to 4G LTE, and Sprint and NetAmerica Alliance have partnered with the Competitive Carriers Association to accelerate smaller Participating CMS Providers deployment of 4G LTE across rural America. The Commission also seeks comment regarding how the incorporation of the additional WEA enhancements the Commission proposes below (such as support for multimedia and multilingual alerts) may affect the implementation of WEA messages with a maximum length of 360 displayable characters. For instance, would the metadata associated with the

inclusion of a URL compete with the maximum text limitation for WEA messages?

7. CSRIC IV concludes that the existing 90-character limit should remain for legacy networks and devices due to these networks' limitations and its expectation that the overwhelming majority of CMS Provider infrastructure and mobile devices will soon achieve 4G LTE capability. We seek comment on this view. The Commission seeks comment on whether the coexistence of 90- and 360-character alerts might cause public confusion. The Commission also seeks comment on the extent to which it would be feasible for alert originators and Participating CMS Providers to support the coexistence of both 90- and 360-character alerts.

8. CSRIC IV considered multiple approaches that would accommodate the existing base of legacy networks and mobile devices, while accounting for 4G technology's ability to deliver and receive longer messages. For example, one approach would be for the alert originator to ''create two WEA [a]lert [m]essages, the first adhering to the 90 displayable character maximum and the second to support the longer displayable character length.'' Alternatively, one WEA message could be generated, the first 90 characters could be delivered to legacy devices, ''and the full longer displayable characters [could be] delivered to future enhanced WEA LTE mobile devices.'' A third alternative would be the transmission of a longer message in four parts over legacy networks (and in a single message over 4G networks, where feasible). The Commission seeks comment on the feasibility of these alternatives and any other approaches for implementing an expanded WEA message. FEMA states that standards applicable to the Integrated Public Alert and Warning System (IPAWS) would need to be updated in order for IPAWS to accept longer messages, and that a software update would likely be necessary to enable alert origination software to initiate longer messages. NWS states that it could provide a longer WEA message in addition to the 90-character message, if necessary. Is commercially available alert origination software capable of automatically generating 90- and 360-character alerts from one message? Are there additional technological solutions, not considered by CSRIC IV, which would more effectively enable the transmission of longer alerts across all technologies, including legacy networks and devices? The Commission also seeks comment on the extent to which existing standards would need to be modified to accommodate the coexistence of 90- and 360-character maximum messages.

9. The Commission proposes that Participating CMS Providers should be required to come into compliance with its proposed WEA messaging rules within one year of the adoption of final rules. With respect to the Commission's proposal to allow the continued delivery of 90-character messages to legacy networks and devices, would it be preferable to adopt a date certain by which all Participating CMS Providers must be able to deliver 360-character WEA messages, rather than allowing the co-existence of 90- and 360-character WEA messages? If so, in what timeframe should the Commission sunset the 90-character WEA message length? Should the date of any sunset be contingent upon the satisfaction of a particular condition, such as the achievement of a particular milestone (*e.g.,* the completion of a 4G network deployment milestone or the completion of any necessary standards work by ATIS/TIA or other standards bodies)?

10. Finally, the Commission seeks comment on the costs associated with changing the maximum character length for WEA messages. To what extent can Participating CMS Providers leverage existing resources and infrastructure deployed for commercial purposes to satisfy the requirement the Commission proposes today? What additional network resources, if any, are necessary to comply with the Commission's proposed rule? If the delivery of expanded WEA messages can be accomplished through a software upgrade, would such upgrades fall within the scope of Participating CMS Providers' fixed-maintenance contracts, thus resulting in a cost of near zero? The Commission also seeks comment on mitigating factors that could offset potential costs, including those for small and rural Participating CMS Providers. The Commission seeks comment on any burden associated with allowing Participating CMS Providers to continue delivering shorter WEA messages using legacy devices and networks, while simultaneously delivering the expanded WEA messages on their 4G networks. The Commission also seeks comment on the costs and benefits of any potential alternative approaches. Specifically, the Commission seeks comment on the extent of cost savings expected to result from expanding the maximum character length to 360, as opposed to requiring that longer messages be issued as sequential 90-character alerts.

2. Classifying Emergency Government Information

11. The WEA rules currently provide for three classifications of WEA message: Presidential Alerts, Imminent Threat Alerts, and AMBER Alerts. For an alert to be issued through WEA, it must fall within one of these three categories. In the *First Report and Order,* the Commission adopted these three categories in the public interest because they aligned with the Commission's interpretation of ''emergency'' alerts under the WARN Act, and because additional alert categories could cause the public to disregard WEA alerts or cause the delivery of alerts to be delayed. In this regard, the Commission's conclusion was consistent with the CMSAAC's finding that supporting these three alert classes achieves the best balance between warning of imminent threats to life and property and the limitations of Participating CMS Provider networks at that time. However, FEMA suggests that communities need the ability to share information beyond the nature of an emergency and how to respond to that emergency; they need the ability to provide additional instructions and information that may contribute to saving lives.

12. The Commission proposes to amend the WEA rules to create an additional class of WEA message, ''Emergency Government Information.'' The Commission proposes to define an Emergency Government Information message as an essential public safety advisory that prescribes one or more actions likely to save lives and/or safeguard property during an emergency. According to CSRIC IV, examples of Emergency Government Information messages include ''boil water'' advisories, and messages indicating shelter locations in the event of long-term or severe flooding, hurricanes, or tornados. The Commission seeks comment on its proposed definition of Emergency Government Information, and on whether enabling the delivery of Emergency Government Information messages would expand the alerting toolkit available to government entities in a meaningful way, complementing existing WEA classes and allowing the provision of more detailed information about how to protect life and property.

13. The Commission seeks comment on how it can ensure that Emergency Government Information messages are used appropriately and in circumstances where they would be most effective at precipitating protective action. According to CSRIC IV, ''[a]n

Emergency Government Information message should only be used to provide information to assist citizens regarding actions to take resulting from an imminent threat to life and property.'' Would Emergency Government Information be most effective if defined as a standalone message, the issuance of which is predicated upon the fulfillment of certain necessary conditions? Or, on the other hand, should Emergency Government Information messages be used only to supplement Imminent Threat Alerts? What guidelines and parameters would ensure that Emergency Government Information messages are used in an appropriate manner? CSRIC IV recommends that only ''appropriate agencies'' become authorized to issue Emergency Government Information messages. The Commission seeks comment on whether it should adopt that approach. If the Commission does, are there particular entities which would be particularly appropriate sources of Emergency Government Information?

14. The Commission seeks comment on the benefits and costs of creating this additional class of WEA alert. Would such messages help to save lives and protect property? What costs, if any, would be imposed on Participating CMS Providers, alert originators, and consumers? Are there any measures that could be taken to mitigate these costs? Is alert origination software currently capable of issuing Emergency Government Information messages using predefined CAP fields and free-form text, or would a software update be required? Would creating an additional category of alerts desensitize the public to other types of alerts? The Commission believes that Participating CMS Providers could use the same hardware to deliver an Emergency Government Information WEA message as they would to deliver another classification of WEA message and seek comment on this view.

15. As required by the WARN Act, the Commission proposes to amend Section 10.280 of the Commission's rules to allow Participating CMS Providers to enable consumers to opt out of receiving Emergency Government Information messages. CSRIC IV recommends that subscribers should be allowed to opt out of receiving Emergency Government Information, and states that this option need not imply a new device setting, but rather, should be combined with existing settings on the device. The CSRIC IV's report states that the subscriber opt-out capability recommended to be offered for Emergency Government Information would need to be ''defined and specified in the Joint ATIS/TIA mobile Device Behavior Specification'' in order to ensure that the option to opt out is provided consistently and uniformly across devices, operating systems and software versions. Is this the case? What, if any, other standards or specifications would need to be modified in order to support the provision of Emergency Government Information? Alternatively, would it be preferable for Emergency Government Information to be presented to consumers on an opt-in basis? Would providing such an opt-in option be consistent with the WARN Act?

16. The Commission also seeks comment on whether there are other classes of alerts that should be added to WEA. FEMA, for example, asserts that the Commission should revisit the manner in which WEA messages are classified, and recommends that the Commission amend the Commission's rules to create the following classes: Federal Alerts (authorized by the President), AMBER Alerts, Severe Weather Alerts, and Local Threat Alerts, each of which would have its own unique attention signal and vibration cadence. As recommended by FEMA, Local Threat Alerts are alerts that may not meet each of the criteria for an imminent threat alert (certainty, urgency and immediacy) but nonetheless may be appropriate for a WEA alert. The Commission seeks comment on this approach. Are additional alert types, such as those currently offered by private mass notifications systems on an opt-in basis, appropriate for WEA? Such additional alert notifications would include weather-related closings, severe traffic incidents, and road closures due to special events. Would such additional classifications help adequately capture the variety of events that merit an alert or warning, and help provide clear instructions to alert originators on the kinds of events where use of the WEA system is appropriate? In addition, could additional alert types provide consumers with a more nuanced range of opt-out choices, in terms of the types of alerts they choose to receive, that could encourage consumer participation in WEA? Parties suggesting additional classes should explain how their proposed classes substantively differ from any of the current classes, or the proposed Emergency Government Information class, and the benefits of their proposed class, including why an additional or alternative alert classification is necessary to help save lives and protect property.

3. Content in WEA Alerts

17. The WEA rules currently prohibit the inclusion of embedded references, including telephone numbers and URLs, in all WEA messages except the Presidential Alert. In the *First Report and Order,* the Commission found that allowing URLs or telephone numbers to be included in WEA messages could exacerbate wireless network congestion in the wake of an emergency when wireless networks are already burdened by calls for help from police, fire, and rescue personnel, as well as to family and friends. In this regard, the Commission's conclusion was consistent with the CMSAAC's recommendation that including telephone numbers and URLs in WEA messages would encourage mass usage and potential congestion of wireless networks.

18. The WEA rules currently provide minimum standards for text-based alerts only. The Commission did not adopt technical requirements for WEA alerts with multimedia capability in the *First Report and Order* because, at that time, the Commission believed ''it would be premature and not consistent with our obligations under section 602(a) of the WARN Act to adopt standards and requirements for technologies that are still under development.'' In this regard, the Commission's conclusion was consistent with the CMSAAC's recommendation that support for text should be the minimum requirement for Participating CMS Providers.

19. Given the advancement of time and technology since the adoption of the WEA rules, the Commission believes that it would serve the public interest to reconsider the prohibition on the inclusion of telephone numbers and URLs in WEA messages. The Commission propose to remove Section 10.440 from its Part 10 WEA rules, in order to allow embedded phone numbers and URLs to be included in WEA messages. In doing so, the Commission seeks to ensure that Americans may be provided with an immediately accessible method of contacting public safety officials or finding additional information about emergency situations by leveraging the existing capabilities of Participating CMS Provider networks and devices. The Commission believes this approach furthers its goal of using the system to advance public safety. The Commission seeks comment on this proposal and on the Commission's rationale.

20. The Commission believes that allowing embedded references in WEA messages will improve alert quality and accessibility by offering additional,

specific information, and could reduce the risk of network congestion by focusing consumer response, thereby minimizing ''milling'' behavior. The Commission seeks comment on this analysis. To what extent do individuals currently respond to the receipt of a WEA message by using the Internet to confirm the existence of the emergency condition in their area or to search for additional information? Could a synchronized push of link content to device cache reduce non-alert congestion? CSRIC IV, START and FEMA agree that ''consideration should be given to including a URL'' in WEA messages, but recommend further study on whether the inclusion of URLs in WEA messages could cause network congestion when many people access a link within seconds of alert receipt. The Commission seek comment on whether such further studies would be helpful, given existing network management technologies that could be deployed to mitigate any potential alert congestion.

21. The Commission believes the potential benefits of allowing embedded phone numbers and URLs in WEA messages may be particularly applicable where AMBER Alerts are concerned. NCMEC states that the ability to provide a URL directing recipients to a Web site specifically used for AMBER Alerts would be the most important possible enhancement to WEA that the Commission can require at this time. FEMA recommends that a phone number be included in AMBER Alerts, noting that the ATIS/TIA specification for the interface between IPAWS and participating wireless carrier gateways already contains provisions for including a phone number. Every type of missing child advisory issued by NCMEC (*e.g.,* bulletin, notice or poster) includes a phone number to contact with potentially helpful information, except WEA AMBER Alerts. According to the Boston Globe, ''[i]n cases in which an abducted child is murdered, 75% of the killings happen within the first three hours.'' The Commission believes that providing WEA AMBER Alert recipients with URLs linking to images of missing children, their suspected abductors, and potentially the abduction vehicle could make it easier for the public to assist alert originators in locating missing children, and that providing a phone number to call could hasten the provision of such information during a critical period when every second may count. The Commission seeks comment on this analysis, and on other potential benefits of allowing alert originators to include embedded references in AMBER Alerts and in WEA messages more generally.

22. The Commission seeks comment regarding the potential costs that may be associated with incorporating embedded references in WEA messages, including any costs associated with the potential for increased call volume or network congestion. If alerts were more narrowly geo-targeted, would these potential burdens be mitigated? What network management techniques could be deployed to counter any potential network congestion? The Commission also seeks comment on any technical considerations that the Commission should take into account with regard to Participating CMS Providers' ability to support embedded references in WEA messages. According to CSRIC IV, adding URLs to WEA messages would necessitate the revision of standards for displaying content generated by the URL. The Commission seeks comment on CSRIC IV's assertion. What technical challenges would need to be addressed to support the synchronized push of content to be stored in cache for all URL links used in WEA CAP messages? Would it be possible to include interactive links in WEA messages, such that an alert recipient could provide real-time feedback to alert originators that would improve emergency responders' situational awareness and help ensure that adequate and appropriate resources are deployed to the scene of the emergency? For example, a WEA message warning about a developing fire in a multi-story building could ask alert recipients whether they see smoke by responding ''yes'' or ''no,'' helping emergency responders make decisions about building ventilation that could help to prevent the fire from further spreading. The Commission observes that the *CMSAAC Report* recommended guidelines for translating embedded references from CAP into a format suitable for communication with mobile devices. The Commission also observes, however, that a data connection may be required in order to access content made available through URLs, and that appropriate protocols and cybersecurity protections may need to be developed in order to protect these functions from malicious intrusion. How should these concerns be addressed? Finally, the Commission seeks comment on how much, if any, additional data would be necessary to transmit embedded references, along with text, in WEA messages, and on the impact, if any, that transmitting this additional data would have on message delivery latency and mobile device battery life. The Commission also seeks comment on the extent of any end-to-end latency in the delivery of WEA messages today, and whether there are ways to employ new technologies to reduce latency for WEA's current functionalities. The Commission seeks comment on these and other technical issues that could affect the implementation of this proposal. The Commission observes that AT&T suggests that the use of phone numbers and URLs in WEA alerts should be limited to WEA AMBER Alerts. The Commission seeks comment on this alternative.

23. The Commission also seeks comment on the efficacy of using embedded URLs to enhance accessibility of WEA for people with disabilities, senior citizens and persons with limited English proficiency, in addition to the general public. Wireless RERC conducted field trials and focus groups regarding disability access to WEA messages and found that users with sensory disabilities prefer to have access to additional information beyond that supplied by the 90-character alert via URLs. The Commission seeks comment on this conclusion, and on how the inclusion of URLs and phone numbers may facilitate access to information. For example, could a URL provide non-English speakers with access to emergency information in their preferred language?

24. Finally, the Commission seeks comment on whether it would serve the public interest to adopt rules governing the provision of multimedia-based alerts, including alerts that contain high-information maps that demonstrate the location of the alert recipient relative to an area affected by an imminent threat, and images of children, suspected abductors and vehicles in AMBER Alerts. The Commission believes that providing multimedia-based alerts could significantly enhance the usefulness of the system, thereby advancing public safety goals. For example, NWS strongly supports the incorporation of graphical content in WEA messages, stating that this improvement would provide greater clarity in WEA messaging. The Commission recognizes that CSRIC IV concludes that it is impractical for current cell broadcast technology, including 4G LTE, to support sending multimedia, such as images and maps, as part of WEA messages without ''significant impacts'' to Participating CMS Provider infrastructure. However, the Commission observes that mobile alerting technology vendors and Participating CMS Providers agree that other technologies may be able to support multimedia functionality. How

much additional data would be associated with the transmission of multimedia content in WEA messages, and what impact, if any, would transmitting this additional data have on message delivery latency and mobile device battery life? The Commission seeks comment on these issues, as well as any technical solutions that may serve to enhance the usefulness of WEA alerts for the general public.

4. Providing Multilingual WEA Messages

25. The WARN Act allows Participating CMS Providers to transmit alerts in languages other than English, if technically feasible. The Commission determined in the *First Report and Order* that it was not technically feasible for CMS Providers to deliver commercial mobile alerts in languages in addition to English and that further study was necessary to ensure that system capacity and message latency were not adversely affected. The Commission's conclusion in this regard is consistent with the CMSAAC's observation that rendering multilingual alerts would require additional character sets that would limit the amount of text that could be transmitted in WEA messages and that more precise geo-targeting increases the number of non-English languages that will be encountered. Accordingly, the Commission found it premature to require that Participating CMS Providers transmit alerts in languages other than English, but encouraged WEA stakeholders to develop multilingual alerting capabilities.

26. The Commission seeks comment on whether the fundamental technical problems that limited the ability of Participating CMS Providers in 2008 to provide alerts in languages other than English remain barriers to implementing Congress' vision. To the extent these problems remain, are they device-based, network-based, or both? FEMA recommends that WEA should be enhanced to support delivery of alert messages in languages other than English if the alert is made available by the originator in other languages. FEMA observes that ''[t]he IPAWS system as currently deployed and based upon the Common Alerting Protocol standards is capable of supporting multiple languages beyond English if the originator of the alert message provides the alert in additional languages.'' Alert originators state that they want to ''[u]se language in the WEA Alert Message that best conveys who is at risk given message length constraints.'' That could reasonably include a language, other than English, that best serves a particular community. Accordingly, the Commission seeks comment on the benefits of supporting multilingual WEA alerts in order to advance the Commission's goals for promoting community participation.

27. In raising the issue of multilingual alerts, the Commission notes that the Multicultural Media, Telecom and Internet Council (MMTC) has highlighted the importance of providing information about emergencies in languages other than English on numerous occasions. The Commission agrees with MMTC that all Americans, regardless of the language they speak, should have access to emergency information. In this *Notice,* the Commission seeks comment on the technical implications and potential costs of supporting multilingual WEA alerts. The Commission also seeks comment on the impact of requiring WEA alerts in languages other than English on the ability of Participating CMS Providers to comply with the rules the Commission propose today. For example, the Commission seeks comment on whether Participating CMS Provider networks continue to experience technical limitations that restrict their ability to offer WEA alerts in languages other than English. How much additional data, if any, would be necessary to support additional languages and/or character sets in WEA messages, and how would the transmission of this additional data affect mobile device battery life and message delivery latency? The Commission seeks comment on whether there are other factors that should be considered in determining whether to support multilingual alerts, and on how states and local alert originators can best determine which languages are appropriate for their communities.

B. WEA Geo-Targeting

28. In the *First Report and Order,* the Commission adopted a geo-targeting requirement for WEA messages in order to ensure that WEA messages would only be received by those individuals affected by a specific emergency. Under Section 10.450 of the WEA rules, Participating CMS Providers may not transmit WEA messages to areas greater than the county (or county equivalent) that approximates the geocode, circle, or polygon specified by the WEA alert. The Commission anticipated that as more refined and cost effective geo-targeting capabilities became available to Participating CMS Providers they would voluntarily elect to target alerts more granularly. Similarly, the CMSAAC recommended county-based geo-targeting, but acknowledged that it would be desirable to allow for ''more flexible geo-targeting to alert areas [to] evolve as technology advances,'' and recommended that the geo-targeting to alert areas smaller than a county ''should be reviewed as part of the biennial review process.''

29. Since the Commission adopted its WEA geo-targeting rules in 2008, there has been considerable interest among alert originators in developing more finely targeted WEA messages. Additionally, research scientists at Carnegie Mellon have developed several polygon compression techniques that enable efficient transmission of polygons representing geographical targets. These techniques are intended to enable compressed polygon vertices to be embedded in emergency alert messages that have strict length restrictions, such as WEA messages.

30. Further, CSRIC IV and START observe that the effectiveness of WEA alert messages may remain suppressed until they can be distributed to finer geospatial areas, so that messages only reach the people who are at risk. ''[O]therwise, people who receive WEA Alert Messages may be trained to think they don't apply to them.'' As CSRIC IV notes, some Participating CMS Providers have made voluntary enhancements to geo-targeting that exceed the Commission's current county-level geo-targeting rules. The enhancements include using an algorithm to geo-target the WEA broadcast to transmission sites capable of best approximating the polygon-based alert area provided by the alert originator, and, in LTE networks, using cell sectorization, a technique whereby a WEA alert is broadcast to only certain sectors within a transmission site. CSRIC IV thus recommends that the Commission amend Section 10.450 of its WEA rules to state ''that a Participating CMS Provider may voluntarily transmit any Alert Message that is specified by the Alert Originator using a geocode, circle, or polygon, to an area that best approximates the geocode, circle, or polygon given the constraints of CMS Provider infrastructure topology, propagation area, and other radio and network characteristics.'' CSRIC IV further recommends that, at a minimum, the Commission should adopt a geo-targeting standard constituting an area no larger than the coverage area of a single transmission site.

31. The Commission proposes to revise the Commission's rules to require that Participating CMS Providers must transmit any alert message that is specified by a geocode, circle, or polygon to a target area not larger than

the specified geocode, circle, or polygon. If, however, the Participating CMS Provider cannot broadcast the alert to an area that accurately matches the target area, the Commission proposes that a Participating CMS Provider may transmit an Alert Message to an area that closely approximates the target area, but in any case not exceeding the propagation area of a single transmission site. In this regard, as a backstop, Participating CMS Providers would be permitted to geo-target WEA alerts with the same level of granularity currently allowed by the Commission's WEA rules. CSRIC IV recommends that CMS Providers be allowed to transmit alert messages, on a voluntary basis, to an area that best approximates the target area, ''given the constraints of Participating CMS Provider infrastructure topology, propagation area, and other radio and network characteristics.'' Would this approach weaken the Commission's current requirement that WEA alerts be geo-targeted to at least the county level, and would potentially allow Participating CMS Providers to geo-target alerts to any area, so long as it could be justified by reference to network constraints. The Commission seeks comment on the Commission's proposal and on this rationale.

32. The Commission seeks comment on the technical feasibility of complying with these more granular geo-targeting proposals. Both the WARN Act and the Commission envisioned that WEA technology would evolve to encompass more precisely geo-targeted alerts. In light of the advances in network technology observed by CSRIC IV, specifically network-based solutions already deployed by Participating CMS Providers, is it technically feasible for Participating CMS Providers, utilizing currently available technology, to more accurately geo-target WEA alerts? The Commission specifically seeks comment on the state of network-based enhancements needed to implement this process. CSRIC IV states that ''the algorithms for mapping the intended alert area to the relevant cell sites/sectors in the CMSP network are considered proprietary and there is no standard method to perform this mapping.'' How can the Commission ensure that all Participating CMS Providers have access to any relevant techniques that are necessary to implement more granular geo-targeting?

33. Further, the Commission seeks comment on other approaches to improve geo-targeting, including device-based geo-targeting solutions. CSRIC IV recommends that ATIS/TIA conduct feasibility studies of the ability of Participating CMS Providers to more narrowly geo-target WEA using network-based, device-based, and third-party-assisted solutions. Network-based geo-targeting solutions include cell sectorization and algorithm-based transmission site selection. A device-based solution entails an alert originator transmitting geographic coordinates for the target area along with the WEA message, and an end-user device using the device's location-based technology to display only those WEA messages that are relevant to the geographic area in which the device is located. CSRIC IV recommends that ATIS/TIA evaluate the extent to which device-based solutions could be optimized by minimizing the amount of data necessary to transmit alert area coordinates, either by compressing the data, circularizing the polygon, or embedding the geographic data in the alert message itself. A third-party-assisted solution (*i.e.,* a service provided by a party other than the mobile device and the Participating CMS Provider) would utilize an external source of geo-location to determine whether the WEA message should be displayed, without relying on the device's own location services.

34. Could a device-based solution improve WEA geo-targeting without burdening Participating CMS Provider infrastructure? Could device-based solutions complement network-based solutions to facilitate the delivery of even more granular WEA messages? Would the provision of alert area coordinates in a WEA message potentially reduce the amount of data available for other message elements, such as text and multimedia, and if so, what measures could mitigate this possibility? Carnegie Mellon University has ''developed a technique which significantly reduces the amount of data required to convey the location, size, and shape of an NWS alert polygon,'' suggesting that only a small amount of data may be necessary to transmit alert coordinates to a mobile device. To what extent can the amount of data needed to transmit geographic coordinates be reduced through such optimization methods? Are such methods feasible or advisable? Are there other techniques for efficiently sending alert area coordinates to a device that should be examined? The Commission also seeks comment on whether the use of device-based solutions might implicate privacy issues and on the protective measures that might be necessary to implement before a device's location-based services are used for the provisioning of WEA alerts. Finally, the Commission seeks comment on the extent to which third-party developers are in the process of developing services to improve WEA geo-targeting.

35. The Commission seeks comment on the potential benefits that more accurate geo-targeting may provide. By proposing measures to ensure that WEA messages are more finely targeted and delivered only to recipients who are likely to be affected by the emergency event, the Commission intends to minimize over-alerting and reduce alert fatigue. Do alerts sent to too wide an area result in significant problems? Does or could inaccurate geo-targeting lead to alert fatigue, and, if so, would it cause many individuals to disregard or opt-out of receiving all but the Presidential message? CSRIC IV and START conclude that finer geo-spatial targeting is necessary to ensure WEA Alert Messages only reach those people at risk, and that the ''effectiveness of WEA Alert Messages may remain suppressed until they can be distributed to finer geospatial targeted populations so that messages only reach the people who are at risk.'' The Commission seeks comment on these findings and encourage commenters to offer statistical evidence of the anticipated benefits resulting from tightening the Commission's geo-targeting requirements. Further, the Commission seeks comment on whether improved geo-targeting technology will increase opportunities for wireless providers to offer beneficial services to the companies currently providing mass notification products to localities, employers, and school systems. Specifically, will improved geo-targeting capabilities expand opportunities for wireless carriers and other parties to contract for services outside of WEA that are beneficial to the alert-originating community? The Commission seeks comment on whether there are other potential public/private partnerships that could further leverage WEA capabilities and bring additional innovative alerting services to communities.

36. Finally, the Commission seeks comment on the potential costs that would result from implementing the more granular geo-targeting requirements the Commission propose today, including through the implementation of network-based, device-based, or third-party-assisted solutions. Would the cost of compliance with the Commission's proposed rules through the use of network-based enhancements likely be minimal because Participating CMS Providers are already engaging in such practices voluntarily? What costs would be entailed for Participating CMS Providers

that are not currently using geo-targeting best practices? Would the implementation of device-based improvements to geo-targeting likely entail a software update to mobile devices? If a software update would be needed, could it be bundled into software updates that Participating CMS Providers would issue for their mobile devices in the regular course of business? What costs might be associated with the delivery of such software updates? Lastly, what costs might be associated with the implementation of a third-party-assisted solution?

C. WEA Testing and Proficiency Training

37. Section 602(f) of the WARN Act provides that ''[t]he Commission shall require by regulation technical testing for commercial mobile radio service providers that elect to transmit emergency alerts and for devices and equipment used by such providers for transmitting alerts''. Under the current WEA rules, the Commission requires Participating CMS Providers to support Required Monthly Testing (RMT) initiated by FEMA, and testing of the C-Interface. The Commission adopted these testing requirements in the *Second Report and Order* to satisfy the WARN Act's testing requirement in a manner that would ensure the reliability and performance of the new WEA system and the availability and viability of both of its gateway functions. The Commission further noted that the CMSAAC proposed that, in order to ensure the reliability and performance of this new system, certain procedures for logging alerts at the Alert Gateway and for testing the system at the Alert Gateway and on an end-to-end basis should be implemented. Since the deployment of WEA in 2012, the system has grown, technology has changed, and new community-based alert initiators have begun to use WEA to address the safety needs of their communities. In the course of analyzing the Commission's proposals below, commenters should address whether the proposal is consistent with the Commission's statutory authority under the WARN Act or the Communications Act.

1. Promoting State and Local Testing and Proficiency Training

38. GAO and alert originators have raised concerns about the lack of a state/local WEA testing regime. In response, the Commission tasked CSRIC IV with making recommendations on how the Commission could address these concerns. In its report, CSRIC IV observes that, according to state and local alert originators, training and proficiency-building exercises constitute a ''fundamental component'' of emergency management programs. Additionally, according to CSRIC IV, WEA testing would provide state and local alert originators with opportunities to evaluate their preparedness for responding to life-threatening events, to ensure the software used to generate and the infrastructure used to disseminate WEA messages are operating correctly, and to test for downstream issues.

39. *Readiness Testing.* CSRIC IV considered three potential models for WEA testing: (1) Allowing alert originators to utilize the current RMT process; (2) allowing alert originators to conduct WEA tests that could be received by wireless customers that opt in to receive alerts; and (3) allowing alert originators to conduct WEA tests that would be received by all wireless customers, unless they opt out of receiving the test. FEMA currently issues nationwide RMTs that are held up to 24 hours before they are delivered to (but not displayed on) WEA-enabled devices. CSRIC IV concluded that a localized test to opt-in participants' WEA-enabled devices would achieve alert originators' goals of providing system verification, as well as opportunities for alert originator proficiency training, and enhancing public awareness of the WEA service.

40. Pursuant to CSRIC IV's recommended opt-in testing model, an alert originator would submit its test message to FEMA/IPAWS, which would then send the test message to Participating CMS Providers that have coverage within the described alert area. Participating CMS Providers would then receive and process the test message, distributing it to devices configured to opt-in to receiving state and local WEA tests.

41. The Commission proposes to add a new section 10.350(c) to the WEA rules to require Participating CMS Providers to ensure their systems support the receipt of ''State/Local WEA Tests'' from the Federal Alert Gateway Administrator, and to distribute such tests to the desired test area in a manner consistent with section 10.450 of the rules. In order to allow State/Local WEA Tests to mirror an actual event, as recommended by the CSRIC, the Commission proposes that the 24-hour delivery window that currently applies to RMTs under section 10.350(a)(2) would not apply to State/Local WEA Tests conducted under proposed section 10.350(c). The Commission believes that the local, geographically focused nature of these tests would allow Participating CMS Providers to distribute the State/Local WEA Tests within their networks upon receipt in a manner consistent with necessary traffic load management and network maintenance. The Commission seeks comment on this analysis. In this regard, the Commission also seeks comment on whether there still remains a justification for the 24-hour window for RMTs. Does the 24-hour window allow for efficient testing that provides adequate data about any weaknesses in the system, including potential message delivery latencies? Do Participating CMS Providers still require a 24-hour window ''to manage traffic loads and to accommodate maintenance windows,'' as indicated by section 10.350(a)(2)? The Commission further proposes that section 10.350(c), consistent with section 10.350(a), should specify that a Participating CMS Provider may forgo accepting or delivering a State/Local WEA Test if the test message is preempted by actual alert traffic, or if an unforeseen condition in the Participating CMS Provider infrastructure precludes distribution of the State/Local WEA Test. In the event that a Participating CMS Provider cannot accept or deliver a test under these circumstances, the Commission proposes to require that Participating CMS Providers shall indicate such an unforeseen condition by sending a response code to the Federal Alert Gateway. Finally, the Commission proposes that Section 10.350(c) state that Participating CMS Providers may provide their subscribers with the option to opt-in to receiving State/Local WEA Tests. The Commission seeks comment on these proposals. The Commission also seeks comment on whether the Commission should require State/Local WEA Test messages to be clearly identified as test messages to prevent confusion.

42. The Commission seeks comment on whether any new or revised technical standards or processes would be necessary to facilitate state and local testing, and if so, whether such standards would be best developed through industry standards bodies or best practices. The Commission seek further comment on whether alert originators at the federal, state and local levels would be best positioned to coordinate with Participating CMS Providers and determine the proper method of outreach to testing participants. Accordingly, would the goal of promoting alert origination proficiency be best achieved by affording alert originators flexibility to develop a WEA testing model that best fits the needs of their individual

communities? Similarly, would industry organizations such as ATIS/TIA be best positioned to create the device and network specifications that may be necessary to support state and local WEA testing? The Commission seeks comment on whether any additional requirements would be necessary to realize the specific opt-in testing regime recommended by CSRIC IV. Should the Commission revise section 10.500 of the WEA rules, which specifies general requirements for WEA mobile device functionality (including monitoring for alert messages and presenting alert content) to include the ability to monitor for State/Local WEA Tests and to be able to receive and display State/Local WEA Test messages?

43. The Commission also seeks comment on the periodicity with which state and local alert originators would likely want to engage in readiness testing, and on the maximum readiness testing periodicity Participating CMS Providers are able to support. With what frequency should State/Local WEA Tests be conducted, in order to optimize and ensure system readiness, without introducing alert fatigue or otherwise imposing undue burdens on Participating CMS Providers?

44. The Commission seeks comment on the public safety benefits likely to result from requiring Participating CMS Providers to support State/Local WEA Testing. According to FEMA, a localized, opt-in, end-to-end approach to testing, as described above, offers the public safety benefits that alert originators state that they need. Specifically, FEMA asserts that requiring Participating CMS Provider support for local testing would improve WEA by (1) demonstrating to the public that their handsets are (or are not) capable of receiving a WEA message; (2) demonstrating WEA capability in coordinated public warning exercises and tests such as those required by the Nuclear Regulatory Commission for local emergency preparedness programs; and (3) providing the public with reassurance that local emergency management is capable of alerting them in times of disaster. The Commission seeks comment on FEMA's analysis.

45. Alternatively, would another approach to state and local WEA testing address alert originators' needs more efficiently? As mentioned above, CSRIC IV considered two alternatives to localized, end-to-end, opt-in WEA testing, including local testing on an opt-out basis, and using the current RMT process. The Commission seeks comment on these alternative testing regimes. While CSRIC IV concludes that opt-out testing would afford substantial benefits in terms of system verification, alert originator proficiency, and public awareness, it also finds that opt-out testing is unnecessarily broad, and that large-scale public response may unduly stress emergency call centers. The Commission seeks comment on CSRIC IV's analysis. With respect to utilizing the current RMT process, CSRIC IV finds that this testing model poses little to no network reliability risk for Participating CMS Providers, but also offers little, if any, benefit in the areas of system verification, alert originator proficiency and public awareness because the test alert would not be displayed on end-user devices. The Commission seek comment on CSRIC IV's findings.

46. The Commission also seeks comment on any potential costs that may be imposed by its proposed testing requirements. Because the proposed testing regime is largely based on the current RMT model, with test recipients likely comprised of a limited number of voluntary, opt-in participants, the Commission anticipates that the proposed testing regime would likely not lead to network congestion. The Commission seeks comment on this observation, as well as the extent to which Participating CMS Providers would incur costs, including costs related to the development of any technical standards or necessary modifications to end user devices. Are there any measures the Commission could take to minimize any attendant costs while still achieving the Commission's public safety goals?

47. *Liability Protection for State/Local WEA Testing.* Finally, CSRIC IV recommends that the Commission confirm that liability protection provided under the WARN Act extends to Participating CMS Providers for their engagement in State/Local WEA Testing. Based on the plain language of the WARN Act, the Commission believes that liability protection would reasonably extend to Participating CMS Provider engagement in State/Local WEA Testing as proposed in this Notice, provided that the Participating CMS Provider otherwise satisfies its obligations under the WARN Act and complies with the Commission's testing requirements. The Commission notes that section 602(f) provides that ''[t]he Commission shall require by regulation technical testing for commercial mobile radio service providers that elect to transmit emergency alerts and for devices and equipment used by such providers for transmitting alerts. Further, section 602(e)(1)(A) states that ''[a]ny commercial mobile service provider [. . .] that transmits emergency alerts and meets its obligations under this title shall not be liable to any subscriber, or user of, such person's service or equipment for—(A) any act or omission related to or any harm resulting from the transmission of, or failure to transmit, an emergency alert.'' The Commission seeks comment on its analysis.

48. *Proficiency Training.* The Commission observes that it may be helpful for state and local alert originators to send WEA test messages in the context of proficiency training exercises. The Commission envision that proficiency training exercises would help develop the preparedness of state and local emergency response, ensuring that emergency managers are able to respond swiftly and efficiently to emergencies through the use of WEA. The Commission seeks comment on whether it should provide alert originators with the option of delivering such proficiency training messages to a single, dedicated end-user device, such as the mobile device of an emergency management official, rather than to a larger set of wireless customers, in order to provide alert originators with an opportunity to develop alert originator proficiency through regular exercises without involving the general public. Further, in order to minimize any potential burden on Participating CMS Providers, the Commission propose that proficiency training exercises would not be subject to the same reporting requirements that the Commission discuss below. The Commission seeks comment on this proposal, and any other approaches the Commission could adopt that would achieve its public safety objectives.

2. Requiring Alert Logging and Test Reporting

49. Section 10.350 of the WEA rules requires Participating CMS Providers to keep an automated log of RMT messages received by the Participating CMS Provider Alert Gateway from the FEMA Alert Gateway. The Commission adopted this requirement in the *Second Report and Order* based on the CMSAAC's recommendation that alert logs should be kept and preserved as an integral part of the Trust Model for maintaining WEA system integrity, for protecting system security, and for testing and troubleshooting purposes. The Commission declined to adopt more specific test reporting requirements at that time because the WEA system was still in a nascent stage. According to CSRIC IV, there is no established procedure for Participating CMS Providers to inform alert originators or government entities of the

success or failure of WEA tests under the current WEA testing model (*i.e.,* RMT and C-Interface Testing), and thus no available method to analyze these results in the interest of public safety. The Commission seeks comment on CSRIC IV's conclusions.

50. The Commission proposes to require Participating CMS Provider Alert Gateways to provide the logging functionality recommended by the *CMSAAC Report.* Specifically, the Commission proposes to adopt a new section 10.320(g) that would require Participating CMS Provider Alert Gateways to:

- Provide a mechanism to log messages with time stamps that verify when messages are received, and when the messages are acknowledged or rejected by the Participating CMS Provider Alert Gateway, and if an alert is rejected, to provide the specific error code generated by the rejection;
- Maintain an online log of active and cancelled alert messages for 90 days, and maintain archived logs for at least 36 months that should be accessible by Participating CMS Providers for testing and troubleshooting purposes; and
- Generate monthly system and performance statistics reports based on category of alert, alert originator, alert area, and other alerting attributes.

The Commission observes that these logging requirements were recommended by the CMSAAC after extensive efforts to arrive at a consensus among CMS Providers, vendors, public safety entities, organizations representing broadcast stations, and organizations representing people with disabilities and the elderly. Are Participating CMS Provider Alert Gateways currently capable of performing the logging functions specified by the CMSAAC? If not, how difficult would it be to add this functionality? Would alert logging allow Participating CMS Providers to monitor whether the WEA system is working as intended? In order to develop a full view of how the WEA system is working, from alert initiation all the way through to receipt of the message by the mobile device, should CMS Providers also log when the alert is received by a representative, dedicated, end-user device (such as a mobile device controlled by and in the possession of the Participating CMS Provider)? Aside from the Commission, should alert logs be accessible only by Participating CMS Providers? The Commission seeks comment on whether other federal or state governmental entities, such as FEMA, may have a legitimate need for access to alert logs. The Commission seeks comment any confidentiality protections that would be required to protect Participating CMS Provider alert logs. The CMSAAC described message logging as part of the Trust Model necessary to ensure WEA system security and reliability because it allows all WEA messages to be attributed reliably to an individual, sender, and to identify when the sender is not properly credentialed. The Commission also seeks comment on whether implementing these CMSAAC-recommended procedures, along with the test reporting requirements described below, would be beneficial in harmonizing the Commission's proposed WEA test reporting and logging procedures with the Commission's EAS rules.

51. The Commission notes that CSRIC IV recommends that industry and government stakeholders ''develop a best practices ATIS/TIA standard for defining and reporting on significant problems.'' The Commission seeks comment on CSRIC IV's recommendation. Should the Commission formalize a reporting process for alert originators? If the Commission does formalize a test reporting procedure, what form should that reporting take, and what specific information should be reported? The Commission also seeks comment on the extent to which reporting procedures could provide alert originators with useful feedback on alert delivery latency, accuracy of geo-targeting, and quality of public response that otherwise would be unavailable. Could feedback on the quality of public response be leveraged to improve alert originators' alert origination proficiency? The Commission seeks comment on the extent to which reported data would be useful to empower alert originators with the ability to ensure the WEA system will work as designed and when needed. What, if any, characteristics of alert dissemination, beyond geo-targeting and latency, would state and local alert originators seek to evaluate through State/Local WEA Testing and thus require reports on? How can a test reporting system be optimized to protect potentially confidential information?

52. Should the Commission also require Participating CMS Providers to report WEA test data? The Commission notes that the Commission has required that EAS Participants file nationwide EAS test result data with the Commission on a confidential basis through an Electronic Test Reporting System (ETRS). Should the Commission require Participating CMS Providers to use this system as a model for the reporting of WEA test data to the Commission? If the Commission were to require reporting of WEA test data, the Commission seeks comment regarding the frequency with which such reporting should take place. For example, should Participating CMS Providers file test data on an annual basis, based on test data collected from the RMT process? The Commission also seeks comment regarding the elements of the test data that should be provided in any such report. For example, should the report include data regarding the time of the receipt of the alert from the FEMA Alert Gateway, and the time of alert transmission? Should Participating CMS Providers include data regarding when an alert is received by a representative mobile device, as discussed above with respect to logging requirements? The Commission also seeks comment on whether such information should be considered presumptively confidential, to be shared with federal, state and local alert originators that have confidentiality protection at least equal to that provided by the Freedom of Information Act (FOIA), consistent with the Commission's data-protection practices in the EAS context. Alternatively, are there differences in the type of data that the Commission might collect from CMS Providers versus EAS Participants that would suggest WEA test data should be treated differently? Should access to WEA test data be limited, and if so, to whom? The Commission seeks comment on the optimal method of filing test result data with the Commission in a manner that fulfills the primary goal of WEA testing to provide alert originators with verification that the system works as designed, and provides the Commission with an opportunity to analyze the performance of the WEA system in order to bring to light any potential weaknesses in the WEA system that the Commission may be able to address through rulemaking, public-private partnerships, or both.

53. The Commission also seeks comment on three alternative test reporting mechanisms: Third-party software using Application Programming Interfaces (APIs), informal communication among alert originators, and use of the Public Safety Help Center. The Commission anticipates that these alternatives could minimize the filing burden on Participating CMS Providers, but could also present significant drawbacks. First, the Commission seeks comment on whether Participating CMS Providers could allow third-party application developers to create software and APIs to satisfy their test reporting requirements. Could

third-party software be designed to automate the process of filing test result data with the Commission by sending such data from the consumer's mobile device directly to a Commission-operated server or account using a the cell broadcast network, a data connection, or WiFi? Second, the Commission seeks comment on whether it would be preferable to leave test reporting to person-to-person interaction without the adoption of formal rules. Could the goals of test reporting be achieved through informal communication between alert originators and their associates? Finally, the Commission seeks comment on the use of the Public Safety Answering Point (PSAP) section of the Public Safety Help Center to satisfy the need for feedback on State/Local WEA Tests. Would a consumer-complaint based reporting mechanism adequately capture shortcomings in State/Local WEA Tests?

54. The Commission also seeks comment on the potential costs that Participating CMS Providers would be likely to incur if the Commission were to adopt rules for alert logging and test reporting. What costs, if any, would logging alerts at the Participating CMS Provider Alert Gateway cause Participating CMS Providers to incur? What costs would reporting test data to the Commission impose? How could the Commission optimize the WEA test reporting process to minimize the filing burden on Participating CMS Providers, and to protect confidential information? How, if at all, could a best-practice-based test reporting system be leveraged to provide comparable benefits at a lower cost?

D. Participating CMS Providers and Subscribers

55. The Commission seeks comment on whether there are additional measures the Commission can take to promote participation in WEA, both by consumers and by CMS Providers. Section 602(b)(2)(E) of the WARN Act provides that ''any commercial mobile service licensee electing to transmit emergency alerts may offer subscribers the capability of preventing the subscriber's device from receiving such alerts, or classes of such alerts, other than an alert issued by the President.'' In the *Third Report and Order,* the Commission addressed this section of the WARN Act by adopting section 10.280 of the WEA rules, which states that Participating CMS Providers ''may provide their subscribers with the option to opt out of both, or either, the 'Child Abduction Emergency/AMBER Alert' and 'Imminent Threat Alert' classes of Alert Messages,'' and that Participating CMS Providers ''shall provide their subscribers with a clear indication of what each option means, and provide examples of the types of messages the customer may not receive as a result of opting out.'' The Commission also allowed Participating CMS Providers the flexibility to provide opt-out choices consistent with their own infrastructure in order to accommodate variations among Participating CMS Provider networks and devices. The Commission reasoned that this approach would allow consumers the flexibility to choose what type of messages they wish to receive, while also ensuring that customers would be apprised of the most severe threats as communicated by Presidential Alert messages. Further, the Commission reasoned that this approach would accommodate ''differences in how CMS providers and device manufacturers provision menus and user interfaces.'' The Commission's approach was consistent with the CMSAAC recommendation that a simple opt-out program should allow consumers the choice to opt out of Imminent Threat Alerts and AMBER Alerts.

56. Section 602(b)(2)(E) of the WARN Act required the Commission to send a report to Congress making recommendations on whether Participating CMS Providers should continue to be permitted to offer their subscribers the ability to opt out of receiving Imminent Threat and AMBER Alerts. As required by the WARN Act, the Commission filed the report on August 5, 2010, but initial deployment of WEA was not scheduled until April 2012. Accordingly, although the Commission adopted opt-out rules in 2008, at the time the Commission submitted its report to Congress there was no WEA service from which customers could opt-out, so the Commission made no recommendations regarding subscriber opt-out capability.

57. Now that WEA has been deployed for over three years, the Commission seek comment on the opt-out provisions currently used by Participating CMS Providers. Further, the Commission seeks comment on specific factors that lead consumers to opt out of receiving WEA messages. For example, do consumers regularly opt out of receiving WEA messages because they receive alerts that are not relevant to their geographic location? If so, would the new geo-targeting rules the Commission proposes today reduce consumer opt-out? Has message length, particularly the 90-character limit, been a factor in consumer decisions to opt out? Would the provision of further details about the nature of life-threatening situations and instructions on how to respond make it more or less likely that consumers would choose to opt out of receiving WEA messages? Similarly, would the availability of WEA messages in languages other than English, Emergency Government Information, embedded URLs, embedded phone numbers or multimedia content have an impact on consumer opt out, and if so, then to what extent?

58. The Commission notes that many Participating CMS Providers supply, display, or refer the customer to instructions on how to opt out of receiving WEA messages on Participating CMS Provider Web sites. Does the manner in which Participating CMS Providers offer their customers information regarding consumer choice have an impact on whether consumers opt out of receiving WEA messages? Would the goals of the statute be better served by requiring a more neutral approach? If so, should the Commission prescribe a consistent, transparent and uniform opt-out procedure for WEA messages, or are there other regulatory responses that would effectively prevent such favoritism while providing Participating CMS Providers with more flexibility in how they inform consumers of the options?

59. The Commission seeks comment on the extent to which Participating CMS Providers can provide consumers with a greater number of opt-out choices that might facilitate consumer participation in WEA. For example, could Participating CMS Providers offer users the option to receive AMBER Alerts only during certain times, such as during the day, so they will not be disturbed during the evening or at night? Are consumers currently able to silence some or all WEA alerts by using ''silent mode'' or ''do not disturb'' functions on their mobile devices? Are there other ways to personalize alert receipt options that would help optimize the balance between encouraging WEA participation and providing consumers with sufficient information to make an informed opt out decision? Should the Commission require Participating CMS Providers to offer any of these types of personalized alert receipt options, and, if so, what costs, if any, would such a requirement impose on the Provider? What benefits would be associated with such a requirement? For example, would a greater number of consumers decide not to disassociate completely from WEA if they had a more nuanced range of choices in how they could receive alerts, such as having the option to

cache certain types of alerts received during the evening or night for later delivery during a more convenient time, or to limit the types of weather alerts they would receive, for example, to tornadoes but not thunderstorms?

60. The Commission seeks comment on the extent that public perception of WEA contributes to consumer opt-out and to CMS Provider election to participate in WEA. To the extent that the rules the Commission proposes today will heighten public awareness and improve public perception of the value of WEA, to what extent is this expected to affect consumer opt out and CMS Provider participation?

61. Finally, the Commission seeks comment on what potential barriers may exist that prevent full participation in WEA by all wireless providers, particularly any barriers confronting smaller providers. What measures could lower any barriers to participation for CMS Providers? Are there particular actions the Commission or other stakeholders could take to facilitate the voluntary participation of non-participating CMS providers, particularly smaller providers, in WEA? For instance, do smaller providers encounter issues obtaining WEA-capable devices?

E. WEA Attention Signals and Public Service Announcements

62. Section 11.45 of the EAS rules provides, in pertinent part, that ''[n]o person may transmit or cause to transmit the EAS codes or Attention Signal, or a recording or simulation thereof, in any circumstance other than in an actual National, State or Local Area emergency or authorized test of the EAS.'' While the Commission's WEA rules do not include a comparable bar against the use of the WEA Attention Signal, because the WEA and EAS Attention Signals use identical frequencies, absent a waiver of the Commission's rules, the broadcast or transmission of the WEA Attention Signal may violate Section 11.45 of the Commission's rules, particularly insofar as the respective signals may be indistinguishable to the listener.

63. FEMA, in collaboration with Ready.gov and the Ad Council, has developed a public education campaign consisting of PSAs, which it has distributed to strategic local markets and state and local IPAWS partners. In November 2015, the Public Safety and Homeland Security Bureau (PSHSB or Bureau), on delegated authority, temporarily waived sections 11.45 and 10.520 of the Commission's rules, in order to allow FEMA to raise public awareness about WEA and its attention signal through a PSA campaign. The waiver, which will expire on May 19, 2017, permits the PSAs to play the WEA Attention Signal to familiarize the public with the sounds that they may hear from their mobile device when they receive a WEA Alert. The Bureau, however, conditioned the waiver upon the WEA PSA making clear that the WEA Attention Signal was being used ''in the context of the PSA and for the purpose of educating the viewing or listening public about the functions of their WEA-capable mobile devices and the WEA program.''

64. The Commission proposes to amend its rules to allow broadcast or transmission of the WEA Attention Signal as part of government-developed PSAs in order to address alert originators' need to raise public awareness about WEA. Specifically, the Commission proposes to amend sections 11.45 and 10.520 to allow federal, state and local governments to use the attention signal common to EAS and WEA to raise public awareness about WEA, provided the relevant entity makes it clear that the WEA Attention Signal is being used in the context of the PSA, ''and for the purpose of educating the viewing or listening public about the functions of their WEA-capable mobile devices and the WEA program,'' including by explicitly stating that the WEA attention signal is being used in the context of a PSA for the purpose of educating the public about WEA. The Commission also seek comment on whether the Commission should further amend section 10.520 to bar the use of the WEA Attention Signal in a manner parallel to the bar on use of the EAS Attention Signal in Section 11.45 of the Commission's rules. In the context of increasing the maximum WEA character limit, FEMA notes that it will ''need to . . . conduct additional public information efforts to inform people of the new format of WEA messages they may receive on their cellular phones.'' Would PSAs be useful for this purpose? If the Commission were to amend the Commission's rules to allow the broadcast or transmission of the WEA Attention Signal in PSAs intended to educate the public about WEA, should the Commission limit this exception to PSAs that are developed by FEMA, or should the Commission extend this exception to PSAs created by any alerting authority recognized by FEMA? If the Commission were to extend the exception in this manner, should any such PSAs be subject to prior review or approval by FEMA as a condition of being considered compliant under the Commission's amended rules?

F. Non-Commercial Educational and Public Broadcast Television Station Testing

65. The WARN Act and the Commission's rules require Non-commercial Educational (NCE) and public broadcast television station licensees and permittees ''to install necessary equipment and technologies on, or as part of, any broadcast television digital signal transmitter to enable the distribution of geographically targeted alerts by commercial mobile service providers that have elected to transmit emergency alerts'' as a back-up to the C-Interface.

66. In a companion *Further Notice of Proposed Rulemaking (Further Notice)* to the *Second Report and Order,* 73 FR 47552, the Commission sought comment on whether it should adopt rules that require NCE and public broadcast television station licensees and permittees to test the installed equipment. In the *Further Notice,* the Commission noted that NCE and public broadcast television station licensees and permittees will, in essence, provide a redundant path by which Participating CMS Providers will be able to receive geo-targeted alerts. The Commission also noted that it adopted rules to implement 602(f) of the WARN Act to require technical testing of this back-up path for Participating CMS Providers.

67. Against that background, the Commission sought comment on whether NCE/public broadcast television stations should participate in WEA testing, and if so, how this testing should be implemented. The Commission asked whether it should implement similar requirements as those it adopted for Participating CMS Providers. Additionally, the Commission sought comment on whether a different testing regime should be implemented given the unique circumstances of NCE/public broadcast television stations and digital television technology. Only two parties commented in response, both of which noted that, although they supported testing of the NCE/public television portion of the system, there were inherent limits in what such testing would show.

68. Given the passage of time, and the advances in WEA technology that have occurred during that time, the Commission asks that interested parties refresh and update the record on whether and how testing of the broadcast-based WEA infrastructure should be implemented. The Commission also seeks comment on whether NCE/public broadcast television stations have the capability to

test and analyze the transport of messages, and if not, would they be required to purchase testing equipment? Would special procedures and test signals need to be developed to NCE/public broadcast television stations to effectively test message transmission and diagnose delivery problems? Additionally, how would NCE/public broadcast television stations report problems? As an alternative, would it be sufficient to require NCE/public broadcast television stations to simply receive tests originated by the Federal Alert Gateway and re-transmit them to the CMS Provider Alert Gateway?

69. Additionally, the Commission asks commenters to specify the benefits and costs of adopting NCE/public broadcast television station testing requirements. For example, would the public benefits associated with ensuring the reliability of a redundant, back-up system outweigh the costs to NCE and public broadcast station licensees and permittees in testing equipment? Would an extended implementation timeframe mitigate such costs?

G. WEA Prioritization

70. Section 10.410 of the Commission's WEA rules requires Participating CMS Providers' Alert Gateways to process alerts on a first in-first out (FIFO) basis, except for Presidential Alerts, which must be processed before all non-Presidential alerts. Section 10.320 reiterates this requirement, and further requires Participating CMS Provider's Alert Gateways to support ''a mechanism to manage congestion within the CMS provider's infrastructure.'' Further, in the *First Report and Order,* the Commission concluded that ''it would be contrary to the public interest if alert messages were to preempt certain active voice or data sessions,'' observing that it would not be in the public interest if urgent calls for help during crises were preempted by alert traffic. This conclusion was consistent with the recommendations of the CMSAAC, which stated that ''the presentation of the received [ ] alert message should take priority over other mobile device functions except for the preemption of an active voice or data session.''

71. Given the passage of time, and the advances in WEA technology that have occurred during that time, the Commission seeks comment on whether it should amend section 10.320 of the Commission's rules to address prioritization at the Alert Gateway, in transit, and on the mobile device. Specifically, with respect to prioritization at the Alert Gateway, the Commission seeks comment on whether WEA alerts should continue to be processed on a FIFO basis, with the exception of the Presidential Alert? Should Imminent Threat Alerts attaining a certain threshold level of urgency, severity and certainty be processed before other, less extreme Imminent Threats potentially affecting the same geographic area? In the event commenters believe a particular type of alert should be prioritized over another, the Commission seeks comment on the order of prioritization and basis for such prioritization. With respect to the prioritization of WEA alerts in transit, should the Commission require that WEA alert data have priority over all other data in transit? Would this have any unintended practical consequences, given that all traffic is increasingly data?

H. Participating CMS Provider Election Process

72. The Commission's WEA rules allow Participating CMS Providers to elect to transmit WEA alert messages ''in a manner consistent with the technical standards, protocols, procedures, and other technical requirements implemented by the Commission.'' The WEA rules also allow Participating CMS Providers to withdraw their election to participate in WEA ''without regulatory penalty or forfeiture.'' The Commission adopted these rules based on the WARN Act's requirements that CMS providers that elect to transmit emergency alerts must agree to follow the technical rules adopted by the Commission, and the WARN Act's provision that Participating CMS Providers may withdraw their election to transmit emergency alerts at any time without penalty upon written notification to subscribers. CSRIC IV recommends that the Commission modify these election procedures to provide CMS Providers with multiple election options. Under CSRIC IV's recommendations, a CMS Provider could elect to continue to participate in WEA under the new rules adopted by the Commission, or ''under the rules in place at the time of the original election.'' CSRIC IV recommends that CMS Providers should be required to electronically file with the Commission, within 180 days following the adoption of changes or enhancements to WEA rules, a letter attesting to the CMS Provider's election as recommended above.

73. The Commission believes that Participating CMS Providers should continue to provide WEA service in a manner consistent with the Commission's WEA rules, including any amendments the Commission might adopt as a result of this proceeding. Under the WARN Act, CMS Provider election to participate in WEA is voluntary, but once a CMS provider elects to participate in WEA, participation must be consistent with the Commission's rules. The WARN Act plainly states that a CMS Provider that elects to transmit alerts under the WARN Act must do so ''in a manner consistent with the technical standards, protocols, procedures, and other technical requirements implemented by the Commission.'' There is nothing in the WARN Act that gives a Participating CMS Provider the authority to select which technical standards, protocols, procedures and other requirements with which it will comply. The Commission observes that to allow each Participating CMS Provider to support a substantively or technically different WEA service could introduce confusion and potentially impede interoperability, unnecessarily complicating the task of alert originators at the very instant when lives may depend on getting an accurate and timely alert to the community. Moreover, if the Commission were to adopt CSRIC IV's recommended revisions to the Commission's election procedures, it would threaten to eliminate or severely inhibit the Commission's ability to implement the WARN Act's vision that the WEA service should evolve, consistent with advancements in the underlying technology.

74. The Commission believes that the record and stakeholder practice support the Commission's position that the Commission should revisit its technical rules for WEA as technology evolves in order to ensure that WEA remains an effective, life-saving service. It was the common understanding among all the CMSAAC stakeholders that WEA would evolve with technology. Indeed, many of the proposals in this *Notice* are based upon the CMSAAC recommendations that were not adopted by the Commission in previous reports and orders because of technological limitations present at the time of their adoption. When the Commission adopted the WEA rules, it retained the ''discretion and flexibility'' to evaluate the CMSAAC's recommendations in order to advance the policy goal underlying the WARN Act, *i.e.,* ''the creation of a [WEA system] in which CMS Providers will elect to participate, and which will effectively deliver alerts and warnings to the public.'' The Commission believes this is consistent with the intent of Congress.

75. In light of the rapid deployment of smart handsets and 4G technology as discussed above, the Commission believes that the statutory provisions

giving rise to WEA authorize the Commission to continue to take a leadership role, in cooperation with other federal entities, states, localities and Participating CMS Providers, to promote the continued effectiveness of WEA as a technologically current element of the nation's overall alerting strategy. The Commission also believes that competitive forces provide Participating CMS Providers with strong incentives to continue to transmit emergency alerts to consumer mobile devices and that these market incentives, along with the public safety benefits the Commission expects to result from these proposed rules, provide a strong argument for continued participation in WEA. The Commission seeks comment on this analysis, as well as on CSRIC IV's recommendation to allow Participating CMS Providers to offer WEA pursuant to different requirements.

I. Implementation Timeframe

76. As discussed below, the Commission proposes that Participating CMS Providers must comply with the Commission's WEA messaging rules within one year of their effective date, and with the Commission's WEA geo-targeting and testing rules within sixty days of their effective date. While all of the Commission's proposed rules are intended to leverage commercially available technologies to improve public safety at minimal cost to Participating CMS Providers, the Commission recognizes that compliance with the Commission's WEA messaging rules, unlike the Commission's WEA testing and geo-targeting rules, would likely require modifications to existing network and device standards in order to ensure that Participating CMS Providers are able to comply with these proposed rules in a uniform manner.

77. CSRIC IV recommends that ''within 180 days of the FCC adoption of rules for WEA enhancements, the FCC, Participating CMS [P]roviders, FEMA, and Alert Originators jointly identify the timelines for enhanced WEA development, testing and deployment,'' taking into consideration ATIS/TIA feasibility studies scheduled to be completed within one year. In response to this CSRIC IV recommendation, and for ease of reference and comment, the Commission provides the table below to set forth the timeframes for those instances where the Commission proposes specific implementation deadlines.

FIGURE 3—PROPOSED IMPLEMENTATION TIMEFRAMES

Proposed Rule Amendment	Proposed implementation timeframe
Increasing Maximum WEA Character Length	*Within 1 year of the rules' effective date.*
Classifying Emergency Government Information	*Within 1 year of the rules' effective date.*
Embedding Telephone Numbers and URLs	*Within 1 year of the rules' effective date.*
Multimedia Alerting	*The Commission seeks comment on a reasonable timeline for Participating CMS Providers to support multimedia in WEA messages.*
Multilingual Alerting	*The Commission seeks comment on a reasonable timeline for Participating CMS Providers to support multilingual WEA messages.*
WEA Geo-targeting	*Within 60 days of the rules' effective date.*
Adopting State and Local WEA Testing and Proficiency Training	*Within 60 days of the rules' effective date.*
Requiring Alert Logging Test Reporting	*Within 60 days of the adoption of final State/Local WEA Testing and proficiency training rules, or within 60 days of the launch of ETRS, whichever is later.*
WEA Attention Signals and Public Service Announcements	*Within 60 days of the rules' effective date.*
Non-commercial Educational and Public Broadcast Television Station Testing.	*The Commission seeks comment on a reasonable timeline for testing of the broadcast-based WEA infrastructure to commence.*

78. *Proposed WEA Messaging Rules.* The Commission proposes that all Participating CMS Providers should comply with the Commission's proposed WEA messaging rules—specifically, the Commission's proposed requirements to extend the maximum WEA message length to 360 characters, provide Emergency Government Information alert messages, and be capable of including phone numbers and URLs in WEA alerts—one year from the adoption of final rules. While the Commission believes these proposed requirements leverage commercially available technologies, the Commission recognizes that implementation of these requirements would necessitate standards modifications. In particular, according to CSRIC IV, the standards revision process associated with increasing the maximum WEA character length would take one year to complete. The Commission seeks comment on this timeframe. Commenters are encouraged to specify an alternative timeline if compliance within one year is considered infeasible, or if compliance can be met earlier, including by specifying whether compliance with the Commission's proposed rules should be completed in stages. The Commission also seeks comment on benefits and costs relating to the Commission's analysis and transition period.

79. *Proposed Geo-targeting, Testing, Logging, and Reporting Rules.* The Commission proposes that all Participating CMS Providers should be required to comply with the Commission's WEA testing and geo-targeting rules within sixty days of their effective date. Given that some Participating CMS Providers are already utilizing a variety of techniques discussed above to voluntarily deliver more finely geo-targeted WEA messages, and that CSRIC IV recommends that the Commission establish a waiver process to the extent necessary to allow State/Local WEA Testing during the pendency of this rulemaking, the Commission believes that Participating CMS Providers are already capable of complying with the Commission's proposed geo-targeting and testing rules, and that it would serve the public interest to implement these requirements in a swift manner. The Commission seeks comment on this timeframe and on the Commission's rationale.

80. The Commission further proposes that Participating CMS Providers should comply with WEA alert logging and test reporting requirements within sixty days of the adoption of final State/Local WEA Testing and proficiency training rules, or within sixty days of the launch of ETRS, whichever is later. The Commission notes that the Commission required EAS Participants to file test report data in ETRS within sixty days of the effective date of the ETRS rules, or within sixty days of the launch of the ETRS, whichever was later. The Commission anticipates that filing test result data in ETRS will present

Participating CMS Providers with obligations similar to those of EAS Participants. If ETRS is not operational within sixty days of the adoption of final State/Local WEA Testing rules, the Commission proposes to encourage state and local alert originators who engage in State/Local WEA Testing to file self-recorded test results in PS Docket No. 15–91 using the Electronic Comment Filing System (ECFS) until ETRS becomes operational. In this manner, any meaningful data from initial State/Local WEA Tests would be captured and recorded, and could be leveraged to help improve WEA. Finally, the Commission proposes that any amendments to the Commission's WEA rules to allow the use of the WEA tones in government-produced PSAs would be effective sixty days from their effective date.

81. *Providing Multilingual and Multimedia Alerts.* The Commission seeks comment on timeframes within which it would be reasonable to expect Participating CMS Providers to support WEA messages in languages other than English, and messages that contain multimedia. In responding to the Commission's requests for comment on the form that rules regarding these issues should take, commenters are encouraged to provide timetables along which the Commission should reasonably expect Participating CMS Providers to comply with such requirements, including any interim milestones that the Commission might expect Participating CMS Providers to reach along the way to fulfilling the Commission's ultimate objectives.

82. *NCE and Public Broadcast Television Station Testing.* The Commission asks commenters to propose a specific implementation timeframe to enable NCE and public broadcast television station licensees and permittees to test the installed equipment. For example, if the Commission were to require NCE/public broadcast television station testing of equipment, should such a requirement be phased in over a specific period of time? Under a phased-in approach, what would be appropriate milestones to guide implementation of such testing requirements? What would be the costs and benefits of a phased in approach?

III. Procedural Matters

A. Ex Parte Rules

83. The proceeding this *Notice* initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Comment Filing Procedures

84. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments in response to this *Notice* on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- Paper Filers: Parties that choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- 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.

1. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

2. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

3. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

- People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

C. Initial Regulatory Flexibility Analysis

85. As required by the Regulatory Flexibility Act of 1980, *see* 5 U.S.C. 604, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth in Appendix B. Written public comments are requested in the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to this *Notice of Proposed Rulemaking* as set forth on the first page of this document, and have a separate and distinct heading designating them as responses to the IRFA.

D. Initial Paperwork Reduction Analysis

86. This document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this

document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

E. Further Information

1. For further information regarding the Notice of Proposed Rulemaking contact James Wiley, Attorney Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, at (202) 418–1678 or *james.wiley@fcc.gov* or John A. Evanoff, Attorney-Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–0848 or *john.evanoff@fcc.gov.*

IV. Ordering Clauses

2. Accordingly, *it is ordered* that pursuant to Sections 1, 4(i) and (o), 201, 303(r), 403, and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (o), 201, 303(r), 403, and 606, as well as by sections 602(a), (b), (c), (f), 603, 604 and 606 of the WARN Act, this *Notice of Proposed Rulemaking Is* hereby *adopted.*

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

List of Subjects

47 CFR Part 10

Communications common carriers, Radio, Emergency alerting.

47 CFR Part 11

Radio, Television, Emergency alerting.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 10 and 47 CFR part 11 to read as follows:

PART 10—WIRELESS EMERGENCY ALERTS

■ 1. The authority citation for part 10 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (o), 201, 303(r), 403, and 606, as well as sections 602(a), (b), (c), (f), 603, 604 and 606 of the WARN Act.

■ 2. Amend § 10.280 by revising paragraph (a) to read as follows:

§ 10.280 Subscribers' right to opt out of WEA notifications.

(a) CMS providers may provide their subscribers with the option to opt out of the ''Child Abduction Emergency/AMBER Alert,'' ''Imminent Threat Alert'' and/or ''Emergency Government Information'' classes of Alert Messages.

* * * * *

■ 3. Add paragraph (g) to § 10.320 to read as follows:

§ 10.320 Provider alert gateway requirements

* * * * *

(g) *Alert Logging.* The CMS provider gateway must perform the following functions:

(1) Provide a mechanism to log messages with time stamps that verify when messages are received, and when the messages are acknowledged or rejected by the Participating CMS Provider Alert Gateway, and if an alert is rejected, to provide the specific error code generated by the rejection;

(2) Maintain an online log of active and cancelled alert messages for 90 days, and maintain archived logs for at least 36 months that should be accessible by Participating CMS Providers for testing and troubleshooting purposes; and

(3) Generate monthly system and performance statistics reports based on category of alert, alert originator, alert area, and other alerting attributes?

■ 4. Amend § 10.350 by revising the section heading and adding paragraph (c) to read as follows:

§ 10.350 WEA testing and proficiency training requirements.

* * * * *

(c) *State/Local WEA Testing.* A Participating CMS Provider must ensure that their systems support State/Local WEA Testing and proficiency training.

(1) A Participating CMS Provider's Gateway shall support the ability to receive a State/Local WEA Test message initiated by the Federal Alert Gateway Administrator.

(2) A Participating CMS Provider shall distribute a State/Local WEA Test to the geographic area specified by the alert originator pursuant to the geographic targeting standard established by § 10.450 of this chapter.

(3) A Participating CMS Provider may forego a State/Local WEA Test if the State/Local WEA Test is pre-empted by actual alert traffic or if an unforeseen condition in the CMS Provider infrastructure precludes distribution of the State/Local WEA Test. A Participating CMS Provider Gateway shall indicate such an unforeseen condition by a response code to the Federal Alert Gateway.

(4) CMS Providers may provide their subscribers with the option to opt in to receive State/Local WEA Tests.

■ 5. Revise the introductory text and add paragraph (d) to § 10.400 to read as follows:

§ 10.400 Classification.

A Participating CMS Provider is required to receive and transmit four classes of Alert Messages: Presidential Alert; Imminent Threat Alert; Child Abduction Emergency/AMBER Alert; and Emergency Government Information.

* * * * *

(d) *Emergency Government Information.* An Emergency Government Information message is an essential public safety advisory that prescribes one or more actions likely to save lives and/or safeguard property during an emergency.

■ 6. Revise § 10.430 to read as follows:

§ 10.430 Character limit.

A Participating CMS Provider must support WEA Alert Messages containing at least 90 characters of alphanumeric text. If, however, it is technically feasible for a Participating CMS Provider to support a WEA Alert Message of up to 360 characters of alphanumeric text, a Participating CMS Provider must transmit such an Alert Message.

§ 10.440 [Removed]

■ 7. Remove § 10.440.

■ 8. Revise § 10.450 to read as follows:

§ 10.450 Geographic targeting.

This section establishes minimum requirements for the geographic targeting of Alert Messages. A Participating CMS Provider will determine which of its network facilities, elements, and locations will be used to geographically target Alert Messages. A Participating CMS Provider must transmit any alert message that is specified by a geocode, circle, or polygon to a target area not larger than the specified geocode, circle, or polygon. If, however, the Participating CMS Provider cannot broadcast the alert to an area that accurately matches the target area, a Participating CMS Provider may transmit an Alert Message to an area that closely approximates the target area, but in any case not exceeding the propagation area of a single transmission site.

■ 9. Amend § 10.520 by revising paragraph (d) to read as follows:

§ 10.520 Common audio attention signal.

* * * * *

(d) The audio attention signal must be restricted to use for Alert Messages under part 10, except as used for federal Public Service Announcements (PSAs) designed to raise public awareness about emergency alerting, provided that the federal agency presents the PSA in a non-misleading manner, including by explicitly stating that the emergency alerting attention signal is being used in the context of a PSA for the purpose of educating the viewing or listening public about emergency alerting.

* * * * *

PART 11—EMERGENCY ALERT SYSTEM

■ 10. The authority citation for part 11 continues to read as follows:

Authority: 47 U.S.C. 151, 154 (i) and (o), 303(r), 544(g) and 606.

■ 11. Revise § 11.45 to read as follows:

§ 11.45 Prohibition of false or deceptive EAS transmissions.

No person may transmit or cause to transmit the EAS codes or Attention Signal, or a recording or simulation thereof, in any circumstance other than in an actual National, State or Local Area emergency or authorized test of the EAS, or as specified in § 10.520(d).

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2015–31234 Filed 12–11–15; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Chapter X

[Docket No. EP 729]

Offers of Financial Assistance

AGENCY: Surface Transportation Board, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board seeks comment on whether and how it should update its rules pertaining to offers of financial assistance in order to improve that process and protect it against abuse.

DATES: Comments are due by February 12, 2016. Reply comments are due by March 14, 2016.

ADDRESSES: Comments and replies may be submitted either via the Board's e-filing format or in paper format. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's Web site at ''*www.stb.dot.gov*'' at the ''E–FILING'' link. Any person submitting a filing in paper format should send an original and 10 paper copies of the filing (and also an electronic version) to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. Copies of written comments and replies will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

FOR FURTHER INFORMATION CONTACT: Jonathon Binet, (202) 245–0368. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: In the ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (1995) (ICCTA), Congress revised the process for filing offers of financial assistance (OFAs) for continued rail service, codified at 49 U.S.C. 10904. Under the OFA process, as further implemented in the Board's regulations at 49 CFR 1152.27, financially responsible parties may offer to temporarily subsidize continued rail service over a line on which a carrier seeks to abandon or discontinue service, or offer to purchase a line and provide continued rail service on a line that a carrier seeks to abandon.

Upon request, the abandoning or discontinuing carrier must provide certain information required under 49 U.S.C. 10904(b) and 49 CFR 1152.27(a) to a party that is considering making an OFA. A party that decides to make an OFA (the offeror) must submit the OFA to the Board, including the information specified in 49 CFR 1152.27(c)(1)(ii). If the Board determines that the OFA is made by a financially responsible offeror, the abandonment or discontinuance authority is postponed to allow the parties to negotiate a sale or subsidy arrangement. 49 U.S.C. 10904(d)(2); 49 CFR 1152.27(e). If the parties cannot agree to the terms of a sale or subsidy, they may request that the Board set binding terms under 49 U.S.C. 10904(f)(1). After the Board has set the terms, the offeror can accept the terms or withdraw the OFA. When the operation of a line is subsidized to prevent abandonment or discontinuance of service, it may only be subsidized for up to one year, unless the parties mutually agree otherwise. 49 U.S.C. 10904(f)(4)(b). When a line is purchased pursuant to an OFA, the buyer must provide common carrier service over the line for a minimum of two years and may not resell the line for five years after the purchase. 49 U.S.C. 10904(f)(4)(A); 49 CFR 1152.27(i)(2).

Since the changes to the OFA process in ICCTA were enacted, the Board's experiences have shown that there are areas where clarifications and revisions could enhance the OFA process and protect it against abuse. Therefore, the Board seeks public comments on whether and how to improve any aspect of the OFA process, including enhancing its transparency and ensuring that it is invoked only to further its statutory purpose of preserving lines for rail service. Although we invite public comment on ways to improve any aspect of the OFA process, we also specifically seek comments on the following possible changes to the Board's OFA regulations.

Financial Responsibility

The Board's regulations require that a potential offeror demonstrate that it is ''financially responsible,'' but those regulations do not fully define this concept or what facts or evidence a party must provide to demonstrate financial responsibility. The Board has made various rulings on this question in specific proceedings, but those rulings are not codified in our regulations, which has led to disputes in some proceedings. *See, e.g., Consol. Rail Corp—Aban. Exemption—in Phila. Pa.*, AB 55 (Sub-No. 710X) *et al.,* slip op. at 4 (STB served Oct. 26, 2012) (''[T]he Offerors assert that they were and are still unsure exactly what documents they were required to produce to be considered financially responsible. . .''). *See also Ind. Sw. Ry.—Aban. Exemption—in Posey & Vanderburgh Ctys., Ind.,* AB 1065X, slip op. at 4–5 (STB served April 8, 2011) (detailing information required from an offeror to establish financial responsibility, in detail beyond that contained in 49 CFR 1152.27(c)(1)(ii)(B)). Accordingly, we ask parties to comment on how the Board should modify its regulations so that the definition of financial responsibility is more transparent and understandable. We also ask parties to comment on methods of ensuring that an offeror is in fact financially responsible, including the following:

- What documentation should a potential offeror be required to submit to show financial responsibility?
- Should the Board require that potential offerors file notices of intent to file an OFA in abandonment and

discontinuance proceedings by a date certain?

• Should the Board require potential offerors to make a financial responsibility showing before requiring carriers to provide financial information to those offerors?

• Should the definition of financial responsibility include the ability, based on the price reflected in an offer of financial assistance, to purchase and operate for at least two years a line being abandoned or to subsidize for one year service being abandoned or discontinued?

• Should the Board alter the process for carriers to provide required financial information to potential offerors, and if so, how?

• Should the Board require potential offerors to make an ''earnest money'' payment or escrow payment, or to obtain a bond? Key considerations include: Whether the payment or bond amount would be a fixed figure or established on a case by case basis; what method would be used in calculating or fixing the amount; when in the process an offeror would need to make a payment or obtain a bond; and whether (and under what circumstances) a waiver of such a requirement would be appropriate.

• Should the Board prohibit OFA filings by individuals or entities that have abused the Board's processes or engaged in other deceitful or abusive behavior before the Board, and if so, what standards should the Board establish in making a prohibition determination?

Continuation of Rail Service

The Board has also adjudicated cases in which there has been controversy as to whether a party seeking to subsidize or acquire a line through the OFA process is doing so based on a genuine interest in and ability to preserve the line for rail service. *See, e.g., Consol. Rail Corp.—Aban. Exemption—in Hudson Cty., N.J.,* AB 167 (Sub-No. 1190X), slip op. at 5 (STB served May 17, 2010) (exempting line from OFA process despite OFA filing because offerors failed to show cause that there was a continued need for rail service outweighing other concerns); *Roaring Fork R.R. Holding Auth.—Aban. Exemption—in Garfield, Eagle, & Pitkin Ctys., Colo.,* AB 547X (STB served May 21, 1999) (dismissing OFA because the record did not provide ''some assurance that shippers are likely to make use of the line if continued service is made available, and that there is sufficient traffic to enable the operator to fulfill its commitment to provide that service''). The Board's regulations do not currently address these situations; therefore, we ask parties for ideas on how the regulations could be modified to do so. In particular, we ask parties to comment on the following:

• Should the Board require that an offeror address whether there is a commercial need for rail service as demonstrated by support from shippers or receivers on the line or through other evidence of immediate and significant commercial need; whether there is community support for rail service; and whether rail service is operationally feasible?

• Should the Board establish criteria and deadlines for carriers that want to file requests for exemptions from the OFA process?

Identity of the Offeror

Another issue the Board has encountered in OFA proceedings is confusion over the identity of the potential offeror. *See CSX Transp. Inc.—Aban. Exemption—in Allegany Cty., Md.,* AB 55 (Sub-No. 659X), slip op. at 1 n.2 (STB served April 24, 2008) (describing confusion over proper name and existence of entity that filed OFA in 2005 but may not have been a legal entity until 2007 or the correct legal entity to receive deed for rail line). In order to avoid such confusion in future proceedings, we ask the parties to comment on the following:

• Should the Board require multiple parties intending to submit a joint OFA to do so through a single legal entity, such as a corporation or partnership, to facilitate the financial responsibility determination and to clarify the party acquiring the common carrier obligation?

• Should the Board require an individual filing an OFA to provide his or her personal address?

• Should the Board require a private legal entity filing an OFA to provide the offeror's exact legal name, the state under whose laws it is organized, and the address of its principal place of business?

Because this is an Advanced Notice of Proposed Rulemaking, the Board may not act on each item listed above, but we seek the public's comment on these ideas, including how they could best be implemented, if appropriate. Parties are encouraged to be specific in commenting on these possible changes and in presenting ideas for other possible changes to the OFA process.

The requirements of section 603 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, (RFA) do not apply to this action because, at this stage, it is an ANPRM and not a ''rule'' as defined in section 601 of the RFA. Under the RFA, however, the Board must consider whether a proposed rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. If adoption of any rule likely to result from this ANPRM could have a significant economic impact on a small entity within the meaning of the RFA, commenters should submit as part of their comments an explanation of how the business or organization falls within the definition of a small entity, and how and to what extent the commenter's business or organization could be affected. Following review of the comments received in response to this ANPRM, if the Board promulgates a notice of proposed rulemaking regarding this matter, it will conduct the requisite analysis under the RFA.

It is ordered:

1. Initial comments are due by February 12, 2016.

2. Reply comments are due by March 14, 2016.

3. This decision is effective on its date of service.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Miller.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2015–31347 Filed 12–11–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 151204999–5999–01]

RIN 0648–BF45

Control Date for the Blueline Tilefish Fishery in Waters North of the Virginia/North Carolina Border

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

ACTION: Advance notice of proposed rulemaking (ANPR); request for comments.

SUMMARY: This document announces a control date that may limit or restrict access to the blueline tilefish fishery in Federal waters north of the Virginia/North Carolina border. This action is

necessary to inform fishery participants that we are considering future action. We intend for this document to promote awareness of possible future rulemaking, and discourage speculative entry into and/or investment in the Mid-Atlantic blueline tilefish fishery.

DATES: December 14, 2015, is established as the ''control date'' for the blueline tilefish fishery, and may be used as a reference date for future management measures related to the blueline tilefish fishery in Federal waters north of the Virginia/North Carolina border, consistent with applicable Federal laws and the Mid-Atlantic Fishery Management Council's recommendations. Written comments must be received on or before February 12, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2015–0139 by any 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-2015-0139,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

▪ *Mail:* Submit written comments to John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Blueline Tilefish Control Date.''

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered. We may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. 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.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. We will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, NMFS, 978–281–9341, or Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 302–526–5255.

SUPPLEMENTARY INFORMATION: The fishery for blueline tilefish (*Caulolatilus microps*), also known as grey tilefish, in Federal waters north of the Virginia/North Carolina border has, until earlier this year, been unregulated, and historically had very low landings. Landings have increased in recent years. The fishery south of this line is managed by the South Atlantic Fishery Management Council as part of the Snapper-Grouper Fishery Management Plan (FMP).

In 2014, new restrictions on harvest in the South Atlantic led to a rapid, 20-fold increase in unregulated landings of blueline tilefish caught north of the Virginia/North Carolina border. This spike in landings prompted the Mid-Atlantic Fishery Management Council to request that we take emergency action to prevent long-term harm to the stock. On June 4, 2015, we published an emergency rule (80 FR 31864) to temporarily restrict harvest of this species in the Mid-Atlantic. Subsequently, the Mid-Atlantic Council initiated an amendment to the Golden Tilefish FMP to establish management measures for blueline tilefish within its jurisdiction with the intention of having new management measures in place before NMFS's emergency rule authority would expire. This would avoid a return to an unregulated fishery.

Due to the limited time to implement new management measures, the Mid-Atlantic Council is not considering a limited access program in the current FMP amendment under development. However, the Mid-Atlantic Council has expressed interest in potentially developing such a program in a future action. At its October 2015 meeting, the Mid-Atlantic Council voted to request that we publish a control date in the **Federal Register** that may be used to affect future participation in all sectors of the blueline tilefish fishery in Federal waters. The Council's discussions clarified that it is the Council's intent that this control date apply to all forms of fishing that have caught and landed blueline tilefish, including: Commercial fishing vessels; party/charter vessels that take recreational anglers for hire; as well as private recreational vessels. However, NMFS has no current information that could be used to distinguish private angler participation in this fishery before and after a control date. Therefore, such a control date would not provide meaningful notification or guidance to private recreational anglers.

Therefore, this notification establishes December 14, 2015, as a control date for potential use in determining historical or traditional participation for the commercial and for-hire recreational sectors of the blueline tilefish fishery. Establishing a control date does not commit us or the Council to develop any particular management program or criteria for participation in this fishery. We may choose a different control date or may choose a management program that does not make use of such a date. We may also choose to take no further action to control entry or access to the blueline tilefish fishery. Any future action we take will be pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, will be discussed at Council meetings, and will have additional Federal rulemaking, including opportunity for public comment.

This notification gives the public notice that interested commercial and for-hire blueline tilefish fishery participants should locate and preserve records that substantiate and verify their participation in the fishery, such as: Dealer purchase slips for commercial fishing trips; Fishing Vessel Trip Reports for both commercial and party/charter vessels; or any other relevant documents. There is no precedent in the Greater Atlantic Region for a limited access program that applies to party/charter or private recreational vessels. In light of the novelty of this aspect of the Council's control date request, we encourage the public to comment on whether limited access for party/charter and private recreational anglers is needed in the blueline tilefish fishery, and, if so, what sort of qualification criteria might be considered by the Council. This notification and control date do not impose any legal obligations, requirements, or expectation.

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

Dated: December 8, 2015.

Samuel D. Rauch III,

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

[FR Doc. 2015–31364 Filed 12–11–15; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 80, No. 239

Monday, December 14, 2015

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

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Guarantee Fee Rates for Guaranteed Loans for Fiscal Year 2016; Maximum Portion of Guarantee Authority Available for Fiscal Year 2016; Annual Renewal Fee for Fiscal Year 2016

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: This notice helps to improve applicants' awareness of the Guarantee Fee Rates for Guaranteed Loans for Fiscal Year (FY) 2016; Maximum Portion of Guarantee Authority Available for FY 2016; Annual Renewal Fee for FY 2016 when applying for guaranteed loans under the Business and Industry (B&I) program.

The Agency was authorized by the 2012 Appropriations Bill, and subsequent Appropriations Acts, to charge a maximum of 3 percent for its guarantee fee for FY 2012, 2013, 2014 and 2015. The guarantee fee for FY 2016 will be 3 percent.

The Agency has established that not more than 12 percent of the Agency's quarterly apportioned B&I guarantee authority will be reserved for loan requests with a reduced fee, and not more than 15 percent of the Agency's quarterly apportioned guarantee authority will be reserved for guaranteed loan requests with a guarantee percentage exceeding 80 percent. Once the respective quarterly limits are reached, all additional loans for that quarter will be at the standard fee and guarantee limits.

The Agency is establishing the renewal fee rate at one-half of 1 percent for the B&I Guaranteed Loan Program. This rate will apply to all loans obligated in FY 2016 that are made under the B&I program.

DATES: *Effective date:* December 14, 2015.

FOR FURTHER INFORMATION CONTACT: Nichelle Daniels, USDA, Rural Development, Business Programs, Business and Industry Division, STOP 3224, 1400 Independence Avenue SW., Washington, DC 20250–3224, telephone (202) 720–0786, email *nichelle.daniels@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: As set forth in 7 CFR 4279.107, the Agency has the authority to charge an initial guarantee fee and an annual renewal fee for loans made under the B&I Guaranteed Loan Program. Pursuant to that authority, the Agency is establishing the renewal fee rate at one-half of 1 percent for the B&I Guaranteed Loan Program. This rate will apply to all loans obligated in FY 2016 that are made under the B&I program. As established in 7 CFR 4279.107(b)(1), the amount of the fee on each guaranteed loan will be determined by multiplying the fee rate by the outstanding principal loan balance as of December 31, multiplied by the percent of guarantee.

The Agency was authorized by the 2012 Appropriations Bill, and subsequent Appropriation Acts, to charge a maximum of 3 percent for its guarantee fee for FY 2012, 2013, 2014 and 2015. It is the Agency's expectation that the 2016 Appropriations Act will contain a provision to charge a maximum of 3 percent for its guarantee fee for FY 2016. As such, the guarantee fee for FY 2016 will be 3 percent.

As set forth in 7 CFR 4279.107(a) and 4279.119(b)(4), each fiscal year, the Agency shall establish a limit on the maximum portion of B&I guarantee authority available for that FY that may be used to guarantee loans with a reduced guarantee fee or guaranteed loans with a guarantee percentage exceeding 80 percent.

Allowing a reduced guarantee fee or exceeding the 80 percent guarantee on certain B&I guaranteed loans that meet the conditions set forth in 7 CFR 4279.107 and 4279.119 will increase the Agency's ability to focus guarantee assistance on projects that the Agency has found particularly meritorious. For reduced guarantee fees, the borrower's business must support value-added agriculture and result in farmers benefiting financially or must be a high impact business development investment as defined in 7 CFR 4279.155(b)(5) and be located in rural communities that experience long-term population decline and job deterioration, remain persistently poor, are experiencing trauma as a result of natural disaster, or are experiencing fundamental structural changes in its economic base.

The Agency has established that not more than 12 percent of the Agency's quarterly apportioned B&I guarantee authority will be reserved for loan requests with a reduced fee, and not more than 15 percent of the Agency's quarterly apportioned guarantee authority will be reserved for guaranteed loan requests with a guarantee percentage exceeding 80 percent. Once the respective quarterly limits are reached, all additional loans for that quarter will be at the standard fee and guarantee limits.

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866, as amended by Executive Order 13258.

Dated: December 1, 2015.

Samuel H. Rikkers,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2015–31300 Filed 12–11–15; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Amendment to Notice of Solicitation of Applications for the Rural Energy for America Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (Agency) published a notice in the **Federal Register** of October 6, 2015 (80 FR 60349), announcing the acceptance of applications for funds available under the Rural Energy for America Program (REAP) for Fiscal Year (FY) 2016. The 2014 Farm Bill provides funding for the program for FY 2016. This notice provides an amendment to Section V. Application Review Information, subsection A. Evaluation Criteria, to allow points to be awarded if any of the criteria are met and to maintain consistency with other Rural Development programs on how poverty areas are defined.

FOR FURTHER INFORMATION CONTACT: For information about this Notice, please contact Kelley Oehler, USDA Rural Development, Energy Division, 1400 Independence Avenue SW., Stop 3225, Room 6870, Washington, DC 20250. Telephone: (202) 720–6819. Email: *Kelley.oehler@wdc.usda.gov*

SUPPLEMENTARY INFORMATION: The October 6, 2015, Notice identified on page 60353, in the third column toward the bottom of the page, under Section V. Application Review Information, subsection A. Evaluation Criteria, paragraph (1)(a) indicates an ''and'' between the words ''unserved'' and ''under-served populations'', and an ''and'' between subparagraphs (i) and (ii), as well as between subparagraphs (i) and (ii) of paragraph (1)(b), which is on page 60354 on the top of the first column. The ''and'' is being replaced with ''or'' in each of these locations to indicate the State Director and Administrator can award points if only one of the criterion is met.

Further, on page 60354 of the Notice, under paragraph (1)(b)(i), which is on the top of the first column, the following language is inserted after the phrase ''living in poverty.'' The period is replaced with a comma and the phrase is being added ''a project is located in a community (village, town, city, or Census Designated Place) with median household income of 60 percent or less of the state's non-metropolitan median household income.''

The changes are being made to ensure REAP maintains consistency with other Agency programs on how poverty areas are defined for State Director and Administrator points and to not restrict points from being awarded if only one criteria is met.

The following Summary of Changes apply to the October 6, 2015, Notice.

Summary of Changes

1. In the third column on page 60353, Section V. Application Review Information, subsection A. Evaluation Criteria, paragraph (1)(a), the sentence is revised to read as follows:

With regard to 7 CFR 4280.120(g)(3), which addresses applicants who are members of unserved or under-served populations, a project that is:

2. In the third column on page 60353, Section V. Application Review Information, subsection A. Evaluation Criteria, paragraph (1)(a)(i), the last sentence is revised to read as follows:

In order to receive points, applicants must provide a statement in their applications to indicate that owners of the project have veteran status; or

3. In the first column on page 60354, paragraph (1)(b)(i)is revised to read as follows:

(i) Located in rural areas with the lowest incomes where, according to the most recent 5-year American Community Survey data by the U.S. Census Bureau, tracts show that at least 20 percent of the population is living in poverty or a project is located in a community (village, town, city, or Census Designated Place) with a median household income of 60 percent or less of the State's non-metropolitan median household income. This will support the Secretary of Agriculture's priority of providing 20 percent of its funding by 2016 to these areas of need; or

Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the basis of race, color, national origin, age, disability, sex, gender identity, religion, reprisal and where applicable, political beliefs, marital status, familial or parental status, religion, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF), found online at *http://www.ascr.usda.gov/complaint_filing_cust.html*, or complete the form at any USDA office, or call (866) 632–9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410, by fax (202) 690–7442, or email at *program.intake@usda.gov.*

Individuals who are deaf, hard of hearing, or have speech disabilities and wish to file either an Equal Employment Opportunity or program complaint, please contact USDA through the Federal Relay Service at (800) 877–8339 or (800) 845–6136 (in Spanish).

Persons with disabilities who wish to file a program complaint, please see information above on how to contact us directly by mail or email. If you require alternative means of communication for program information (*e.g.*, Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Dated: December 8, 2015.

Samuel H. Rikkers,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2015–31325 Filed 12–11–15; 8:45 am]

BILLING CODE 3410–XY–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) plans to hold its regular committee and Board meetings in Washington, DC, Tuesday and Wednesday, January 12–13, 2016 at the times and location listed below.

DATES: The schedule of events is as follows:

Tuesday, January 12, 2016

10:30–11:30 p.m. Technical Programs Committee
11:30–Noon Planning and Evaluation Committee
1:30–2:00 p.m. Ad Hoc Committee on Design Guidance
2:00–2:30 Budget Committee
2:30–4:00 Ad Hoc Committee on Information and Communication Technology (Closed)

Wednesday, January 13, 2016

9:30–11:00 a.m. Ad Hoc Committee on Frontier Issues
11:00–Noon Architectural Barriers Act Compliance Program
1:30–3:00 Board Meeting

ADDRESSES: Meetings will be held at the Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact David Capozzi, Executive Director, (202) 272–0010 (voice); (202) 272–0054 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting scheduled on the afternoon of Wednesday, January 13, 2016, the Access Board will consider the following agenda items:

- Approval of the draft November 10, 2015 meeting minutes (vote)
- Ad Hoc Committee Reports: Design Guidance; Frontier Issues; and

Information and Communication Technology
- Budget Committee
- Technical Programs Committee
- Planning and Evaluation Committee
- Election Assistance Commission Report
- Executive Director's Report
- Public Comment (final 15 minutes of the meeting)

Members of the public can provide comments either in-person or over the telephone during the final 15 minutes of the Board meeting on Wednesday, January 13, 2016. Any individual interested in providing comment is asked to pre-register by sending an email to *bunales@access-board.gov* with the subject line ''Access Board meeting—Public Comment'' with your name, organization, state, and topic of comment included in the body of your email. All emails to register for public comment must be received by Wednesday, January 6, 2016. Commenters will be called on in the order by which they pre-registered. Due to time constraints, each commenter is limited to two minutes. Commenters on the telephone will be in a listen-only capacity until they are called on. Use the following call-in number: (877) 701–1628; passcode: 4900 0109 and dial in 5 minutes before the meeting begins at 1:30 p.m.

All meetings are accessible to persons with disabilities. An assistive listening system, Communication Access Realtime Translation (CART), and sign language interpreters will be available at the Board meeting and committee meetings.

Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (see *www.access-board.gov/the-board/policies/fragrance-free-environment* for more information).

You may view the Wednesday, January 13, 2016 meeting through a live webcast from 1:30 p.m. to 3:00 p.m. at: *www.access-board.gov/webcast.*

David M. Capozzi,

Executive Director.

[FR Doc. 2015–31403 Filed 12–11–15; 8:45 am]

BILLING CODE 8150–01–P

BROADCASTING BOARD OF GOVERNORS

Government in the Sunshine Act Meeting Notice

DATE AND TIME: Wednesday, December 16, 2015, 9:15 a.m.–11:30 a.m. EST.

PLACE: Cohen Building, Room 3321, 330 Independence Ave. SW., Washington, DC 20237.

SUBJECT: Notice of Meeting of the Broadcasting Board of Governors.

SUMMARY: The Broadcasting Board of Governors (Board) will be meeting at the time and location listed above. The Board will vote on a consent agenda consisting of the minutes of its Oct. 8, 2015 meeting, a resolution honoring the 55th anniversary of Voice of America's (VOA) French-to-Africa Service, a resolution honoring the 55th anniversary of VOA's Spanish Service, a resolution honoring first anniversary of Current Time—the joint production of VOA and Radio Free Europe/Radio Liberty, and a resolution honoring Carlos Garcia-Perez. The Board will receive a report from the Chief Executive Officer and Director of BBG. The Board will also receive a review of Radio Free Asia.

This meeting will be available for public observation via streamed webcast, both live and on-demand, on the agency's public Web site at *www.bbg.gov.* Information regarding this meeting, including any updates or adjustments to its starting time, can also be found on the agency's public Web site.

The public may also attend this meeting in person at the address listed above as seating capacity permits. Members of the public seeking to attend the meeting in person must register at *http://bbgboardmeetingdecember2015.eventbrite.com* by 12:00 p.m. (EST) on December 15. For more information, please contact BBG Public Affairs at (202) 203–4400 or by email at *pubaff@bbg.gov.*

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Oanh Tran at (202) 203–4545.

Oanh Tran,

Director of Board Operations.

[FR Doc. 2015–31498 Filed 12–10–15; 4:15 pm]

BILLING CODE 8610–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–520–804]

Certain Steel Nails From the United Arab Emirates: Notice of Court Decision Not in Harmony With the Final Determination and Amended Final Determination of the Less Than Fair Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On November 3, 2015, the United States Court of International Trade (Court) sustained the Department of Commerce's (the Department) *Final Remand Redetermination* pertaining to the less-than-fair-value (LTFV) investigation of certain steel nails from the United Arab Emirates.[1] Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), the Department is notifying the public that the Court's final judgment in this case is not in harmony with the *Final Determination,* and that the Department is amending the *Final Determination* with respect to Dubai Wire FZE (Dubai Wire), and Precision Fasteners LLC (Precision Fasteners).[2] The period of investigation (POI) is January 1, 2010, through December 31, 2010.

DATES: *Effective Date:* November 13, 2015.

FOR FURTHER INFORMATION CONTACT: Michael A. Romani or Minoo Hatten, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0198 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

[1] *See Mid Continent Nail Corp.* v. *United States,* CIT Consol. Court No. 12–00133, Slip Op. 15–122 (November 3, 2015); Final Results of Redetermination Pursuant to Court Remand, Court No. 12–00133, dated September 30, 2014 (*Final Remand Redetermination*); *Mid Continent Nail Corp.* v. *United States,* 999 F. Supp. 2d 1307 (CIT 2014) (*Remand Order*).

[2] *See Certain Steel Nails from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value,* 77 FR 17029 (March 23, 2012) as amended by *Certain Steel Nails from the United Arab Emirates: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 77 FR 27421 (May 10, 2012), (collectively, *Final Determination*).

Background

On June 26, 2014, the Court issued the *Remand Order,* upholding most aspects of the *Final Determination,* but remanding for the Department to apply a regulation the Court held had been improperly withdrawn.[3] On remand, the Department applied the withdrawn regulation, under protest, and as a result, the estimated weighted-average dumping margins for Dubai Wire and Precision Fasteners changed. On November 3, 2015, the Court upheld the *Final Remand Redetermination* in full, and affirmed several other appealed issues which it had deferred ruling on pending the Department's remand findings.[4]

Timken Notice

In its decision in *Timken,* as clarified by *Diamond Sawblades,* the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's November 3, 2015, final judgment affirming the *Final Remand Redetermination* constitutes a final decision of that court which is not in harmony with the *Final Determination.* This notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Determination

Because there is now a final court decision, the Department is amending the *Final Determination* with respect to both Dubai Wire and Precision Fasteners.

Producer or exporter	Weighted-average dumping margin (percent)
Dubai Wire FZE	2.86
Precision Fasteners LLC	0.00

Partial Exclusion From Antidumping Duty Order and Partial Discontinuation of Antidumping Duty Administrative Review

Pursuant to sections 735(c)(2) of the Act, ''the investigation shall be terminated upon publication of that negative determination'' and the Department shall ''terminate the suspension of liquidation'' and ''release any bond or other security, and refund any cash deposit.'' *See* Sections 735(c)(2)(A) and (B) of the Act. As a result of this amended final determination, in which the Department calculated a weighted-average dumping margin of 0.00 percent for Precision Fasteners, the Department is hereby excluding merchandise from the following producer/exporter chain from the antidumping duty order:

Producer: Precision Fasteners LLC
Exporter: Precision Fasteners LLC

Accordingly, the Department will direct U.S. Customs and Border Protection (CBP) to release any bonds or other security and refund cash deposits. This exclusion does not apply to merchandise produced by Precision Fasteners and exported by any other company. Therefore, resellers of merchandise produced, or produced and exported by Precision Fasteners are not entitled to the exclusion. Similarly, the exclusion does not apply to merchandise produced by any other company and exported by Precision Fasteners.

We note, however, that pursuant to *Timken* the suspension of liquidation must continue during the pendency of the appeals process. Thus, at this time we will instruct CBP to continue the suspension of liquidation at a cash deposit rate of 0.0 percent for entries produced and exported by Precision Fasteners until otherwise instructed and to release any bond or other security that Precision Fasteners made pursuant to the *Final Determination.* If the CIT's ruling is not appealed, or if appealed and upheld, the Department will instruct CBP to terminate the suspension of liquidation and to liquidate entries produced and exported by Precision Fasteners without regard to antidumping duties. As a result of the exclusion, the Department is discontinuing the ongoing administrative review for Precision Fasteners, in part[5] and will not initiate any new administrative reviews of the antidumping duty order with respect to merchandise produced and exported by Precision Fasteners.

Lastly, we note that at this time, the Department remains enjoined by Court order from liquidating entries produced and/or exported by Precision Fasteners during the period 11/03/2011 through 4/30/2013 with the exception of the gap period 05/02/2012 through 05/07/2012. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

Dubai Wire was a mandatory respondent in completed administrative reviews subsequent to the LTFV investigation and therefore the Dubai Wire LTFV redetermination weighted-average dumping margin is superseded by the cash deposit rate currently in effect for Dubai Wire.[6]

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: December 4, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–31429 Filed 12–11–15; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See Mid Continent,* 999 F. Supp. 2d at 1323.

[4] *See Mid Continent,* Court No. 12–00133, Slip Op. 15–122 at *22.

[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 37588 (July 1, 2015). The review will continue with regard to merchandise produced by Precision Fasteners and exported by another company or produced by any other company and exported by Precision Fasteners.

[6] *See Certain Steel Nails From the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2013–2014,* 80 FR 32527, 32528 (June 9, 2015).

DEPARTMENT OF COMMERCE

International Trade Administration

Renewable Energy and Energy Efficiency Advisory Committee

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The Renewable Energy and Energy Efficiency Advisory Committee (RE&EEAC) will hold a meeting on Tuesday, February 2, 2016 at the U.S. Department of Commerce Herbert C. Hoover Building in Washington, DC. The meeting is open to the public and interested parties are requested to contact the U.S. Department of Commerce in advance of the meeting.

DATES: February 2, 2016, from approximately 8:30 a.m. to 4 p.m. Eastern Standard Time (EST). Members of the public wishing to participate must notify Victoria Gunderson at the contact information below by 5:00 p.m. DST on Friday, January 29, 2016, in order to pre-register.

FOR FURTHER INFORMATION, PLEASE CONTACT: Victoria Gunderson, Office of Energy and Environmental Industries (OEEI), International Trade Administration, U.S. Department of Commerce at (202) 482–7890; email: *Victoria.Gunderson@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Commerce established the RE&EEAC

pursuant to his discretionary authority and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) on July 14, 2010. The RE&EEAC was re-chartered on June 12, 2014. The RE&EEAC provides the Secretary of Commerce with consensus advice from the private sector on the development and administration of programs and policies to enhance the international competitiveness of the U.S. renewable energy and energy efficiency industries.

During the February 2nd meeting of the RE&EEAC, committee members will discuss priority issues identified in advance by the Committee Chair and Sub-Committee leadership, hear from Department of Commerce officials and interagency partners on major issues impacting the competitiveness of the U.S. renewable energy and energy efficiency industries, and submit recommendations to the Department of Commerce intended to address these issues.

A limited amount of time before the close of the meeting will be available for pertinent oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two to five minutes per person (depending on number of public participants). Individuals wishing to reserve additional speaking time during the meeting must contact Ms. Gunderson and submit a brief statement of the general nature of the comments, as well as the name and address of the proposed participant by 5:00 p.m. EST on Friday, January 22, 2016. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to submit a copy of their oral comments by email to Ms. Gunderson for distribution to the participants in advance of the meeting.

Any member of the public may submit pertinent written comments concerning the RE&EEAC's affairs at any time before or after the meeting. Comments may be submitted to the Renewable Energy and Energy Efficiency Advisory Committee, c/o: Victoria Gunderson, Office of Energy and Environmental Industries, U.S. Department of Commerce; 1401 Constitution Avenue NW.; Mail Stop: 4053; Washington, DC 20230. To be considered during the meeting, written comments must be received no later than 5:00 p.m. DST on Friday, January 22, 2016, to ensure transmission to the Committee prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of RE&EEAC meeting minutes will be available within 30 days following the meeting.

Dated: December 4, 2015.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2015–31365 Filed 12–11–15; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–938]

Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has completed its administrative review of the countervailing duty (CVD) order on citric acid and certain citrate sales from the People's Republic of China (PRC) for the period January 1, 2013, through December 31, 2013. On June 8, 2015, the Department published in the **Federal Register** the *Preliminary Results* of this administrative review.[1] We completed the Post-Preliminary Results in this administrative review on June 26, 2015.[2]

We gave interested parties an opportunity to comment on the *Preliminary Results* and Post-Preliminary Results. Our analysis of the comments received resulted in a change to the net subsidy rate for Laiwu Taihe Biochemistry Co. Ltd. (Taihe). The final net subsidy rate is listed below in the section entitled, ''Final Results of the Review.''

DATES: *Effective date:* December 14, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–3874.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 2015, the Department published in the **Federal Register** the *Preliminary Results* of the 2013 administrative review of the CVD order on citric acid and certain citrate salts from the PRC. We completed the Post-Preliminary Results in this administrative review on June 26, 2015. We invited parties to comment on the *Preliminary Results* and Post-Preliminary Results.

On July 22, 2015, we received case briefs from the Government of China (GOC) and Taihe. On July 27, 2015, we received a rebuttal brief from the petitioners.[3]

On August 13, 2015, we postponed the final results by 60 days, until December 7, 2015.[4]

Scope of the Order

The merchandise subject to the order is citric acid and certain citrate salts. The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 2918.14.0000, 2918.15.1000, 2918.15.5000, 3824.90.9290, and 3824.90.9290. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive.

A full description of the scope of the order is contained in the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled, ''Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review: Citric Acid and Certain Citrate Salts; 2013'' (Issues and Decision Memorandum), dated concurrently with and hereby adopted by this notice.

Analysis of Comments Received

All issues raised in the case briefs are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and

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[1] *See Citric Acid and Certain Citrate Salts: Preliminary Results of Countervailing Duty Administrative Review; 2013,* 80 FR 32346 (June 8, 2015) (*Preliminary Results*).

[2] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Melissa G. Skinner, Director, Office II, entitled, ''Post-Preliminary Results Decision Memorandum in the 2013 Countervailing Duty Administrative Review; Citric Acid and Certain Citrate Salts from the People's Republic of China,'' dated June 26, 2015 (Post-Preliminary Results).

[3] The petitioners are Archer Daniels Midland Company, Cargill Incorporated, and Tate & Lyle Ingredients America LLC.

[4] *See* memorandum to Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, from Shannon Morrison, International Trade Compliance Analyst, entitled, ''Citric Acid and Certain Citrate Salts from the People's Republic of China: Extension of Deadline for Final Results of Countervailing Duty Administrative Review,'' dated August 13, 2015.

is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the 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://www.trade.gov/enforcement/*. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Methodology

The Department conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we determine that there is a subsidy (*i.e.,* a financial contribution from an ''authority'' that confers a benefit to the recipient, and that the subsidy is specific).[5] *See* the Issues and Decision Memorandum for a full description of the methodology underlying our conclusions.

In making our findings, we relied, in part, on the facts otherwise available. Further, because the GOC did not act to the best of its ability to respond to the Department's requests for information, we drew an adverse inference in selecting from among the facts available, pursuant to sections 776(a) and (b) of the Act. *See* the Issues and Decision Memorandum in the section entitled, ''Use of Facts Otherwise Available and Adverse Inferences,'' for further information.

Final Results of the Review

In accordance with 19 CFR 351.221(b)(5), we determine a net countervailable subsidy rate of 30.93 percent *ad valorem* for Taihe.

Assessment Rates

The Department intends to issue appropriate assessment instructions directly to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these final results, to liquidate shipments of subject merchandise by Taihe entered, or withdrawn from warehouse, for consumption on or after January 1, 2013, through December 31, 2013.

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

Cash Deposit Instructions

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount shown above on shipments of subject merchandise by Taihe entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed companies, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to companies covered by this order, but not examined in this review, are those established in the most recently-completed segment of the proceeding for each company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice serves as a 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). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 7, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Use of Facts Otherwise Available and Adverse Inferences
V. Subsidies Valuation Information
VI. Benchmarks and Discount Rates
VII. Analysis of Programs
VIII. Analysis of Comments
1. Whether To Find Input for the Less-Than-Adequate-Remuneration (LTAR) Programs Not Specific
A. Sulfuric Acid
B. Steam Coal
C. Calcium Carbonate
D. Caustic Soda
2. Whether the Department Should Apply Adverse Facts Available in its Market Distortion Analysis of the Sulfuric Acid, Calcium Carbonate, and Caustic Soda Industries
3. Whether To Reverse the Department's ''Authorities'' Determination for Certain Input Suppliers
4. Including Ocean Freight and Import Duties in the International Freight Benchmark for Input for LTAR Programs
5. The Selection of Ports in the International Freight Benchmark for Input for LTAR Programs
6. Whether To Use Freight Rates for Flat Rack Containers in the International Freight Benchmark for the Calcium Carbonate for LTAR Program
7. Whether To Include the Costs for Hazardous Shipping Charges in the International Freight Benchmark for the Sulfuric Acid and Caustic Soda for LTAR Programs
IX. Recommendation

[FR Doc. 2015–31419 Filed 12–11–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Request for Public Input on Sectoral Dialogues To Inform Work on Standards Cooperation Under the U.S.-India Strategic and Commercial Dialogue

ACTION: Notice.

SUMMARY: With this notice, the U.S. Department of Commerce (USDOC), on behalf of the Administration, is seeking public input to identify priority sectors in which the United States and India will pursue cooperative dialogues under the U.S.-India Strategic and Commercial Dialogue (S&CD) to address standards-related trade barriers. The aim of the cooperative dialogues is for the private sector to produce concrete recommendations for the U.S. and Indian governments on breaking down barriers related to standards, regulatory, and conformity assessment practices to increase bilateral trade. Stakeholder input will be used by the USDOC, in consultation with its interagency partners, to identify those sectors where cooperative work will yield the most benefits for bilateral trade from a U.S. perspective. The USDOC will also use stakeholder input to seek agreement from its Indian government counterparts on the sectors in which to begin cooperative work.

Criteria for selection include: The nature of the existing standards-related barriers in the sector (medical devices, ICT products, oil and gas, etc.), including whether the standards related measures that are affecting bilateral trade are subject to regulatory discretion or have limited potential for adjustment due to legislated mandates; the relative

estimated trade impact of eliminating the standards-related barriers in the sector; and whether private sector representatives from the sector—both U.S. and Indian—are committed to leading a cooperative dialogue to produce concrete recommendations for the U.S. and Indian governments on breaking down barriers in the sector. Selection will also take into account the willingness of U.S. and Indian regulators to become involved in this targeted work, as well as if another bilateral forum relevant to the suggested issue already exists.

In order for a sector to be considered, stakeholder input must identify private-sector leaders from the United States and India that have mutually agreed to coordinate and lead a cooperative dialogue among stakeholders in the sector from both the United States and India to develop recommendations for the U.S. and Indian governments on breaking down standards-related barriers in their sector. Confirmation of such agreement is encouraged. See additional requirements for submissions in the contents below.

The private sector cooperative dialogue leaders from the selected priority sectors are expected to begin work as early as possible in 2016 and to report their preliminary recommendations to the U.S. and Indian governments at the next meeting of the U.S.-India S&CD, expected to take place in India in mid-2016. At the discretion of the U.S. and Indian private sector cooperative dialogue leads, U.S. and Indian government officials will be available to provide information to facilitate the development of private sector recommendations. Selection of future priority sectors will be evaluated on the basis of the performance of the cooperative dialogues in the initially selected priority sectors.

FOR FURTHER INFORMATION CONTACT: Michael Boyles, Manager, Emerging Issues, Office of Standards and Investment Policy, International Trade Administration, by telephone at (202) 482–1935 (this is not a toll-free number) or email at *Michael.Boyles@trade.gov.*

SUPPLEMENTARY INFORMATION: In January 2015, President Obama and Prime Minister Modi decided to elevate the bilateral commercial and economic partnership by establishing the first-ever U.S.-India Strategic and Commercial Dialogue (S&CD) which was held in Washington, DC on September 22, 2015. The S&CD is the signature, annual forum for policy discussions between the United States Government and the Government of India. The United States and Indian Governments are using this vehicle to advance their shared priorities of generating economic growth, creating jobs, and strengthening the middle class. U.S. Secretary of State John Kerry and U.S. Secretary of Commerce Penny Pritzker co-chaired the dialogue with their Indian counterparts, Minister of External Affairs Sushma Swaraj and Minister of Commerce and Industry Nirmala Sitharaman.

Below are highlights of work agreed to on standards cooperation at the September 22, 2015 S&CD:

Standards Cooperation: The United States and India are working together to participate in the development of international standards and technical regulations to boost trade and help reduce administrative and logistical burdens, which disproportionately affect small and medium sized enterprises. The United States and India will engage their respective industries to identify up to two sectors where standards and conformity assessment-focused cooperative dialogues could lead to mutual benefit and increased trade. To support the removal of barriers that impact the global supply chain, the United States and India will exchange best practices for the operation of national Enquiry Points under the World Trade Organization Agreement on Technical Barriers to Trade and will explore opportunities for more cooperation on reference standards between India's National Physical Laboratories (NPL) and the National Institute of Standards and Technology (NIST). The United States and India announced a private sector-led collaboration to update a bilateral standards portal, which facilitates the sharing of information to improve industry understanding of market access requirements in both countries.

Request For Public Input: Submissions relevant to this request for public input should be submitted no later than 60 days after the date of this notice and can be submitted online or in writing.

Written submissions should be directed to Michael Boyles, Office of Standards and Investment Policy, Industry and Analysis, U.S. Department of Commerce, Room 22025, 14th and Constitution Avenue NW., Washington, DC 20230.

Online submissions should be submitted using *http://www.regulations.gov.*

In order to ensure the timely receipt and consideration of comments, ITA strongly encourages commenters to make online submissions using *http://www.regulations.gov.* Comments should be submitted under ITA–2015–0005. To find this docket, enter the docket number in the ''Enter Keyword or ID'' Window at the *http://www.regulations.gov* home page and click ''Search.'' The site will provide a search-results page listing all documents associated with the docket number. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the search-results page, and click on the link entitled ''Comment now!'' The *http://www.regulations.gov* Web site provides the option of making submissions by filling in a comments field, or by attaching a document. ITA prefers submissions to be provided in an attached document. (For further information on using *http://www.regulations.gov,* please consult the resources provided on the Web site by clicking on the ''Help'' tab.)

All comments and recommendations submitted in response to this notice will be made available to the public so should not include any privileged or confidential business information. The file name should begin with the character ''P'' (signifying that the comments contain no privileged or confidential business information and can be posted publicly), followed by the name of the person or entity submitting the comments. Written submissions should include an original and five (5) copies.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

Required Content for Submissions: USDOC seeks public input on the sectors that would benefit most from focused engagement by U.S. and Indian private-sector leaders and government representatives under the S&CD to address trade barriers related to standards, regulatory, and conformity assessment practices to increase bilateral trade. Criteria for selection include: The nature of the existing standards-related barriers in the sector (medical devices, ICT products, oil and gas, etc.), including whether the standards related measures that are affecting bilateral trade are subject to regulatory discretion or have limited potential for adjustment due to legislated mandates; the relative estimated trade impact of eliminating the standards-related barriers in the sector; and whether private sector representatives from the sector—both U.S. and Indian—are committed to leading a cooperative dialogue to

produce concrete recommendations for the U.S. and Indian governments on breaking down the barriers in the sector. Selection will also take into account the willingness of U.S. and Indian regulators to become involved in this targeted work.

Submissions should include: A description of the main standards-related barrier(s) affecting U.S.-India trade in the sector (*e.g.,* lack of transparency by U.S. and/or Indian officials in developing standards and/or regulations affecting the sector; U.S. and Indian officials applying different standards or technical regulations to products or services in the sector; testing or other requirements that are difficult to meet; and/or requirements being applied by U.S. and/or Indian officials only when products or services in the sector are imported from the other's market), including whether the areas involved are subject to regulatory discretion or have limited potential for adjustment due to legislated mandates; the relative estimated trade impact of eliminating the standards-related barriers in the sector; and data on bilateral trade in the sector for at least three years to help evaluate trade trends.

Submissions must identify private-sector leaders from the United States and India that have mutually agreed to coordinate and lead a cooperative dialogue among stakeholders in the sector from both the United States and India to develop recommendations for the U.S. and Indian governments on breaking down standards-related barriers in their sector. Confirmation of such agreement is encouraged. No U.S. Government funding will be provided for these activities.

Additionally, submissions should provide information on current and previous efforts to address standards-related barriers to bilateral trade in the sector, including under other government-to-government initiatives, to help evaluate the potential for liberalization of barriers identified. Submissions should also provide information, if known, about the U.S. and Indian government authorities, in particular regulators, whose actions impact the sector, and who would need to be involved in implementing the recommendations that the private sector leads will develop under a U.S.-India cooperative dialogue on the subject sector. Before finalizing priority sector selection, U.S. and Indian government S&CD leads will confirm that their respective relevant regulators support targeted work in the sector. Additional information also is welcome that would help USDOC and its interagency partners evaluate prospects for growth in bilateral trade in the sector, if this work is undertaken.

Dated: December 4, 2015.

Chris Rosettie,

Director, Office of Standards and Investment Policy, International Trade Administration.

[FR Doc. 2015–31430 Filed 12–11–15; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is conducting the tenth administrative review (''AR'') of the antidumping duty order on wooden bedroom furniture (''WBF'') from the People's Republic of China (''PRC''). The period of review (''POR'') is January 1, 2014, through December 31, 2014. We invite interested parties to comment on these preliminary results.

DATES: *Effective Date:* December 14, 2015.

FOR FURTHER INFORMATION CONTACT: Patrick O'Connor or Jeffrey Pedersen, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0989, and (202) 482–2769, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The product covered by the order is wooden bedroom furniture, subject to certain exceptions.[1] Imports of subject merchandise are classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 9403.50.9042, 9403.50.9045, 9403.50.9080, 9403.50.9042, 9403.50.9045, 9403.60.8081, 7009.92.1000 or 7009.92.5000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description in the *Order* remains dispositive.[2]

Methodology

The Department is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (''the Act'') and 19 CFR 351.213. For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum, which is hereby adopted with this notice. A list of topics discussed in the Preliminary Decision Memorandum is provided as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

PRC-Wide Entity

The Department selected Shanghai Jian Pu Import & Export Co., Ltd. (''Jian Pu'') as the sole mandatory respondent.[3] The Department preliminarily determines that Jian Pu did not establish its eligibility for a separate rate for the reasons explained in the Preliminary Decision Memorandum. Accordingly, we are preliminarily treating Jian Pu as part of the PRC-wide entity.

In addition, six other companies for which a review was requested failed to provide separate rate applications or certifications necessary to establish their eligibility for a separate rate.[4] The

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[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People's Republic of China,* 70 FR 329 (January 4, 2005) (''*Order*'').

[2] For a complete description of the Scope of the Order, please *see* ''*Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Wooden Bedroom Furniture from the People's Republic of China,*'' from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations (''Preliminary Decision Memorandum''), dated concurrently with this notice.

[3] *See* Preliminary Decision Memorandum.

[4] Those six companies, other than Shanghai Jian Pu, not establishing their eligibility for a separate rate are: (1) Baigou Crafts Factory of Fengkai; (2) Dongguan Hung Sheng Artware Products Co., Ltd., Coronal Enterprise Co., Ltd.; (3) Hualing Furniture (China) Co., Ltd., Tony House Manufacture (China) Co., Ltd., Buysell Investments Ltd., Tony House Industries Co., Ltd.; (4) Orient International Holding Shanghai Foreign Trade Co., Ltd.; (5) Prime Wood International Co., Ltd, Prime Best International Co., Ltd., Prime Best Factory, Liang Huang (Jiaxing) Enterprise Co., Ltd.; and (6) Woodworth Wooden Industries (Dong Guan) Co., Ltd. Although

Continued

Department preliminarily determines that these seven companies, including Shanghai Jian Pu, are part of the PRC-wide entity. The PRC-wide entity rate is 216.01 percent. For additional information regarding this determination, *see* the Preliminary Decision Memorandum.

Preliminary Determination of No Shipments

Based on an analysis of U.S. Customs and Border Protection (''CBP'') information, and comments provided by a number of companies, the Department preliminarily determines that 11 of the companies for which an AR was requested and that claimed no shipments during this POR did not have any reviewable transactions during the POR.[5] For additional information regarding this determination, *see* the Preliminary Decision Memorandum.[6] Consistent with an announced refinement to its assessment practice in NME cases, the Department is not rescinding this AR, in part, but intends to complete the review with respect to the companies for which it has preliminarily found no shipments and issue appropriate instructions to CBP based on the final results of the review.[7]

Public Comment

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments, filed electronically using ACCESS, within 30 days of the date of publication of this notice, pursuant to 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days after the due date for case briefs, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this review are requested to submit with each argument a statement of the issue, a summary of the argument not to exceed five pages, and a table of statutes, regulations, and cases cited, in accordance with 19 CFR 351.309(c)(2).

Any interested party may request a hearing within 30 days of publication of this notice.[8] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.[9]

The Department will issue the final results of this AR, which will include the results of its analysis of issues raised in any briefs received, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuing the final results of these reviews, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[10] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

For each individually examined respondent in this review whose weighted-average dumping margin is above *de minimis* (*i.e.,* 0.5 percent) in the final results of this review, the Department will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those sales, in accordance with 19 CFR 351.212(b)(1).[11] Where an importer- (or customer-) specific *ad valorem* rate is greater than *de minimis,* the Department will instruct CBP to collect the appropriate duties at the time of liquidation.[12] Where either a respondent's weighted average dumping margin is zero or *de minimis,* or an importer- (or customer-) specific *ad valorem* dumping margin is zero or *de minimis,* the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[13] We intend to instruct CBP to liquidate entries of subject merchandise exported by the PRC-wide entity at the PRC-wide rate.

The Department announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales database submitted by companies individually examined during the AR, the Department will instruct CBP to liquidate such entries at the PRC-wide rate. Additionally, if the Department determines that an exporter had no shipments of subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate.[14]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of these reviews for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the PRC-wide entity, which is 216.01 percent; and (2) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter.

These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this

Woodworth Wooden Industries (Dong Guan) Co., Ltd. claimed to have no shipments of subject merchandise during the POR, the Department found evidence that contradicted this claim. *See* Memorandum from Patrick O'Connor, International Trade Compliance Analyst, Office IV, to Abdelali Elouaradia Director, Office IV, AD/CVD Operations, regarding the ''Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People's Republic of China: Analysis of No Exports, Sales, or Entries by Certain Companies,'' dated concurrently with this memorandum.

[5] Those 11 companies with no shipments during the POR are: (1) Clearwise Co., Ltd.; (2) Dongguan Chengcheng Furniture Co., Ltd.; (3) Dongguan Singways Furniture Co., Ltd.; (4) Eurosa (Kunshan) Co., Ltd., Eurosa Furniture Co., (Pte) Ltd.; (5) Golden Well International (HK) Ltd.; (6) Hangzhou Cadman Trading Co., Ltd.; (7) Rizhao Sanmu Woodworking Co., Ltd.; (8) Shenyang Shining Dongxing Furniture Co., Ltd.; (9) Wuxi Yushea Furniture Co., Ltd.; (10) Yeh Brothers World Trade Inc.; and (11) Zhejiang Tianyi Scientific & Educational Equipment Co., Ltd.

[6] *See* Memorandum from Patrick O'Connor, International Trade Compliance Analyst, Office IV, to Abdelali Elouaradia Director, Office IV, AD/CVD Operations, regarding the ''Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People's Republic of China: Analysis of No Exports, Sales, or Entries by Certain Companies,'' dated concurrently with this notice.

[7] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011) and the ''Assessment Rates'' section, below.

[8] *See* 19 CFR 351.310(c).

[9] *See* 19 CFR 351.310(d).

[10] *See* 19 CFR 351.212(b).

[11] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[12] *See* 19 CFR 351.212(b)(1).

[13] *See* 19 CFR 351.212(b)(1).

[14] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: December 2, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

(1) Summary
(2) Background
(3) Scope of the Order
(4) Respondent Selection
(5) DISCUSSION OF THE METHODOLOGY
  a. Preliminary Determination of No Shipments
  b. Duty Absorption
  c. NME Country Status
  d. Separate Rates
(6) Conclusion

[FR Doc. 2015–31426 Filed 12–11–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee Public Meeting

AGENCY: International Trade Administration, DOC.

ACTION: Notice of federal advisory committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Environmental Technologies Trade Advisory Committee (ETTAC).

DATES: The meeting is scheduled for Tuesday, January 12, 2016, at 8:30 a.m. Eastern Standard Time (EST).

ADDRESSES: The meeting will be held in Room 48019 at the U.S. Department of Commerce, Herbert Clark Hoover Building, 1401 Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Kreps, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 4053, 1401 Constitution Avenue NW., Washington, DC 20230 (Phone: 202–482–3835; Fax: 202–482–5665; email: *amy.kreps@trade.gov.*) This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at (202) 482–5225 no less than one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The meeting will take place from 8:30 a.m. to 3:30 p.m. EST. The general meeting is open to the public and time will be permitted for public comment from 3:00–3:30 p.m. EST. Those interested in attending must provide notification by Wednesday, December 30, 2015 at 5:00 p.m. EST, via the contact information provided above. Written comments concerning ETTAC affairs are welcome any time before or after the meeting. Minutes will be available within 30 days of this meeting.

Topics to be considered:

The agenda for this meeting will include discussion of priorities and objectives for the committee, trade promotion programs within the International Trade Administration, and subcommittee working meetings.

Background: The ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. ETTAC operates as an advisory committee to the Secretary of Commerce and the Trade Promotion Coordinating Committee (TPCC). ETTAC was originally chartered in May of 1994. It was most recently re-chartered until August 2016.

Dated: December 7, 2015.

Edward A. O'Malley,

Office Director, Office of Energy and Environmental Industries.

[FR Doc. 2015–31428 Filed 12–11–15; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–937]

Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On June 8, 2015, the Department of Commerce (the ''Department'') published the preliminary results of the fifth administrative review (''AR'') of the antidumping duty order on citric acid and certain citrate salts (''citric acid'') from the People's Republic of China (''PRC''), in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (''the Act'').[1] On October 27, 2015, the Department issued Post-Preliminary Results[2] in this AR. The period of review (''POR'') for the AR is May 1, 2013, through April 30, 2014. The review covers three companies, RZBC Import & Export Co., Ltd. (''RZBC I&E''),[3] Laiwu Taihe Biochemistry Co., Ltd. (''Taihe''), and Yixing Union Biochemical Ltd. (''Yixing Union''). Based on our analysis of the comments received, we made certain changes to our Post-Preliminary Results. The final dumping margins for this review are listed in the ''Final Results'' section below.

DATES: *Effective date:* December 14, 2015.

FOR FURTHER INFORMATION CONTACT: Krisha Hill, Maisha Cryor, or Aleksandras Nakutis, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4037, (202) 482–5831, or (202) 482–3147, respectively.

SUPPLEMENTARY INFORMATION:

Background

For a full history of the events that have taken place since the publication of the *Preliminary Results* and the Post-Preliminary Results, *see* the Issues and Decision Memorandum.[4] The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit (''CRU''), Room B8024 of the main Department of Commerce building, as well as electronically via Enforcement and Compliance's

[1] *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014,* 80 FR 32353 (June 8, 2015) (''*Preliminary Results*'').

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, regarding ''Decision Memorandum for the Post-Preliminary Results of Antidumping Duty Administrative Review: Citric Acid and Certain Citrate Salts from the People's Republic of China; 2013–14,'' dated October 27, 2015 (''Post-Preliminary Results'').

[3] The Department initiated the fifth administrative review on RZBC Co., Ltd., RZBC I&E, and RZBC (Juxian) Co., Ltd. (collectively ''RZBC''). Only RZBC I&E exported subject merchandise to the United States during the POR.

[4] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary, Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, regarding ''Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Citric Acid and Certain Citrate Salts from the People's Republic of China,'' issued concurrently with this notice (''Issues and Decision Memorandum'').

Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''). ACCESS is available to registered users at *https://access.trade.gov* and it is available to all parties in the CRU. In addition, parties can directly access a complete version of the Issues and Decision Memorandum 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.

Scope of the Order

The merchandise covered by this order is citric acid and certain citrate salts from the PRC. The product is currently classified under subheadings 2918.14.0000, 2918.15.1000, 2918.15.5000, and 3824.90.9290 of the Harmonized Tariff System of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of merchandise subject to the scope is dispositive. For a full description of the scope of the order, see Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in parties' case and rebuttal briefs are addressed in the Issues and Decision Memorandum. In an Appendix to this notice, we have provided a list of the issues raised by parties.

Changes Since the Post-Preliminary Results

Based on our review of the record and comments received from interested parties regarding our *Preliminary Results* and Post-Preliminary Results, we have made certain revisions to the margin calculations for RZBC I&E and Taihe. Further, the Final Surrogate Value Memorandum contains descriptions of our changes to the surrogate values.[5]

- We deducted letter of credit costs from brokerage and handling expense for both respondents.
- We made adjustments to labor and limestone consumption in Taihe's co-product calculations.
- We made adjustments to the export subsidy calculation for RZBC I&E.

Final Determination of No Shipments

In the Preliminary Results, the Department preliminarily determined that Yixing Union did not have any reviewable transactions during the POR. We have not received any information to contradict this determination. Therefore, the Department determines that Yixing Union did not have any reviewable entries of subject merchandise during the POR, and will issue appropriate instructions that are consistent with our ''automatic assessment'' clarification, for these final results.[6]

Final Results

We determine that the following weighted-average dumping margins exist for the POR:

Exporter	Weighted-average dumping margin (percent)
RZBC Import & Export Co., Ltd	0.00
Laiwu Taihe Biochemistry Co., Ltd	6.61

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), the Department has determined, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of these final results of this review. In accordance with 19 CFR 351.212(b)(1), we are calculating importer- (or customer-) specific assessment rates for the merchandise subject to this review. For any individually examined respondent whose weighted-average dumping margin is above *de minimis* (*i.e.,* 0.50 percent), the Department will calculate importer- (or customer)-specific assessment rates for merchandise subject to this review. Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise.[7] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate is above *de minimis.* Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Pursuant to a refinement in the Department's non-market economy (''NME'') practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate (*i.e.,* 156.87 percent). In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate.[8]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For Yixing Union, which claimed no shipments, the cash deposit will remain unchanged from the rate assigned to Yixing Union in the most recently completed review of the company; (2) for the exporters listed above, the cash deposit rate will be the rate listed for each exporter in the table in the ''Final Results'' section of this notice; (3) for previously investigated or reviewed PRC and non-PRC exporters that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-

[5] *See* Memorandum from Krisha Hill and Maisha Cryor to Robert Bolling regarding, ''Final Results of the Fifth Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China: Surrogate Value Memorandum,'' issued concurrently with this memorandum (''Final Surrogate Value Memorandum'').

[6] *See* Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694 (October 4, 2011) (''Assessment Practice Refinement'').

[7] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[8] For a full discussion of this practice, *see* Assessment Practice Refinement, 76 FR at 65694.

specific rate; (4) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity established in the final determination of the less than fair value investigation (*i.e.,* 156.87 percent); and (5) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Notification to Importers Regarding the Reimbursement of Duties

This notice also 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 the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these final results of administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: December 7, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—Issues and Decision Memorandum

Summary

List of Issues

Background

Scope of the Order

Discussion of the Issues

Issues

- Comment 1: Whether the Department Should Select Indonesia as the Primary Surrogate Country
- Comment 2: Whether the Department's Approach to the Surrogate Country Selection Process Is Counter to its Policy, Practice, and Statutory Obligations
- Comment 3: Whether the Department Should Rely on the Aditya Birla Financial Statements to Calculate the Financial Ratios
- Comment 4: Whether the Surrogate Financial Ratios Should be Based on PT Budi's Segment Financial Information
- Comment 5: Whether the Department Should Assign Surrogate Values to Respondents' Energy Factors of Production Values
- Comment 6: The Weight Denominator for Brokerage & Handling and Inland Freight
- Comment 7: Whether to Deduct Letter of Credit Cost from the Brokerage and Handling Surrogate Value Calculation
- Comment 8: Whether the Department Should Value Corn Using Indonesian Import Prices or, Alternatively, Recalculate the Thai Import Prices to Exclude Aberrational Data
- Comment 9: Distance to Calculate Inland Freight
- Comment 10: Whether the Department Should Make Certain Revisions to its Surrogate Value for Sludge
- Comment 11: Whether to Value RZBC's High Protein Scrap as a Co-Product
- Comment 12: Whether the Department Used Incorrect Rates to Calculate RZBC I&E's Export Subsidy Adjustment
- Comment 13: Whether the Department Should Treat Taihe's Corn Feed as a By-Product
- Comment 14: Whether the Department Should Make Certain Revisions to Taihe's Co-Product Calculation
- Comment 15: Whether the Application of Differential Pricing Methodology to Taihe's Sales is Contrary to Law and Otherwise Unsupported by Substantial Evidence on the Record

Recommendation

[FR Doc. 2015–31427 Filed 12–11–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–968]

Aluminum Extrusions From the People's Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review; 2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) completed its administrative review of the countervailing duty order [1] (CVD) on aluminum extrusions from the People's Republic of China (PRC) for the January 1, 2013, through December 31, 2013 period of review (POR). We determined that the Guang Ya Group [2] and the Jangho Companies [3] (mandatory respondents) received countervailable subsidies during the POR. The final net subsidy rates are listed below in ''Final Results of Administrative Review.''

DATES: *Effective date:* December 14, 2015.

FOR FURTHER INFORMATION CONTACT: Davina Friedmann, Tyler Weinhold or Robert James, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0698, (202) 482–1121 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 9, 2015, the Department published the Preliminary Results of this administrative review.[4] On October 7, 2015, the Department extended the final results of this administrative review until December 7, 2015. On October 27, 2015, the Department issued its post-preliminary results of review.[5] The Department invited interested parties to comment on both the Preliminary Results and Post-

[1] *See Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order,* 76 FR 30653 (May 26, 2011) (*Order*).

[2] For purposes of this administrative review, the Guang Ya Group includes Guang Ya Aluminium Industries Co. Ltd.; Foshan Guangcheng Aluminium Co., Ltd.; and Yonghi Guanghai Aluminium Industry Co., Ltd. Also, these companies submitted responses on the record of this review clarifying the usage of ''Aluminium'' in its name, rather than ''Aluminum,'' the form on which we both received a request for review and/or on which we initiated this review.

[3] For purposes of this administrative review, the Jangho companies includes Guangzhou Jangho Curtain Wall System Engineering Co., Ltd., (Guangzhou Jangho); Jangho Group Co., Ltd. (Jangho Group Co.); Beijing Jiangheyuan Holding Co., Ltd (Beijing Jiangheyuan); Beijing Jangho Curtain Wall System Engineering Co., Ltd. (Beijing Jangho); and Shanghai Jangho Curtain Wall System Engineering Co., Ltd., (Shanghai Jangho).

[4] *See Aluminum Extrusions from the People's Republic of China: Preliminary Results, Preliminary Intent To Rescind, in Part, and Partial Rescission of Countervailing Duty Administrative Review; 2013,* 80 FR 32528, dated June 9, 2015 (Preliminary Results).

[5] *See* Memorandum from Scot Fullerton through Christian Marsh to Paul Piquado re: ''Post-Preliminary Analysis Memorandum in the 2013 Countervailing Duty Administrative Review; Aluminum Extrusions from the People's Republic of China,'' dated October 27, 2015 (Post-Preliminary Analysis).

Preliminary Analysis and received case and rebuttal briefs from several parties.[6] There were no requests from interested parties to conduct a hearing.

Scope of the Order

The merchandise covered by the *Order* is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents).[7]

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8708.80.65.90, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.30, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive.

Analysis of Comments Received

All issues raised in the parties' briefs are addressed in the Issues and Decision Memorandum, dated concurrently with this notice, and which is hereby adopted by this notice. A list of the issues raised is attached to this notice at Appendix I.[8] 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;* the Issues and Decision Memorandum is available to all parties in the Central Records Unit (CRU), Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Methodology

The Department conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[9] For a full description of the methodology underlying all of the Department's conclusions, including our reliance, in part, on adverse facts available pursuant to sections 776(a) and (b) of the Act, *see* the Issues and Decision Memorandum.

Partial Rescission of Review

For those companies named in the *Initiation Notice*[10] for which all review requests have been timely withdrawn, we are rescinding this administrative review in accordance with 19 CFR 351.213(d)(1). These companies are listed at Appendix II to this notice. For these companies, countervailing duties shall be assessed at rates equal to the rates of the cash deposits for estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the POR, in accordance with 19 CFR 351.212(c)(2).

Also, between August 1, 2014 and September 5, 2014, the Department received timely no-shipment certifications from certain companies. The Department confirmed with U.S. Customs and Border Protection (CBP) that these companies did not ship merchandise to the United States during this review period.[11] However, these no-shipment companies were also included in the Petitioner's timely withdrawal request, and because no party other than the Petitioner requested a review of the no-shipment companies, the Department is rescinding the administrative review of these companies pursuant to 19 CFR 351.213(d)(1).

Rate for Non-Selected Companies Under Review

There are 38 companies for which a review was requested and not rescinded, but were not selected as mandatory respondents. For these companies, we calculated the non-selected rate using a methodology of weight-averaging the rates of the Guang Ya Group and Jangho Group based on

[6] For additional case history for this administrative review, *see* accompanying Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review; Aluminum Extrusions from the People's Republic of China, dated concurrently with this notice (Issues and Decision Memorandum).

[7] *See* Issues and Decision Memorandum for a complete description of the scope of the *Order.*

[8] *See* Memoradum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado Assistant Secretary for Enforcement and Compliance regarding: ''Decision Memorandum for the Final Results of Countervailing Duty Administrative Review: Aluminum Extrusions from the People's Republic of China, 2013 (Third Review),'' December 7, 2015 (Issues and Decision Memorandum).

[9] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[10] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 79 FR 36462 (June 27, 2014) (*Initiation Notice*).

[11] On August 27, 2015, the Department issued the requisite ''no-shipments'' message to CBP inquiring whether certain companies shipped merchandise to the United States during the instant review period, which was subsequently confirmed by CBP. *See* public message number 5239314.

their publicly-ranged sales data for the POR because basing a weighted-average on their proprietary sales data for the POR risks disclosure of proprietary information. For further information on the calculation of the non-selected rate, refer to the section in the Issues and Decision Memorandum entitled, ''Final *Ad Valorem* Rate for Non-Selected Companies Under Review.''

For those companies that failed to respond to the Department's quantity and value questionnaire, we have relied on facts available, determined that those companies are non-cooperative and, on that basis, found that the application of adverse facts available is warranted in determining the net countervailable subsidy rate for those companies. For further discussion of this determination, refer to the section in the Issues and Decision Memorandum entitled, ''Use of Facts Otherwise Available and Adverse Inferences.''

Final Results of Administrative Review

In accordance with 19 CFR 351.221(b)(5), we determine the following final net subsidy rates for the 2013 administrative review:

Company	2013 *Ad valorem rate* (percent)
Guang Ya Group [12]	3.59
Jangho Companies [13]	64.14
Dynamic Technologies China Ltd	222.82
Foreign Trade Co. of Suzhou New & High Tech Industrial Development Zone	222.82
Foshan Shunde Aoneng Electrical Appliances Co., Ltd	222.82
Golden Dragon Precise Copper Tube Group	222.82
WTI Building Products, Ltd	222.82
Zhaoqing Asia Aluminum Factory Company Ltd	222.82
Allied Maker Limited	61.36
Alnan Aluminum Co. Ltd	61.36
Barcalente Metal Producers (Suzhou) Co. Ltd	61.36
Changzhou Changzheng Evaporator Co., Ltd	61.36
Classic & Contemporary Inc	61.36
Danfoss Micro Channel Heat Exchanger (Jia Xing) Co. Ltd	61.36
Dongguan Golden Tiger Hardware Industrial Co., Ltd	61.36
Ever Extend Ent. Ltd	61.36
Fenghua Metal Product Factory	61.36
Guandong JMA Aluminum Profile (Group) Co., Ltd	61.36
Guangdong Whirlpool Electrical Appliances Co. Ltd	61.36
Guangdong Zhongya Aluminum Company Limited	61.36
Hanyung Alcobis Co., Ltd	61.36
Hangyung Metal (Suzhou) Co., Ltd	61.36
Henan New Kelong Electrical Appliances, Co., Ltd	61.36
IDEX Dinglee Technology (Tianjin) Co., Ltd	61.36
IDEX Technology Suzhou Co., Ltd	61.36
Jiangsu Susun Group (HK) Co., Ltd	61.36
Justhere Co., Ltd	61.36
Kromet International Inc	61.36
Metaltek Group Co. Ltd	61.36
North Fenghua Aluminum Limited	61.36
Nidec Sankyo Singapore Pte. Ltd	61.36
Nanhai Textiles Import & Export Co., Ltd	61.36
Permasteelisa Hong Kong Ltd	61.36
Permasteelisa South China Factory	61.36
Sapa Profiles (Shanghai) Co., Ltd	61.36
Shanghai Tongtai Precise Aluminum Alloy Manufacturing Co., Ltd	61.36
Shenyang Yuanda Aluminum Industry Engineering Co., Ltd	61.36
Taishan City Kam Kiu Aluminum Extrusion Co., Ltd	61.36
Taizhou United Imp & Exp Co Ltd	61.36
tenKsolar (Shanghai) Co., Ltd	61.36
Union Industry (Asia) Co., Limited	61.36
Whirlpool Microwave Products Development Ltd	61.36
Zhejiang Dongfeng Refrigeration Components Co. Ltd	61.36
Zhongya Shaped Aluminum (HK) Holding Limited	61.36
Zhongshan Daya Hardware Co., Ltd	61.36
Zhaoqing New Zhongya Aluminum Co., Ltd	61.36

Assessment Rates

The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of these final results of review, to liquidate shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 2013, through December 31, 2013, at the *ad valorem* rates listed above.

Cash Deposit Requirements

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts indicated above for each company listed on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms, we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company,

[12] *See* Footnote 2.

[13] *See* Footnote 3.

as appropriate. Accordingly, the cash deposit requirements that will be applied to companies covered by this order, but not examined in this administrative review, are those established in the most recently completed segment of the proceeding for each company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice serves as a 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). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 7, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Final Decision Memorandum

Summary
List of Comments
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Partial Rescission of Review
Subsidies Valuation Information
Loan Benchmark Rates
Use of Facts Otherwise Available and Adverse Inferences
Analysis of Programs
Programs Determined Not to Confer Measurable Benefit or Not Used
Ad Valorem Rate for Non-Selected Companies Under Review
Ad Valorem Rate for Non-Cooperative Companies Under Review
Analysis of Comments
Comment 1: Whether the Jangho Companies' Products are Subject to the Scope of the *Order*
Comment 2: Whether the Department Should Instruct CBP to Lift Suspension and Not Assess Duties Prior to the Date of Initiation of the Relevant Scope Ruling on Curtain Wall Units
Comment 3: Whether the GOC Provided Policy Loans to the Jangho Companies and GYG
Comment 4: Whether the Department's Benchmark Interest Rates are Arbitrary, Unsupported by Record Evidence, or Unlawful
Comment 5: Whether Preferential Tax Policies for High or New Technology Enterprises (HTNEs) Program is Specific
Comment 6: Whether Tax Offsets for Research and Development (R&D) Program is Specific
Comment 7: Alleged Ministerial Error in the Jangho Companies' Overall and Additional Subsidy Margin Calculations
Comment 8: Whether The Department May Countervail Provision of Glass for LTAR; Whether Glass is, Properly, an Input of the Subject Merchandise
Comment 9: Whether The Department May Countervail Provision of Aluminum Extrusions for LTAR; Whether Aluminum Extrusions are, Properly, Inputs of the Subject Merchandise
Comment 10: Whether the Department Should Include the Subsidy Rates for Glass and Aluminum Extrusions for LTAR Programs in the Rates for Non-Selected Companies
Comment 11: Whether the Jangho Companies' Glass and Aluminum Extrusions Producers and Suppliers and GYG's Primary Aluminum Producers and Suppliers are ''Authorities''
Comment 12: Whether Specificity Exists for Primary Aluminum for LTAR, Glass for LTAR and Aluminum Extrusions for LTAR
Comment 13: Whether the Department may use a ''tier two'' Benchmark for Primary Aluminum for LTAR, Aluminum Extrusions for LTAR, and Glass for LTAR
Comment 14: Whether the Department Made a Ministerial Error in the Calculation of Benefits for the Aluminum Extrusions for LTAR and Glass for LTAR Programs.
Comment 15: Whether the Department Should Calculate Subsidies on Two Programs for Which It Sought Additional Information After Issuance of the *Preliminary Results*
Comment 16: Whether the Department Made a Ministerial Error in the Policy Lending Calculation for GYG
Comment 17: Whether the Department Should Allocate Benefits from GYG's Famous Brands Program over 2013 Sales
Comment 18: Whether the Department Should Countervail Non-Recurring Subsidies Received Prior to January 1, 2005
Comment 19: Whether TenKSolar Shanghai Should Receive the Cooperative Rate for Non-Selected Respondents
Comment 20: Whether the Department Should Use Aluminum Billet Purchases by Guang Ya in the Benchmark Calculation of Primary Aluminum for LTAR
Comment 21: Whether the Department Erred in Calculating the Benchmark for Primary Aluminum
Conclusion

Appendix II

List of Companies on Which We Are Rescinding This Administrative Review [14]

1. Acro Import and Export Co.
2. Activa International Inc.
3. Aluminicaste Fundicion de Mexico
4. Changshu Changshen Aluminum Products Co., Ltd.
5. Changzhou Tenglong Auto Parts Co., Ltd.
6. China Zhongwang Holdings, Ltd.
7. Chiping One Stop Industrial & Trade Co., Ltd.
8. Clear Sky Inc.
9. Cosco (J.M.) Aluminum Co., Ltd.
10. Dongguan Aoda Aluminum Co., Ltd.[15]
11. Dragonluxe Limited
12. Dynabright International Group (HK) Limited
13. First Union Property Limited
14. Foshan City Nanhai Hongjia Aluminum alloy Co., Ltd.
15. Foshan Jinlan Aluminum Co. Ltd.
16. Foshan JMA Aluminum Company Limited
17. Foshan Shanshui Fenglu Aluminum Co., Ltd.
18. Foshan Yong Li Jian Alu. Ltd.
19. Fujian Sanchuan Aluminum Co., Ltd.
20. Global PMX Dongguan Co., Ltd.
21. Global Point Technology (Far East) Limited
22. Gold Mountain International Development, Ltd.
23. Gran Cabrio Capital Pte. Ltd.
24. Gree Electric Appliances
25. GT88 Capital Pte. Ltd.
26. Guangdong Hao Mei Aluminum Co., Ltd.
27. Guangdong Jianmei Aluminum Profile Company Limited
28. Guangdong Nanhai Foodstuffs Imp. & Exp. Co., Ltd.
29. Guangdong Weiye Aluminum Factory Co., Ltd.
30. Guangdong Xingfa Aluminum Co., Ltd.
31. Guangdong Xin Wei Aluminum Products Co., Ltd.
32. Guangdong Yonglijian Aluminum Co., Ltd
33. Hangzhou Xingyi Metal Products Co., Ltd.
34. Hanwood Enterprises Limited
35. Hao Mei Aluminum Co., Ltd.
36. Hao Mei Aluminum International Co., Ltd.
37. Hong Kong Gree Electric Appliances Sales Limited
38. Honsense Development Company
39. Hui Mei Gao Aluminum Foshan Co., Ltd.
40. Idex Health
41. Innovative Aluminum (Hong Kong) Limited
44. iSource Asia
45. Jiangmen Qunxing Hardware Diecasting Co., Ltd.

[14] One company on which the review was initiated, tenKsolar Inc., provided a certified submission of its role as a U.S. importer located within the United States. *See* Letter from tenKSolar (Shanghai) Co., Ltd. regarding, ''Aluminum Extrusions from the People's Republic of China—Quantity and Value Questionnaire Response,'' dated September 4, 2014. Because tenKsolar is a U.S. importer, we are rescinding the review of this entity.

[15] Petitioner requested a review of Dongguang Aoda Aluminum Co., Ltd. *See* Letter from the Aluminum Extrusions Fair Trade Committee regarding, ''Aluminum Extrusions from the People's Republic of China: Request for Administrative Review,'' dated June 2, 2014. However, in the Department's initiation notice, this company's name was spelled *Dongguan* Aoda Aluminum Co., Ltd. Accordingly, this notice serves as a correction to the spelling of this company's name.

46. Jiangsu Changfa Refrigeration Co., Ltd.
47. Jiangyin Trust International Inc
48. Jiangyin Xinhong Doors and Windows Co., Ltd.
49. Jiaxing Jackson Travel Products Co., Ltd.
50. Jiaxing Taixin Metal Products Co., Ltd.
51. Jiuyan Co., Ltd.
52. JMA (HK) Company Limited
53. Kam Kiu Aluminum Products Sdn Bhd
54. Kanal Precision Aluminum Product Co., Ltd.
55. Karlton Aluminum Company Ltd.
56. Kunshan Giant Light Metal Technology Co., Ltd.
57. Liaoning Zhongwang Group Co., Ltd.
58. Liaoyang Zhongwang Aluminum Profiled Co. Ltd.
59. Longkou Donghai Trade Co., Ltd.
60. Massoud & Bros. Co., Ltd.
61. Metaltek Metal Industry Co., Ltd.
62. Midea Air Conditioning Equipment Co., Ltd.
63. Midea International Trading Co., Ltd./ Midea International Trading Co., Ltd.
64. Miland Luck Limited
65. New Asia Aluminum & Stainless Steel Product Co., Ltd.
66. Nidec Sankyo (Zhejiang) Corporation
67. Ningbo Coaster International Co., Ltd.
68. Ningbo Hi Tech Reliable Manufacturing Company
69. Ningbo Lakeside Machiery Factory [16]
70. Ningbo Minmetals & Machinery Imp. & Exp. Corp.
71. Ningbo Yili Import and Export Co., Ltd.
72. North China Aluminum Co., Ltd.
73. Northern States Metals
74. PanAsia Aluminum (China) Limited
75. Pengcheng Aluminum Enterprise Inc.
76. Pingguo Aluminum Company Limited
77. Pingguo Asia Aluminum Co., Ltd.
78. Popular Plastics Company Limited
79. Press Metal International Ltd
80. Samuel, Son & Co., Ltd.
81. Sanchuan Aluminum Co., Ltd.
82. Shangdong Huasheng Pesticide Machinery Co.
83. Shangdong Nanshan Aluminum Co., Ltd.
84. Shanghai Automobile Air Conditioner Accessories Ltd.
85. Shanghai Canghai Aluminum Tube Packaging Co., Ltd
86. Shanghai Dongsheng Metal
87. Shanghai Shen Hang Imp & Exp Co., Ltd.
88. Shenzhen Hudson Technology Development Co., Ltd.
89. Shenzhen Jiuyuan Co., Ltd.
90. Sihui Shi Guo Yao Aluminum Co., Ltd.
91. Sincere Profit Limited
92. Skyline Exhibit Systems (Shanghai) Co., Ltd.
93. Suzhou JRP Import & Export Co., Ltd.
94. Suzhou New Hongji Precesion Part Co
95. Tai-Ao Aluminum (Taishan) Co. Ltd.
96. Taizhou Lifeng Manufacturing Corporation
97. tenKsolar, Inc.
98. Taogoasei America Inc./Toagoasei America Inc.
99. Tianjin Ganglv Nonferrous Metal Materials Co., Ltd.
100. Tianjin Jinmao Import & Export Corp., Ltd.
101. Tianjin Ruxin Electric Heat Transmission Technology Co., Ltd.
102. Tianjin Xiandai Plastic & Aluminum Products Co., Ltd.
103. Tiazhou Lifeng Manufacturing Corporation/Taizhou Lifeng Manufacturing Corporation, Ltd.
104. Top-Wok Metal Co., Ltd.
105. Traffic Brick Network, LLC
106. USA Worldwide Door Components (Pinghu) Co., Ltd.
107. Wenzhou Shengbo Decoration & Hardware
108. Whirlpool (Guangdong)
109. Xin Wei Aluminum Company Limited
110. Xinya Aluminum & Stainless Steel Product Co., Ltd.
111. Zhejiang Anji Xinxiang Aluminum Co., Ltd.
112. Zhejiang Yongkang Listar Aluminum Industry Co., Ltd.
113. Zhejiang Zhengte Group Co., Ltd.
114. Zhenjiang Xinlong Group Co., Ltd.
115. Zhongshan Gold Mountain Aluminum Factory Ltd.
116. Zhuhai Runxingtai Electrical Equipment Co., Ltd.

[FR Doc. 2015–31425 Filed 12–11–15; 8:45 am]

BILLING CODE 3510–DS–P

[16] Homax Group Inc. (Homax) requested a review of Ningbo Lakeside Machinery Factory. *See* Letter from the Homax regarding, ''Aluminum Extrusions from the People's Republic of China: Request for Third Administrative Review of Countervailing Duty Order,'' dated May 30, 2014. However, in the Department's initiation notice, this company's name was spelled Ningbo Lakeside *Machiery* Factory. Accordingly, this notice serves as a correction to the spelling of this company's name.

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:30 a.m. EST, Wednesday, December 16, 2015.

PLACE: CFTC Headquarters Lobby-Level Hearing Room, Three Lafayette Centre, 1155 21st Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hold this meeting to consider rulemaking matters, including two proposed rules and a final rule. The agenda for this meeting is available to the public and posted on the Commission's Web site at *http://www.cftc.gov.* In the event that the time, date, or place of this meeting changes, an announcement of the change, along with the new time, date, or place of the meeting, will be posted on the Commission's Web site.

CONTACT PERSON FOR MORE INFORMATION: Christopher J. Kirkpatrick, Secretary of the Commission, 202–418–5964.

Christopher J. Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2015–31479 Filed 12–10–15; 11:15 am]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB–2015–0056]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is requesting to renew the Office of Management and Budget (OMB) approval for an existing information collection titled, ''Generic Information Collection Plan for Development and/or Testing of Model Forms, Disclosures, Tools, and Other Similar Related Materials.''

DATES: Written comments are encouraged and must be received on or before January 13, 2016 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *OMB:* Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or fax to (202) 395–5806. Mailed or faxed comments to OMB should be to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection. *Please note that comments submitted after the comment period will not be accepted.* In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov* (this link active on the day following publication of this notice). Select ''Information Collection Review,'' under ''Currently under review, use the dropdown menu ''Select Agency'' and select ''Consumer Financial Protection Bureau'' (recent submissions to OMB will be at the top of the list). The same documentation is also available at *http://www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA

Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *PRA@cfpb.gov. Please do not submit comments to this email box.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Information Collection Plan for Development and/or Testing of Model Forms, Disclosures, Tools, and Other Similar Related Materials.

OMB Control Number: 3170–0022.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 21,000.

Estimated Total Annual Burden Hours: 8,925.

Abstract: This generic information collection plan allows for qualitative testing of disclosures and related materials relating to the features of consumer financial products and services. The research results in recommendations for the development of and revisions to such disclosures and related materials. The research activities may be conducted by the Bureau or external parties such as, for example, contractors retained by the Bureau, and will employ cognitive psychological testing methods. This approach has been demonstrated to be feasible and valuable by the Bureau and other agencies in developing disclosures and related materials. The planned research activities will be conducted with the goal of creating effective disclosures and related materials that will help consumers understand the features of consumer financial products and services.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on September 25, 2015, (80 FR 57793). Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: December 9, 2015.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2015–31420 Filed 12–11–15; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2015–HQ–0048]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army proposes to alter a system of records notice AAFES 1609.03, entitled ''AAFES Catalog System'' is used to locate order information; to reply to customer inquiries and complaints; to create labels for shipment to the proper location; to refund customer remittances or to collect monies due; to provide claim and postal authorities with confirmation/certification of shipment for customer claims for damage or lost shipments.

DATES: Comments will be accepted on or before January 13, 2016. This proposed action will be effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy Rogers, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905 or by calling (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/.* The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, were submitted on October 23, 2015, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 8, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

AAFES 1609.03

SYSTEM NAME:

AAFES Catalog System (August 9, 1996, 61 FR 41572).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Customer name, Social Security Number (SSN), mailing address, email address, telephone number, method of payment, partial credit card number, name and address of recipient of order, description and price of item ordered, method of shipment, amount of order/refund, claim data for returns/damages to shipments, and freight entry assigned to shipment.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army; and 8013, Secretary of the Air Force; Department of Defense Instruction 1015.15, Establishment, Management, and Control of Nonappropriated Fund Instrumentalities and Financial Management of Supporting Resources; Army Regulation 215–8/Air Force Instruction 34–211(I), Army and Air Force Service Operations; and E.O. 9397 (SSN), as amended.''

PURPOSE:

Delete entry and replace with ''The system is used to locate order information; to reply to customer inquiries and complaints; to create labels for shipment to the proper location; to refund customer remittances or to collect monies due; to provide claim and postal authorities with confirmation/certification of shipment for customer claims for damage or lost shipments.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the on-line ordering fulfillment contractor to allow for the confirmation by email of orders received, fulfilled and closed.

To Exchange vendor representative organizations for the purpose of direct shipment from the supplier to the customer.

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government, typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records. The disclosure is limited to information necessary to establish the identity of the individual, including name address, and SSN.

The DoD Blanket Routine Uses set forth at the beginning of the Army's compilation of system of records notices may apply to this system. The complete list of DoD Blanket Routine Uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx*''.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Delete entry and replace with ''Electronic storage media and paper records.''

RETRIEVABILITY:

Delete entry and replace with ''By order number, purchase order number, customer's name, name of recipient, phone number, SSN, or freight entry assigned to shipment.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Information on shipments is maintained in computer files for 180 days following completion of shipment and destroyed after 6 years or until obsolete or superseded.

Purchase orders are retained for 2 years; transaction records are retained for 2 years; refund vouchers are retained for 6 years; returned merchandise slips are retained for 6 years; repair/replacement order slips are held 2 years. All records are destroyed by shredding. All electronic records are destroyed by erasing/reformatting the media.

Customer records are kept continuously until obsolete or superseded, at which point paper records are shredded, and electronic records are destroyed by erasing/reformatting the media.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Director/Chief Executive Officer, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director/Chief Executive Officer, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide name, current address and telephone number, and sufficient details to permit locating pertinent records.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).' ''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director/Chief Executive Officer, Army and Air Force Exchange Service, Attention: FOIA/Privacy Manager, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide name, current address and telephone number, and sufficient details to permit locating pertinent records.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).' ''

* * * * *

[FR Doc. 2015–31352 Filed 12–11–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2015–HQ–0047]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Army proposes to alter a system of records notice AAFES 0404.01, entitled ''Incentive Awards Case Files,'' to consider and select employees for incentive awards and other honors.

DATES: Comments will be accepted on or before January 13, 2016. This proposed action will be effective on the date following the end of the comment

period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy Rogers, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3827 or by calling (703) 428–7499.

SUPPLEMENTARY INFORMATION: The Department of the Army's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/.* The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, were submitted on October 23, 2015, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: December 8, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

AAFES 0404.01

SYSTEM NAME:

Incentive Awards Case Files (August 9, 1996, 61 FR 41572).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Nonappropriated Funds Instrumentalities (NAFI) employees of the Army and Air Force Exchange Service who are recipients of awards.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, Social Security Number (SSN), telephone number, current address, grade/step, position title, award nominated for and justification, accomplishments, requirements of position held, organization in which employed.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 8013, Secretary of the Air Force; Army Regulation 215–8/Air Force Instruction 34–211(I), Army and Air Force Exchange Service Operations; and E.O. 9397 (SSN), as amended.''

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to public and private organizations, including news media, which grant or publicize employee awards or honors.

The DoD Blanket Routine Uses set forth at the beginning of the Army's compilation of system of records notices may apply to this system. The complete list of DoD blanket routine uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx''*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with ''Paper records and electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''By individual's full name and SSN.''

SAFEGUARDS:

Delete entry and replace with ''Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to person(s) with an official ''need to know'' who are responsible for servicing the record in performance of their official duties. Persons are properly screened and cleared for access. Access to computerized data is role-based and further restricted by passwords, which are changed periodically. In addition, the integrity of automated data is ensured by internal audit procedures, data base access accounting reports, and controls to preclude unauthorized disclosure.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records are retained for 2 years, following which paper records are destroyed by shredding, and electronic media is destroyed by deleting/erasing.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Director/Chief Executive Officer, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director/Chief Executive Officer, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide full name, SSN, current address and telephone number, and sufficient details to assist in locating the record.

In addition, the requestor must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the

foregoing is true and correct. Executed on (date). (Signature)'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director/Chief Executive Officer, Army and Air Force Exchange Service, Attention: FOIA/Privacy Manager, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide full name, SSN, current address and telephone number, and sufficient details to assist in locating the record.

In addition, the requestor must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Army's rules for accessing records and for contesting the contents of the records and appealing the initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.''

* * * * *

[FR Doc. 2015–31350 Filed 12–11–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License: Lockmasters Incorporated

Correction

In notice document 2015–30491 appearing on page 75075 in the issue of Tuesday, December 1, 2015, make the following correction:

1. On page 75075, in the first column, in the **DATES** section, ''[INSERT DATE 15 DAYS AFTER PUBLICATION FIRST APPEARS IN **Federal Register**]'' should read ''December 16, 2015''.

[FR Doc. C1–2015–30491 Filed 12–11–15; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF EDUCATION

[Docket No. ED–2015–ICCD–0119]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Student Assistance General Provisions—Annual Fire Safety Report

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before January 13, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2015–ICCD–0119. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Student Assistance General Provisions—Annual Fire Safety Report.

OMB Control Number: 1845–0097.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector, State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 7,964.

Total Estimated Number of Annual Burden Hours: 7,964.

Abstract: The Department of Education regulations at 34 CFR 668.49 require institutions to collect statistics on fires occurring in on-campus student housing facilities, including the number and cause of each fire, the number of injuries related to each fire that required treatment at a medical facility, the number of deaths related to each fire, and the value of property damage caused by each fire. Institutions must also publish an annual fire safety report containing the institution's policies regarding fire safety and the fire statistics information. Further institutions are required to maintain a fire log that records the date, time, nature, and general location of each fire in on-campus student housing facilities.

This request is to extend the current approval of reporting requirements contained in the regulations. The collection requirements in the regulations are necessary to meet institutional information reporting to students and staff as well as for reporting to Congress through the Secretary.

Dated: December 9, 2015.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2015–31346 Filed 12–11–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–47–000.
Applicants: American Transmission Company LLC, Duke-American Transmission Company, LLC, ATC Management Inc.
Description: Application for Authorization for Corporate Reorganization and Request for Confidential Treatment and Certain Waivers pursuant to Section 203 of the Federal Power Act of American Transmission Company LLC Transmission Company LLC.
Filed Date: 12/8/15.
Accession Number: 20151208–5186.
Comments Due: 5 p.m. ET 12/29/15.

Docket Numbers: EC15–98–000.
Applicants: Union Power Partners, L.P., Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Texas, Inc.
Description: Response to November 24 and 25, 2015 Deficiency Letters of Entergy Services, Inc. on behalf of Union Power Partners, L.P., et. al.
Filed Date: 12/7/15.
Accession Number: 20151207–5261.
Comments Due: 5 p.m. ET 1/6/16.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–29–000.
Applicants: Avalon Solar Partners II LLC.
Description: Self-Certification of EWG of Avalon Solar Partners II LLC.
Filed Date: 12/8/15.
Accession Number: 20151208–5108.
Comments Due: 5 p.m. ET 12/29/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1714–007.
Applicants: LG&E Energy Marketing Inc.
Description: Supplement to June 30, 2015 Triennial Market Power Update for Central Region of LG&E Energy Marketing Inc.
Filed Date: 12/7/15.
Accession Number: 20151207–5130.
Comments Due: 5 p.m. ET 12/28/15.

Docket Numbers: ER15–1922–000.
Applicants: Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy New Orleans, Inc.
Description: Response to November 5, 2015 Deficiency Letter of Entergy Services, Inc. on behalf of the participating Entergy Operating Companies.
Filed Date: 12/7/15.
Accession Number: 20151207–5260.
Comments Due: 5 p.m. ET 12/28/15.

Docket Numbers: ER15–2741–000.
Applicants: Arizona Public Service Company.
Description: Report Filing: Refund Report to be effective N/A.
Filed Date: 12/8/15.
Accession Number: 20151208–5185.
Comments Due: 5 p.m. ET 12/29/15.

Docket Numbers: ER16–237–001.
Applicants: South Jersey Energy ISO9, LLC.
Description: Tariff Amendment: Supplement to Market-Based Rate Application and Tariff Amendment to be effective 11/3/2015.
Filed Date: 12/7/15.
Accession Number: 20151207–5206.
Comments Due: 5 p.m. ET 12/28/15.

Docket Numbers: ER16–238–001.
Applicants: South Jersey Energy ISO10, LLC.
Description: Tariff Amendment: Supplement to Market-Based Rate Application and Tariff Amendment to be effective 11/3/2015.
Filed Date: 12/7/15.
Accession Number: 20151207–5207.
Comments Due: 5 p.m. ET 12/28/15.

Docket Numbers: ER16–475–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original Interconnection Service Agreement No. 4303, Queue No. Z2–046/AA1–066 to be effective 11/6/2015.
Filed Date: 12/7/15.
Accession Number: 20151207–5200.
Comments Due: 5 p.m. ET 12/28/15.

Docket Numbers: ER16–476–000.
Applicants: AEP Texas Central Company.
Description: § 205(d) Rate Filing: TCC-Guadalupe Valley Electric Cooperative IA to be effective 11/17/2015.
Filed Date: 12/8/15.
Accession Number: 20151208–5056.
Comments Due: 5 p.m. ET 12/29/15.

Docket Numbers: ER16–477–000.
Applicants: AEP Texas North Company.
Description: § 205(d) Rate Filing: TNC-Oncor Electric Delivery Company First Amd & Restated IA LLC to be effective 11/10/2015.
Filed Date: 12/8/15.
Accession Number: 20151208–5057.
Comments Due: 5 p.m. ET 12/29/15.

Docket Numbers: ER16–478–000.
Applicants: Wheelabrator Saugus Inc.
Description: Notice of Cancellation of Power Sales Contract of Wheelabrator Saugus Inc.
Filed Date: 12/8/15.
Accession Number: 20151208–5073.
Comments Due: 5 p.m. ET 12/29/15.

Docket Numbers: ER16–479–000.
Applicants: Avalon Solar Partners II LLC.
Description: Baseline eTariff Filing: Application for MBR to be effective 12/10/2015.
Filed Date: 12/8/15.
Accession Number: 20151208–5091.
Comments Due: 5 p.m. ET 12/29/15.

Docket Numbers: ER16–480–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: PacifiCorp Energy Carbon Decommissioning Construction Agmt Rev 2 to be effective 2/7/2016.
Filed Date: 12/8/15.
Accession Number: 20151208–5094.
Comments Due: 5 p.m. ET 12/29/15.

Docket Numbers: ER16–481–000.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Termination of GSFA and GIA for Los Medanos Energy Center, LLC, Service Agreement No. 8 under PG&E FERC Electric Tariff Volume No. 5 of Pacific Gas and Electric Company.
Filed Date: 12/8/15.
Accession Number: 20151208–5123.
Comments Due: 5 p.m. ET 12/29/15.

Docket Numbers: ER16–482–000.
Applicants: Duke Energy Florida, LLC.
Description: § 205(d) Rate Filing: City of Williston NITSA Amendment OATT SA No. 146 to be effective 1/1/2016.
Filed Date: 12/8/15.
Accession Number: 20151208–5168.
Comments Due: 5 p.m. ET 12/29/15.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD16–3–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of the North American Electric Reliability Corporation for Approval of Revised Definitions of Terms Used in Reliability Standards.
Filed Date: 12/7/15.
Accession Number: 20151207–5262.
Comments Due: 5 p.m. ET 12/29/15.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR16–2–000.

Applicants: North American Electric Reliability Corporation.

Description: Petition of North American Electric Reliability Corporation for Approval of Proposed Rules of Procedure Revisions.

Filed Date: 12/7/15.

Accession Number: 20151207–5226.

Comments Due: 5 p.m. ET 12/28/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 8, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–31391 Filed 12–11–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–468–000]

FTS Master Tenant 1, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding FTS Master Tenant 1, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 28, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 8, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–31394 Filed 12–11–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–474–000]

Central Antelope Dry Ranch C LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding Central Antelope Dry Ranch C LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 28, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 8, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–31395 Filed 12–11–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2290–109]

Southern California Edison Co; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity Amendment of License.

b. *Project No:* P–2290–109.

c. *Date Filed:* June 4, 2015.

d. *Applicant:* Southern California Edison Company (SCE).

e. *Name of Project:* Kern River 3.

f. *Location:* The project is located on the Kern River, in Kern and Tulare counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* David Moore, Southern California Edison, 1515 Walnut Grove Avenue, Rosemead, CA 91771, (626) 302–9494.

i. *FERC Contact:* Mary Karwoski, (202) 502–6543, *Mary.Karwoski@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* January 7, 2016.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2290–109.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears 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. *Description of Request:* SCE requests to amend the project license as follows: (1) Replace the existing final U.S. Forest Service Section 4(e) Condition 6(f) with the amended final Section 4(e) Condition 6(f) filed with the Commission by the U.S. Forest Service on March 3, 2015; and (2) revise Article 422 so that the language is consistent with the amended final Section 4(e) Condition 6(f). The proposed changes are administrative and necessary to resolve inconsistencies between U.S. Forest Service 4(e) Condition 6(f), license Article 422, and language contained in a 2002 settlement agreement regarding whitewater flows below the Fairview Dam. The filing includes background information providing context, a description of the proposed amendment, reasons the amendment is necessary, and documentation of consultation. On February 25, 2014, the Commission issued public notice in this proceeding. All previous intervenors remain a party to the proceeding.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: December 8, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–31396 Filed 12–11–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–91–000]

East Tennessee Natural Gas, LLC; Revised Notice of Schedule for Environmental Review of the Loudon Expansion Project

This notice identifies the Federal Energy Regulatory Commission (Commission or FERC) staff's revised schedule for the completion of the environmental assessment (EA) for East Tennessee Natural Gas, LLC's Loudon Expansion Project. The previous notice of schedule, issued on October 28, 2015, identified December 21, 2015 as the EA issuance date. Staff has revised the schedule for issuance of the EA.

Schedule for Environmental Review

Issuance of EA—December 28, 2015
90-day Federal Authorization Decision Deadline—March 27, 2016

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the project's progress.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: December 8, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–31392 Filed 12–11–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–13–000]

Emera Maine; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On December 7, 2015, the Commission issued an order in Docket No. EL16–13–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into the justness and reasonableness of Emera Maine's proposed revisions to its Open Access Transmission Tariff for Maine Public District. *Emera Maine,* 153 FERC ¶ 61,283 (2015).

The refund effective date in Docket No. EL16–13–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Dated: December 8, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–31393 Filed 12–11–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R09–OAR–2015–0779; FRL–9940–06–Region 9]

Official Release of EMFAC2014 Motor Vehicle Emission Factor Model for Use in the State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is approving and announcing the availability of the latest version of the California EMFAC (short for EMission FACtor) model for use in state implementation plan (SIP) development and transportation conformity in California. EMFAC2014 is the latest update to the EMFAC model for use by California state and local governments to meet Clean Air Act (CAA) requirements. The new model, which is based on new and improved data, calculates air pollution emissions factors for passenger cars, trucks, motorcycles, motor homes and buses. Today's notice also sets the date after which EMFAC2014, rather than EMFAC2011, must be used to satisfy the requirement that conformity determinations be based on the latest emissions model available. This requirement can be met by using the most current version of the motor vehicle emissions model approved by the EPA. Since the EMFAC model is used only in California, the EPA's approval and the announcement of the availability of the model does not affect the applicability of the Motor Vehicle Emissions Simulator (MOVES) model for users in other states.

DATES: The EPA's approval of the EMFAC2014 emissions model for SIP and conformity purposes is effective December 14, 2015. EMFAC2014 must be used as described in this Notice for all new regional emissions analyses and carbon monoxide (CO) and particulate matter (PM_{10} and $PM_{2.5}$) hot-spot analyses for transportation conformity purposes that are started on or after December 14, 2017.

FOR FURTHER INFORMATION CONTACT: Karina O'Connor, *oconnor.karina@epa.gov,* (775) 434–8176, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901.

SUPPLEMENTARY INFORMATION: Copies of the official version of the EMFAC2014 model, including technical support documents, are available on the California Air Resources Board (CARB) Web site: *http://www.arb.ca.gov/msei/categories.htm#onroad_motor_vehicles.* Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. Background

A. What is the EMFAC model?

The EMFAC model is a computer model that can estimate emission rates for on-road mobile sources (''motor vehicles'') for calendar years from 2000 to 2050 operating in California. Pollutant emissions for hydrocarbons (HC), CO, nitrogen oxides (NO_X), PM_{10}, $PM_{2.5}$, lead, carbon dioxide (CO_2), and sulfur oxides are output from the model. Emissions are calculated for fifty-one different vehicle classes composed of passenger cars, various types of trucks and buses, motorcycles, and motor homes.

EMFAC is used to calculate current and future inventories of motor vehicle emissions at the state, air district, air basin, county, or project level. EMFAC contains default vehicle activity data, and the option of modifying that data, so it can be used to estimate a motor vehicle emissions inventory in tons/day for a specific year, month, or season, and as a function of ambient temperature, relative humidity, vehicle population, mileage accrual, miles of travel and speeds. Thus the model can be used to make decisions about air pollution policies and programs at the local or state level.

Inventories based on EMFAC are also used to meet the federal CAA's SIP and transportation conformity requirements. Transportation conformity is required under CAA section 176(c) to ensure that federally supported transportation plans, transportation improvement programs (TIPs), and highway and transit projects are consistent with (''conform to'') the purpose of the SIP. Conformity to a SIP means that a transportation activity will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards (NAAQS) or interim milestones. The EPA's transportation conformity regulations (40 CFR parts 51.390 and 93) describe how federally funded and approved highway and transit projects meet these statutory requirements. EMFAC is used statewide in all regional emissions analyses and CO, PM_{10} and $PM_{2.5}$ hot-spot analyses for transportation conformity determinations in California.

B. What versions of EMFAC are currently in use in California?

Most SIPs in California were developed using EMFAC2011 (released by CARB in September 2011) or EMFAC2007 (released by CARB in October 2007). The EPA approved and announced the availability of EMFAC2011 on March 16, 2013 (78 FR 14533) and approved and announced the availability of EMFAC2007 on January 18, 2008 (73 FR 3464) for all nonattainment and maintenance areas in California.

EMFAC2011 was considered a major update to previous versions of EMFAC and most SIPs in California were updated with EMFAC2011 in the 2012–2014 timeframe. EMFAC2011 included a new model structure, new data and methodologies regarding calculation of motor vehicle emissions, and revisions to implementation data for control measures.

C. Why is the EPA announcing its approval of the EMFAC model?

CAA section 172(c)(3) and 40 CFR 51.114(a) require that SIP inventories be based on the most current, accurate, and applicable models that are available at the time the SIP is developed. CAA section 176(c)(1) and 40 CFR 93.111(a) require that the latest emissions estimates be used in conformity analyses. The EPA approves models that fulfill these requirements.

Under 40 CFR 93.111(a), the EPA must approve new versions of EMFAC for SIP purposes before they can be used in transportation conformity analyses. In a May 21, 2015 letter, CARB requested that the EPA approve EMFAC2014 for use in developing SIPs and in determining conformity in California.[1] EMFAC2014 is a significant change from previous EMFAC models with a new model user interface and is capable of calculating motor vehicle emissions for all California areas. EMFAC2014 is being approved as the latest emissions model for statewide use in SIP development and emissions analyses for conformity purposes. Since the EMFAC model is only used in California, the EPA's statewide approval of the model does not affect the applicability of the MOVES emissions factor model for users in other states.

II. EPA Action

A. What version of EMFAC is the EPA approving?

In this notice, the EPA is approving and announcing that EMFAC2014 is available to use in statewide California SIP development and for regional emissions analyses and CO, PM_{10} and $PM_{2.5}$ hot-spot analyses for transportation conformity. EMFAC2014 was developed by CARB and transmitted for approval to the EPA on May 21, 2015.

The EMFAC2014 model has been rewritten using Python and MySQL software into a new structure that will facilitate future model updates, and allow CARB to incorporate updated regulations and emissions data into the model and provide for a more simplified user experience. The four major modules of EMFAC2011: EMFAC–LDV, EMFAC–HD, EMFAC–SG and EMFAC–PL have been integrated into EMFAC2014, under one interface. The model is now operated in either the Emissions Mode or the Emissions Rate Mode for regional emissions analyses to access emission databases and vehicle activity data for the appropriate geographic subarea. EMFAC2014 Project-Level Assessment (EMFAC2014–PL) is triggered when EMFAC2014 is run under the Emissions Rate Mode. Using EMFAC2014–PL, emissions rates are estimated based on user-specified, project-specific conditions. A handbook for using EMFAC2014 at the project level is available from CARB at: *http://www.arb.ca.gov/msei/downloads/emfac2014/emfac2014-vol2-pl-handbook-052015.pdf.* EMFAC2014 allows users to run one model for SIP inventories, regional emissions analyses and project analyses.

B. What analyses can EMFAC2014 be used for?

The EPA is approving the model to estimate regional emissions of HC, CO, NO_X, PM_{10}, $PM_{2.5}$, lead, and sulfur oxides.[2] However, EMFAC2014 will only be used in transportation conformity for pollutants and precursors that are transportation-related emissions, *e.g.,* HC, CO, NO_X, PM_{10} and $PM_{2.5}$.

The EPA is also approving EMFAC2014 to estimate CO, PM_{10} and $PM_{2.5}$ emissions for conformity hot-spot analyses involving individual transportation projects. A hot-spot analysis is defined in 40 CFR 93.101 as an estimation of likely future localized pollutant concentrations and a comparison of those concentrations to the relevant NAAQS. This analysis is conducted on a smaller scale than a nonattainment or maintenance area, *e.g.,* for a congested roadway intersection.

The EPA also notes that this approval action does not impact what methodology is required for calculating re-entrained road dust for regional PM_{10} and $PM_{2.5}$ SIPs and transportation conformity analyses. EMFAC2014's PM_{10} and $PM_{2.5}$ estimates do not include such emissions. When applicable, PM_{10} and $PM_{2.5}$ nonattainment and maintenance areas are required to use the EPA's AP–42 road dust method for calculating road dust emissions, unless a local method is approved in advance by the EPA.[3] In addition, EMFAC2014 does not estimate ammonia emissions. Air quality and transportation agencies should contact the EPA Regional Office if ammonia emissions estimates are needed for SIPs or regional conformity emissions analyses.

C. Why does the EPA consider EMFAC2014 to be a major update to EMFAC?

EMFAC2014 includes significant changes to its model interface, new data and methodologies regarding calculation of motor vehicle emissions and revisions to implementation data for control measures. EMFAC2014 includes updated data on car and truck activities, and emissions reductions associated with CARB's Advanced Clean Cars regulations,[4] supporting new estimates of emissions from heavy-heavy duty diesel trucks and buses. Motor vehicle fleet age, vehicle types and vehicle population have also been updated based on 2000–2012 California Department of Motor Vehicle (DMV) data. Each of these changes impact emission factors for each area in California. The new model interface for EMFAC2014 will allow users to update the default VMT data and speed profiles by vehicle class for different future scenarios. CARB's Web site describes these and other model changes at: *http://www.arb.ca.gov/msei/categories.htm#onroad_motor_vehicles.*

D. How were stakeholders and the public involved in the EMFAC development process?

Since 2013, CARB has held a series of public workshops to discuss emissions inventory updates and EMFAC updates and to receive comments on the resulting changes in the emissions inventory and models.[5] CARB also conducted beta testing of interim versions of the model with air districts and Metropolitan Planning Organizations (MPOs). Stakeholders and other members of the public had the opportunity to request briefings with CARB staff and provide them with comments and suggestions to improve the model. The EPA was included in those discussions and our suggestions were incorporated into the material

[1] The EMFAC2014 model and supporting information is available for downloading at *http://www.arb.ca.gov/msei/categories.htm#onroad_motor_vehicles.* Technical documentation explaining the changes to the model and the technical foundations for the model is available at *http://www.arb.ca.gov/msei/downloads/emfac2014/emfac2014-vol3-technical-documentation-052015.pdf* .

[2] The EPA notes that EMFAC2014 can be used for CO_2 emissions analyses as well, but there are no SIP or transportation conformity requirements for greenhouse gases (GHGs). In addition, although SO_2 is listed as a potential precursor for $PM_{2.5}$ formation in 40 CFR 93.102(b)(2)(v), this precursor has not been considered significant for the on-road mobile sources covered by transportation conformity in California to date.

[3] For further information, see the EPA's February 4, 2011 Notice of Availability for the January 2011 AP–42 Method for Estimating Re-entrained Road Dust from Paved Roads (76 FR 6328). Also, for using AP–42 for unpaved roads, see the EPA's August 2, 2007 memorandum, ''Policy Guidance on the Use of the November 1, 2006, Update to AP–42 for Re-entrained Road Dust for SIP Development and Transportation Conformity.''

[4] For further information, see EPA's January 9, 2013 waiver of preemption for the Advanced Clean Cars regulations at *http://www.gpo.gov/fdsys/pkg/FR-2013-01-09/pdf/2013-00181.pdf.*

[5] See *http://www.arb.ca.gov/msei/workshop-meetings.htm.*

available on the CARB EMFAC public Web site. CARB also developed and posted training modules for EMFAC2014 and supports a mobile source emissions inventory email listserv to announce updates and changes to the EMFAC supporting material.[6]

CARB also made available to the public a series of technical memos that describe each update to the model and public presentations that summarize the changes from earlier versions of the model. The technical memos are available on CARB's Web site at: *http://www.arb.ca.gov/msei/downloads/emfac2014/emfac2014-vol4-comp-table-of-emfac-topics-052015.xlsx* and at *http://www.arb.ca.gov/msei/categories.htm#onroad_motor_vehicles.* Specific changes incorporated into the EMFAC2014 model are also discussed in *http://www.arb.ca.gov/msei/downloads/emfac2014/emfac2014-vol3-technical-documentation-052015.pdf.* All presentations from the public workshops are available on the CARB Web site at: *http://www.arb.ca.gov/msei/workshop-meetings.htm.*

E. Does this Notice establish a transportation conformity grace period for the use of this model?

Yes. The transportation conformity rule (40 CFR 93.111) requires that conformity determinations be based on the latest motor vehicle emissions model approved by the EPA for SIP purposes for a state or area. Section 176(c)(1) of the CAA states that

> . . . [t]he determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel, and congestion estimates. . . .

When the EPA approves and announces the availability of a new emissions model such as EMFAC2014, the EPA will consult with the U.S. Department of Transportation (DOT) to establish a grace period before the model is required for conformity analyses (40 CFR 93.111(b)). The conformity rule provides for a grace period for new emissions models of between 3 and 24 months after notice of availability is published in the **Federal Register** (40 CFR 93.111(b)(1)).

The EPA articulated its intentions for establishing the length of a conformity grace period in the preamble to the 1993 transportation conformity rule (November 24, 1993, 58 FR 62211):

> EPA and DOT [the Department of Transportation] will consider extending the grace period if the effects of the new emissions model are so significant that previous SIP demonstrations of what emission levels are consistent with attainment would be substantially affected. In such cases, States should have an opportunity to revise their SIPs before MPOs must use the model's new emissions factors.

In consultation with the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA), the EPA considers ''the degree of change in the model and the scope of re-planning likely to be necessary by MPOs in order to assure conformity'' in establishing the length of the grace period (40 CFR 93.111(b)(2)).

Upon consideration of these factors, the EPA is establishing a two-year grace period before EMFAC2014 is required for the following conformity analyses:

- All new HC, NO_X, PM_{10}, $PM_{2.5}$ and CO regional emissions analyses (*e.g.,* supporting transportation plan and TIP conformity determinations); and
- All new CO, PM_{10} and $PM_{2.5}$ hot-spot analyses supporting project-level conformity determinations.

The grace period begins on December 14, 2015 and ends on December 14, 2017. Areas have the option of using the new model prior to the end of the grace period.

As discussed earlier in the notice, EMFAC2014 incorporates significant changes to the model interface and procedures used to estimate both emissions for regional emissions analysis and hot-spot analyses for CO and PM. In addition to incorporating the new EMFAC2014 procedures, state and local agencies also need to consider how the model affects regional conformity analysis results and whether SIP and/or transportation plan/TIP changes are necessary to assure future conformity determinations. As stated earlier in the notice, the changes to EMFAC impact emission factors for each area in California. CARB has requested an 18-month grace period to allow them to update SIPs previously developed using EMFAC2007 or EMFAC2011 with the updated emissions from EMFAC2014 during 2016. Therefore, additional time is necessary for CARB to revise previously approved SIPs with EMFAC2014 and complete the SIP revision process, so that MPOs can incorporate revised SIP budgets into the transportation conformity process.

For application of EMFAC2014 at the project level, while EMFAC2014 was originally released by CARB in October of 2014, project sponsors developing future project-level analysis may need some time to familiarize themselves with this model.

Therefore, it is appropriate to set a two-year grace period to allow all areas in California to incorporate EMFAC2014 in conformity hot-spot analyses and apply the changes to the model structure and updated planning assumptions incorporated in EMFAC2014 in a timely manner. In the interim, new PM and CO hot-spot analyses that are started prior to the end of the EMFAC2014 grace period can be based on EMFAC2011 and the EPA's existing PM hot-spot guidance[7] (40 CFR 93.111(c)).

When the grace period ends on December 14, 2017, EMFAC2014 will become the only approved motor vehicle emissions model for all new regional and hot-spot transportation conformity analyses across California, as a means of meeting the requirement to use the latest emissions information in conformity analyses (40 CFR 93.111). In general, this means that all new HC, NO_X, PM_{10}, $PM_{2.5}$, and CO regional conformity analyses and CO, PM_{10} and $PM_{2.5}$ hot-spot analyses started after the end of the two-year grace period must be based on EMFAC2014, even if the SIP is based on an earlier version of the EMFAC model. The EPA is considering what project-level guidance is necessary for EMFAC2014 and will make information available on the EPA's Web site: *www.epa.gov/otaq/stateresources/transconf/projectlevel-hotspot.htm.*

In addition, in most cases, if an area revises previously approved EMFAC2011-based SIP budgets using EMFAC2014, the revised EMFAC2014 budgets would be used for conformity purposes once the EPA approves the SIP revision. In general, the EPA will not make adequacy findings for these SIPs because submitted SIPs cannot supersede approved budgets until they are approved. However, 40 CFR 93.118(e)(1) allows an approved budget to be replaced by an adequate budget if the EPA's approval of the initial budgets specifies that the budgets being approved may be replaced in the future by new adequate budgets. This flexibility has been used in limited situations in the past, such as during the transition from EMFAC7F and EMFAC7G to EMFAC2002. See 67 FR 46618 (July 16, 2002); 67 FR 69139 (November 15, 2002); and 68 FR 15720 (April 1, 2003). In such cases, the EMFAC2014-based budgets would be used for conformity purposes once they have been found adequate. States should consult with the EPA as needed

[6] To subscribe to CARB's listserv for Mobile Source Emission Inventory development, see ''Join our MSEI listserv'' at *www.arb.ca.gov/msei/msei.htm.*

[7] *See* Web page *http://www3.epa.gov/otaq/stateresources/transconf/projectlevel-hotspot.htm#pm-hotspot* for latest guidance documents and information.

to determine if this flexibility applies to their situation.

F. Can areas use EMFAC2011 during the grace period?

Yes, the conformity rule provides some flexibility for regional emissions analyses that are started before the end of the grace period. Analyses that begin before or during the grace period may continue to rely on EMFAC2011. The interagency consultation process should be used if it is unclear if an EMFAC2011-based analysis was begun before the end of the grace period. When the grace period ends, EMFAC2014 will become the EPA-approved motor vehicle emissions model for regional emissions analyses for transportation conformity in California.

CO, PM_{10} and $PM_{2.5}$ hot-spot analyses for project-level conformity determinations can be based on EMFAC2011 if the analysis was begun before the end of the grace period, and if the final environmental document for the project is issued no more than three years after the issuance of the draft environmental document (see 40 CFR 93.111(c)). Therefore quantitative analysis already underway that were started before the end of the grace period using EMFAC2011 can be completed as long as 40 CFR 93.111(c) is satisfied. The interagency consultation process should be used if it is unclear whether an EMFAC2011-based analysis is covered by the circumstances described in the conformity rule.

G. Future Updates to EMFAC

On January 31, 2006, CARB submitted a letter to the EPA and to the California Division of the FHWA indicating the State's intention to make future revisions to update EMFAC. These EMFAC updates would reflect, among other new information, updated vehicle fleet data every three years. In California, MPOs and Air Districts have not been able to update vehicle fleet data embedded into EMFAC. The EPA's July 2004 final rule (69 FR 40004) states that new vehicle registration data must be used when it is available prior to the start of new conformity analyses and that states and MPOs are strongly encouraged to update the data at least every five years as described in EPA/USDOT December 2008 guidance.[8] The next update to the planning assumptions in EMFAC is expected in 2017.

III. Summary of EPA Actions

As described in this notice, the EPA is approving and announcing the availability of EMFAC2014 as submitted by CARB on May 21, 2015 with the following limitations and conditions:

(1) The approval is limited to California.

(2) The approval is Statewide and applies to estimation of emissions of HC, CO, NO_x, PM_{10}, $PM_{2.5}$, lead, and sulfur oxides. In addition, EMFAC2014 will be used in transportation conformity regional emissions analyses for pollutants and precursors that are applicable in a given nonattainment or maintenance area. The EPA is approving the emission factor elements of EMFAC2014, but not the associated default travel activity (*e.g.* Vehicle Miles Traveled). The EPA is also approving EMFAC2014's Emission Rate Mode that allows the model to estimate project-level emissions for CO, PM_{10} and $PM_{2.5}$ conformity hot-spot analyses.

(3) A 24-month statewide transportation conformity grace period will be established beginning December 14, 2015 and ending December 14, 2017 for the transportation conformity uses described in (2) above.

Dated: December 2, 2015.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2015–31307 Filed 12–11–15; 8:45 am]

BILLING CODE 6560–50–P

[8] For more information on qualitative PM hot-spot analyses, see the EPA and the FHWA's joint ''Guidance for The Use of Latest Planning Assumptions in Transportation Conformity Determinations'' (EPA420–B–08–901, December 2008).

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0600]

Information Collection Requirement Being Submitted to the Office of Management and Budget for Emergency Review and Approval

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before January 4, 2016.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the Title as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: The Commission is requesting emergency OMB processing of the information collection requirement(s) contained in this notice and has requested OMB approval no later than 26 days after the collection is received at OMB. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

OMB Control Number: 3060–0600.

Title: Application to Participate in an FCC Auction, FCC Form 175.

Form Number: FCC Form 175.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents and Responses: 500 respondents and 500 responses.

Estimated Time per Response: 90 minutes.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for the currently approved information collection is contained in sections 154(i) and 309(j)(5) of the Communications Act, as amended, 47 U.S.C.s 4(i), 309(j)(5), and sections 1.2105, 1.2110, 1.2112 of the Commission's rules, 47 CFR 1.2105, 1.2110, 1.2112. Statutory authority for the revised information collection is contained in sections 154(i) and 309(j)(5) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 309(j)(5), and sections 1.2105, 1.2110, 1.2112 of the Commission's rules, as amended, 47 CFR 1.2105, 1.2110, 1.2112.

Estimated Total Annual Burden: 750 hours.

Total Annual Costs: None.

Nature and Extent of Confidentiality: Information collected on FCC Form 175 is made available for public inspection, and the Commission is not requesting that respondents submit confidential information on FCC Form 175. Respondents seeking to have information collected on FCC Form 175 withheld from public inspection may request confidential treatment of such information pursuant to section 0.459 of the Commission's rules, 47 CFR 0.459.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: The Commission is submitting this revised information collection to OMB under its emergency processing procedures. The Commission is seeking emergency OMB approval no later than 26 days after the collection is received at OMB. On February 22, 2012, the President signed the Spectrum Act, which, among other things, authorized the Commission to conduct incentive auctions, and directed that the Commission use this innovative tool for an incentive auction of broadcast television spectrum to help meet the Nation's growing spectrum needs. *See* Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, sections 6402, 6403, 125 Stat. 156 (2012) (Spectrum Act). The Commission's broadcast incentive auction (BIA) will have three main components: (1) A reverse auction in which broadcast television licensees will submit bids to voluntarily relinquish their spectrum usage rights in exchange for defined shares of proceeds from the forward auction; (2) a repacking of the broadcast television bands; and (3) a forward auction of initial licenses for flexible use of the newly available spectrum.

The Commission is revising the currently approved information collection on FCC Form 175 to implement new collection requirements that are the result of (1) various Commission actions in which the Commission adopted general rules and procedures to govern the BIA, including rules applicable to applicants seeking to participate in the forward auction component of the BIA and, (2) the Commission's adoption of new and modified competitive bidding rules and requirements in the *Updating Part 1 Report and Order,* which will apply to applicants seeking to participate in a Commission auction, including the forward auction component of the BIA.

The Commission's auction rules and related requirements are designed to ensure that the competitive bidding process is limited to serious qualified applicants, deter possible abuse of the bidding and licensing process, and enhance the use of competitive bidding to assign Commission licenses in furtherance of the public interest. The information collected on FCC Form 175 is used by the Commission to determine if an applicant is legally, technically, and financially qualified to participate in a Commission auction. Additionally, if an applicant applies for status as a particular type of auction participant pursuant to Commission rules, the Commission uses information collected on FCC Form 175 to determine whether the applicant is eligible for the status requested. Commission staff reviews the information collected on FCC Form 175 for a particular auction as part of the pre-auction process, prior to the auction being held. Staff determines whether each applicant satisfies the Commission's requirements to participate in the auction and, if applicable, is eligible for the status as a particular type of auction participant it requested. Without the information collected on FCC Form 175, the Commission will not be able to determine if an applicant is legally, technically, and financially qualified to participate in a Commission auction, including the forward auction component of the BIA, and has complied with the various applicable regulatory and statutory auction requirements for such participation. The Commission plans to continue to use the FCC Form 175 for all upcoming, non-reverse spectrum auctions, including those required or authorized to be conducted pursuant to the Spectrum Act, collecting only the information necessary for each particular auction.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2015–31318 Filed 12–11–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewals; Comment Request (3064–0046, 3064–0113, & 3064–0178)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of existing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the FDIC is soliciting comment on the renewal of the information collections described below.

DATES: Comments must be submitted on or before February 12, 2016.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202–898–3877), Counsel, MB–3016 or Manuel E. Cabeza (202–898–3767), Counsel MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and

Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper or Manuel E. Cabeza, at the FDIC address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently-approved collections of information:

1. *Title:* Home Mortgage Disclosure Act.

OMB Number: 3064–0046.

Affected Public: Insured state nonmember banks.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,575.

Estimated Number of Responses: 1,091,614.

Estimated Time per Response: 5 minutes.

Total Annual Burden: 90,967 hours.

General Description: To permit the FDIC to detect discrimination in residential mortgage lending, certain insured state nonmember banks are required by FDIC Regulation 12 CFR 338 to maintain various data on home loan applicants.

2. *Title:* External Audits.

OMB Number: 3064–0113.

Form Numbers: None.

Frequency of Response: Annually.

Affected Public: All insured financial institutions with total assets of $500 million or more and other insured financial institutions with total assets of less than $500 million that voluntarily choose to comply.

General Description: FDIC's regulations at 12 CFR 363 establish annual independent audit and reporting requirements for financial institutions with total assets of $500 million or more. The requirements include the submission of an annual report on their financial statements, recordkeeping about management deliberations regarding external auditing and reports about changes in auditors. The information collected is used to facilitate early identification of problems in financial management at financial institutions.

Explanation of burden estimates: The estimates of annual burden are based on the estimated burden hours for FDIC-supervised institutions within each asset classification ($1 billion or more, $500 million or more but less than $1 billion, and less than $500 million) to comply with the requirements of Part 363 regarding the annual report, audit committee, other reports, and the notice of change in accountants. The number of respondents reflects the number of FDIC-supervised institutions in each asset classification. The number of annual responses reflects the estimated number of submissions for each asset classification. The annual burden hours reflects the estimated number of hours for FDIC-supervised institutions within each asset classification to comply with the requirements of Part 363.

a. FDIC-Supervised Institutions with Assets of $1 Billion or More.

Number of Respondents: 351.

Annual Responses: 1,141.

Estimated Time per Response: 69.84 hours.

Annual Burden Hours: 79,688 hours.

b. FDIC-Supervised Institutions with Assets of $500 Million or More but Less than $1 Billion.

Number of Respondents: 401.

Annual Responses: 1,303.

Estimated Time per Response: 8.42 hours.

Annual Burden Hours: 10,977 hours.

c. FDIC-Supervised Institutions with Assets Less than $500 Million.

Number of Respondents: 3,291.

Annual Responses: 9,873.

Estimated Time per Response: 15 minutes.

Annual Burden Hours: 2,468 hours.

Total Number of Respondents: 4,043.

Total Annual Responses: 12,317.

Total Annual Burden Hours: 84,026 hours.

3. *Title:* Market Risk Capital Requirements.

OMB Number: 3064–0178.

Form Numbers: None.

Frequency of Response: Occasionally.

Affected Public: Insured state nonmember banks and state savings associations.

Estimated Number of Respondents: 1.

Estimated Number of Responses: 1.

Total Annual Burden: 1,964 hours.

General Description: The FDIC's market risk capital rules (12 CFR part 324, subpart F) enhance risk sensitivity, increase transparency through enhanced disclosures and include requirements for the public disclosure of certain qualitative and quantitative information about the market risk of state nonmember banks and state savings associations (FDIC-supervised institutions). The market risk rule applies only if a bank holding company or bank has aggregated trading assets and trading liabilities equal to 10 percent or more of quarter-end total assets or $1 billion or more. Currently, only one FDIC-regulated entity meets the criteria. The information collection requirements are located at 12 CFR 324.203 through 324.212. The collection of information is necessary to ensure capital adequacy appropriate for the level of market risk.

Section 324.203(a)(1) requires FDIC-supervised institutions to have clearly defined policies and procedures for determining which trading assets and trading liabilities are trading positions and specifies the factors a FDIC-supervised institutions must take into account in drafting those policies and procedures. Section 324.203(a)(2) requires FDIC-supervised institutions to have clearly defined trading and hedging strategies for trading positions that are approved by senior management and specifies what the strategies must articulate. Section 324.203(b)(1) requires FDIC-supervised institutions to have clearly defined policies and procedures for actively managing all covered positions and specifies the minimum requirements for those policies and procedures. Sections 324.203(c)(4) through 324.203(c)(10) require the annual review of internal models and specify certain requirements for those models. Section 324.203(d) requires the internal audit group of a FDIC-supervised institution to prepare an annual report to the board of directors on the effectiveness of controls supporting the market risk measurement systems.

Section 324.204(b) requires FDIC-supervised institutions to conduct quarterly backtesting. Section 324.205(a)(5) requires institutions to demonstrate to the FDIC the appropriateness of proxies used to capture risks within value-at-risk models. Section 324.205(c) requires institutions to develop, retain, and make available to the FDIC value-at-risk and profit and loss information on sub-portfolios for two years. Section 324.206(b)(3) requires FDIC-supervised institutions to have policies and procedures that describe how they determine the period of significant financial stress used to calculate the institution's stressed value-at-risk models and to obtain prior FDIC approval for any material changes to these policies and procedures.

Section 324.207(b)(1) details requirements applicable to a FDIC-supervised institution when the FDIC-supervised institution uses internal models to measure the specific risk of certain covered positions. Section 324.208 requires FDIC-supervised institutions to obtain prior written FDIC approval for incremental risk modeling. Section 324.209(a) requires prior FDIC approval for the use of a comprehensive risk measure. Section 324.209(c)(2) requires FDIC-supervised institutions to retain and report the results of supervisory stress testing. Section 324.210(f)(2)(i) requires FDIC-supervised institutions to document an internal analysis of the risk characteristics of each securitization position in order to demonstrate an

understanding of the position. Section 324.212 requires quarterly quantitative disclosures, annual qualitative disclosures, and a formal disclosure policy approved by the board of directors that addresses the approach for determining the market risk disclosures it makes.

Request for Comment

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the collections of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 9th day of December 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–31389 Filed 12–11–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, December 15, 2015, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' Meetings.

Memorandum and resolution: Review of Regulations Transferred from the Former Office of Thrift Supervision: Part 390, Subpart V—Management Official Interlocks.

Memorandum and resolution re: Notice of Proposed Rulemaking Regarding Proposed Revisions to Part 341 of the FDIC's Rules and Regulations Requiring the Registration of Securities Transfer Agents.

Memorandum and resolution re: Fourth Joint **Federal Register** Notice Addressing FDIC Regulations in Accordance with the Economic Growth and Regulatory Paperwork Reduction Act (''EGRPRA'').

Summary reports, status reports, reports of the Office of Inspector General, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda: Memorandum and resolution re: Proposed 2016 FDIC Operating Budget.

The meeting will be held in the Board Room located on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *https://fdic.primetime.mediaplatform.com/#!/channel/1232003497484/Board+Meetings* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call 703–562–2404 (Voice) or 703–649–4354 (Video Phone) to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at 202–898–7043.

Dated: December 9, 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–31481 Filed 12–10–15; 11:15 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10326, Legacy Bank, Scottsdale, Arizona

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Legacy Bank, Scottsdale, Arizona (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Legacy Bank on January 7, 2010. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 32.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: December 9, 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–31390 Filed 12–11–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission

DATE AND TIME: Thursday, December 17, 2015 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (ninth floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes for October 29, 2015
Remarks by Chair Ravel
Draft Advisory Opinion 2015–13: Senator Harry Reid
Draft Advisory Opinion 2015–14: Hillary for America
Rulemaking Petition: Independent Spending by Corporations, Labor Organizations, Foreign Nationals, and Certain Political Committees (Citizens United)
Rulemaking Priorities and Proposals: Regulatory Relief for Political Parties; REG 2014–10 Outline of Draft NPRM Implementing Party Segregated Accounts; REG 2013–01 Draft Notice of Proposed Rulemaking on Technical Modernization; Coordination Rulemaking Proposal
Commission Documents/Public Disclosure Policies
Notice of Proposed Rulemaking on Reporting Multistate Independent

Expenditures and Electioneering Communications in Presidential Primary Elections
Legislative Recommendations
2016 Meeting Dates
Election of Officers
Management and Administrative Matters

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2015–31544 Filed 12–10–15; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), to approve of and assign OMB numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION: Final approval under OMB delegated authority of the extension for three years, with revision, of the following information collection:

Report title: The Banking Organization Systemic Risk Report.

Agency form number: FR Y–15.

OMB control number: 7100–0352.

Frequency: Quarterly.

Respondents: U.S. bank holding companies (BHCs) and savings and loan holding companies (SLHCs) with $50 billion or more of total consolidated assets and any U.S.-based organizations designated as global systemically important banks (G–SIBs) that do not otherwise meet the consolidated assets threshold for BHCs.

Estimated annual reporting hours: One-time implementation: Savings and loan holding companies—1,000 hours; ongoing—54,536 hours.

Estimated average hours per response: One-time implementation: Savings and loan holding companies—1,000 hours; ongoing—401 hours.

Number of respondents: 34.

General description of report: This information collection is mandatory and is authorized by the Dodd-Frank Act (sections 163, 165, and 604), the International Banking Act, the Bank Holding Company Act, and the Home Owners' Loan Act (12 U.S.C. 1467a, 1844, 3106, and 3108).

Abstract: The FR Y–15 report collects systemic risk data from U.S. BHCs and SLHCs with total consolidated assets of $50 billion or more, and any U.S.-based organization identified as a global systemically important bank (G–SIB) based on their most recent method 1 score calculation [1] that does not otherwise meet the consolidated assets threshold for BHCs. The Federal Reserve uses the FR Y–15 data primarily to monitor, on an ongoing basis, the systemic risk profile of the institutions which are subject to enhanced prudential standards under section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA).[2]

Current Actions: On July 9, 2015, the Federal Reserve published a notice in the **Federal Register** (80 FR 39433) requesting public comment for 60 days on the extension, with revision, of the FR Y–15. On August 20, 2015, the Federal Reserve published an additional notice in the **Federal Register** (80 FR 50623) requesting public comment on amendments to Schedule G that would align the definition of short-term wholesale funding with the definition in the final G–SIB surcharge rule. The comment period for both notices expired on October 19, 2015.

The Board received four comment letters on the proposed revisions to the FR Y–15: Three from trade associations and one from a banking organization. In general, comments focused on the implementation of the proposed changes, the confidentiality of liquidity-related items, the move from annual to quarterly reporting, and the scope of application. Commenters requested delayed implementation of the new definitions, confidential treatment of certain liquidity data and quarterly reports, a phase-in of the quarterly reporting requirement, and an increased reporting threshold. The comments and responses are discussed in detail below.

Detailed Discussion of Public Comments

A. Implementation of the Proposed Changes

Commenters expressed concern about the December 31, 2015, implementation date for the proposed changes. One commenter argued that respondents need six-to-nine months after a final notice is published to revise and validate their reporting systems, and that changes to items which measure total activity over the reporting period are particularly difficult to implement mid-year. Two of the commenters requested that the implementation date be delayed by six months (to June 30, 2016), with initial submissions being semiannual and on a reasonable estimates basis, while the other two commenters requested that the implementation date be delayed by a full year (to December 31, 2016). One commenter suggested that delaying the implementation date would better allow respondents to incorporate the changes into their capital planning processes.

In response to the comment that respondents need six or more months to revise and validate their reporting systems, the vast majority of the proposed changes either align definitions with other existing regulatory requirements, such as the supplementary leverage ratio (SLR) and

[1] See 12 CFR 217.402. For the current list of G–SIBs, see *2015 update of list of global systemically important banks (G–SIBs),* 3 November 2015, available at *www.financialstabilityboard.org/2015/11/2015-update-of-list-of-global-systemically-important-banks-g-sibs/.*

[2] 12 U.S.C. 5365.

the liquidity coverage ratio (LCR), or provide instructional clarifications that better ensure uniform reporting. The harmonization of definitions across different regulatory requirements should facilitate implementation as firms already are working with the definitions and not pose the implementation challenges associated with reporting new data items. For example, firms subject to the SLR have been publicly disclosing total leverage exposures quarterly since March 31, 2015. Thus, these firms should already have the basic systems in place for calculating the revised Schedule A, which captures the subcomponents of the total exposures value. Furthermore, all of the data captured on the proposed new Schedule G is an aggregation of information that respondents will already be collecting in connection with the LCR [3] or on the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C; OMB No. 7100–0128).

Delaying the implementation date of the proposed changes would cause data collected in the United States to be inconsistent with the global data used for G–SIB identification and calculation of the G–SIB surcharge.[4] Using the revised indicators in the U.S. implementation of the G–SIB surcharge, including, for example, the adoption of the SLR definition in Schedule A, is essential for consistent G–SIB identification. Using indicator values under the old definitions would undermine the G–SIB assessment, which relies on uniform reporting in order to measure each institution's activity on a relative basis.

Considering the number and type of changes being made, along with the need to remain consistent with the international standard, the Board is maintaining an effective date of December 31, 2015, as proposed. However, to allow extra time to implement and validate the revised calculations, the Board is extending the submission date for the end-2015 report from 65 calendar days to 90 calendar days after the December 31, 2015, as-of date. The submission date for subsequent year-end reports is 65 days from the December 31 as-of date.

According to the proposal, the new schedule designed to capture short-term wholesale funding (Schedule G) would be reported starting with the June 30, 2016, as-of date. This date was chosen in coordination with the proposed July 1, 2015, implementation of the Complex Institution Liquidity Monitoring Report (FR 2052a; OMB No. 7100–0361), as Schedule G relies on observations made in this report over the previous four quarters. In the proposal, the Board noted that ''the effective date for banking organizations to report Schedule G may be delayed pending the implementation of the requirement for such organizations to report data on the FR 2052a''.[5] With the liquidity reports now being implemented in December 2015,[6] the effective date of Schedule G needs to be adjusted accordingly. To reflect the final implementation date of the FR 2052a, the Board is extending forward the effective date of Schedule G (from June 30, 2016) to December 31, 2016.

According to the proposal, respondents with total assets of $700 billion or more or with $10 trillion or more in assets under custody would be required to report average values on Schedule G using daily data, with all other respondents reporting averages using monthly data. The proposal further stated that respondents with $250 billion or more in on-balance sheet assets or $10 billion or more in foreign exposures would begin reporting average values using daily data starting with the end-June 2017 as-of date. These dates were chosen to correspond with the proposed submission frequency of the FR 2052a, so that respondents would be reporting averages commensurate with the availability of the underlying data.

The finalized FR 2052a reporting requirement no longer includes a transition from monthly to daily data for firms with $250 billion or more in on-balance sheet assets or $10 billion or more in foreign exposures.[7] Moreover, foreign banking organizations (FBOs) identified as LISCC firms are required to provide FR 2052a data daily.[8] To align the reporting requirement for Schedule G with the availability of the FR 2052a data, the Board is requiring respondents that have reported the FR 2052a data daily for the twelve months up to and including the as-of date, to report average short-term wholesale funding values using daily data, rather than monthly data. All other respondents would report average values using monthly data. Importantly, this approach would ensure that the Schedule G reporting criteria matches data availability even when a firm changes their FR 2052a reporting frequency.

Several commenters requested that the first submission after the effective date be made on a reasonable-estimates basis. It would be inappropriate to allow respondents that have previously submitted data used in the G–SIB score calculations (*i.e.,* method 1 and method 2 of the U.S. G–SIB rule) [9] to instead submit estimates for these items, unless such estimates are explicitly permitted in the reporting instructions. However, the Board does recognize the challenges inherent in updating the definitions of items which measure total activity over the reporting period in the middle of the observation window. As known overestimates are already permitted for the payments activity items (see instructions for Schedule C, item 1), the revised FR Y–15 instructions temporarily extend this treatment to the underwriting data. Accordingly, the Board is allowing firms to include known overestimates when precise totals are unavailable for Schedule C, items 4 and 5, for the December 31, 2015, as-of date.

The revised FR Y–15 allows the newly added memorandum items to be submitted on a reasonable-estimates basis, as they do not currently influence the G–SIB score calculation. Specifically, reasonable estimates are allowed for Schedule B, item M.1, and Schedule C, items M.1, M.2, and M.3, for the December 31, 2015, as-of date.

Under the proposal, the exposures data in Schedule A would have been calculated using average values over the reporting period. This was done to align the FR Y–15 reporting requirements with the SLR, as advanced approached institutions are already required to calculate the related exposures metric using averages.[10] One commenter noted that BHCs not subject to the SLR requirement would only be calculating the SLR data for the purposes of the FR Y–15.

The shift from point-in-time measures to quarterly averages would represent a notable increase in the reporting burden for these institutions. To mitigate the burden associated with the total exposures calculation, the revised FR Y–15 provides respondents not subject to the advanced approaches capital framework the option to continue submitting Schedule A using point-in-

[3] See 80 FR 71795 (November 17, 2015).

[4] The Basel Committee on Banking Supervision published in January a list of indicator changes that will take effect starting with the end-2015 G–SIB assessment. See Appendix 6 of *Instructions for the end-2014 G–SIB assessment exercise,* Basel Committee on Banking Supervision, January 2015, available at *www.bis.org/bcbs/gsib/instr_end14_gsib.pdf.*

[5] See 80 FR 39435 (July 9, 2015).

[6] See 80 FR 71795 (November 17, 2015).

[7] Ibid.

[8] A list of the LISCC firms can be found at *www.federalreserve.gov/bankinforeg/large-institution-supervision.htm.*

[9] See 80 FR 49082 (August 14, 2015).

[10] See 12 CFR 217.10.

time data. To allow data users to easily distinguish whether the provided information represents point-in-time or average data, the revised FR Y–15 adds a new ''Yes/No'' item to Schedule A (item 6) that asks whether or not the holding company has reported the subcomponents of item 5 using average values over the reporting period.

One commenter argued that it would be difficult to calculate securities received as collateral in securities lending (item M.1) as an average of daily data, and suggested that quarter-end values may be sufficiently informative for monitoring systemic risk. To mitigate the burden associated with the memoranda items, the revised FR Y–15 requires respondents to provide Schedule A, items M.1, M.2, and M.3 as point-in-time values rather than averages.

IHC Reporting

On February 18, 2014, the Board adopted a final rule implementing enhanced prudential standards for foreign banking organizations (FBOs),[11] which, among other things, requires an FBO with U.S. non-branch assets of greater than $50 billion to establish a U.S. intermediate holding company (IHC) by July 1, 2016, to which it must transfer its entire ownership interest in all U.S. BHCs, U.S. insured depository institutions, and U.S. subsidiaries.[12] Currently, the Board has not proposed reporting requirements for IHCs, which, as noted in the preamble to the final rule implementing enhanced prudential standards for FBOs, would be addressed at a later date.[13] Nonetheless, two commenters argued that additional consideration should be given to an FBO that is required to establish an IHC, but which will not be designating an existing U.S. BHC subsidiary as its IHC. They noted that U.S. non-bank subsidiaries of FBOs not currently subject to the FR Y–15 reporting requirements will need to be integrated into the consolidated figures once the IHC is formed. The commenters requested that the implementation date for these IHCs be delayed until June 30, 2017, with initial submissions being semiannual and on a reasonable estimates basis.

At such time that the Board proposes reporting requirements for IHCs, it would invite comment through the **Federal Register** notice and comment process, and would evaluate the particular circumstances and challenges surrounding IHC formation vis-à-vis the full spectrum of Board regulatory reporting requirements.

B. Confidentiality

Two commenters argued that Schedule G, which would collect data related to a firm's use of short-term wholesale funding, contains sensitive liquidity information. All of the commenters noted that certain information in the schedule is expected to be added in the future to a different regulatory reporting form, the FR 2052a, which is a confidential report. The commenters requested that Schedule G be kept confidential, arguing that the confidentiality of similar data elements should match across different regulatory reports. Alternatively, one commenter suggested using a materiality threshold to determine when the data in Schedule G would be publically disclosed. Two commenters requested that Schedule D, items 7 and 8 also be kept confidential, as these items, under their revised definitions, would likewise be sourced from the FR 2052a.

In contrast to the FR 2052a, which collects raw, daily liquidity and funding data that are reported with a two-day delay, Schedule G collects aggregate funding data that are averaged over a twelve-month period and reported with a 50-day delay for quarterly submissions and a 65-day delays for annual submissions. For these reasons, the data reported in Schedule G is fundamentally different from the related items that are reported in the FR 2052a. Disclosing the data in Schedule G therefore does not present the same confidentiality concerns as would disclosing the data in the FR 2052a, because the data in Schedule G are aggregate rather than granular data, averaged over a 12-month period rather than not averaged, and reported with a 50-day or 65-day delay rather than with a two-day delay.

Moreover, releasing the data reported in the FR Y–15, including the information captured in Schedule G, serves the important policy goal of providing valuable insight into the domestic systemic risk landscape. This data could be used by the U.S. financial markets to evaluate the systemic footprint of individual firms. In particular, disclosing the short-term wholesale funding data in Schedule G provides public insight into how the Board is evaluating the systemic footprint of organizations subject to section 165 of DFA, including how enhanced prudential standards are applied to these organizations in accordance with their relative systemic importance. In addition to increasing transparency, providing this type of data to the public encourages market discipline regarding incremental changes in systemic risk.

To better align the timing of the disclosure of LCR-related liquidity data in the FR Y–15, the revised FR Y–15 maintains the confidentiality of certain data items (and delays the public release of certain data items) until related LCR disclosure requirements are in place. In particular, the revised FR Y–15 delays disclosing the more granular short-term funding data (Schedule G, items 1 through 4) until the first reporting date after the LCR disclosure standard has been implemented.[14] However, for the reasons stated above, items 5 through 8 in Schedule G, which represent highly aggregated data, will be publicly available starting with the December 31, 2016 reporting date.

The items in Schedule D related to the LCR are essential components of the trading and available-for-sale (AFS) securities indicator that are already disclosed publicly as part of the FR Y–15. The proposed revisions to the FR Y–15 would have harmonized certain definitions in Schedule D with the definitions used in the U.S. LCR to reduce reporting burden and enhance regulatory consistency.[15] Such harmonization should not significantly alter the sensitivity of the information being collected. The data under the revised definitions are similar in nature to the data captured currently, and the current data are already being publically disclosed. Moreover, the submission deadlines allow for a 65-day and a 50-day reporting lag from the observation date for annual and quarterly reporting, respectively. Thus, any potential insight into the liquidity position of the respondent is generally very stale by the time the information is released to the public, and the information therefore does not appear to represent a trade secret or confidential business information at the time that it is made public. With these considerations, items 7 and 8 of Schedule D in the revised FR

[11] See 79 FR 17239 (March 27, 2014).

[12] See 12 CFR 252.153.

[13] Under the current FR Y–15 reporting requirements, IHCs with a U.S. bank subsidiary and $50 billion or more in total consolidated assets would be required to file the FR Y–15 starting with the first as of date after the IHC is established.

[14] Under this approach, should the standard be implemented in 2016, all data in Schedule G would be made available to the public starting with the December 31, 2016 as-of date.

[15] As noted in the initial **Federal Register** notice, ''[w]hile this revision aligns level 1 and level 2 liquid assets with the definition of high-quality liquid assets in the U.S. LCR rule, this could, in turn, result in a more stringent measure of the trading and AFS securities indicator relative to the international standard'' (80 FR 39433, July 9, 2015). This is due to the more narrow scope of the U.S. LCR definitions.

Y–15 will continue to be made available to the public.

C. Reporting Frequency

Under the proposal, the reporting frequency of the FR Y–15 would have been modified from annual to quarterly starting with the reporting period ending March 31, 2016. Two commenters argued that the increased frequency is unnecessary because the systemic footprint of a BHC is unlikely to change significantly on a quarterly basis and that other supervisory mechanisms exist that could be leveraged to assess the systemic risk profile of BHCs. One commenter further suggested that a large merger is the most likely source of a major short-term change to the systemic risk profile of a non-G–SIB and that such changes will receive separate scrutiny regarding systemic risk. The commenters requested that the annual reporting frequency be maintained. To further alleviate reporting burden, one of the commenters suggested staggering the due dates of the various schedules so that the report is collected in stages throughout the year.

An institution's systemic profile is not necessarily static throughout the year, especially to the extent that a firm takes active steps to reduce their systemic footprint. Large year-over-year changes have been observed in the past and may continue to be observed in the future as firms react to the implementation of the G–SIB framework. Under the current reporting regime, any large changes in systemic footprint are only observed at year-end.

The supervisory mechanisms suggested by commenters such as the Comprehensive Capital Analysis and Review (CCAR), the Dodd-Frank Act Stress Tests (DFAST), and resolution planning, are not adequate substitutes for the FR Y–15 as they were not designed to capture the systemic footprint of an institution. The FR Y–15 report provides consistent and comparable measures of systemic risk that, unless otherwise noted, are unavailable from other sources.[16] Furthermore, the Board's review of risks to financial stability for proposed mergers and acquisitions relies, in part, on the data provided in the FR Y–15 report.

Staggering the due dates of the schedules would increase the collection frequency without increasing the number of observations made in a single year. Thus, this approach would not allow for the monitoring of changes in an institution's systemic footprint throughout the year.

Finally, the year-end values currently being reported may not be indicative of an institution's systemic footprint throughout the year. Quarterly reporting would allow for a more robust assessment of a firm's overall systemic footprint. For all these reasons, the revised FR Y–15 requires quarterly reporting, as proposed.

A number of commenters requested that non-year-end data be kept confidential. One commenter noted that other jurisdictions do not require quarterly disclosures of the G–SIB data and argued that releasing the quarterly information could put U.S. BHCs at a competitive disadvantage compared to their foreign competitors who disclose the data on a less frequent basis.

Releasing the data reported on the FR Y–15 helps promote important policy goals, such as transparency and market discipline. As previously stated, the FR Y–15 currently provides valuable information about the domestic systemic risk landscape that can be used by the market to evaluate the systemic importance of individual institutions on a national level.[17] An increased disclosure frequency would provide the public with the ability to better monitor how firm actions affect the systemic footprint of an institution throughout the year. Moreover, firms would be better positioned to evaluate how changes in their systemic activities compare with those of other respondents. This comparison is important as the G–SIB determination process relies on a relative methodology.[18] Furthermore, there are numerous examples where U.S. disclosure requirements have extended beyond the requirements of other countries. U.S. institutions have remained very competitive in international markets despite the more comprehensive disclosure regime. Consistent with the current treatment of the annual data and considering the public purposes that would be served by additional disclosure, the revised FR Y–15 requires that the quarterly reports be made publicly available.

One commenter noted that the technical challenges associated with switching to a more frequent data collection are compounded by the number of additional reporting requirements that will be implemented in the coming year (*e.g.,* the FR 2052a). Two commenters requested that the quarterly reporting requirement be phased in, with semi-annual reporting in 2016 and quarterly reporting beginning in 2017.

In light of the technical challenges associated with the shift to more frequent reporting, including implementing and testing quarterly reporting systems, the revised FR Y–15 delays implementation of the quarterly reporting requirement for three months, to June 30, 2016.

Two commenters requested that the submission deadline for quarterly reports be extended to 65 calendar days after the quarter-end to avoid overlap with other reports that contain source data for the FR Y–15. One commenter noted that such an extension would align the quarter-end and year-end filing requirements.

Staff supports the use of staggered submission dates, where feasible, in order to ease potential resource constraints. The proposed 50-day submission deadline was chosen after considering the due dates of other major quarterly reports, including those which contain source data for the FR Y–15.[19] Extending the submission date an additional 15 days would make the deadline substantially later than the deadline for other quarterly reports. To ensure the timely availability of systemic risk data, the revised FR Y–15 maintains the proposed submission deadline of 50 calendar days after the quarter-end.

There may be instances in the future where data is sourced from another report that is not yet due to be submitted at the time the FR Y–15 is due.[20] In these cases, the Board will allow respondents to submit the FR Y–15 with the data items from the other report left blank. Respondents will then need to resubmit the report after the source form has been filed so that the missing data is automatically populated.

D. Reporting Criteria

The FR Y–15 is collected from BHCs with total consolidated assets of $50 billion or more. One commenter argued that this threshold may not be appropriate as it scopes in many BHCs that do not materially engage in the

[16] Items on the FR Y–15 that are available on other reports submitted to the Federal Reserve are populated automatically (see General Instructions, Section H).

[17] See 78 FR 77128 (December 20, 2013).

[18] See 80 FR 49082 (August 14, 2015).

[19] Certain items on the FR Y–15 are populated based on data reported on the FR Y–9C and the Country Exposure Report (FFIEC 009; OMB No. 7100–0035). The FR Y–9C must be submitted within 40 calendar days after quarter-end and the FFIEC 009 must be filed 45 days after quarter-end.

[20] For example, should the leverage exposures data become available on a revised version of the Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101; OMB No. 7100–0319), the quarterly data would not be available until 60 days after the quarter-end for institutions in parallel run.

activities covered in the report. The commenter further noted that these BHCs are not subject to the G–SIB capital rule, which relies on the data captured in the FR Y–15 to inform G–SIB designation. The commenter requested that the respondent panel be limited to only those institutions covered by the G–SIB rule (*i.e.,* advanced approaches banking organizations that are not subsidiaries of FBOs) or that smaller institutions be permitted to only submit annually based on information already available in other regulatory reports.

A second commenter argued that it may not be appropriate to include regional banking organizations in the reporting panel as they have systemic scores that are significantly smaller than those of the G–SIBs. To alleviate the reporting burden on smaller institutions, the commenter suggested raising the reporting threshold to $300 billion so that only G–SIBs are subject to the reporting requirement. A third commenter questioned the necessity of collecting Schedule G data from BHC subsidiaries of FBOs, as these institutions are not subject to the U.S. G–SIB rule.

While the data on the FR Y–15 is indeed used to inform G–SIB designation,[21] the information being captured has a broader purpose. The report was primarily designed to monitor, on an ongoing basis, the systemic risk profile of institutions subject to enhanced prudential standards under section 165 of DFA.[22] This monitoring includes BHC subsidiaries of FBOs, which can have substantial systemic footprints within the United States. The information is also used to analyze the systemic risk implications of proposed mergers and acquisitions, and to identify depository institutions that present potential systemic risks.

To maintain an informed view of the macroprudential risks associated with banking organizations, it is important to look beyond the footprints of the eight U.S. G–SIBs. This principal applies, for example, in the G–SIB designation process, where all U.S. top-tier bank holding companies that are advanced approaches institutions must calculate a measure of systemic importance.[23] To identify institutions that may pose systemic risks at the domestic level, it is essential to look at an even wider group.

Institutions not subject to the G–SIB capital rule can have material systemic footprints. While systemic risk can arise due to the solitary actions of a very large firm, it may also arise due to the interactions between firms. Through their interconnectedness, complexity, and facilitation of critical banking activities, institutions which have not been designated as G–SIBs may still play a systemically-important role in the U.S. banking system.

Moreover, reducing the reporting scope to only those institutions subject to the G–SIB rule would dramatically limit the number of respondents. Adopting a more restricted reporting requirement could incentivize non-respondents to pursue additional systemic activities, especially those which would not affect their reporting status. Any increases in systemic footprint that result may then go unobserved.

For the reasons outlined above, the revised FR Y–15 applies to all bank holding companies with total consolidated assets of $50 billion or more, which is consistent with the asset threshold in section 165 of DFA. Moreover, as short-term wholesale funding is a critical component of the systemic risk profile that the FR Y–15 was designed to assess, Schedule G applies to all respondents, including subsidiaries of FBOs.

E. Specific Data Items

General Instructions

The FR Y–15 instructions direct respondents to provide a brief explanation of any unusual changes from the previous report. One commenter noted that unusual changes is not explicitly defined. The commenter also suggested that it would reduce administrative burden if explanations were submitted electronically.

The revised FR Y–15 instructions state that unusual changes are differences that are not attributable to general organic growth and/or standard fluctuations in the business cycle. The FR Y–15 is not the only report with the unusual changes provision (*e.g.,* the FR Y–9C also contains this concept).

One commenter requested that mapping information be made available for data elements derived from other sources, such as a mapping between Schedule A and the SLR disclosures, and a mapping between Schedule G and the FR 2052a.

Mapping information for data items automatically retrieved from other reports is already provided in Section H of the General Instructions of the FR Y–15. Should additional items become available in other regulatory reports, the instructions would be updated such that these items are automatically retrieved and no additional reporting is required. To ease reporting burden and ensure data comparability, the revised FR Y–15 includes additional information in the reporting instructions regarding the connection between the items in Schedule A and the SLR disclosure tables. The Board will provide information regarding the connection between Schedule G and the FR 2052a prior to the Schedule G effective date.

Schedule A

Two commenters noted that the SLR rule permits the netting of certain on-balance sheet securities financing transactions (SFTs), but that SFT items in the FR Y–15 require gross reporting. They requested that SFTs be reported on a net basis throughout the report where the underlying transaction meets the netting criteria specified in the SLR.

Schedule A, item 2(a) is intended to mirror the requirements under the SLR and the revised reporting instructions clarify this point. However, Schedule F, item 6 and 7 are not intended to mirror the requirements under the SLR. Therefore, the revised FR Y–15 maintains the current reporting definitions for the SFT items in Schedule F, as they mirror the international standard and thus promote comparability.

Under the proposal, regulatory adjustments (Schedule A, item 3(b)) would be reported as a quarterly average of daily data. One commenter argued that this treatment diverges from the method used for the purposes of the SLR and that the calculation would be challenging to implement. The commenter requested that respondents be permitted to report regulatory adjustments as point-in-time data. In response, the revised FR Y–15 collects regulatory adjustments using point-in-time data, consistent with the requirement in the SLR.

Schedule B

One commenter noted that the instructions for Schedule B, item 3(f) appear to exclude the short legs of derivatives used to hedge the equity securities reported in Schedule B, item 3(e). The commenter requested that the instructions be amended to explicitly include these derivatives, as doing so would be consistent with the international standard. In response, the instructions to the FR Y–15 have been revised to include these derivatives.

Two commenters noted that the proposed revisions appear to expand the scope of items capturing over-the-counter (OTC) derivatives to also

[21] See 80 FR 49082 (August 14, 2015).

[22] See 78 FR 77128 (December 20, 2013).

[23] 80 FR 49082 (August 14, 2015).

include exchange-traded derivatives. The commenters expressed concern that the derivative items under an expanded scope would be inconsistent with the international standard.

The revisions in question were not intended to alter the scope of the OTC derivatives items. In response, the revised FR Y–15 reverts to the original line names for the OTC derivative items throughout the report to make it clear that exchange-traded derivatives should not be reported.

One commenter argued that including in Schedule B special purpose entities (SPEs) that are a part of a consolidated financial institution would be very difficult to operationalize, as the consolidation status of such entities is not generally public information. Considering this operational challenges, the revised FR Y–15 removes this requirement. The Board may revisit reporting requirements for SPEs in the future.

Schedule D

One commenter noted that Level 3 trading assets are being counted both in the trading and AFS securities indicator and in the Level 3 assets indicator. The commenter expressed concern that this results in counting the same assets twice within a single indicator.

The trading and AFS securities indicator is a separate and distinct indicator from the one capturing Level 3 assets. Thus, Level 3 trading assets are not being double counted within the same indicator. Accordingly, the revised FR Y–15 maintains the current treatment of Level 3 assets in the trading and AFS securities indicator.

Technical Clarifications

Commenters asked for a number of technical clarifications regarding specific data items on the FR Y–15 form. The revised FR Y–15 instructions address these questions and others that have been received.

Board of Governors of the Federal Reserve System, December 9, 2015.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2015–31356 Filed 12–11–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–16GK; Docket No. CDC–2015–0111]

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 efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection request entitled ''Ingress/Egress and Work Boot Outsole Wear Investigation at Surface Mining Facilities''. The goal of this work is to investigate how ingress/egress systems on mobile equipment and personal protective footwear (work boots) used by miners may lead to slips, trips and falls by interviewing and surveying mine workers and examining work boot outsole characteristics.

DATES: Written comments must be received on or before February 12, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2015–0111 by any of the following methods:

Federal eRulemaking Portal: Regulation.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. All relevant comments received will be posted without change to Regulations.gov, including any personal information provided. For access to the docket to read background documents or comments received, go to Regulations.gov.

Please note: All public comment should be submitted 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 the 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 OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

Ingress/Egress and Work Boot Outsole Wear Investigation at Surface Mines—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety & health at work for all people through research and prevention. NIOSH, under PL 91–173 as amended by PL 95–164 (Federal Mine Safety and Health Act of 1977) has the responsibility to conduct research to improve working conditions and to prevent accidents and occupational diseases in the U.S. mining sector. The goal of the proposed project is to investigate how ingress/egress systems on mobile equipment, and personal protective footwear (boots) used by miners may lead to slips, trips and falls at stone, sand and gravel surface mining facilities. NIOSH is requesting a 3-year approval for this data collection.

The project objective will be achieved through two studies. The first study aims to: Identify elements of ingress/egress systems on haulage trucks and front end loaders that pose a risk of slips, trips and falls (STFs) and could lead to STF related injuries; to determine worker behavior associated with STF incidents; and to learn how purchasing/maintenance decisions are made for ingress/egress systems. In the surface mining industry, it is still unclear which component of the ingress/egress system poses the greatest risk for STF. Hence there is a need to understand where, how and why STF incidents occur during ingress/egress on mobile equipment.

NIOSH will conduct semi-structured interviews and focus groups with mobile equipment operators, and interviews with mine management to explore the issues identified above. Focus groups will be conducted in a private setting with 4–6 participants using a predefined list of questions to help guide the discussion. Semi-structured interviews will be conducted either in person or over the telephone. Two separate interview guides will be used for mobile equipment operators and mine management to guide the discussion.

For the focus groups and semi-structured interviews, NIOSH will collect basic demographic information including years of mining experience, years of experience with haul trucks/front end loaders, and models of haul trucks/front end loaders operated most often in the past year. The semi-structured interviews and focus groups will be audio recorded for further analysis of the discussion. The semi-structured interviews will last no longer than 60 minutes and the focus groups will last no longer than 90 minutes.

The second study aims to identify changes in tread (wear) on the work boot outsoles and other outsole characteristics that will be used in further analysis to develop guidelines for work boot replacement based on measureable features of boot outsoles. This information will also be used in further analysis to determine desirable and undesirable features of work boots based on mine characteristics or job activities. Most mining companies replace footwear at a pre-determined interval or based on appearance and comfort (Chiou, Bhattacharya, & Succop, 1996) with little knowledge of the actual condition of the boot outsole and its influence on the likelihood of a STF incident. Although there have been attempts to quantify shoe outsole wear in industrial work when the shoe was ready for disposal (Chiou et al., 1996), there is a lack of knowledge in the mining industry on how quickly the outsoles of work boots wear, what sorts of wear occur, and how wear patterns influence the likelihood of a STF.

For the longitudinal study, NIOSH will provide participants with a pair of new work boots of their choice, in accordance with mine requirements and policies. Afterwards, participants will complete a preliminary survey and provide basic demographic information, details of their current work boots, and details of STF incidents in the past 3 months. Participants will be requested to wear the supplied boots at work and treat the boots as they would any pair of boots they would wear at work.

NIOSH researchers will scan the boot outsoles longitudinally, at 2 to 3 month intervals for the length of the study. To better understand wear patterns and risks, participants will complete an on-going survey that records hours worked, locations commonly visited, and tasks performed along with details of any near miss or STF event. These self-reports will be collected via survey on a bi-weekly basis. Participants will be offered multiple modalities to respond to the survey (in-person, on paper, over the telephone, via email or using an online survey) to increase response rates. When a participant feels their boots need to be replaced (or when the end of the two-year tracking period has been reached), they will complete a final survey assessing why the boots were at the end of their life and will return their boots to NIOSH researchers for further analysis.

For the cross-sectional study, participants' current work boots will be scanned and participants will complete the preliminary survey that includes basic demographic information, details of current work boots, and details of STF events in the past three months.

The results of these research studies will have very different applications, but one goal: Reducing the risks of STF accidents at surface mining facilities. The results of the ingress/egress study will help identify features of the ingress/egress system that may lead to STF accidents so that they can be made safer by the manufacturers and to allow mining companies to make better purchasing decisions and encourage the acquisition of systems with better slip and fall protection. The results of the boot outsole wear study will be used to inform mine policy and practices by providing miners and mine managers with the knowledge to determine when to replace footwear based on measurable features of the boot outsoles.

The total estimated burden hours are 643. There is no cost to the 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)
Mobile equipment Operators	Mobile equipment operators focus group guide.	25	1	1.25	31
Mobile equipment operators	Mobile equipment operator interview guide.	10	1	45/60	8
Mine Management	Mine Management Interview Guide	15	1	45/60	11
Mine Worker	Screening Questionnaire	50	1	6/60	5

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Mine Worker	Informed consent form (Longitudinal boot outsole study).	50	1	12/60	10
Mine Worker	Preliminary survey	150	1	15/60	38
Mine Worker	On-going survey	50	52	12/60	520
Mine Worker	Final Survey	50	1	6/60	5
Mine Worker	Talent and consent waiver	150	1	6/60	15
Total					643

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. 2015–31344 Filed 12–11–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2015–0112]

Proposed 2016 Guideline for Prescribing Opioids for Chronic Pain

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) in the Department of Health and Human Services (HHS) announces the opening of a docket to obtain public comment on the draft CDC Guideline for Prescribing Opioids for Chronic Pain (Guideline). The Guideline provides recommendations regarding initiation or continuation of opioids for chronic pain; opioid selection, dosage, duration, follow-up, and discontinuation; and assessment of risk and addressing harms of opioid use. The Guideline is intended to be used by primary care providers (*e.g.,* family physicians or internists) who are treating patients with chronic pain (*i.e.,* pain lasting longer than 3 months or past the time of normal tissue healing) in outpatient settings. The draft Guideline is intended to apply to patients aged 18 years of age or older with chronic pain outside of palliative and end-of-life care. The Guideline is not intended to apply to patients in treatment for active cancer. The Guideline is not a federal regulation; adherence to the Guideline will be voluntary.

DATES: Written comments must be received on or before January 13, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2015–0112 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway NE., Mailstop F–63, Atlanta, GA 30341, Attn: Docket CDC–2015–0112.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *http://regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Arlene I. Greenspan, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway NE., Mailstop F–63, Atlanta, GA 30341; Telephone: 770–488–4696.

SUPPLEMENTARY INFORMATION:

Background

CDC developed the draft Guideline to provide recommendations about opioid prescribing for primary care providers who are treating adult patients with chronic pain in outpatient settings, outside of active cancer treatment, palliative care, and end-of-life care. The draft Guideline summarizes scientific knowledge about the effectiveness and risks of long-term opioid therapy, and provides recommendations for when to initiate or continue opioids for chronic pain; opioid selection, dosage, duration, follow-up, and discontinuation; and assessing risk and addressing harms of opioid use. The draft Guideline identifies important gaps in the literature where further research is needed.

To develop the recommendations, CDC conducted a systematic review on benefits and harms of opioids and developed the draft Guideline using the Grading of Recommendations Assessment, Development, and Evaluation (GRADE) framework. CDC drafted recommendations and consulted with experts on the evidence to inform the recommendations. CDC hosted webinars in September 2015 and also provided opportunities for stakeholder and peer review of the draft Guideline. The Guideline is not a federal regulation; adherence to the Guideline will be voluntary. For additional information on prescription drug overdose, please visit *http://www.cdc.gov/drugoverdose/prescribing/guideline.html.*

Supporting and Related Material in the Docket

The docket contains the following supporting and related materials to help inform public comment: The Guideline; the Clinical Evidence Review Appendix; the Contextual Evidence Review Appendix; and three documents that comprise the Comment Summaries and CDC Responses (Constituent Comment Summary, Peer Review Summary, and Stakeholder Review Group Summary). The Clinical Evidence Review Appendix and the Contextual Evidence Review Appendix include primary evidence, studies, and data tables that were used by CDC to develop the recommendations in the Guideline. The Constituent Comment Summary reflects input obtained in response to webinars hosted on September 16 and September 17, 2015, during which CDC shared an overview of the development process and draft recommendation statements. The Stakeholder Review Group Summary also reflects input obtained from stakeholders (comprised of professional and community organizations) following their review of a prior draft of the Guideline. Finally, the Peer Review Summary reflects input obtained from three scientific peer

reviewers following their review of a draft of the full Guideline, along with a summary of comments received and CDC responses.

Dated: December 9, 2015.

Veronica Kennedy,

Acting Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2015–31375 Filed 12–11–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Injury Prevention and Control, (BSC, NCIPC)

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces, the following meeting of the aforementioned committee:

Time and Date: 9:00 a.m.–1:00 p.m., January 7, 2016 (OPEN).

Place: Teleconference Dial-In Number: 1–888–395–7561, Participant Code: 3954121.

Status: The meeting as designated above will be open to the public.

Purpose: The Board will: (1) Conduct, encourage, cooperate with, and assist other appropriate public health authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases, and other impairments; (2) assist States and their political subdivisions in preventing and suppressing communicable and non-communicable diseases and other preventable conditions and in promoting health and well-being; and (3) conduct and assist in research and control activities related to injury.

The Board of Scientific Counselors makes recommendations regarding policies, strategies, objectives, and priorities; and reviews progress toward injury prevention goals and provides evidence in injury prevention-related research and programs. The Board also provides advice on the appropriate balance of intramural and extramural research, the structure, progress and performance of intramural programs. The Board is designed to provide guidance on extramural scientific program matters, including the: (1) Review of extramural research concepts for funding opportunity announcements; (2) conduct of Secondary Peer Review of extramural research grants, cooperative agreements, and contracts applications received in response to the funding opportunity announcements as it relates to the Center's programmatic balance and mission; (3) submission of secondary review recommendations to the Center Director of applications to be considered for funding support; (4) review of research portfolios, and (5) review of program proposals.

Matters for Discussion: The Board of Scientific Counselors will discuss the background for development of the CDC Guideline for Prescribing Opioids for Chronic Pain (Guideline) and the formation of the Prescribing Opioids for Chronic Pain Workgroup (Opioid Guideline Workgroup). We will be accepting public comments only related to the formation of the Opioid Guideline Workgroup. There will be 30 minutes allotted for public comments at the end of the session. All public comments will be limited to two-minutes per speaker.

CDC is also publishing a related notice in today's **Federal Register** announcing the opening of a public comment period on the Guideline itself. Individuals are given 30 days to provide comments on the Guideline. Please see instructions in that notice about providing comment.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Arlene Greenspan, Dr. P.H, M.P.H., P.T., Associate Director for Science, NCIPC, CDC, 4770 Buford Highway NE., Mailstop F–63, Atlanta, Georgia 30341, Telephone (770) 488–4696.

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. 2015–31367 Filed 12–11–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–R–282 and CMS–10597]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by February 12, 2016.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov*. Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ___, Room C4–26–05,

7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*.

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*.

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–R–282 Medicare Advantage Appeals and Grievance Data Disclosure Requirements and Supporting Regulations (42 CFR 422.111)

CMS–10597 CMS Healthcare.gov Site Wide Online Survey

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. The term ''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 requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Medicare Advantage Appeals and Grievance Data Disclosure Requirements (42 CFR 422.111); *Use:* Medicare Advantage (MA) organizations and demonstrations are required to collect and disclose information pertaining to the number of disputes, and their disposition in the aggregate, with the categories of grievances and appeals to any individual eligible to elect an MA organization who requests this information. The CMS continues to need the same format and form for reporting. *Form Number:* CMS–R–282 (OMB control number: 0938–0778); *Frequency:* Annually and semi-annually; *Affected Public:* Private Sector (Business or other for-profit and Not-for-profit institutions); *Number of Respondents:* 53,730; *Total Annual Responses:* 54,460; *Total Annual Hours:* 5,700. (For policy questions regarding this collection contact Stephanie Simons at 206–615–2420.)

2. *Type of Information Collection Request:* New collection (Request for a new OMB control number; *Title of Information Collection:* CMS Healthcare.gov Site Wide Online Survey; *Use:* The purpose of the survey is to gain an understanding of user experience, comprehension, and satisfaction with using the Federal Health Insurance Marketplace Web site established by the Affordable Care Act. The Marketplace provides coverage to uninsured Americans, as well as those already enrolled in Marketplace health insurance. One of the ways to purchase Marketplace insurance is through the online tools on HealthCare.gov. We have developed a survey to be administered to consumers while they are using the Web site. This survey is part of a continuing data collection program mandated by the ACA. It is designed to support the program goal to provide tools and information to help consumers to successfully find health insurance that they may not otherwise qualify for or find. Monitoring usability and the user experience through this ongoing survey provides the Web site developers with valuable information for use in continuous improvement of the Web site. The Web site survey is part of a larger research program to inform the development and enhancement of web tools for CMS programs such as the Health Insurance Marketplace. *Form Number:* CMS–10597 (OMB control number: 0938—New); *Frequency:* Weekly, Monthly, Occasionally; *Affected Public:* Individuals or Households; *Number of Respondents:* 14,000; *Total Annual Responses:* 14,000; *Total Annual Hours:* 933. (For policy questions regarding this collection contact Frank Funderburk at 410–786–1820.)

Dated: December 9, 2015.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2015–31399 Filed 12–11–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10555]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. 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 or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by January 13, 2016.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 or Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in

this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

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. The term ''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 publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Small Business Health Options Program (SHOP) Effective Date and Termination Notice Requirements; *Use:* The CMS is requiring for plan years beginning on or after January 1, 2016, the SHOP must ensure that a QHP issuer notifies qualified employees, enrollees, and new enrollees in a QHP through the Small Business Health Options Program (SHOP) of the effective date of coverage. As required by the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameter for 2016 (CMS–9944–F), which went on display on February 20, 2015, if any enrollee's coverage through the SHOP is terminated due to non-payment of premiums or a loss of the enrollee's or employer group's eligibility to participate in the SHOP, the SHOP must notify the enrollee or the qualified employer of the termination of such coverage. In the termination of coverage, the SHOP must include the termination date and reason for termination to the enrollee or qualified employer.

To aid in understanding levels of awareness and customer services needs associated with the SHOP associated with the Exchanges established by the Affordable Care Act, CMS will engage in collecting primary qualitative and quantitative research from Exchange target audiences. These surveys are part of a broader data collection effort designed to support the program goal to improve customer satisfaction for people and small businesses that are eligible for coverage through the SHOP. The CMS has designed three surveys to target different audiences, specifically agents and brokers, employers, and employees. *Form Number:* CMS–10555 (OMB Control Number: 0938–New); *Frequency:* Annually; biannually; *Affected Public:* Federal Government, State Governments, Private Sector (Business or other for-profits and Not-for-profit institutions); *Number of Respondents:* 2,885; *Total Annual Responses:* 5,770; *Total Annual Hours:* 50,425. (For policy questions regarding this collection contact Christelle Jang at (410) 786–8438.)

Dated: December 9, 2015.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2015–31398 Filed 12–11–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Administration for Native Americans Annual Data Collection (Annual Data Report).

OMB No.: New collection.

Description: Content and formatting changes are being made to the Objective Progress Report (OPR). Content changes are being made to the OPR, now known as the Annual Data Report (ADR) previously approved under information collection OMB No. 0980–0204. ANA has determined that the requirement for ANA grantees to submit information about the project activities on quarterly basis creates undue burden for Grantees. Therefore, ANA has reformatted the OPR to require Grantees submit an annual report instead of quarterly report when reporting on partnerships, youth and elder engagement, impact indicators, community involvement etc. This will reduce the administrative burden on Grantees, especially the smaller organizations. The majority of content being requested from the grantees essentially remain same except for the frequency of reporting. The other sections of the document with reference to ''quarterly'' information will be changed to reflect the shift from four-times a year reporting requirement to once per year and once at the end of the project period.

Respondents: Tribal Government, Native non-profit organizations, Tribal Colleges & Universities receiving ANA funding.

Annual Burden Estimates

The following is the hour of burden estimate for this information collection:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ADR	275	2	2	275

Estimated Total Annual Burden Hours: 275.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect

if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2015–31314 Filed 12–11–15; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on Thursday, February 18, 2016, from 8 a.m. to 6 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, C, and D, 620 Perry Pkwy., Gaithersburg, MD 20877. The hotel telephone number is 301–977–8900.

Contact Person: Dimitrus Culbreath, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1535, Silver Spring, MD, 20993, *Dimitrus.Culbreath@fda.hhs.gov*, 301–796–6872, 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 Web site at *http://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.

Agenda: The Committee will discuss and make recommendations on clinical trial, postapproval study design, and physician training requirements for leadless cardiac pacemaker device technology. Specifically, the Committee will be asked to make recommendations on the acceptability of adverse event rates in acute and chronic timeframes as well as indications for use for this device type, given availability of other technologies with different adverse event profiles; required training and acceptability of observed learning curves for the new device type and necessary elements for postapproval study collection.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: 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 11, 2016. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. 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 3, 2016. 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 4, 2016.

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 Artair Mallett at 301–796–9638, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 8, 2015.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2015–31372 Filed 12–11–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0990–New–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for a new collection. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before January 13, 2016.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the Information Collection Request Title and document identifier HHS–OS–0990–New–30D for reference.

Information Collection Request Title: Privacy and Security Capacity Assessment of the Title X Network

Abstract: The Office of the Assistant Secretary for Health Office of Population Affairs, (OPA) is requesting an approval by Office of Management and Budget (OMB) for a new information collection (Privacy and Security Capacity Assessment) which seeks to collect feedback from the Title X network regarding Title X grantees' and service sites' current privacy and security capabilities for health information exchange. This voluntary form will be administered at most annually and enable the Title X network to share important information to critically inform OPA's development of Family Planning Annual Report (FPAR 2.0), as well as identify any training assistance and inform guidance that OPA may offer in the future. OPA will solicit feedback from Title X agencies to advise our work on privacy and security, and proposes to make this data collection form available for up to 3 years so that OPA can accept feedback from the network regarding any changes or trends that might alter our approach to privacy and security as we proceed through the design and build process for the planned FPAR 2.0 data repository.

Likely Respondents: Title X Grantees, Subrecipients, and Service Sites.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average annualized burden per response (hours)	Annualized total burden (hours)
Grantees	Sustainability Assessment—Grantees.	92 Grantees	1	40 minutes (0.66 hours).	60.72
Service Sites	Sustainability Assessment—Sites.	4,168	1	40 minutes (0.66 hours).	2,750.88
Totals		4,260			2811.60

Terry S. Clark,

Asst. Information Collection Clearance Officer.

[FR Doc. 2015–31355 Filed 12–11–15; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Customs Brokers User Fee Payment for 2016

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document provides notice to customs brokers that the annual user fee of $138 that is assessed for each permit held by a broker, whether it may be an individual, partnership, association, or corporation, is due by February 26, 2016.

DATES: Payment of the 2016 Customs Broker User Fee is due by February 26, 2016.

FOR FURTHER INFORMATION CONTACT: Julia Peterson, Broker Management Branch, Office of International Trade, (202) 863–6601.

SUPPLEMENTARY INFORMATION: Pursuant to section 111.96 of title 19 of the Code of Federal Regulations (19 CFR 111.96(c)), U.S. Customs and Border Protection (CBP) assesses an annual user fee of $138 for each customs broker district and national permit held by an individual, partnership, association, or corporation. CBP regulations provide that this fee is payable for each calendar year in each broker district where the broker was issued a permit to do business by the due date. *See* 19 CFR 24.22(h) and (i)(9). Broker districts are defined in the General Notice entitled, ''Geographic Boundaries of Customs Brokerage, Cartage and Lighterage Districts,'' published in the **Federal Register** on March 15, 2000 (65 FR 14011), and corrected, with minor changes, on March 23, 2000 (65 FR 15686) and on April 6, 2000 (65 FR 18151).

As required by 19 CFR 111.96, CBP must provide notice in the **Federal Register** no later than 60 days before the date that the payment is due for each broker permit. This document notifies customs brokers that for calendar year 2016, the due date for payment of the user fee is February 26, 2016. It is anticipated that for subsequent years, the annual user fee for customs brokers will be due on the last business day of February of each year.

Dated: December 9, 2015.

Brenda B. Smith,

Assistant Commissioner, Office of International Trade.

[FR Doc. 2015–31370 Filed 12–11–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of April 5, 2016 which has been established for the

FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 23, 2015.

Roy E. Wright,

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

I. Watershed-based studies:

LOWER SUSQUEHANNA WATERSHED

Community	Community map repository address
Lancaster County, Pennsylvania (All Jurisdictions) **Docket No.: FEMA–B–1419**	
Borough of Adamstown	Borough Office, 3000 North Reading Road, Adamstown, PA 19501.
Borough of Akron	Borough Hall, 117 South 7th Street, Akron, PA 17501.
Borough of Christiana	Borough Hall, 10 West Slokom Avenue, Christiana, PA 17509.
Borough of Columbia	Borough Hall, 308 Locust Street, Columbia, PA 17512.
Borough of Denver	Borough Office, 501 Main Street, Denver, PA 17517.
Borough of East Petersburg	Borough Hall, 6040 Main Street, East Petersburg, PA 17520.
Borough of Elizabethtown	Borough Office, 600 South Hanover Street, Elizabethtown, PA 17022.
Borough of Ephrata	Borough Hall, 124 South State Street, Ephrata, PA 17522.
Borough of Lititz	Borough Office, 7 South Broad Street, Lititz, PA 17543.
Borough of Manheim	Borough Office, 15 East High Street, Manheim, PA 17545.
Borough of Marietta	Borough Hall, 111 East Market Street, Marietta, PA 17547.
Borough of Millersville	Borough Office, 100 Municipal Drive, Millersville, PA 17551.
Borough of Mount Joy	Borough Office, 21 East Main Street, Mount Joy, PA 17552.
Borough of Mountville	Borough Office, 21 East Main Street, Mountville, PA 17554.
Borough of Quarryville	Borough Office, 300 Saint Catherine Street, Quarryville, PA 17566.
Borough of Strasburg	Borough Office, 145 Precision Avenue, Strasburg, PA 17579.
City of Lancaster	Lancaster City Municipal Building, 120 North Duke Street, Lancaster, PA 17602.
Township of Bart	Bart Township Office, 46 Quarry Road, Quarryville, PA 17566.
Township of Brecknock	Brecknock Township Office, 1026 Dry Tavern Road, Denver, PA 17517.
Township of Caernarvon	Caernarvon Township Office, 2147 Main Street, Narvon, PA 17555.
Township of Clay	Clay Township Office, 870 Durlach Road, Stevens, PA 17578.
Township of Colerain	Colerain Township Office, 1803 Kirkwood Pike, Kirkwood, PA 17536.
Township of Conestoga	Township Municipal Building, 3959 Main Street, Conestoga, PA 17516.
Township of Conoy	Conoy Township Office, 211 Falmouth Road, Bainbridge, PA 17502.
Township of Drumore	Township Office, 1675 Furniss Road, Drumore, PA 17518.
Township of Earl	Earl Township Office, 517 North Railroad Avenue, New Holland, PA 17557.
Township of East Cocalico	East Cocalico Township Office, 100 Hill Road, Denver, PA 17517.
Township of East Donegal	East Donegal Township Municipal Building, 190 Rock Point Road, Marietta, PA 17547.
Township of East Drumore	East Drumore Township Municipal Building, 925 Robert Fulton Highway, Quarryville, PA 17566.
Township of East Earl	Township Municipal Building, 4610 Division Highway, East Earl, PA 17519.
Township of East Hempfield	East Hempfield Township Office, 1700 Nissley Road, Landisville, PA 17538.
Township of East Lampeter	East Lampeter Township Office, 2250 Old Philadelphia Pike, Lancaster, PA 17602.
Township of Eden	Eden Township Office, 489 Stony Hill Road, Quarryville, PA 17566.
Township of Elizabeth	Elizabeth Township Municipal Building, 423 South View Drive, Lititz, PA 17543.

LOWER SUSQUEHANNA WATERSHED—Continued

Community	Community map repository address
Township of Ephrata	Township Office, 265 Akron Road, Ephrata, PA 17522.
Township of Fulton	Fulton Township Municipal Building, 777 Nottingham Road, Peach Bottom, PA 17563.
Township of Lancaster	Township Municipal Building, 1240 Maple Avenue, Lancaster, PA 17603.
Township of Leacock	Leacock Township Office, 3545 West Newport Road, Intercourse, PA 17534.
Township of Little Britain	Little Britain Township Municipal Building, 323 Green Lane, Quarryville, PA 17566.
Township of Manheim	Manheim Township Office, 1840 Municipal Drive, Lancaster, PA 17601.
Township of Manor	Manor Township Office, 950 West Fairway Drive, Lancaster, PA 17603.
Township of Martic	Martic Township Municipal Building, 370 Steinman Farm Road, Pequea, PA 17565.
Township of Mount Joy	Mount Joy Township Municipal Building, 159 Merts Drive, Elizabethtown, PA 17022.
Township of Paradise	Township Office, 2 Township Drive, Paradise, PA 17562.
Township of Penn	Penn Township Office, 97 North Penryn Road, Manheim, PA 17545.
Township of Pequea	Pequea Township Office, 1028 Millwood Road, Willow Street, PA 17584.
Township of Providence	Providence Township Office, 200 Mount Airy Road, New Providence, PA 17560.
Township of Rapho	Rapho Township Office, 971 North Colebrook Road, Manheim, PA 17545.
Township of Sadsbury	Sadsbury Township Office, 7182 White Oak Road, Christiana, PA 17509.
Township of Salisbury	Salisbury Township Office, 5581 Old Philadelphia Pike, Gap, PA 17527.
Township of Strasburg	Township Municipal Building, 400 Bunker Hill Road, Strasburg, PA 17579.
Township of Upper Leacock	Upper Leacock Township Office, 36 Hillcrest Avenue, Leola, PA 17540.
Township of Warwick	Warwick Township Office, 315 Clay Road, Lititz, PA 17543.
Township of West Cocalico	West Cocalico Township Office, 156B West Main Street, Reinholds, PA 17569.
Township of West Donegal	West Donegal Township Office, 1 Municipal Drive, Elizabethtown, PA 17022.
Township of West Earl	West Earl Township Office, 157 West Metzler Road, Brownstown, PA 17508.
Township of West Hempfield	West Hempfield Township Municipal Building, 3401 Marietta Avenue, Lancaster, PA 17601.
Township of West Lampeter	West Lampeter Township Office, 852 Village Road, Lampeter, PA 17537.

II. Non-watershed-based studies:

Community	Community map repository address
San Diego County, California, and Incorporated Areas Docket No.: FEMA–B–1461	
City of Imperial Beach	City Hall, 825 Imperial Beach Boulevard, Imperial Beach, CA 91932.
City of San Diego	Development Services Department, 1222 First Avenue, MS301, San Diego, CA 92101.
Unincorporated Areas of San Diego County	Department of Public Works, Flood Control, 5510 Overland Avenue, Suite 410, San Diego, CA 92123.
Geary County, Kansas, and Incorporated Areas Docket No.: FEMA–B–1463	
City of Grandview Plaza	City Hall, 402 State Avenue, Grandview Plaza, KS 66441.
City of Junction City	Municipal Building, 700 North Jefferson Street, Junction City, KS 66441.
City of Milford	City Hall, 201 12th Street, Milford, KS 66514.
Unincorporated Areas of Geary County	Geary County Municipal Building, 700 North Jefferson Street, Junction City, KS 66441.
Bullitt County, Kentucky, and Incorporated Areas Docket No.: FEMA–B–1427	
City of Fox Chase	149 North Walnut Street, 3rd Floor, Shepherdsville, KY 40165.

Community	Community map repository address
City of Hebron Estates	3407 Burkland Boulevard, Shepherdsville, KY 40165.
City of Hillview	283 Crestwood Lane, Louisville, KY 40229.
City of Lebanon Junction	271 Main Street, Lebanon Junction, KY 40150.
City of Mount Washington	275 Snapp Street, Mount Washington, KY 40047.
City of Shepherdsville	634 Conestoga Parkway, Shepherdsville, KY 40165.
Unincorporated Areas of Bullitt County	149 North Walnut Street, 3rd Floor, Shepherdsville, KY 40165.
Bowman County, North Dakota, and Incorporated Areas Docket No.: FEMA–B–1462	
City of Bowman	City Hall, 101 First Street Northeast, Bowman, ND 58623.
City of Gascoyne	City Hall, 100 West Nordell Avenue, Gascoyne, ND 58653.
City of Scranton	City Hall, 109 Second Avenue Southwest, Scranton, ND 58653.
Unincorporated Areas of Bowman County	County Courthouse, 104 First Street Northwest, Bowman, ND 58623.
Colfax County, Nebraska, and Incorporated Areas Docket No.: FEMA–B–1463	
City of Clarkson	City Office, 120 West 2nd Street, Clarkson, NE 68629.
City of Schuyler	Municipal Building, 1103 B Street, Schuyler, NE 68661.
Village of Howells	Village Hall, 128 North 3rd Street, Howells, NE 68641.
Village of Leigh	Village Office, 109 Short Street, Leigh, NE 68643.
Village of Richland	Colfax County Courthouse, 411 East 11th Street, Schuyler, NE 68661.
Village of Rogers	Village Clerk's Office, 160 Center Street, Rogers, NE 68659.
Unincorporated Areas of Colfax County	Colfax County Courthouse, 411 East 11th Street, Schuyler, NE 68661.

[FR Doc. 2015–31377 Filed 12–11–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of March 16, 2016, which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 23, 2015.

Roy E. Wright,

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

I. Watershed-based studies:

Community	Community map repository address
Middle Coosa Watershed	
Calhoun County, Alabama, and Incorporated Areas Docket No.: FEMA–B–1453	
City of Anniston	City Hall, 1128 Gurnee Avenue, Anniston, AL 36201.
City of Jacksonville	City Hall, 320 Church Avenue Southeast, Jacksonville, AL 36265.
City of Oxford	City Hall, 145 Hamric Drive East, Oxford, AL 36203.
City of Piedmont	City Hall, 109 North Center Avenue, Piedmont, AL 36272.
City of Weaver	City Hall, 500 Anniston Street, Weaver, AL 36277.
Town of Hobson City	Town Hall, 715 Martin Luther King Drive, Hobson City, AL 36201.
Town of Ohatchee	Town Hall, 7801 Highway 77, Ohatchee, AL 36271.
Unincorporated Areas of Calhoun County	Calhoun County EMA, 507 Francis Street West, Jacksonville, AL 36265.
Cherokee County, Alabama, and Incorporated Areas Docket No.: FEMA–B–1453	
City of Centre	City Hall, 401 East Main Street, Centre, AL 35960.
Unincorporated Areas of Cherokee County	County Engineering Department, 1875 East Main Street, Centre, AL 35960.
Etowah County, Alabama, and Incorporated Areas Docket No.: FEMA–B–1453	
City of Attalla	City Hall, 612 North 4th Street, Attalla, AL 35954.
City of Gadsden	City Hall, 90 Broad Street, Gadsden, AL 35901.
City of Glencoe	City Hall, 201A West Chastain Boulevard, Glencoe, AL 35905.
City of Hokes Bluff	City Hall, 3301 Alford Bend Road, Hokes Bluff, AL 35903.
City of Rainbow City	City Hall, 3700 Rainbow Drive, Rainbow City, AL 35906.
City of Southside	City Hall, 2255 Highway 77, Southside, AL 35907.
Town of Reece City	Reece City Town Hall, 1023 Valley Drive, Attalla, AL 35954.
Town of Sardis City	Town Hall, 1335 Sardis Drive, Sardis City, AL 35956.
Unincorporated Areas of Etowah County	Etowah County Courthouse, 800 Forrest Avenue, Gadsden, AL 35901.
Talladega County, Alabama, and Incorporated Areas Docket No.: FEMA–B–1453	
City of Childersburg	City Hall, 201 8th Avenue Southwest, Childersburg, AL 35044.
City of Lincoln	City Hall, 150 Magnolia Street, Lincoln, AL 35096.
City of Sylacauga	City Hall, 301 North Broadway Avenue, Sylacauga, AL 35150.
City of Talladega	City Hall, 203 South Street West, Talladega, AL 35161.
Unincorporated Areas of Talladega County	Talladega County Highway Department Engineering Office, 500 Institute Lane, Talladega, AL 35161.

II. Non-watershed-based studies:

Community	Community map repository address
Marin County, California, and Incorporated Areas Docket No.: FEMA–B–1413	
City of Belvedere	Building Department, 450 San Rafael Avenue, Belvedere, CA 94920.
City of Larkspur	Planning Department, 400 Magnolia Avenue, Larkspur, CA 94939.
City of Mill Valley	Public Works Department, 26 Corte Madera Avenue, Mill Valley, CA 94941.
City of Novato	Public Works Department, 922 Machin Avenue, Novato, CA 94945.
City of San Rafael	Public Works Department, 111 Morphew Street, San Rafael, CA 94901.
City of Sausalito	Planning Department, 420 Litho Street, Sausalito, CA 94965.
Town of Corte Madera	Engineering Department, 233 Tamalpais Drive, Corte Madera, CA 94976.
Town of Ross	Public Works Department, 31 Sir Francis Drake Boulevard, Ross, CA 94957.
Town San Anselmo	Public Works Department, 525 San Anselmo Avenue, San Anselmo, CA 94960.
Town of Tiburon	Planning Department, 1505 Tiburon Boulevard, Tiburon, CA 94920.
Unincorporated Areas of Marin County	Department of Public Works, 3501 Civic Center Drive, Room 304, San Rafael, CA 94903.

Community	Community map repository address
Douglas County, Colorado, and Incorporated Areas Docket No.: FEMA–B–1447	
City of Lone Tree	City of Lone Tree Public Works Department, 9222 Teddy Lane, Lone Tree, CO 80124.
Town of Castle Rock	Town of Castle Rock Utilities Department, 175 Kellogg Court, Castle Rock, CO 80109.
Town of Parker	Town of Parker Stormwater Utility, Public Works Department, 20120 East Mainstreet, Parker, CO 80138.
Unincorporated Areas of Douglas County	Douglas County Public Works, Engineering Department, 100 Third Street, Castle Rock, CO 80104.
Lake County, Indiana, and Incorporated Areas Docket No.: FEMA–B–1404	
Town of Griffith	Town Hall, 111 North Broad Street, Griffith, IN 46319.
Town of Highland	Town Hall, 3333 Ridge Road, Highland, IN 46322.
Town of Munster	Town Hall, 1005 Ridge Road, Munster, IN 46321.
Town of Schererville	Town Hall, 10 East Joliet Street, Schererville, IN 46375.
Unincorporated Areas of Lake County	County Building, 2293 North Main Street, Crown Point, IN 46307.
Bourbon County, Kansas, and Incorporated Areas Docket No.: FEMA–B–1459	
City of Fort Scott	Memorial Hall, 1 East Third Street, Fort Scott, KS 66701.
Unincorporated Areas of Bourbon County	GIS Office, 210 South National Avenue, Fort Scott, KS 66701.
Suffolk County, Massachusetts (All Jurisdictions) Docket No.: FEMA–B–1356	
City of Boston	City Hall, One City Hall Square, Boston, MA 02201.
City of Chelsea	City Hall, 500 Broadway, Chelsea, MA 02150.
City of Revere	City Hall, 281 Broadway, Revere, MA 02151.
Town of Winthrop	Town Hall, One Metcalf Square, Winthrop, MA 02152.
Dakota County, Minnesota, and Incorporated Areas Docket No.: FEMA–B–1436	
City of Hastings	City Hall, 101 Fourth Street East, Hastings, MN 55033.
Lucas County, Ohio, and Incorporated Areas Docket No.: FEMA–B–1436	
City of Toledo	Department of Inspection, One Government Center, Suite 1600, Toledo, OH 43604.
Unincorporated Areas of Lucas County	Lucas County Engineer's Office, 1049 South McCord Road, Holland, OH 43528.
Village of Ottawa Hills	Jean W. Youngen Municipal Building, 2125 Richards Road, Ottawa Hills, OH 43606.

[FR Doc. 2015–31376 Filed 12–11–15; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001; Internal Agency Docket No. FEMA–B–1554]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the

community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 23, 2015.

Roy E. Wright,

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

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Alabama:						
Baldwin	City of Foley (15–04–7975P).	The Honorable John E. Koniar, Mayor, City of Foley, P.O. Box 1750, Foley, AL 36535.	City Hall, 407 East Laurel Avenue, Foley, AL 36535.	*http://www.msc.fema.gov/lomc*	Feb. 28, 2016	010007
Tuscaloosa	City of Tuscaloosa (15–04–4630P).	The Honorable Walter Maddox, Mayor, City of Tuscaloosa, P.O. Box 2089, Tuscaloosa, AL 35401.	Engineering Department, 2201 University Boulevard, Tuscaloosa, AL 35401.	*http://www.msc.fema.gov/lomc*	Oct. 21, 2015	010203
Tuscaloosa	City of Tuscaloosa (15–04–6987P).	The Honorable Walter Maddox, Mayor, City of Tuscaloosa, P.O. Box 2089, Tuscaloosa, AL 35401.	Engineering Department, 2201 University Boulevard, Tuscaloosa, AL 35401.	*http://www.msc.fema.gov/lomc*	Feb. 17, 2016	010203
Arkansas: Pulaski	City of North Little Rock (15–06–3972P).	The Honorable Joe Smith, Mayor, City of North Little Rock, P.O. Box 5757, North Little Rock, AR 72119.	Engineering Department, 500 West 13th Street, North Little Rock, AR 72114.	*http://www.msc.fema.gov/lomc*	Feb. 11, 2016	050182
Colorado:						
Denver	City and County of Denver (15–08–1063P).	The Honorable Michael B. Hancock, Mayor, City and County of Denver, 1437 Bannock Street, Suite 350, Denver, CO 80202.	Department of Public Works, 201 West Colfax Avenue, Denver, CO 80202.	*http://www.msc.fema.gov/lomc*	Feb. 29, 2016	080046
Eagle	Unincorporated areas of Eagle County (15–08–0620P).	The Honorable Kathy Chandler-Henry, Chair, Eagle County Board of Commissioners, P.O. Box 850, Eagle, CO 81631.	Eagle County Engineering Department, 500 Broadway Street, Eagle, CO 81631.	*http://www.msc.fema.gov/lomc*	Feb. 12, 2016	080051
Florida:						
Brevard	Unincorporated areas of Brevard County (15–04–2643P).	The Honorable Robin Fisher, Chairman, Brevard County Board of Commissioners, District 1, 400 South Street, Suite 1–A, Titusville, FL 32780.	Brevard County Public Works Department, 2725 Judge Fran Jamieson Way, Melbourne, FL 32940.	*http://www.msc.fema.gov/lomc*	Feb. 10, 2016	125092

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Collier	City of Marco Island (15–04–6066P).	The Honorable Larry Sacher, Chairman, City of Marco Island Council, 50 Bald Eagle Drive, Marco Island, FL 34145.	City Hall, 50 Bald Eagle Drive, Marco Island, FL 34145.	*http://www.msc.fema.gov/lomc*	Feb. 1, 2016	120426
Collier	City of Naples (15–04–3687P).	The Honorable John Sorey III, Mayor, City of Naples, 735 8th Street South, Naples, FL 34102.	Planning Department, 295 Riverside Circle, Naples, FL 34102.	http://www.msc.fema.gov/lomc	Feb. 8, 2016	125130
Duval	City of Jacksonville (15–04–5977P).	The Honorable Lenny Curry, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	Development Services Division, 214 North Hogan Street, Room 2100, Jacksonville, FL 32202.	*http://www.msc.fema.gov/lomc*	Feb. 23, 2016	120077
Hillsborough	Unincorporated areas of Hillsborough County (15–04–4418P).	The Honorable Sandra L. Murman, Chair, Hillsborough County Board of Commissioners, District 1, 601 East Kennedy Boulevard, Tampa, FL 33602.	Hillsborough County Center, 601 East Kennedy Boulevard, Tampa, FL 33602.	*http://www.msc.fema.gov/lomc*	Feb. 17, 2016	120112
Lee	City of Bonita Springs (14–04–8856P).	The Honorable Ben L. Nelson, Jr., Mayor, City of Bonita Springs, 9101 Bonita Beach Road, Bonita Springs, FL 34135.	Community Development Department, 9220 Bonita Beach Road, Bonita Springs, FL 34135.	*http://www.msc.fema.gov/lomc*	Feb. 23, 2016	120680
Lee	City of Bonita Springs (15–04–7945P).	The Honorable Ben L. Nelson, Jr., Mayor, City of Bonita Springs, 9101 Bonita Beach Road, Bonita Springs, FL 34135.	Community Development Department, 9220 Bonita Beach Road, Bonita Springs, FL 34135.	*http://www.msc.fema.gov/lomc*	Feb. 5, 2016	120680
Lee	Unincorporated areas of Lee County (15–04–5434P).	The Honorable Brian Hamman, Chairman, Lee County Board of Commissioners, District 4, P.O. Box 398, Fort Myers, FL 33902.	Lee County Community, Development Department, 1500 Monroe Street, Fort Meyers, FL 33901.	*http://www.msc.fema.gov/lomc*	Feb. 12, 2016	125124
Martin	City of Stuart (15–04–4536P).	The Honorable Kelli Glass Leighton, Mayor, City of Stuart, 121 Southwest Flagler Avenue, Stuart, FL 34994.	City Hall, 121 Southwest Flagler Avenue, Stuart, FL 34994.	*http://www.msc.fema.gov/lomc*	Jan. 29, 2016	120165
Miami-Dade	City of Miami Beach (15–04–3498P).	The Honorable Philip Levine, Mayor, City of Miami Beach, 1700 Convention Center Drive, Miami Beach, FL 33139.	City Hall, 1700 Convention Center Drive, Miami Beach, FL 33139.	*http://www.msc.fema.gov/lomc*	Feb. 5, 2016	120651
Monroe	Unincorporated areas of Monroe County (15–04–7977P).	The Honorable Danny Kolhage, Mayor, Monroe County Board of Commissioners, 530 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*http://www.msc.fema.gov/lomc*	Feb. 8, 2016	125129
Monroe	Unincorporated areas of Monroe County (15–04–8109P).	The Honorable Danny Kolhage, Mayor, Monroe County Board of Commissioners, 530 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*http://www.msc.fema.gov/lomc*	Feb. 10, 2016	125129
Monroe	Unincorporated areas of Monroe County (15–04–9028P).	The Honorable Danny Kolhage, Mayor, Monroe County Board of Commissioners, 530 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*http://www.msc.fema.gov/lomc*	Feb. 22, 2016	125129
Orange	City of Orlando (15–04–1761P).	The Honorable Buddy Dyer, Mayor, City of Orlando, P.O. Box 4990, Orlando, FL 32802.	Permitting Services Division, 400 South Orange Avenue, Orlando, FL 32839.	*http://www.msc.fema.gov/lomc*	Feb. 11, 2016	120186
Sarasota	City of Sarasota (15–04–6953P).	The Honorable Willie Charles Shaw, Mayor, City of Sarasota, 1565 1st Street, Room 101, Sarasota, FL 34236.	Building Department, 1565 1st Street, Sarasota, FL 34236.	*http://www.msc.fema.gov/lomc*	Feb. 26, 2016	125150
Georgia:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Columbia	Unincorporated areas of Columbia County (15–04–3830P).	The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, P.O. Box 498, Evans, GA 30809.	Columbia County Engineering Services Department, 630 Ronald Reagan Drive, Building A, East Wing, Evans, GA 30809.	*http://www.msc.fema.gov/lomc*	Feb. 18, 2016	130059
Columbia	Unincorporated areas of Columbia County (15–04–8626P).	The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, P.O. Box 498, Evans, GA 30809.	Columbia County Engineering Services Department, 630 Ronald Reagan Drive, Building A, East Wing, Evans, GA 30809.	*http://www.msc.fema.gov/lomc*	Feb. 18, 2016	130059
Kentucky: Jefferson	Louisville–Jefferson County Metro Government (15–04–6547P).	The Honorable Greg Fischer, Mayor, City of Louisville, 527 West Jefferson Street, 4th Floor, Louisville, KY 40202.	Metropolitan Sewer District, 700 West Liberty Street, Louisville, KY 40202.	*http://www.msc.fema.gov/lomc*	Feb. 11, 2016	210120
Massachusetts:						
Bristol	Town of North Attleborough (15–01–1818P).	The Honorable Paul Belham, Sr., Chairman, Town of North Attleborough Selectmen, 43 South Washington Street, North Attleborough, MA 02760.	Public Works Department, 49 Whiting Street, North Attleborough, MA 02760.	*http://www.msc.fema.gov/lomc*	Feb. 17, 2016	250059
Essex	City of Newburyport (15–01–1564P).	The Honorable Donna D. Holaday, Mayor, City of Newburyport, 60 Pleasant Street, Newburyport, MA 01950.	City Hall, 60 Pleasant Street, Newburyport, MA 01950.	*http://www.msc.fema.gov/lomc*	Feb. 16, 2016	250097
Montana: Carbon	Unincorporated areas of Carbon County (15–08–0428P).	The Honorable John Prinkki, Presiding Officer, Carbon County Board of Commissioners, P.O. Box 887, Red Lodge, MT 59068.	Carbon County Floodplain Department, P.O. Box 466, Red Lodge, MT 59068.	*http://www.msc.fema.gov/lomc*	Feb. 12, 2016	300139
New Mexico: Bernalillo.	City of Albuquerque (15–06–0268P).	The Honorable Richard J. Berry, Mayor, City of Albuquerque, 1 Civic Plaza Northwest, Albuquerque, NM 87102.	Development and Review Services Division, 600 2nd Street Northwest, Suite 201, Albuquerque, NM 87102.	*http://www.msc.fema.gov/lomc*	Feb. 3, 2016	350002
North Carolina:						
Wake	Town of Holly Spings (15–04–6644P).	The Honorable Richard G. Sears, Mayor, Town of Holly Springs, P.O. Box 8, Holly Springs, NC 27540.	Engineering Department, 128 South Main Street, Holly Springs, NC 27540.	*http://www.msc.fema.gov/lomc*	Feb. 4, 2016	370403
Wake	Unincorporated areas of Wake County (15–04–6644P).	The Honorable James West, Chairman, Wake County Board of Commissioners, P.O. Box 550, Raleigh, NC 27602.	Wake County Environmental Services Department, 336 Fayetteville Street, Raleigh, NC 27602.	*http://www.msc.fema.gov/lomc*	Feb. 4, 2016	370368
Pennsylvania:						
Berks	Borough of Bally (15–03–0023P).	The Honorable Glenn Mutter, President, Borough of Bally Council, 425 Chestnut Street, Bally, PA 19503.	Borough Hall, 425 Chestnut Street, Bally, PA 19503.	*http://www.msc.fema.gov/lomc*	Feb. 11, 2016	420125
Berks	Township of Washington (15–03–0023P).	The Honorable James P. Roma, Chairman, Township of Washington Board of Supervisors, 120 Barto Road, Barto, PA 19504.	Township Hall, 120 Barto Road, Barto, PA 19504.	*http://www.msc.fema.gov/lomc*	Feb. 11, 2016	421383
Chester	Township of Caln (15–03–2049P).	The Honorable John D. Contento, President, Township of Caln Board of Commissioners, 253 Municipal Drive, Thorndale, PA 19372.	Township Municipal Building, 253 Municipal Drive, Thorndale, PA 19372.	*http://www.msc.fema.gov/lomc*	Feb. 16, 2016	422247
South Carolina: Charleston.	Unincorporated areas of Charleston County (15–04–8691P).	The Honorable J. Elliot Summey, Chairman, Charleston County Board of Commissioners, 4045 Bridgeview Drive, Suite B254, North Charleston, SC 29405.	Charleston County Building Inspection Services Division, 4045 Bridgeview Drive, Suite A311, North Charleston, SC 29405.	*http://www.msc.fema.gov/lomc*	Feb. 22, 2016	455413
Texas:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Bexar	City of San Antonio (15–06–0789P).	The Honorable Ivy R. Taylor, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78284.	*http://www.msc.fema.gov/lomc*	Feb. 4, 2016	480045
Bexar	City of San Antonio (15–06–2623P).	The Honorable Ivy R. Taylor, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78284.	*http://www.msc.fema.gov/lomc*	Feb. 3, 2016	480045
El Paso	City of El Paso (15–06–1599P).	The Honorable Oscar Leeser, Mayor, City of El Paso, 300 North Campbell Street, El Paso, TX 79901.	City Hall, 300 North Campbell Street, El Paso, TX 79901.	*http://www.msc.fema.gov/lomc*	Feb. 5, 2016	480214
Houston	City of Houston (14–06–2581P).	The Honorable Annise D. Parker, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	Floodplain Management Office, 1002 Washington Avenue, 3rd Floor, Houston, TX 77002.	*http://www.msc.fema.gov/lomc*	Feb. 12, 2016	480296
Montgomery	Unincorporated areas of Montgomery County (14–06–2160P).	The Honorable Craig Doyal, Montgomery County Judge, 501 North Thompson Street, Suite 401, Conroe, TX 77301.	Montgomery County Permitting Department, 501 North Thompson Street, Suite 100, Conroe, TX 77301.	*http://www.msc.fema.gov/lomc*	Feb. 26, 2016	480483
Williamson	City of Leander (14–06–2567P).	The Honorable Christopher Fielder, Mayor, City of Leander, 200 West Willis Street, Leander, TX 78641.	City Hall, 200 West Willis Street, Leander, TX 78641.	*http://www.msc.fema.gov/lomc*	Feb. 5, 2016	481536

[FR Doc. 2015–31379 Filed 12–11–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2010–0050]

Recovery Policy, RP 9525.7, Labor Costs—Emergency Work

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability.

SUMMARY: This document provides notice of the availability of the final policy, Recovery Policy 9525.7, *Labor Costs—Emergency Work.* The Federal Emergency Management Agency (FEMA) published a notice of availability and request for comment for the proposed policy on August 13, 2010 at 75 FR 49508.

DATES: This policy is effective November 19, 2015.

ADDRESSES: This final policy is available online at *http://www.regulations.gov* and on FEMA's Web site at *http://www.fema.gov.* The proposed and final policy, all related **Federal Register** Notices, and all public comments received during the comment period are available at *http://www.regulations.gov* under docket ID FEMA–2010–0050. A hard copy of the final policy may be viewed at the Office of the Chief Counsel, Federal Emergency Management Agency, Room 8NE, 500 C Street SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: William Roche, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472–3100, 202–646–3834.

SUPPLEMENTARY INFORMATION: This policy provides guidance on eligible labor costs for an applicant's permanent, temporary, and contract employees who perform emergency work (Category A and Category B). Changes to this final policy from the previous version are as follows: Additional authority cited in section V; the addition of a definitions section (section VII) to define terms used in the policy; revisions to the policy section (section VIII) that establish requirements for reimbursement based on predisaster labor policies; a clarification citing the authority for mutual aid agreements to which the Recipient/Subrecipient must comply; provides flexibility for reimbursement of costs for personnel that preposition assets prior to an event to support the performance of eligible emergency work; deletes ''standby time'' as an ineligible cost; and addresses the issue of 24-hour work shifts for firefighters and other personnel performing emergency work when supported and determined reasonable. FEMA received one comment on the proposed policy.

Authority: 42 U.S.C. 5121–5207 and implementing regulations of 44 CFR part 206.

Dated: December 8, 2015.

Joshua Dozor,

Acting Deputy Associate Administrator, Office of Policy and Program Analysis, Federal Emergency Management Agency.

[FR Doc. 2015–31381 Filed 12–11–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood

Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of April 19, 2016 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 23, 2015.

Roy E. Wright,

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

I. Non-watershed-based studies:

Community	Community map repository address
Marion County, Indiana (All Jurisdictions) **Docket No.: FEMA–B–1426**	
City of Beech Grove	City Hall, 806 Main Street, Beech Grove, IN 46107.
City of Indianapolis	City Hall, 1200 Madison Avenue, Suite 100, Indianapolis, IN 46225.
City of Lawrence	City Hall, 9001 East 59th Street, Lawrence, IN 46216.
Town of Speedway	Town Hall, 1450 North Lynhurst Drive, Speedway, IN 46224.
Calhoun County, Iowa, and Incorporated Areas **Docket No.: FEMA–B–1436**	
City of Farnhamville	City Hall, 240 Hardin Street, Farnhamville, IA 50538.
City of Knierim	Fire Station, 203 Center Street, Knierim, IA 50552.
City of Lake City	City Hall, 105 North Center Street, Lake City, IA 51449.
City of Lohrville	City Hall, 605 2nd Street, Lohrville, IA 51453.
City of Manson	City Hall, 1015 13th Street, Manson, IA 50563.
City of Pomeroy	City Hall, 114 South Ontario Street, Pomeroy, IA 50575.
City of Rinard	Calhoun County Engineer's Office, 416 4th Street, Suite 7, Rockwell City, IA 50579.
City of Rockwell City	City Hall, 335 Main Street, Rockwell City, IA 50579.
City of Somers	Calhoun County Engineer's Office, 416 4th Street, Suite 7, Rockwell City, IA 50579.
Unincorporated Areas of Calhoun County	Calhoun County Engineer's Office, 416 4th Street, Suite 7, Rockwell City, IA 50579.
Greene County, Iowa, and Incorporated Areas **Docket No.: FEMA–B–1436**	
City of Churdan	City Hall, 507 Sand Street, Churdan, IA 50050.
City of Jefferson	City Hall, 220 North Chestnut Street, Jefferson, IA 50129.
City of Paton	Greene County Courthouse, 114 North Chestnut Street, Jefferson, IA 50129.
City of Ralston	Greene County Courthouse, 114 North Chestnut Street, Jefferson, IA 50129.
City of Rippey	Greene County Courthouse, 114 North Chestnut Street, Jefferson, IA 50129.
Unincorporated Areas of Greene County	Greene County Courthouse, 114 North Chestnut Street, Jefferson, IA 50129.

Community	Community map repository address
Marquette County, Michigan (All Jurisdictions) Docket No.: FEMA–B–1292	
Charter Township of Chocolay	Chocolay Township Office, 5010 U.S. Highway 41 South, Marquette, MI 49855.
Charter Township of Marquette	Charter Township Hall, 1000 Commerce Drive, Marquette, MI 49855.
City of Marquette	City Hall, 300 West Baraga Avenue, Marquette, MI 49855.
Township of Ely	Ely Township Hall, 1555 County Road 496, Ishpeming, MI 49849.
Township of Powell	Powell Township Hall, 101 Bensinger Street, Big Bay, MI 49808.
Township of Sands	Sands Township Hall, 987 South Michigan Route 553, Gwinn, MI 49841.
Township of Skandia	Township Hall, 224 Kreiger Drive, Skandia, MI 49885.
Township of West Branch	West Branch Township Hall, 1016 County Road 545 North, Skandia, MI 49885.
Summit County, Ohio, and Incorporated Areas Docket No.: FEMA–B–1315 and B–1452	
City of Akron	City Hall, 166 South High Street, Akron, OH 44308.
City of Barberton	Engineering Department, 576 West Park Avenue, Barberton, OH 44203.
City of Cuyahoga Falls	Engineering Department, 2310 Second Street, Cuyahoga Falls, OH 44221.
City of Fairlawn	City Hall, 3487 South Smith Road, Fairlawn, OH 44333.
City of Green	Central Administration Building, 1755 Town Park Boulevard, Uniontown, OH 44685.
City of Hudson	City Hall, 115 Executive Parkway, Suite 400, Hudson, OH 44236.
City of Munroe Falls	City Hall, 43 Munroe Falls Avenue, Munroe Falls, OH 44262.
City of New Franklin	City Hall, 5611 Manchester Road, Akron, OH 44319.
City of Norton	Building and Zoning Department, 4060 Columbia Woods Drive, Norton, OH 44203.
City of Stow	Engineering Department, 3760 Darrow Road, Stow, OH 44224.
City of Tallmadge	Planning and Zoning Department, 46 North Avenue, Tallmadge, OH 44278.
City of Twinsburg	City Hall, 10075 Ravenna Road, Twinsburg, OH 44087.
Unincorporated Areas of Summit County	Building Standards Department, 1030 East Tallmadge Avenue, Akron, OH 44310.
Village of Boston Heights	Village Hall, 45 East Boston Mills Road, Boston Heights, OH 44236.
Village of Clinton	Village Hall, 7871 Main Street, Clinton, OH 44216.
Village of Lakemore	Municipal Building, 1400 Main Street, Lakemore, OH 44250.
Village of Mogadore	Village Hall, 135 South Cleveland Avenue, Mogadore, OH 44260.
Village of Peninsula	Village Hall, 1582 Main Street, Peninsula, OH 44264.
Village of Reminderville	Village Hall, 3382 Glenwood Boulevard, Reminderville, OH 44202.
Village of Richfield	Planning and Zoning Department, 4410 West Streetsboro Road, Richfield, OH 44286.
Village of Silver Lake	Village Hall, 2961 Kent Road, Silver Lake, OH 44224.

[FR Doc. 2015–31378 Filed 12–11–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2015–N227; FXES11130100000–167–FF01E00000]

Endangered Species; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for recovery permits to conduct activities with the purpose of enhancing the survival of endangered species. The Endangered Species Act of 1973, as amended (Act), prohibits certain activities with endangered species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing such permits.

DATES: To ensure consideration, please send your written comments by January 13, 2016.

ADDRESSES: Program Manager, Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181. Please refer to the permit number for the application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Fish and Wildlife Biologist, at the above address, or by telephone (503–231–6131) or fax (503–231–6243).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits certain activities with respect to endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Act provides for certain permits, and requires that we invite public comment before issuing these permits for endangered species.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the permittee to conduct activities (including take or interstate commerce) with respect to U.S. endangered or threatened species for scientific

purposes or enhancement of propagation or survival. Our regulations implementing section 10(a)(1)(A) of the Act for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, and Federal agencies and the public to comment on the following applications. Please refer to the permit number for the application when submitting comments.

Documents and other information submitted with these applications are available for review by request from the Program Manager for Restoration and Endangered Species Classification at the address listed in the **ADDRESSES** section of this notice, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552).

Permit Number: TE–702631

Applicant: Assistant Regional Director, Ecological Services, Fish and Wildlife Service, Pacific Region, Portland, Oregon.

The applicant requests a permit amendment to allow Service employees and their designated agents to remove and reduce to possession (collect plants and their parts) the following Micronesian plant species and to take the following Micronesian animal species:

Scientific name	Common name(s)
Plants:	NCN.
Eugenia bryanii	NCN.
Hedyotis megalantha	pao dedu [Ch], pao doodu.[CI]
Heritiera longipetiolata	ufa halomtanu [Ch], ufa hålom tano.[CI]
Phyllanthus saffordii	NCN.
Psychotria malaspinae	aplokating palaoan.[Ch/CI]
Solanum guamense	NCN.
Tinospora homosepala	NCN.
Animals:	
Emballonura semicaudata rotensis	Pacific sheath-tailed bat (Mariana subspecies), payeyi [Ch], paischeey.[CI]
Emoia slevini	Slevin's skink, Marianas Emoia, Marianas skink, gualiik halumtanu.[Ch], gholuuf [CI]
Hypolimnas octocula mariannensis	Mariana eight-spot butterfly, ababbang [Ch], Libweibwogh.[CI]
Vagrans egistina	Mariana wandering butterfly, ababbang [Ch], Libweibwogh.[CI]
Ischnura luta	Rota blue damselfly, dulalas Luta [Ch], dulalas Luuta.[CI]
Partula gibba	humped tree snail, akaleha [Ch], denden.[CI]
Partula langfordi	Langford's tree snail, akaleha [Ch], denden.[CI]
Partula radiolata	Guam tree snail, akaleha [Ch], denden.[CI]
Samoana fragilis	fragile tree snail, akaleha dogas [Ch], denden.[CI]

NCN = no common name.
Ch = Chamorro name.
CI = Carolinian name.

The purpose of these activities is to carry out recovery activities for scientific purposes or for enhancing the species' propagation or survival in Guam and the Commonwealth of the Northern Marianas Islands.

Permit Number: TE–40123A

Applicant: U.S. Army Garrison, Pohakuloa Training Area, Hilo, Hawaii.

The applicant requests a permit renewal to remove and reduce to possession (collect plants and their parts) *Asplenium fragile* var. *insulare* (no common name (ncn)), *Haplostachys haplostachya* (honohono), *Kadua coriacea* (kioele), *Isodendrion hosakae* (aupaka), *Lipochaeta venosa* (ncn), *Neraudia ovata* (ncn), *Portulaca sclerocarpa* (poe) *Silene lanceolata* (ncn), *Solanum incompletum* (popolo ku mai), *Spermolepis hawaiiensis* (ncn), *Stenogyne angustifolia* var. *angustifolia* (ncn), *Tetramolopium arenarium* (ncn), *Vigna o-wahuensis* (ncn), and *Zanthoxylum hawaiiense* (ae) at Pohakuloa Training Area, Hawaii Island, Hawaii, in conjunction with ex situ genetic storage, controlled propagation, and outplanting for the purpose of enhancing the species' survival.

Permit Number: TE–80996B

Applicant: Marguerite Butler-Higa, University of Hawaii, Honolulu, Hawaii.

The applicant requests a new recovery permit renewal to take (capture, mark release, and collect bio-samples) blackline Hawaiian damselfly (*Megalagrion nigrohamatum nigrolineatum*), Oceanic Hawaiian damselfly (*Megalagrion oceanicum*), and crimson Hawaiian damselfly (*Megalagrion leptodemas*) in conjunction with population and genetic studies for the purpose of enhancing the species' survival.

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: December 4, 2015.

Richard Hannan,

Acting Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2015–31424 Filed 12–11–15; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[156A2100DD/AAKC001030/ A0A501010.999900.253G]

Enterprise Rancheria of Maidu Indians of California Liquor Control Statute

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the liquor control ordinance of the Enterprise Rancheria of Maidu Indians of California. The liquor control statute regulates and controls the possession, sale, manufacture, and distribution of alcohol in conformity with the laws of the State of California.

DATES: This code shall become effective December 14, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Harley Long, Tribal Government Officer, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825, Telephone: (916) 978–6000, Fax: (916) 978–6099; or Ms. Laurel Iron Cloud, Chief, Division of Tribal Government Services, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW., MS–4513–MIB, Washington, DC 20240, Telephone: (202) 513–7641.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor control ordinances for the purpose of regulating liquor transactions in Indian country. The Enterprise Rancheria of Maidu Indians of California Tribal Council duly adopted the Enterprise Rancheria of Maidu Indians of California Liquor Control Statute on April 10, 2015.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Enterprise Rancheria of Maidu Indians of California Tribal Council duly adopted by Resolution the Enterprise Rancheria of Maidu Indians of California Liquor Control Statute by Resolution No. 15–05 on April 10, 2015.

Dated: December 3, 2015.

Kevin Washburn,

Assistant Secretary—Indian Affairs.

Enterprise Rancheria of Maidu Indians of California Liquor Control Statue shall read as follows:

ARTICLE ONE

INTRODUCTION

Section 1. Authority

This Statute is enacted pursuant to the Act of August 15, 1953 (Pub. L. 83–277, 67 Stat. 586, 18 U.S.C. 1161) and by powers vested in the Tribal Council of the Estom Yumeka Maidu Tribe of the Enterprise Rancheria (''Tribal Council'') to develop, adopt and enforce statutes as authorized under Article VI, Section 3 of the Constitution of the Enterprise Rancheria—Estom Yumeka Maidu, approved May 5, 1996 and revised as of October 29, 2003.

Section 2. Purpose

The purpose of this Statute is to regulate and control the possession, sale, manufacture and distribution of liquor within Tribal Trust Lands, in order to permit alcohol sales by tribally owned and operated enterprises and private lessees, and at tribally approved special events. Enactment of a liquor control statute will help provide a source of revenue for the continued operation of the tribal government, the delivery of governmental services, and the economic viability of tribal enterprises.

Section 3. Short Title

This Statute shall be known and cited as the ''Liquor Control Statute.''

Section 4. Jurisdiction

This Statute shall apply to all lands now or in the future under the governmental authority of the Tribe, including Tribal Trust Lands.

Section 5. Application of 18 U.S.C. 1161

By adopting this Statute, the Tribe hereby regulates the sale, manufacturing, distribution, and consumption of liquor while ensuring that such activity conforms with all applicable laws of the State of California as required by 18 U.S.C. 1161 and the United States.

Section 6. Declaration of Public Policy; Findings

The Tribal Council enacts this Statute, based upon the following findings:

(a) The distribution, possession, consumption and sale of liquor on the Tribe's Reservation is a matter of special concern to the Tribe.

(b) The Tribe is the beneficial owner of Tribal Trust Lands, upon a portion of which the Tribe plans to construct and operate a gaming facility and related entertainment and lodging facilities.

(c) The Tribe's gaming facility will serve as an integral and indispensable part of the Tribe's economy, providing revenue to the Tribe's government and employment to tribal citizens and others in the local community.

(d) Federal law, as codified at 18 U.S.C. 1154 and 1161, currently prohibits the introduction of liquor into Indian country, except in accordance with State law and the duly enacted law of the Tribe.

(e) The Tribe recognizes the need for strict control and regulation of liquor transactions on Tribal Trust Lands because of potential problems associated with the unregulated or inadequate regulated sale, possession, distribution, and consumption of liquor.

(f) Regulating the possession, sale, distribution and manufacture of liquor within Tribal Trust Lands is also consistent with the Tribe's interest in ensuring the peace, safety, health, and general welfare of the Tribe and its citizens.

(g) Tribal control and regulation of liquor on Tribal Trust Lands is consistent with the Tribe's custom and tradition of controlling the possession and consumption of liquor on tribal lands and at tribal events.

(h) The purchase, distribution, and sale of liquor on Tribal Trust Lands shall take place only at duly licensed (i) tribally owned enterprises, (ii) other enterprises operating pursuant to a lease with the Tribe, and (iii) tribally-sanctioned events.

(i) The sale or other commercial manufacture or distribution of liquor on Tribal Trust Lands, other than sales, manufacture, and distributions made in strict compliance with this Statute, is detrimental to the health, safety, and general welfare of the citizens of the Tribe, and is prohibited.

ARTICLE TWO

DEFINITIONS

Section 1. Definitions

As used in this Statute, the terms below are defined as follows:

(a) Alcohol means ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, in any form, and regardless of source or the process used for its production.

(b) Alcoholic beverage means all alcohol, spirits, liquor, wine, beer and any liquid or solid containing alcohol, spirits, liquor, wine, or beer, and which contains one-half of one percent or more of alcohol by volume and that is fit for human consumption, either alone or when diluted, mixed, or combined with any other substance(s).

(c) Compact means a Tribal-State compact between the State and the Tribe that governs the conduct of class III gaming activities on that portion of

the Tribal Trust Lands recognized as ''Indian lands'' pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. 2701, *et seq.,* or such other procedures prescribed by the Secretary under the Act pursuant to 25 U.S.C. 2710(d)(7)(B)(vii).

(d) License means, unless otherwise stated, a license issued by the Tribe in accordance with this Statute.

(e) Liquor means any alcoholic beverage, as defined under this Section.

(f) Person means any individual or entity, whether Indian or non-Indian, receiver, assignee, trustee in bankruptcy, trust, estate, firm, corporation, partnership, joint corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise, and any other Indian tribe, band or group. The term shall also include the businesses of the Tribe.

(g) Sale and sell means the transfer for consideration of any kind, including by exchange or barter.

(h) Secretary means the Secretary of the United States Department of the Interior.

(i) State means the State of California.

(j) Tribal Trust Lands means and includes all lands held by the United States in trust for the Tribe now or in the future.

(k) Tribe means the Estom Yumeka Maidu Tribe of the Enterprise Rancheria, a federally recognized Indian tribe, listed in the **Federal Register** as ''Enterprise Rancheria of Maidu Indians of California.''

ARTICLE THREE

LIQUOR SALES, POSSESSION, & MANUFACTURE

Section 1. Possession of Alcohol

The introduction and possession of alcoholic beverages shall be lawful within Tribal Trust Lands; provided that such introduction or possession is in conformity with the laws of the State.

Section 2. Retail Sales of Alcohol

The sale of alcoholic beverages shall be lawful within Tribal Trust Lands; provided that such sales are in conformity with the laws of the State and are made pursuant to a license issued by the Tribe.

Section 3. Manufacture of Alcohol

The manufacture of beer and wine shall be lawful within Tribal Trust Lands, provided that such manufacture is in conformity with the laws of the State and pursuant to a license issued by the Tribe.

Section 4. Age Limits

The legal age for possession or consumption of alcohol within Tribal Trust Lands shall be the same as that of the State, which is currently 21 years. No person under the age of 21 years shall purchase, possess or consume any alcoholic beverage. If there is any conflict between State law and the terms of the Compact, if any, regarding the age limits for alcohol possession or consumption, the age limits in the Compact shall govern for purposes of this Statute.

ARTICLE FOUR

LICENSING

Section 1. Licensing

The Tribal Council shall have the power to establish procedures and standards for tribal licensing of liquor sales within Tribal Trust Lands, including the setting of a license fee schedule, and shall have the power to publish and enforce such standards; provided that no tribal license shall issue except upon showing of satisfactory proof that the applicant is duly licensed by the State. The fact that an applicant for a tribal license possesses a license issued by the State shall not provide the applicant with an entitlement to a tribal license. The Tribal Council may in its discretion set standards which are more, but in no case less, stringent than those of the State.

ARTICLE FIVE

ENFORCEMENT

Section 1. Enforcement

The Tribal Council shall have the power to develop, enact, promulgate and enforce regulations as necessary for the enforcement of this Statute and to protect the public health, welfare and safety of the Tribe, provided that all such regulations shall conform to and not be in conflict with any applicable tribal, federal or state law. Regulations enacted pursuant to this Statute may include provisions for suspension or revocation of tribal liquor licenses, reasonable search and seizure provisions, and civil and criminal penalties for violations of this Statute to the full extent permitted by federal law and consistent with due process.

Tribal law enforcement personnel and security personnel duly authorized by the Tribal Council shall have the authority to enforce this Statute by confiscating any liquor sold, possessed, distributed, manufactured or introduced within Tribal Trust Lands in violation of this Statute or of any regulations duly adopted pursuant to this Statute.

The Tribal Council shall have the exclusive jurisdiction to hold hearings on violations of this Statute and any procedures or regulations adopted pursuant to this Statute; to promulgate appropriate procedures governing such hearings; to determine and enforce penalties or damages for violations of this Statute; and to delegate to a subordinate hearing officer or panel the authority to take any or all of the foregoing actions on its behalf.

ARTICLE SIX

TAXES

Section 1. Taxation

Nothing contained in this Statute is intended to, nor does in any way, limit or restrict the Tribe's ability to impose any tax upon the sale or consumption of alcohol. The Tribe retains the right to impose such taxes by appropriate statute to the full extent permitted by federal law.

ARTICLE SEVEN

MISCELLANEOUS PROVISIONS

Section 1. Sovereign Immunity Preserved

Nothing contained in this Statute is intended to, nor does in any way, limit, alter, restrict, or waive the sovereign immunity of the Tribe or any of its agencies, agents or officials from unconsented suit or action of any kind.

Section 2. Conformance with Applicable Laws

All acts and transactions under this Statute shall be in conformity with the Compact, if any, and laws of the State to the extent required by 18 U.S.C. 1161 and with all Federal laws regarding alcohol in Indian Country.

Section 3. Effective Date

This Statute shall be effective as of the date on which the Secretary certifies this Statute and publishes the same in the **Federal Register**.

Section 4. Repeal of Prior Acts

All prior enactments of the Tribal Council, including tribal resolutions, policies, regulations, or statutes pertaining to the subject matter set forth in this Statute are hereby rescinded.

Section 5. Amendments

This Statute may only be amended pursuant to an amendment duly enacted by the Tribal Council and certification by the Secretary and publication in the **Federal Register**, if required.

Section 6. Severability and Savings Clause

If any part or provision of this Statute is held invalid, void, or unenforceable by a court of competent jurisdiction, such adjudication shall not be held to render such provisions inapplicable to other persons or circumstances. Further, the remainder of the Statute shall not be affected and shall continue to remain in full force and effect.

[FR Doc. 2015–31313 Filed 12–11–15; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167 A2100DD/AAKC001030/ A0A501010.999900]

Renewal of Agency Information Collection for Water Delivery and Electric Service Data for the Operation of Irrigation and Power Projects and Systems

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is seeking comments on the renewal of Office of Management and Budget (OMB) approval for the collection of information for Electrical Service Application authorized by OMB Control Number 1076–0021 and Water Request authorized by OMB Control Number 1076–0141. Both of these information collections expire March 31, 2016.

DATES: Submit comments on or before February 12, 2016.

ADDRESSES: You may submit comments on the information collection to Yulan Jin, Chief, Division of Water and Power, Office of Trust Services, Mail Stop 4655—MIB, 1849 C Street NW., Washington, DC 20240; telephone: (202) 219–0941 or email: *yulan.jin@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Yulan Jin, telephone: (202) 219–0941 or email: *yulan.jin@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The BIA owns, operates, and maintains three electric power utilities that provide a service to the end user. The BIA also owns, operates, and maintains 15 irrigation projects that provide a service to the end user. To be able to properly bill for the services provided, the BIA must collect customer information to identify the individual responsible for repaying the government the costs of delivering the service, and billing for those costs. Additional information necessary for providing the service is the location of the service delivery. The Debt Collection Improvement Act of 1996 (DCIA) requires that certain information be collected from individuals and businesses doing business with the government. This information includes the taxpayer identification number for possible future use to recover delinquent debt. To implement the DCIA requirement to collect customer information, the BIA has included a section concerning the collection of information in its regulations governing its electrical power utilities (25 CFR 175) and in its regulations governing its irrigation projects (25 CFR 171).

II. Request for Comments

The BIA requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0021.

Title: Electrical Service Application, 25 CFR 175.

Brief Description of Collection: In order for electric power consumers to be served, information is needed by the BIA to operate and maintain its electric power utilities and fulfill reporting requirements.

Section 175.6 and 175.22 of 25 CFR part 175, Indian electric power utilities, specifies the information collection requirement. Power consumers must apply for electric service. The information to be collected includes: Name; electric service location, and other operational information identified in the local administrative manuals. All information is collected from each electric power consumer.

Type of Review: Extension without change of currently approved collection.

Respondents: BIA electric power consumers—individuals and businesses.

Number of Respondents: 3,000 per year.

Estimated Time per Response: ½ hour.

Frequency of Response: The information is collected once, unless the respondent requests new electrical service elsewhere or if it has been disconnected for failure to pay their electric bill.

Obligation to respond: Responses are required to receive or maintain a benefit.

Estimated Total Annual Hour Burden: 1,500 hours.

* * * * *

OMB Control Number: 1076–0141.

Title: Water Request, 25 CFR 171.

Brief Description of Collection: In order for irrigators to receive water deliveries, information is needed by the BIA to operate and maintain its irrigation projects and fulfill reporting requirements. Section 171.140 and other sections cited in section 171.40 of 25 CFR 171, [Irrigation] Operation and Maintenance, specifies the information collection requirement. Water users must apply for water delivery and for a number of other associated services, such as, subdividing a farm unit, requesting leaching service, requesting water for domestic or stock purposes, building structures or fences in BIA rights-of-way, requesting payment plans on bills, establishing a carriage agreement with a third-party, negotiating irrigation incentives leases, and requesting an assessment waiver. The information to be collected includes: Full legal name; correct mailing address; taxpayer identifying number; water delivery location; if subdividing a farm unit—a copy of the recorded plat or map of the subdivision where water will be delivered; the time and date of requested water delivery; duration of water delivery; amount of water delivered; rate of water flow; number of acres irrigated; crop statistics; any other agreements allowed under 25 CFR part 171; and any additional information required by the local project

office that provides your service. The information water users submit is for the purpose of obtaining or retaining a benefit, namely irrigation water.

Type of Review: Extension without change of currently approved collection.

Respondents: Water users of BIA irrigation project—individual and businesses.

Number of Respondents: 6,539 per year.

Number of Responses: 27,075 per year.

Estimated Time per Response: A range of 18 minutes to 6 hours, depending on the specific service being requested.

Frequency of Response: On occasion through the irrigation season, averaging approximately two times per year.

Obligation to respond: Responses are required to receive or maintain a benefit.

Estimated Total Annual Hour Burden: 14,059 hours.

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2015–31343 Filed 12–11–15; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167 A2100DD/AAKC001030/ A0A501010.999900]

North Fork Rancheria of Mono Indians of California Liquor Control Statute

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the liquor control statute of the North Fork Rancheria of Mono Indians of California. The liquor control statute regulates and controls the possession, sale, manufacture, and distribution of alcohol in conformity with the laws of the State of California for the purpose of generating new Tribal revenues.

DATES: This code shall become effective December 14, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Harley Long, Tribal Government Officer, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825, Telephone: (916) 978–6000, Fax: (916) 978–6099; or Ms. Laurel Iron Cloud, Chief, Division of Tribal Government Services, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW., MS–4513–MIB, Washington, DC 20240, Telephone: (202) 513–7641.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Pub. Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The North Fork Rancheria of Mono Indians of California Tribal Council duly adopted the North Fork Rancheria of Mono Indians of California Liquor Ordinance on July 07, 2014.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the North Fork Rancheria of Mono Indians of California Tribal Council duly adopted by Resolution the North Fork Rancheria of Mono Indians of California Liquor Control Statute by Resolution No. 14–32 dated July 07, 2014.

Dated: December 3, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

ARTICLE ONE INTRODUCTION

Section 1. Authority

This Statute is enacted pursuant to the Act of August 15, 1953 (Pub. L. 83–277, 67 Stat. 586, 18 U.S.C. 1161) and by powers vested in the Tribal Council of the North Fork Rancheria (''Tribal Council'') to develop, adopt and enforce statutes as authorized under Article VI, Section 1 of the Constitution of the North Fork Rancheria, adopted May 18, 1996.

Section 2. Purpose

The purpose of this Statute is to regulate and control the possession, sale, manufacture and distribution of liquor within Tribal Trust Lands, in order to permit alcohol sales by tribally owned and operated enterprises and private lessees, and at tribally approved special events. Enactment of a liquor control statute will help provide a source of revenue for the continued operation of the tribal government, the delivery of governmental services, and the economic viability of tribal enterprises.

Section 3. Short Title

This Statute shall be known and cited as the ''Liquor Control Statute.''

Section 4. Jurisdiction

This Statute shall apply to all lands now or in the future under the governmental authority of the Tribe, including Tribal Trust Lands.

Section 5. Application of 18 U.S.C. 1161

By adopting this Statute, the Tribe hereby regulates the sale, manufacturing, distribution, and consumption of liquor while ensuring that such activity conforms with all applicable laws of the State of California as required by 18 U.S.C. § 1161 and the United States.

Section 6. Declaration of Public Policy; Findings

The Tribal Council enacts this Statute, based upon the following findings:

(a) The distribution, possession, consumption and sale of liquor on the Tribe's Reservation is a matter of special concern to the Tribe.

(b) The Tribe is the beneficial owner of Tribal Trust Lands, upon which the Tribe plans to construct and operate a gaming facility and related entertainment and lodging facilities.

(c) The Tribe's gaming facility will serve as an integral and indispensable part of the Tribe's economy, providing revenue to the Tribe's government and employment to tribal citizens and others in the local community.

(d) Federal law, as codified at 18 U.S.C. 1154 and 1161, currently prohibits the introduction of liquor into Indian country, except in accordance with State law and the duly enacted law of the Tribe.

(e) The Tribe recognizes the need for strict control and regulation of liquor transactions on Tribal Trust Lands because of potential problems associated with the unregulated or inadequate regulated sale, possession, distribution, and consumption of liquor.

(f) Regulating the possession, sale, distribution and manufacture of liquor within Tribal Trust Lands is also consistent with the Tribe's interest in ensuring the peace, safety, health, and general welfare of the Tribe and its citizens.

(g) Tribal control and regulation of liquor on Tribal Trust Lands is consistent with the Tribe's custom and tradition of controlling the possession and consumption of liquor on tribal lands and at tribal events.

(h) The purchase, distribution, and sale of liquor on Tribal Trust Lands shall take place only at duly licensed (i) tribally owned enterprises, (ii) other enterprises operating pursuant to a lease with the Tribe, and (iii) tribally-sanctioned events.

(i) The sale or other commercial manufacture or distribution of liquor on Tribal Trust Lands, other than sales, manufacture, and distributions made in strict compliance with this Statute, is detrimental to the health, safety, and

general welfare of the citizens of the Tribe, and is prohibited.

ARTICLE TWO DEFINITIONS

Section 1. Definitions

As used in this Statute, the terms below are defined as follows:

(a) *Alcohol* means ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, in any form, and regardless of source or the process used for its production.

(b) *Alcoholic beverage* means all alcohol, spirits, liquor, wine, beer and any liquid or solid containing alcohol, spirits, liquor, wine, or beer, and which contains one-half of one percent or more of alcohol by volume and that is fit for human consumption, either alone or when diluted, mixed, or combined with any other substance(s).

(c) *Compact* means the Tribal-State compact between the State and the Tribe that governs the conduct of class III gaming activities on that portion of the Tribal Trust Lands recognized as ''Indian lands'' pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. 2701, *et seq.*

(d) *License* means, unless otherwise stated, a license issued by the Tribe in accordance with this Statute.

(e) *Liquor* means any alcoholic beverage, as defined under this Section.

(f) *Person* means any individual or entity, whether Indian or non-Indian, receiver, assignee, trustee in bankruptcy, trust, estate, firm, corporation, partnership, joint corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise, and any other Indian tribe, band or group. The term shall also include the businesses of the Tribe.

(g) *Sale and sell* means the transfer for consideration of any kind, including by exchange or barter.

(h) *State* means the State of California.

(i) *Tribal Trust Lands* means and includes all lands held by the United States in trust for the Tribe now or in the future.

ARTICLE THREE LIQUOR SALES, POSSESSION, & MANUFACTURE

Section 1. Possession of Alcohol

The introduction and possession of alcoholic beverages shall be lawful within Tribal Trust Lands; provided that such introduction or possession is in conformity with the laws of the State.

Section 2. Retail Sales of Alcohol

The sale of alcoholic beverages shall be lawful within Tribal Trust Lands; provided that such sales are in conformity with the laws of the State and are made pursuant to a license issued by the Tribe.

Section 3. Manufacture of Alcohol

The manufacture of beer and wine shall be lawful within Tribal Trust Lands, provided that such manufacture is in conformity with the laws of the State and pursuant to a license issued by the Tribe.

Section 4. Age Limits

The legal age for possession or consumption of alcohol within Tribal Trust Lands shall be the same as that of the State, which is currently 21 years. No person under the age of 21 years shall purchase, possess or consume any alcoholic beverage. If there is any conflict between State law and the terms of the Compact regarding the age limits for alcohol possession or consumption, the age limits in the Compact shall govern for purposes of this Statute.

ARTICLE FOUR LICENSING

Section 1. Licensing

The Tribal Council shall have the power to establish procedures and standards for tribal licensing of liquor sales within Tribal Trust Lands, including the setting of a license fee schedule, and shall have the power to publish and enforce such standards; provided that no tribal license shall issue except upon showing of satisfactory proof that the applicant is duly licensed by the State. The fact that an applicant for a tribal license possesses a license issued by the State shall not provide the applicant with an entitlement to a tribal license. The Tribal Council may in its discretion set standards which are more, but in no case less, stringent than those of the State.

ARTICLE FIVE ENFORCEMENT

Section 1. Enforcement

The Tribal Council shall have the power to develop, enact, promulgate, and enforce regulations as necessary for the enforcement of this Statute and to protect the public health, welfare, and safety of the Tribe, provided that all such regulations shall conform to and not be in conflict with any applicable tribal, Federal, or State law. Regulations enacted pursuant to this Statute may include provisions for suspension or revocation of tribal liquor licenses, reasonable search and seizure provisions, and civil and criminal penalties for violations of this Statute to the full extent permitted by Federal law and consistent with due process.

Tribal law enforcement personnel and security personnel duly authorized by the Tribal Council shall have the authority to enforce this Statute by confiscating any liquor sold, possessed, distributed, manufactured, or introduced within Tribal Trust Lands in violation of this Statute or of any regulations duly adopted pursuant to this Statute.

The Tribal Council shall have the exclusive jurisdiction to hold hearings on violations of this Statute and any procedures or regulations adopted pursuant to this Statute; to promulgate appropriate procedures governing such hearings; to determine and enforce penalties or damages for violations of this Statute; and to delegate to a subordinate hearing officer or panel the authority to take any or all of the foregoing actions on its behalf.

ARTICLE SIX TAXES

Section 1. Taxation

Nothing contained in this Statute is intended to, nor does in any way, limit or restrict the Tribe's ability to impose any tax upon the sale or consumption of alcohol. The Tribe retains the right to impose such taxes by appropriate statute to the full extent permitted by Federal law.

ARTICLE SEVEN MISCELLANEOUS PROVISIONS

Section 1. Sovereign Immunity Preserved

Nothing contained in this Statute is intended to, nor does in any way, limit, alter, restrict, or waive the sovereign immunity of the Tribe or any of its agencies, agents or officials from unconsented suit or action of any kind.

Section 2. Conformance with Applicable Laws

All acts and transactions under this Statute shall be in conformity with the Compact and laws of the State to the extent required by 18 U.S.C. 1161 and with all Federal laws regarding alcohol in Indian Country.

Section 3. Effective Date

This Statute shall be effective as of the date on which the Secretary of the Interior certifies this Statute and publishes the same in the **Federal Register**.

Section 4. Repeal of Prior Acts

All prior enactments of the Tribal Council, including tribal resolutions, policies, regulations, or statutes pertaining to the subject matter set forth in this Statute are hereby rescinded.

Section 5. Amendments

This Statute may only be amended pursuant to an amendment duly enacted by the Tribal Council and certification by the Secretary of the Interior and publication in the **Federal Register**, if required.

Section 6. Severability and Savings Clause

If any part or provision of this Statute is held invalid, void, or unenforceable by a court of competent jurisdiction, such adjudication shall not be held to render such provisions inapplicable to other persons or circumstances. Further, the remainder of the Statute shall not be affected and shall continue to remain in full force and effect.

[FR Doc. 2015–31311 Filed 12–11–15; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMP0000 L91420000.PP0000 16XL5573PF]

Notice of Public Meeting, Pecos District Resource Advisory Council Meeting, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, Bureau of Land Management's (BLM) Pecos District Resource Advisory Council (RAC) will meet as indicated below.

DATES: The RAC will meet on January 21, 2016, at the Roswell Field Office, 2909 West 2nd Street, Roswell, New Mexico, 88201, from 9 a.m.–12:30 p.m. The public may send written comments to the RAC at the BLM Pecos District, 2909 West 2nd Street, Roswell, New Mexico, 88201.

FOR FURTHER INFORMATION CONTACT: Howard Parman, Pecos District Office, Bureau of Land Management, 2909 West 2nd Street, Roswell, New Mexico 88201, 575–627–0212. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8229 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 10-member Pecos District RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the BLM's Pecos District. Planned agenda items include: Election of a new chairman; report on the status of the Carlsbad plan revision; a discussion of the presentations made at the previous meeting by both BLM staff and cave interests regarding the BLM's management of cave in regards to containing the spread of White Nose Syndrome; a report on the status of the activity plan for the Lesser Prairie-Chicken Area of Environmental Concern (ACEC); and a report from the ACEC Grazing Subcommittee, including the research being conducted at the ACEC.

All RAC meetings are open to the public. There will be a half-hour public comment period at 9:30 a.m. for any interested members of the public who wish to address the RAC. Depending on the number of persons wishing to speak and time available, the time for individual comments may be limited.

Andrew Archuleta,

Acting Deputy State Director, Lands and Resources.

[FR Doc. 2015–31423 Filed 12–11–15; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CONC–19592; PPWOBSADC0, PPMVSCS1Y.Y00000]

Notice of Continuation of Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for the periods specified below.

DATES: Effective January 1, 2016.

FOR FURTHER INFORMATION CONTACT: Brian Borda, Chief, Commercial Services Program, National Park Service, 1201 Eye Street NW., 11th Floor, Washington, DC 20005, Telephone: 202–513–7156.

SUPPLEMENTARY INFORMATION: The contracts listed below have been extended to the maximum allowable under 36 CFR 51.23. Under the provisions of the respective concession contracts and pending the completion of the public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed 1 year under the terms and conditions of the current contract as amended. The continuation of operations does not affect any rights with respect to selection for award of a new concession contract. The publication of this notice merely reflects the intent of the National Park Service but does not bind the National Park Service to continue any of the contracts listed below.

CONCID	Concessioner	Park unit
NACC001–89	Golf Course Specialists, Inc	National Mall and Memorial Parks.
NACC003–86	Guest Services, Inc	National Mall and Memorial Parks.
INDE001–94	Concepts by Staib, Ltd.	Independence National Historical Park.
BLRI001–83	Southern Highland Handicraft Guild, Inc	Blue Ridge Parkway.
CAHA001–98	Koru Village Incorporated	Cape Hatteras National Seashore.
CAHA004–98	Oregon Inlet Fishing Center, Inc	Cape Hatteras National Seashore.
VIIS001–71	CBI Acquisitions, LLC	Virgin Islands National Park.
GLCA002–88	ARAMARK Sports and Entertainment Services, Inc	Glen Canyon National Recreation Area.
GLCA003–69	ARAMARK Sports and Entertainment Services, Inc	Glen Canyon National Recreation Area.
PEFO001–85	Xanterra Parks & Resorts, Inc	Petrified Forest National Park.
LAKE001–73	Rex G. Maughan & Ruth G. Maughan	Lake Mead National Recreation Area.
LAKE002–82	Lake Mead R.V. Village, LLC	Lake Mead National Recreation Area.
LAKE005–97	Rex G. Maughan & Ruth G. Maughan	Lake Mead National Recreation Area.
LAKE006–74	Las Vegas Boat Harbor, Inc	Lake Mead National Recreation Area.
LAKE007–84	Seven Resorts, Inc	Lake Mead National Recreation Area.
LAKE009–88	Temple Bar Marina, LLC	Lake Mead National Recreation Area.

Dated: December 4, 2015.

Lena McDowall,

Chief Financial Officer.

[FR Doc. 2015–31332 Filed 12–11–15; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKR–GAAR–15389]; [PPAKAKROZ7] [PPMPSPD1Y.YM0000]

Notice of Application for a Right-of-Way Across Gates of the Arctic National Preserve

AGENCY: National Park Service, Interior.

ACTION: Notice of application.

SUMMARY: An application for a right-of-way across the Western (Kobuk River) unit of Gates of the Arctic National Preserve has been filed by the Alaska Industrial Development and Export Authority with the National Park Service, pursuant to and consistent with section 1104(b) and (c) of the Alaska National Interest Lands Conservation Act (Pub. L. 96–487). In accordance with section 201(4)(c) of the Alaska National Interest Lands Conservation Act, the National Park Service is giving notice and providing for a thirty-day period for other parties to apply for access across the preserve.

Potential applicants for such access need to contact the National Park Service (see the contact information provided below) to obtain the requirements for filing an application for access.

DATES: Applications must be received by or postmarked by January 13, 2016.

ADDRESSES: Superintendent, Gates of the Arctic National Park and Preserve, 4175 Geist Road, Fairbanks, Alaska 99709.

FOR FURTHER INFORMATION CONTACT: Greg Dudgeon, Superintendent, Gates of the Arctic National Park and Preserve, 4175 Geist Road, Fairbanks, Alaska 99709. Telephone: 907–457–5752. Email: *yuga_ambler_road@nps.gov*.

Dated: November 30, 2015.

Herbert C. Frost,

Regional Director, Alaska Region.

[FR Doc. 2015–31422 Filed 12–11–15; 8:45 am]

BILLING CODE 4312–EF–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–APPFL–19524; PPWODESCP1, PMP00SLY05.YP0000]

Manhattan Project National Historical Park

AGENCY: National Park Service, Interior.

ACTION: Notice of Execution of Agreement and Establishment of Park.

SUMMARY: The National Park Service (NPS) announces that the Secretary of the Interior and the Secretary of Energy have entered into an agreement governing the administration of facilities, land, or interests in land under the jurisdiction of the Department of Energy (DOE) that are to be initially included in the Manhattan Project National Historical Park (Park) and setting out the specific responsibilities of each of the Secretaries with regard to the Park. This agreement satisfies the legal requirements to establish the Park. This new unit of the National Park System is located in Oak Ridge, Tennessee; Hanford, Washington; and Los Alamos, New Mexico.

DATES: The agreement governing the management of Park was signed by the Secretary of the Interior and the Secretary of Energy on November 10, 2015. The law directing the establishment of the Park requires that notice of the establishment of the Park be published in the **Federal Register** not later than 30 days after the date on which the agreement is executed.

ADDRESSES: The Memorandum of Agreement between the Department of the Interior and the Department of Energy and the associated boundary map are available for public review on the NPS's Planning, Environment and Public Comment Web site at: *http://parkplanning.nps.gov/MPNHP*. A copy of the boundary map is available on the Web site at: *http://parkplanning.nps.gov/document.cfm?parkID=482&projectID=57561&documentID=69146*.

FOR FURTHER INFORMATION CONTACT: Victor Knox, Associate Director, Park Planning, Facilities, and Lands by phone at 202–208–3264.

SUPPLEMENTARY INFORMATION: Section 3039 of the Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291) includes specific provisions relating to the establishment of this unit of the National Park System as follows:

a. Section 3039(d) of Public Law 113–291 requires the Secretary of the Interior and the Secretary of Energy, not later than one year after the date of enactment of the act (December 19, 2014), to enter into an agreement governing the administration of facilities, land, or interests in land under the DOE's jurisdiction that are to be included in the Park and setting out the specific responsibilities of each of the Secretaries with regard to the Park.

b. Section 3039(e)(2) of Public Law 113–291 also requires the Secretary of the Interior to publish in the **Federal Register** notice of the establishment of the Park, including a boundary map, not later than 30 days after the agreement is executed.

Beginning in February 2015 representatives of the Secretary of the Interior and the Secretary of Energy met to discuss a framework for managing the Park and to determine which of the eligible areas identified in the authorizing legislation would be initially included in the Park. Over the course of several months the agency representatives visited all three DOE locations, toured the eligible areas, and met with interested members of the public in each location. As a result of those discussions, tours, and meetings, the Secretaries determined that the areas shown on the map published with this notice would be initially included in the Park. On July 28, 2015, the draft agreement and a proposed boundary map were posted on the NPS's public park-planning Web site, and members of the public were allowed 30 days to comment on them. The agency representatives then analyzed those comments and modified the draft agreement and the boundary map accordingly. Although the NPS and DOE recognize the historical significance of the other eligible areas identified in the authorizing legislation, those facilities either are not currently safe for visitation or are needed to support ongoing DOE mission work. They are therefore not included in the Park at this time; however, the agencies will periodically reevaluate them to determine if they can be included in the Park at a later date.

The Secretary of the Interior has determined that the execution of the agreement satisfies the legal requirements to establish this new unit of the National Park System. Accordingly, effective on the date of publication of this notice, the Park is established as a new unit of the National Park System and is subject to the laws and policies governing such units.

Authority: Section 3039 of the Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015, Public Law 113–291.

Dated: December 4, 2015.

Peggy O'Dell,

Deputy Director, Operations.

[FR Doc. 2015–31330 Filed 12–11–15; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Rack Mountable Power Distribution Units, DN 3105;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Server Technology, Inc. on December 8, 2015. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain rack mountable power distribution units. The complaint names as respondents Raritan Americas, Inc. of Somerset, NJ; Legrand North America of West Hartford, CT; and Legrand SA of France. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register.** There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3105'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: December 8, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–31338 Filed 12–11–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–934]

Certain Dental Implants; Notice of Correction Concerning Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission

ACTION: Correction of notice.

SUMMARY: Correction is made to the deadline to submit statements on the

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

public interest specified in notice 80 FR 76574–75 which was published on Wednesday, December 9, 2015. The deadline to submit statements on the public interest is extended to Friday, December 18, 2015.

Issued: December 9, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–31354 Filed 12–11–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0073]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Furnishing of Samples

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit 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: Comments are encouraged and will be accepted for 60 days until February 12, 2016.

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 Anita Scheddel, Program Analyst, Explosives Industry Programs Branch, 99 New York Ave. NE., Washington, DC 20226 at email: *Anita.Scheddel@atf.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- 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 1140–0073:

1. *Type of Information Collection* (check justification or form 83): Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Furnishing of Samples.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Businesses and other non-profits.

Other (if applicable): None.

Abstract: ATF requires licensed manufacturers and importers and persons who manufacture or import explosives materials or ammonium nitrate to submit samples at the request of the Director.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,350 respondents will take 30 minutes to complete the survey.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 1, 175 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: December 8, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–31334 Filed 12–11–15; 8:45 am]

BILLING CODE 4410–FY–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 15–05]

Notice of Entering Into a Compact With the Kingdom of Morocco

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with Section 610(b)(2) of the Millennium Challenge Act of 2003 (22 U.S.C. 7701–7718) as amended (the Act), and the heading ''Millennium Challenge Corporation'' of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2015, the Millennium Challenge Corporation (MCC) is publishing a summary of the Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Kingdom of Morocco. Representatives of the United States Government and Morocco executed the Compact documents on November 30, 2015. The complete text of the Compact has been posted at *https://assets.mcc.gov/documents/compact-morocco-employability-and-land.pdf.*

Dated: December 9, 2015.

Maame Ewusi-Mensah Frimpong,

Vice President and General Counsel, Millennium Challenge Corporation.

Summary of Millennium Challenge Compact With the Kingdom of Morocco

Overview

MCC has signed a five-year, $450 million compact with the Government of Morocco (GoM) aimed at reducing poverty through economic growth. The compact seeks to assist the GoM in addressing two major constraints to economic growth: Education quality and land productivity, with an approach and methodology that incorporate the core issues of government and public-private coordination.

Program Overview and Budget

Morocco was selected for compact eligibility in December 2012, and the subsequent constraints analysis identified (i) education quality; (ii) land policy and implementation (with qualitatively different issues for rural areas and industrial land); and (iii) governance, notably labor market regulations, taxes, and the judiciary system as binding constraints to economic growth and investment. In addition, the analysis identified the effectiveness of the Moroccan government's level of coordination as an

overarching issue that directly impacts the binding constraints identified and the efforts of the GoM to address them, resulting in low productivity of government investment.

The land and education sectors represent binding constraints to growth and provide opportunities to develop policy responses to both the supply and demand for skilled labor. The compact directly addresses the root causes of these binding constraints, which are:

(1) Secondary education and workforce development systems that produce a supply of workers that do not adequately meet private sector skills demand, and

(2) Land policy and implementation that inhibit access to and productive uses of rural and industrial land, thus diminishing investment and consequent demand for labor.

By improving the policy and institutional environment, and creating models to engage the private sector, the two projects will address both the supply and demand sides of the labor market. Both projects support the shift from static, state-led systems to competitive, dynamic systems that engage the private sector and respond to market needs. Further, both projects take a targeted approach to developing and demonstrating new models, and building capacity so that those models can be replicated and scaled up post-compact.

The budget for the compact is $450 million, not including the contribution by the GoM of approximately $67.5 million or 15 percent of the U.S. contribution, allocated as follows (all figures are approximate due to rounding):

COMPACT BUDGET SUMMARY

Project/activity	Budget (in U.S. $)
Education and Training for Employability Project:	
Secondary Education	$112,580,000
Workforce Development	107,420,000
Education and Training for Employability Project Subtotal	220,000,000
Land Productivity Project:	
Governance	10,500,000
Rural Land	33,000,000
Industrial Land	127,000,000
Land Productivity Project Subtotal	170,500,000
Monitoring and Evaluation	10,000,000
Program Administration and Oversight	49,500,000
Compact Grand Total	450,000,000
Government of Morocco Contribution	67,500,000
Program Grand Total	517,500,000

The Education and Training for Employability Project aims to increase the employability and employment rate of Moroccans by improving the quality and relevance of, and equitable access to, secondary education and workforce development programs in response to private sector needs. Given significant social and gender inequalities in Morocco, a concerted effort has been made to ensure that the Education and Training for Employability Project results in equitable outcomes for both girls and boys and reduces social, gender, and geographically-based inequalities.

The Land Productivity Project aims to increase land productivity in Morocco by enabling land markets to better respond to investor demand and by strengthening the enabling environment for investment

Education and Training for Employability Project

The Education and Training for Employability Project is comprised of two activities aimed at increasing the employability and employment rate of Moroccans by improving the quality and relevance of, and equitable access to, secondary education and workforce development programs in response to private sector needs.

1. Secondary Education Activity. The Secondary Education Activity aims to demonstrate a new cost-effective, sustainable, and scalable model of public secondary schools for delivering quality secondary education focused on the employability competencies needed for the modern workforce. It will also support key reforms to improve system performance management. The model will be piloted and rigorously evaluated in approximately 90–110 schools, which will receive a multi-faceted package of interventions in the three key areas of school management, pedagogy, and infrastructure. This package will support schools in meeting the terms of new performance contracts and will also work to create an enhanced learning environment for students that better meets their developmental needs, and better prepares them for tertiary education or entry into the labor market.

MCC funding will also support the development, planning, and implementation of rigorous international and national assessments of student learning, and the utilization of assessment data to inform decisions for improving performance. MCC funding will additionally support the development and piloting of a new approach to school infrastructure and information technology operations and maintenance, through private sector performance contracts in these areas.

2. Workforce Development Activity. The Workforce Development Activity aims to increase the employability of Moroccans by: Improving the quality and relevance of, and equitable access to, private sector-driven technical and vocational education and training (TVET). The activity will also provide: (i) Technical assistance to develop and implement demand-driven TVET sector policy; (ii) effective employment services to help unemployed or economically inactive women as well as at-risk urban and peri-urban youth to obtain quality jobs; and (iii) support to a labor market observatory that will provide dynamic labor market information to improve decision-making for public policy and private investment.

An MCC- and GoM-funded grant facility will support selected private sector-driven training centers by issuing grants for infrastructure, equipment, and technical assistance. Additionally, results-based incentive mechanisms, such as social impact bonds, will be used to support promising programs that provide integrated job placement services for women and at-risk urban youth. MCC funding will also support the development and implementation of rigorous impact evaluations to test other non-MCC funded promising labor market interventions.

Land Productivity Project

The project aims to increase land productivity in Morocco by enabling land markets to better respond to investor demand and by strengthening the enabling environment for investment. To achieve this objective, MCC funding will support the following activities:

1. Governance Activity. The Governance Activity is designed to support the development and implementation of a long-term land productivity strategy to address governance and land market constraints to investment and productivity. Once the strategy and roadmap to its implementation are in place, the activity will finance implementation of key elements of the roadmap.

2. Rural Land Activity. The Rural Land Activity aims to increase rural productivity by making the GoM's current process for privatizing irrigated collective lands more inclusive and less time-consuming. The activity will (i) develop procedures for privatization of irrigated collective land that can be implemented within three years or less; (ii) use these improved procedures to support the privatization of up to 46,000 hectares of collective land within Morocco's Gharb region; and (iii) develop and apply tools to address other land-related root causes of low productivity identified during due diligence, such as minimum parcel size requirements. The activity will engage in extensive consultations and outreach in the region of intervention and will develop and apply fair and inclusive land allocation criteria that protect the rights of land holders, including women.

3. Industrial Land Activity. The Industrial Land Activity aims to transform the way the GoM brings industrial land to market, from a state- to a market-driven approach, through the development of a new model for industrial zone development. By using public-private partnerships for industrial land development, the activity seeks to encourage private sector participation in the development and management of industrial zones, and to ensure that such development and management responds to private sector demand in terms of location, land offering, infrastructure and site and social services.

ECONOMIC ANALYSIS

Project/activity	ERR	Beneficiaries
Education and Training for Employability Project	12.7% to 14.5%	2,019,100
Secondary Education	12.4% to 15.1%	1,744,100
Workforce Development	13.2%	275,000
Land Productivity Project	15.8% to 18.0%	177,800
Governance	.....	.....
Rural Land	23.0%	81,500
Industrial Land	13.4% to 16.7%	96,300

* The costs of the governance activity are included in the Land Productivity Project's overall ERR.

An economic rate of return (ERR) was calculated for each of the compact's projects. The costs of the Governance Activity, which is a critical national policy and institutional reform component that will support a land strategy and roadmap, as well as the long-term sustainability and impact of the project's other two activities, are included in the overall ERR for the Land Productivity Project.

The Compact is expected to benefit 2.2 million people over a twenty-year period.

[FR Doc. 2015–31366 Filed 12–11–15; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 10:00 a.m., Thursday, December 17, 2015.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Notice and Request for Comment, Regulatory Review in Accordance with the Economic Growth Regulatory Paperwork Reduction Act of 1996.

2. NCUA Rules and Regulations, Adding Share Insurance Coverage for Lawyers Trust Accounts and Other Similar Escrow Accounts.

RECESS: 10:45 a.m.

TIME AND DATE: 11:00 a.m., Thursday, December 17, 2015.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Supervisory Action. Closed pursuant to Exemptions (8), (9)(i)(B), and (9)(ii).

2. Request under section 205(d) of the Federal Credit Union Act. Closed pursuant to Exemption (6).

FOR FURTHER INFORMATION CONTACT: Gerard Poliquin, Secretary of the Board, Telephone: 703–518–6304.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2015–31502 Filed 12–10–15; 4:15 pm]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 15 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference.

DATES: All meetings are Eastern time and ending times are approximate:

Design (review of applications): This meeting will be closed. *Date and time:* January 11, 2016; 11:00 a.m. to 1:30 p.m.

Design (review of applications): This meeting will be closed. *Date and time:* January 11, 2016; 2:30 p.m. to 5:00 p.m.

Design (review of applications): This meeting will be closed. *Date and time:* January 12, 2016; 11:00 a.m. to 1:30 p.m.

Design (review of applications): This meeting will be closed. *Date and time:* January 12, 2016; 2:30 p.m. to 5:00 p.m.

State Partnerships (review of applications): This meeting will be open. *Date and time:* January 12, 2016; 3:00 p.m. to 5:00 p.m.

State Partnerships (review of partnership agreements): This meeting will be open. *Date and time:* January 13, 2016; 3:00 p.m. to 5:00 p.m.

State Partnerships (review of applications): This meeting will be open. *Date and time:* January 14, 2016; 3:00 p.m. to 5:00 p.m.

Design (review of applications): This meeting will be closed. *Date and time:* January 19, 2016; 11:00 a.m. to 1:30 p.m.

Design (review of applications): This meeting will be closed. *Date and time:* January 19, 2016; 2:30 p.m. to 5:00 p.m.

Folk & Traditional Arts (review of nominations): This meeting will be closed. *Date and time:* January 19, 2016; 2:00 p.m. to 4:00 p.m.

Folk & Traditional Arts (review of nominations): This meeting will be closed. *Date and time:* January 22, 2016; 2:00 p.m. to 4:00 p.m.

Research (review of applications): This meeting will be closed. *Date and time:* January 25, 2016; 2:00 p.m. to 4:30 p.m.

Research (review of applications): This meeting will be closed. *Date and time:* January 26, 2016; 2:00 p.m. to 4:30 p.m.

Regional Partnerships (review of partnership agreements): This meeting will be open. *Date and time:* January 27, 2016; 3:00 p.m. to 4:00 p.m.

Folk and Traditional Arts (review of applications): This meeting will be closed. *Date and time:* January 28, 2016; 2:00 p.m. to 4:00 p.m.

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW., Washington, DC, 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506; *plowitzk@arts.gov,* or call 202/682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2012, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

Dated: December 9, 2015.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2015–31345 Filed 12–11–15; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov*.

SUPPLEMENTARY INFORMATION: On August 18, 2015 the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on December 8, 2015 to:

Angela L. Sremba Permit No. 2016–006

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2015–31335 Filed 12–11–15; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov*.

SUPPLEMENTARY INFORMATION: On November 6, 2015 the National Science Foundation published a notice in the **Federal Register** of a permit modification application received. The permit was issued on December 8, 2015 to:

Joseph A. Covi Permit No. 2015–015

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2015–31337 Filed 12–11–15; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346; NRC–2010–0298]

License Renewal for Davis-Besse Nuclear Power Station, Unit 1

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal and record of decision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued renewed facility operating license No. NPF–3 to FirstEnergy Nuclear Operating Company (FENOC or the licensee), the operator of the Davis-Besse Nuclear Power Station, Unit 1. Renewed facility operating license No. NPF–3 authorizes operation of Davis-Besse by the licensee at reactor core power levels not in excess of 2817 megawatts thermal, in accordance with the provisions of the Davis-Besse renewed license and technical specifications. In addition, the NRC has prepared a record of decision (ROD) that supports the NRC's decision to renew facility operating license No. NPF–3.

DATES: The license renewal of facility operating license No. NPF–3 was effective on December 8, 2015.

ADDRESSES: Please refer to Docket ID NRC–2010–0298 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 Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2010–0298. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463;

email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *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 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: Richard Plasse, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–1427; email: *Richard.Plasse@nrc.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the NRC has issued renewed facility operating license No. NPF–3 to FirstEnergy Nuclear Operating Company, the operator of Davis-Besse. Renewed facility operating license No. NPF–3 authorizes operation of Davis-Besse by the licensee at reactor core power levels not in excess of 2817 megawatts thermal, in accordance with the provisions of the Davis-Besse renewed license and technical specifications. The NRC's ROD that supports the NRC's decision to renew facility operating license No. NPF–3 is available in ADAMS under Accession No. ML15295A319. As discussed in the ROD and the final supplemental environmental impact statement (FSEIS) for Davis-Besse, Supplement 52 to NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Davis-Besse Nuclear Power Station'' dated April 2015 (ADAMS Accession No. ML15112A098 for Volume 1 and ML15113A187 for Volume 2), the NRC has considered a range of reasonable alternatives that included natural gas combined-cycle (NGCC), supercritical pulverized coal, combination of wind, solar, and NGCC, and the no action alternative. The ROD and FSEIS document the NRC decision for the environmental review that the adverse environmental impacts of license renewal for Davis-Besse are not so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable.

Davis-Besse, is a pressurized water reactor located in Carroll Township, Ottawa County, Ohio. The application for the renewed license, ''License Renewal Application, Davis-Besse Nuclear Power Station,'' dated August 30, 2010, as supplemented by letters dated through June 29, 2015 (ADAMS Accession No. ML15180A252), complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. As required by the Act and the NRC's regulations in Chapter 1 of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC has made appropriate findings, which are set forth in the license. A public notice of the proposed issuance of the renewed license and an opportunity for a hearing was published in the **Federal Register** on October 25, 2010 (75 FR 65528).

For further details with respect to this action, see: (1) FirstEnergy Nuclear Operating Company license renewal application for Davis-Besse Nuclear Power Station, Unit 1 dated August 20, 1010, as supplemented by letters dated through June 29, 2015; (2) the NRC's safety evaluation report published on September 3, 2013 (ADAMS Accession No. ML13248A267); (3) the NRC's supplemental safety evaluation report published on August 10, 2015 (ADAMS Accession No. ML15196A429); (4) the NRC's final environmental impact statement (NUREG–1437, Supplement 52), for Davis-Besse published in April 2014; and (5) the NRC's ROD.

Dated at Rockville, Maryland, this 8th day of December 2015.

For the Nuclear Regulatory Commission.

Christopher G. Miller,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2015–31418 Filed 12–11–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0001]

Sunshine Act Meeting Notice

DATE: December 14, 21, 28, 2015, January 4, 11, 18, 2016.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of December 14, 2015

Tuesday, December 15, 2015

9:00 a.m. Hearing on Construction Permit for SHINE Medical Isotope Production Facility: Section 189a. of the Atomic Energy Act Proceeding (Public Meeting); (Contact: Steven Lynch: 301–415–1524).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, December 17, 2015

9:30 a.m. Briefing on Project AIM 2020 (Public Meeting); (Contact: John Jolicoeur: 301–415–1642).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, December 17, 2015

1:00 p.m. Briefing on Digital Instrumentation and Control (Public Meeting); (Contact: Daniel Doyle: 301–415–3748).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of December 21, 2015—Tentative

There are no meetings scheduled for the week of December 21, 2015.

Week of December 28, 2015—Tentative

There are no meetings scheduled for the week of December 28, 2015.

Week of January 4, 2016—Tentative

There are no meetings scheduled for the week of January 4, 2016.

Week of January 11, 2016—Tentative

There are no meetings scheduled for the week of January 11, 2016.

Week of January 18, 2016—Tentative

There are no meetings scheduled for the week of January 18, 2016.

* * * * *

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.*

braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: December 10, 2015.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2015–31567 Filed 12–10–15; 4:15 pm]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Approval of Exemption From the Bond/Escrow Requirement Relating to the Sale of Assets by an Employer Who Contributes to a Multiemployer Plan; Harrington Air Systems, LLC and J.C. Cannistraro, LLC

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of approval.

SUMMARY: The Pension Benefit Guaranty Corporation has approved a request from Harrington Air Systems, LLC, and its sister company J.C. Cannistraro, LLC, for an exemption from the bond/escrow requirement of section 4204(a)(1) of the Employee Retirement Income Security Act of 1974, as amended, with respect to the Sheet Metal Workers National Pension Fund. A notice of the request for exemption was published on June 24, 2015 (80 FR 36366). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESSES: The non-confidential portions of the request for a variance and any PBGC response to the request may be obtained by writing to the Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026 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: Bruce Perlin (*Perlin.Bruce@PBGC.gov*), 202–326–4020, ext. 6818 or Jon Chatalian (*Chatalian.Jon@PBGC.gov*), ext. 6757, Office of the Chief Counsel, Suite 340, 1200 K Street NW., Washington, DC 20005–4026; (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4020.)

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (''ERISA'' or ''the Act''), provides that a complete or partial withdrawal of an employer from a multiemployer plan does not occur solely because, as a result of a bona fide arm's-length sale of assets to an unrelated party, the seller ceases covered operations or ceases to have an obligation to contribute for such operations, if the following conditions under section 4204(a)(1)(A)–(C), are met:

(A) The purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contributions base units for which the seller was obligated to contribute;

(B) the purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred; and

(C) the contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale. Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation (''PBGC'') to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the asset sale rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S.1076, The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Considerations 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of an exemption or variance from the bond/escrow requirement does not constitute a finding by PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under PBGC's regulation on variances or exemptions from the requirements of section 4204(a)(1)(B) with respect to sales of assets (29 CFR part 4204), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (sections 4204.12 or 4204.13) must first be made to the plan in question. PBGC will consider a waiver request only if the plan denies the request because it does not satisfy the conditions of the regulatory tests or the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of ''Exemption Four'' of the Freedom of Information Act, 5 U.S.C. § 552(b)(4).

Under section 4204.22 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, based on the following reasons:

(1) The approval of a variance/exemption would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) the approval of a variance/exemption would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and section 4204.22(b) of the regulation require PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption. PBGC received no comments in response to notice of Harrington Air Systems, LLC and J.C. Cannistraro, LLC's request for an exemption of the bond/escrow requirement.

The Decision

On June 23, 2015, PBGC published a notice of the pendency of a request by Harrington Air Systems, LLC (''HAS'') and its sister company J.C. Cannistraro, LLC (''JCC'', and collectively with HAS, the ''Buyer'') for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to the purchase of Harrington Brothers Corporation (''HBC'' or the ''Seller''). According to the request, the Seller was obligated to contribute to the Sheet Metal Workers National Pension Fund (the ''Fund''), a multiemployer defined benefit pension plan. According to the Buyer's representations, the Buyer acquired under an asset sale agreement effective February 24, 2014, most of the business assets of the Seller. The parties structured the transaction to comply with section 4204 of ERISA. HAS is an entity set up by JCC to effectuate the purchase of HBC's assets. In the request, the Buyer represents that HAS and JCC are businesses under common control pursuant to 26 CFR § 1.414(c)–2 and therefore treated as one employer under ERISA. Additionally, the Buyer represents, among other things, that:

1. Under the terms of the asset purchase agreement, the Buyer paid the Seller approximately $5.1 million in the form of an unsecured promissory note that may be adjusted post-closing based on the performance of certain construction contracts in place at the time of the transaction.
2. The Buyer is obligated to contribute to the Fund for the purchased operations for substantially the same contribution base units for which the Seller had an obligation to contribute.
3. The Seller has agreed to be secondarily liable for any withdrawal liability it would have had with regard to the sold operations (if not for § 4204) should the Buyer withdraw from the Fund within the five plan years following the sale and fail to pay withdrawal liability.
4. The estimated amount of unfunded vested benefits allocable to the Seller with respect to the operations sold is about $23.4 million.
5. The amount of the bond/escrow required under § 4204(a)(1)(B) is $1.68 million.
6. After the close of the transaction, the Buyer requested that the trustees of the Fund waive the bond/escrow requirements of ERISA § 4204. The Fund denied the request on the grounds that the Buyer did not satisfy the net income or net tangible assets tests under PBGC's regulations for an exemption from the bond/escrow requirement of § 4204(a)(1)(B).
7. To satisfy the net income test under 29 CFR 4204.13(a)(1), the Fund determined that the average annual net income required for the three-year period prior to the transaction needed to be approximately $440,000 greater than the amount reported.
8. The Buyer asserts that the three-year average net income of JCC was lowered due to an ''aberrantly poor year'' in the construction industry in Massachusetts in 2011. The Buyer states that JCC's average annual net income for the years between 2011–2014 was approximately $1 million more than what was required to meet the net income test under 29 CFR 4204.13(a)(1), and that its net income for the 3 years between 2012–2014 was approximately $1.5 million more than what was required.
9. The Buyer further asserts that, in denying the Buyer's request for a waiver, the Fund looked only at the average net income of JCC. It contends that aggregating the net incomes of JCC and HAS, two businesses under common control under 26 CFR 1.414(c)–2, shows that there ''can be no serious argument that a waiver will create risk for the Fund, let alone substantial risk.''
10. The Buyer's request additionally states that a variance of the bond/escrow requirement in this instance furthers the purposes of Title IV of ERISA because Congress, in enacting Title IV, sought to minimize intrusions into normal business operations while protecting plans. The Buyer asserts that HBC had previously been a ''struggling enterprise'' and that the transaction has ''resulted in a more stable and financially secure contributing employer to the Fund.''

Based on the facts of this case and the representations and statements made in connection with the request for an exemption, including JCC's updated 2014 financial information, PBGC has determined that an exemption from the bond/escrow requirement of section 4204(a)(1)(B) is warranted, in that it would more effectively carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the Plan. Therefore, the PBGC hereby grants the request for an exemption from the bond/escrow requirement.

The granting of a variance or an exemption from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is a determination to be made by the Plan sponsor.

Issued in Washington, DC, on this 8th day of December 2015.

W. Thomas Reeder,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2015–31357 Filed 12–11–15; 8:45 am]

BILLING CODE 7709–02–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–28 and CP2016–34; Order No. 2858]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Parcel Select Contract 11 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 16, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add Parcel Select Contract 11 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–28 and CP2016–34 to consider the Request pertaining to the proposed Parcel Select Contract 11 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in

[1] Request of the United States Postal Service to Add Parcel Select Contract 11 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 8, 2015 (Request).

the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than December 16, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Derrick D. Dennis to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–28 and CP2016–34 to consider the matters raised in each docket.
2. Pursuant to 39 U.S.C. 505, Derrick D. Dennis is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).
3. Comments are due no later than December 16, 2015.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2015–31373 Filed 12–11–15; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–29 and CP2016–35; Order No. 2859]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 160 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 16, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 160 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–29 and CP2016–35 to consider the Request pertaining to the proposed Priority Mail Contract 160 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than December 16, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Kenneth R. Moeller to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–29 and CP2016–35 to consider the matters raised in each docket.
2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).
3. Comments are due no later than December 16, 2015.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2015–31374 Filed 12–11–15; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Priority Mail Contract 160 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 8, 2015 (Request).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76590; File No. SR–NYSEArca–2015–93]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of Shares of Cumberland Municipal Bond ETF Under NYSE Arca Equities Rule 8.600

December 8, 2015.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 24, 2015, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): Cumberland Municipal Bond ETF. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares:[4] Cumberland Municipal Bond ETF (the ''Fund''),[5] a series of the ETFis Series Trust I (''Trust'').[6]

The investment adviser to the Fund will be Virtus ETF Advisers LLC (the ''Adviser''). The Fund's sub-adviser will be Cumberland Advisors Inc. (''Sub-Adviser''). Virtus ETF Solutions LLC will serve as the Fund's operational administrator. ETF Distributors LLC will serve as the distributor (the ''Distributor'') of Fund Shares on an agency basis. The Bank of New York Mellon (the ''Administrator'') will serve as the administrator, custodian, transfer agent and fund accounting agent for the Fund.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[7] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Adviser and Sub-Adviser are not registered as broker-dealers. The Adviser (but not the Sub-Adviser) is affiliated with one or more broker-dealers and the Adviser has implemented and will maintain a fire wall with respect to each such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser or Sub-Adviser become registered broker-dealers or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Description of the Fund

Principal Investments

According to the Registration Statement, the Fund will seek to provide a competitive level of current income exempt from federal income tax, while preserving capital. The Fund, under normal market conditions,[8] will invest at least eighty percent (80%) of the Fund's net assets in debt securities whose interest is, in the opinion of bond counsel for the issuer at the time of issuance, exempt from U.S. federal income tax (''Municipal Bonds''). The Sub-Adviser will invest the Fund's assets using a barbell strategy, which means that the Sub-Adviser will overweight the Fund's investments in Municipal Bonds with maturities on the short and long ends of the fixed income yield curve, while underweighting exposure to Municipal Bonds with intermediate maturities.

According to the Registration Statement, Municipal Bonds in which the Fund may invest include one or more of the following:

- General obligation bonds, which are typically backed by the full faith, credit, and taxing power of the issuer;
- revenue bonds, which are typically secured by revenues generated by the issuer;
- discount bonds, which may be originally issued at a discount to par value or sold at market price below par value;
- premium bonds, which are sold at a premium to par value;
- zero coupon bonds, which are issued at an original issue discount, with the full value, including accrued interest, paid at maturity; and
- private activity bonds, which are typically issued by or on behalf of local or state government for the purpose of financing the project of a private user.

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Securities and Exchange Commission (''Commission'') has approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 69591 (May 16, 2013), 78 FR 30372 (May 22, 2013) (SR–NYSEArca–2013–33) (order approving Exchange listing and trading of International Bear ETF); 69061 (March 7, 2013), 78 FR 15990 (March 13, 2013) (SR–NYSEArca–2013–01) (order approving Exchange listing and trading of Newfleet Multi-Sector Income ETF). The Commission has approved for Exchange listing and trading shares of two actively managed funds of the PIMCO ETF Trust that principally hold municipal bonds. *See* Securities Exchange Act Release No. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving listing and trading of shares of the PIMCO Short-Term Municipal Bond Strategy Fund and PIMCO Intermediate Municipal Bond Strategy Fund). The Commission also has approved listing and trading on the Exchange of shares of the SPDR Nuveen S&P High Yield Municipal Bond Fund under Commentary .02 of NYSE Arca Equities Rule 5.2(j)(3). *See* Securities Exchange Act Release No.63881 (February 9, 2011), 76 FR 9065 (February 16, 2011) (SR–NYSEArca–2010–120).

[6] The Trust is registered under the 1940 Act. On May 20, 2015, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act''), and under the 1940 Act relating to the Fund (File Nos. 333–187668 and 811–22819) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30607 (July 23, 2013) (File No. 812–14080) (''Exemptive Order'').

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] The term ''under normal market conditions'' includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

The Fund will have no target duration for its investment portfolio, and the Sub-Adviser may target a shorter or longer average portfolio duration based on the Sub-Adviser's forecast of interest rates and view of fixed-income markets generally.[9] The Sub-Adviser will generally apply a heavier weight toward Municipal Bonds with shorter maturities during periods of high interest rates and longer maturities during periods of lower interest rates.[10]

With respect to credit quality, under normal market conditions, at least 90% of the Fund's assets invested in Municipal Bonds will be in Municipal Bonds rated ''A'' or better by at least one major credit rating agency or, if unrated, deemed to be of comparable quality by the Sub-Adviser. From time to time, the Fund may concentrate (*i.e.,* invest more than 25% of its total assets) in particular sectors. The Fund may sell investments for a variety of reasons, such as to adjust the portfolio's average maturity, duration, or overall credit quality, or to shift assets into and out of higher-yielding or lower-yielding securities or certain sectors.

According to the Registration Statement, under normal market conditions, at least 80% of the Fund's income will be exempt from federal income taxes. However, a significant portion of the Fund's income could be derived from securities subject to the alternative minimum tax.

Other Investments

While the Fund, under normal market conditions, will invest at least eighty percent (80%) of its assets in Municipal Bonds, as described above, the Fund may invest its remaining assets in other assets and financial instruments, as described below.

The Fund may invest in equity securities, both directly and indirectly through investment in shares of exchange-traded funds (''ETFs''),[11] other investment companies, and other types of securities and instruments described below. The equity portion of the Fund's portfolio may include common stocks traded on securities exchanges or in the over-the-counter (''OTC'') market. In addition to common stocks, the equity portion of the Fund's portfolio may also include exchange-traded and OTC preferred stocks, and warrants.[12]

The Fund may purchase taxable municipal bonds when the Sub-Adviser believes they offer opportunities for the Fund, or variable rate demand notes (VRDNs) that pay interest monthly or quarterly based on a floating rate that is reset daily or weekly based on an index of short-term municipal rates.

The Fund may invest in exchange-traded and OTC securities convertible into common stock. Such securities include the following: Convertible bonds and convertible preferred stocks.[13]

The Fund may invest directly and indirectly in cash equivalents, namely, money market instruments that include the following: U.S. Government obligations or corporate debt obligations (including those subject to repurchase agreements); banker's acceptances[14] and certificates of deposit[15] of domestic branches of banks, commercial paper,[16] and master notes.[17]

In order to maintain sufficient liquidity, to implement investment strategies or for temporary defensive purposes, the Fund may invest a significant portion of its assets in shares of one or more money market funds. Generally, money market mutual funds are registered investment companies that seek to earn income consistent with the preservation of capital and maintenance of liquidity by investing primarily in high quality money market instruments.

The Fund may invest in the securities of other investment companies in compliance with Section 12(d)(1)(E), (F) and (G) of the 1940 Act and the rules thereunder.[18]

The Fund may write U.S. exchange-traded call and put options on securities, ETFs or security indexes to seek income or may purchase or write U.S. exchange-traded put or call options for hedging purposes.

The Fund may purchase securities on a when-issued basis or for settlement at a future date (forward commitment) if the Fund holds sufficient liquid assets to meet the purchase price.

Additionally, the Trust, on behalf of the Fund, has claimed an exclusion from the definition of the term ''commodity pool operator'' pursuant to Rule 4.5 under the Commodity Exchange Act, as amended (the ''CEA''). Therefore, the Fund is not subject to regulation or registration as a commodity pool operator under the CEA.

Investment Restrictions

The Fund may, from time to time, take temporary defensive positions that are inconsistent with its principal investment strategies in an attempt to respond to adverse market, economic, political or other conditions. In such circumstances, the Fund may also hold up to 100% of its portfolio in cash and cash equivalent positions.

[9] Duration measures the interest rate sensitivity of a debt security by assessing and weighting the present value of the security's payment pattern. Generally, the longer the maturity, the greater the duration and, therefore, the greater effect interest rate changes have on the price of the security.

[10] The Adviser represents that, under normal market conditions, no Municipal Bond held by the Fund will exceed 30% of the Fund's net assets, and the five most heavily weighted Municipal Bonds held by the Fund will not in the aggregate account for more than 50% of the Fund's assets; and the Fund will hold Municipal Bonds of a minimum of 13 non-affiliated issuers.

[11] The ETFs in which the Fund may invest will be registered under the 1940 Act and include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). Such ETFs all will be listed and traded in the U.S. on registered exchanges.

[12] With respect to its exchange-traded equity securities investments, the Fund will normally invest in equity securities that are listed and traded on a U.S. exchange or in markets that are members of the Intermarket Surveillance Group (''ISG'') or parties to a comprehensive surveillance sharing agreement with the Exchange. In any case, not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (except for non-exchange-traded investment company securities) will consist of equity securities whose principal market is not a member of ISG or a market with which the Exchange does not have a comprehensive surveillance sharing agreement. *See* note 28, *infra.*

[13] The criteria in note 11 above also will apply to exchange-traded convertible preferred stocks and exchange-traded stocks into which convertible bonds may be converted.

[14] Banker's acceptances are time drafts drawn on and ''accepted'' by a bank. When a bank ''accepts'' such a time draft, it assumes liability for its payment. When the Fund acquires a banker's acceptance, the bank that ''accepted'' the time draft is liable for payment of interest and principal when due. The banker's acceptance carries the full faith and credit of such bank.

[15] A certificate of deposit is an unsecured, interest bearing debt obligation of a bank.

[16] Commercial paper is an unsecured, short-term debt obligation of a bank, corporation, or other borrower. Commercial paper maturity generally ranges from two to 270 days and is usually sold on a discounted basis rather than as an interest-bearing instrument. The Fund will invest directly in commercial paper only if it is rated in one of the top two rating categories by Moody's, S&P or Fitch or, if not rated, is of equivalent quality in the Adviser's opinion. Commercial paper may include master notes of the same quality. Master notes are unsecured obligations which are redeemable upon demand of the holder and which permit the investment of fluctuating amounts at varying rates of interest.

[17] Master notes may be acquired by the Fund through the master note program of the Fund's custodian bank.

[18] 15 U.S.C. 80a–12(d)(1)(E), (F) and (G).

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), consistent with Commission guidance. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[19]

The Fund will seek to qualify for treatment as a regulated investment company under the Internal Revenue Code of 1986.[20]

The Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

Creation and Redemption of Shares

According to the Registration Statement, the Trust will issue and sell Shares of the Fund only in ''Creation Units'' on a continuous basis through the Distributor, at their net asset value (''NAV'') next determined after receipt, on any business day, for an order received in proper form. All orders to create Creation Units must be placed for one or more Creation Unit size aggregations of Shares (50,000 Shares per Creation Unit). The Creation Unit size is subject to change. Cash creations will be the default mechanism for creation of Shares.

However, the Fund will retain the ability to utilize an in-kind mechanism for creation of Shares, upon approval of the Distributor. In such case, the consideration for purchase of a Creation Unit of the Fund generally will consist of an in-kind deposit of ''Deposit Securities'' for each Creation Unit constituting a substantial replication, or a representation, of the securities included in the Fund's portfolio and a ''Cash Component'' computed as described below. Together, the Deposit Securities and the Cash Component constitute the ''Fund Deposit'', which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The Cash Component is an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities. If the Cash Component is a positive number (*i.e.,* the NAV per Creation Unit exceeds the market value of the Deposit Securities), the Cash Component will be such positive amount. If the Cash Component is a negative number (*i.e.,* the NAV per Creation Unit is less than the market value of the Deposit Securities), the Cash Component will be such negative amount, and the creator will be entitled to receive cash from the Fund in an amount equal to the Cash Component. The Cash Component serves the function of compensating for any differences between the NAV per Creation Unit and the market value of the Deposit Securities.

The Administrator, through the National Securities Clearing Corporation (''NSCC''), will make available on each business day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time), the list of the names and the required number of Shares of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund. Such Fund Deposit will be applicable, subject to any adjustments as described below, in order to effect creations of Creation Units of the Fund until such time as the next-announced composition of the Deposit Securities is made available.

The identity and number of Shares of the Deposit Securities required for the Fund Deposit for the Fund will change as rebalancing adjustments and corporate action events occur from time to time. In addition, the Trust reserves the right to permit or require the substitution of an amount of cash—*i.e.,* a ''cash in lieu'' amount—to be added to the Cash Component to replace any Deposit Security that may not be available in sufficient quantity for delivery, that may not be eligible for transfer or that may not be eligible for trading by an ''Authorized Participant'' (as described below) or the investor for which it is acting.

In addition to the list of names and numbers of securities constituting the current Deposit Securities of the Fund Deposit, the Administrator, through NSCC, also will make available on each business day the estimated Cash Component, effective through and including the previous business day, per outstanding Creation Unit of the Fund.

Procedures for Creation of Creation Units

To be eligible to place orders to create a Creation Unit of the Fund, an entity must be (i) a ''Participating Party'', *i.e.,* a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of NSCC (the ''Clearing Process'') or a clearing agency that is registered with the Commission, or (ii) a Depositary Trust Company (''DTC'') Participant and, in each case, must have executed an agreement with the Trust, the Distributor and the Administrator with respect to creations and redemptions of Creation Units (''Participant Agreement''). A Participating Party and DTC Participant are collectively referred to as an ''Authorized Participant''.

All orders to create Creation Units must be received by the Distributor no later than the close of the regular trading session on the Exchange (ordinarily 4:00 p.m., Eastern Time), in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form.

Redemption of Creation Units

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor and the Fund through the Administrator and only on a business day. Cash redemptions will be the default mechanism for redemptions of Shares.

However, the Fund will retain the ability to utilize an in-kind mechanism for redemption of Shares, upon approval of the Distributor. In such case, the redemption proceeds for a Creation Unit generally consist of Deposit Securities, as announced by the Administrator on the business day of the request for redemption received in proper form, plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the

[19] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

[20] 26 U.S.C. 851.

Deposit Securities (the ''Cash Redemption Amount''), less a redemption transaction fee. In the event that the Deposit Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential is required to be made by or through an Authorized Participant by the redeeming shareholder.

With respect to the Fund, the Administrator, through NSCC, will make available immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time) on each business day, the Deposit Securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. Deposit Securities received on redemption may not be identical to Deposit Securities which are applicable to creations of Creation Units.

If it is not possible to effect deliveries of the Deposit Securities, the Trust may in its discretion exercise its option to redeem such shares in cash, and the redeeming beneficial owner will be required to receive its redemption proceeds in cash. In addition, an investor may request a redemption in cash which the Fund may, in its sole discretion, permit.[21] In either case, the investor will receive a cash payment equal to the NAV of its Shares based on the NAV of Shares of the Fund next determined after the redemption request is received in proper form (minus a redemption transaction fee and additional charge for requested cash redemptions, to offset the Trust's brokerage and other transaction costs associated with the disposition of Deposit Securities). The Fund may also, in its sole discretion, upon request of a shareholder, provide such redeemer a portfolio of securities which differs from the exact composition of the Deposit Securities but does not differ in NAV.

The right of redemption may be suspended or the date of payment postponed with respect to the Fund (1) for any period during which the Exchange is closed (other than customary weekend and holiday closings); (2) for any period during which trading on the Exchange is suspended or restricted; (3) for any period during which an emergency exists as a result of which disposal of the Shares of the Fund or determination of the Shares' NAV is not reasonably practicable; or (4) in such other circumstance as is permitted by the Commission.

Net Asset Value

The NAV per Share for the Fund will be computed by dividing the value of the net assets of the Fund (*i.e.,* the value of its total assets less total liabilities) by the total number of Shares outstanding, rounded to the nearest cent. Expenses and fees, including the management fee, will be accrued daily and taken into account for purposes of determining NAV. The NAV of the Fund will be determined as of the close of the regular trading session on the Exchange (ordinarily 4:00 p.m., Eastern Time) on each day that the Exchange is open. Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more sources.

The pricing and valuation of portfolio securities will be determined in good faith in accordance with procedures approved by, and under the direction of, the Trust's Board of Trustees (''Board''). In determining the value of the Fund's assets, equity securities will be generally valued at market using quotations from the primary market in which they are traded. Debt securities (other than short-term investments) will be valued on the basis of broker quotes or valuations provided by a pricing service, which in determining value will utilize information regarding recent sales, market transactions in comparable securities, quotations from dealers, and various relationships between securities. Other assets, such as accrued interest, accrued dividends and cash also will be included in determining the NAV. The Fund normally will use third party pricing services to obtain portfolio security prices.

Municipal Bonds, money market instruments, convertible bonds and VRDNs will generally be valued at bid prices received from independent pricing services as of the announced closing time for trading in fixed-income instruments in the respective market.

Exchange-traded equity securities, including common stocks, ETFs, preferred stocks, convertible preferred stocks and warrants, will be valued at market value, which will generally be determined using the last reported official closing or last trading price on the exchange or market on which the security is primarily traded at the time of valuation or, if no sale has occurred, at the last quoted bid price on the primary market or exchange on which they are traded. If market prices are unavailable or the Fund believes that they are unreliable, or when the value of a security has been materially affected by events occurring after the relevant market closes, the Fund will price those securities at fair value as determined in good faith using methods approved by the Trust's Board.

Equity securities traded in the OTC market, including common stocks, preferred stocks, and warrants, will be valued at the last reported sale price on the valuation date. OTC traded convertible preferred stocks will be valued based on price quotations obtained from a broker-dealer who makes markets in such securities or other equivalent indications of value provided by a third-party pricing service. Securities of non-exchange-traded investment company securities registered under the 1940 Act, including money market funds, will be valued at NAV.

Option contracts will be valued at their most recent sale price on the applicable exchange. If no such sales are reported, these contracts will be valued at their most recent bid price.

To the extent the assets of the Fund are invested in other open-end investment companies that are registered under the 1940 Act, the Fund's NAV will be calculated based upon the NAVs reported by such registered open-end investment companies.

Securities and assets for which market quotations are not readily available or which cannot be accurately valued using the Fund's normal pricing procedures will be valued by the Trust's Fair Value Pricing Committee at fair value as determined in good faith under policies approved by the Board. Fair value pricing may be used, for example, in situations where (i) portfolio securities, such as securities with small capitalizations, are so thinly traded that there have been no transactions for that security over an extended period of time; (ii) an event occurs after the close of the exchange on which a portfolio security is principally traded that is likely to change the value of the portfolio security prior to the Fund's NAV calculation; (iii) the exchange on which the portfolio security is principally traded closes early; or (iv) trading of the particular portfolio security is halted during the day and does not resume prior to the Fund's NAV calculation. The Board will monitor and evaluate the Fund's use of fair value pricing, and periodically reviews the results of any fair valuation under the Trust's policies.

[21] The Adviser represents that, to the extent the Trust effects the creation or redemption of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

Availability of Information

The Fund's Web site (*www.cumberetfs.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[22] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund's Web site will disclose the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.[23]

The Fund will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via the NSCC. The basket represents one Creation Unit of the Fund. The NAV of Shares of the Fund will normally be determined as of the close of the regular trading session on the Exchange (ordinarily 4:00 p.m., Eastern Time) on each business day. Authorized Participants may refer to the basket composition file for information regarding securities and financial instruments that may comprise the Fund's basket on a given day.

The approximate value of the Fund's investments on a per-Share basis, the Indicative Intra-Day Value (''IIV''), will be disseminated every 15 seconds during the Exchange Core Trading Session. The IIV should not be viewed as a ''real-time'' update of NAV because the IIV will be calculated by an independent third party and may not be calculated in the exact same manner as NAV, which will be computed daily.

The IIV for the Fund will be calculated by dividing the ''Estimated Fund Value'' as of the time of the calculation by the total number of outstanding Shares. ''Estimated Fund Value'' is the sum of the estimated amount of cash held in the Fund's portfolio, the estimated amount of accrued interest owing to the Fund and the estimated value of the securities held in the Fund's portfolio, minus the estimated amount of the Fund's liabilities. The IIV will be calculated based on the same portfolio holdings disclosed on the Fund's Web site. In determining the estimated value for each of the component securities, the IIV will use last sale, market prices or other methods that would be considered appropriate for pricing securities held by registered investment companies.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's shareholder reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares and the underlying U.S. exchange-traded equity securities will be available via the Consolidated Tape Association (''CTA'') high-speed line, and from the national securities exchange on which they are listed. Price information regarding non-U.S. exchange-traded equity securities held by the Fund will be available from the exchanges trading such assets.

Quotation information from brokers and dealers or pricing services will be available for Municipal Bonds, taxable municipal bonds, convertible bonds, VRDNs, and cash equivalents. Price information for investment company securities (other than ETFs) will be available from the applicable investment company's Web site and from market data vendors. Price information for OTC equity securities will be available from major market data vendors. Pricing information regarding each asset class in which the Fund will invest will generally be available through nationally recognized data service providers through subscription agreements. Quotation and last sale information for exchange-traded options will be available via the Options Price Reporting Authority and from the applicable U.S. options exchange. In addition, the IIV, (which is the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3)), will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.[24] The dissemination of the IIV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[25] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca

[22] The Bid/Ask Price of the Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[23] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[24] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs taken from CTA or other data feeds.

[25] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m., Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Adviser will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the Fund's portfolio. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [26] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio [27] as defined in NYSE Arca Equities Rule 8.600(c)(2) will be made available to all market participants at the same time. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, or by regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.[28]

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.[29]

FINRA, on behalf of the Exchange, or regulatory staff of the Exchange, will communicate as needed regarding trading in the Shares, options and certain exchange-traded equity securities with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, or regulatory staff of the Exchange, may obtain trading information regarding trading in the Shares, options and certain exchange-traded equity securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, options and certain exchange-traded equity securities from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine (''TRACE''). FINRA also can access data obtained from the Municipal Securities Rulemaking Board (''MSRB'') relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (4) how information regarding the IIV and the Disclosed Portfolio is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., Eastern Time each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [30] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities

[26] 17 CFR 240.10A–3.

[27] The term ''Disclosed Portfolio'' is defined in NYSE Arca Equities Rule 8.600(c)(2).

[28] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[29] For a list of the current members of ISG, *see www.isgportal.org*. The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[30] 15 U.S.C. 78f(b)(5).

laws. FINRA, on behalf of the Exchange, or regulatory staff of the Exchange, will communicate as needed regarding trading in the Shares, options and certain exchange-traded equity securities with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, or regulatory staff of the Exchange, may obtain trading information regarding trading in the Shares, options and certain exchange-traded equity securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, options and certain exchange-traded equity securities from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to TRACE. FINRA also can access data obtained from the MSRB relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. The Fund may not purchase or hold illiquid assets if, in the aggregate, more than 15% of its net assets would be invested in illiquid assets. The Adviser and Sub-Adviser are not registered as broker-dealers but the Adviser is affiliated with one or more broker-dealers and has implemented and will maintain a fire wall with respect to each such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares and the underlying U.S. exchange-traded equity securities will be available via the CTA high-speed line, and from the national securities exchange on which they are listed. The Fund will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. Moreover, prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that principally holds municipal bonds and that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that principally holds municipal bonds and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or *up to 90 days* (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2015–93 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–NYSEArca–2015–93. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549 on official business days between 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2015–93 and should be submitted on or before January 4, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Brent J. Fields,

Secretary.

[FR Doc. 2015–31328 Filed 12–11–15; 8:45 am]

BILLING CODE 8011–01–P

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension: Form T–6.
OMB Control No. 3235–0391, SEC File No. 270–344.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form T–6 (17 CFR 269.9) is an application for eligibility and qualification for a foreign person or corporation under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*). Form T–6 provides the basis for determining whether a foreign person or corporation is eligible to serve as a trustee for qualified indenture. Form T–6 is filed on occasion. The information collected must be filed with the Commission and is publicly available. Form T–6 takes approximately 17 burden hours per response and is filed by approximately 1 respondent annually. We estimate that 25% of the 17 hours (4.25 hours) is prepared by the filer for an annual reporting burden of 4.25 hours (4.25 hours per response × 1 response).

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 control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: December 8, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–31359 Filed 12–11–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76591; File No. SR–NYSE–2015–63]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Listed Company Manual To Provide That Any Senior Official of a Listed Company With the Rank of Corporate Secretary or Higher Can Sign the Written Request of a Listed Company Seeking To Change Its Designated Market Maker Unit Required by Section 806.01 of the Manual

December 8, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 25, 2015, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Listed Company Manual (the ''Manual'') to provide that any senior official of a listed company with the rank of Corporate Secretary or higher can sign the written request of a listed company seeking to change its designated market maker (''DMM'') unit required by Section 806.01 of the Manual. The filing also proposes to replace outdated references throughout the Manual to ''Specialists'' with references to ''DMMs'' and update the text of Section 402.09(E) to reflect the current text of NYSE Rule 460. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Manual to provide that any senior official of a listed company with the rank of Corporate Secretary or higher can sign the written request of a listed company seeking to change its DMM unit required by Section 806.01 of the Manual. The filing also proposes to replace outdated references throughout the Manual to ''Specialists'' with

references to ''DMMs'' and update the text of Section 402.09(E) to reflect the current text of NYSE Rule 460.

Section 806.01 of the Manual establishes a process to be followed by any listed company wishing to change to a new DMM unit. Pursuant to Section 806.01, a listed company wishing to change DMM units must file with the Corporate Secretary of the Exchange a written notice (the ''Issuer Notice''), signed by the company's chief executive officer. The Issuer Notice is required to indicate the specific issues prompting this request. It has been the Exchange's experience that companies have occasionally found it burdensome to obtain the signature of their CEO for purposes of submitting an Issuer Notice and that this requirement has caused an undesirable delay when companies are making their submissions. We also note that this requirement is inconsistent with the Exchange Rule 103B, which provides that any senior official with the rank of Corporate Secretary or higher (or, in the case of a structured product listing, a senior officer of the issuer) can sign the notice in which a listed company informs the Exchange of its initial selection of a DMM unit. It has been the Exchange's experience that a senior officer other than the chief executive officer often manages the DMM relationship on behalf of the listed company and has authority to take action in relation to that relationship. In light of that fact, the Exchange believes there is no reason to have different requirements with respect to the commencement and severing of a listed company's relationship with its DMM unit. Consequently, we propose to amend Section 806.01 to provide that any official with the rank of Corporate Secretary or higher at a listed company may sign an Issuer Notice.

The Exchange amended its rules a number of years ago to significantly change the role of specialists on the trading floor.[3] In connection with that change, the Exchange adopted the new title of ''designated market maker'' or ''DMM'' for specialists. Several sections of the Manual (Sections 106.02, 106.03 and 806.01) include outdated references to specialists. The Exchange proposes to replace these references with references to DMMs. In addition, Section 402.09(E) (''Rule 460—Specialists Participating in Contests or Serving as Directors'') is intended as a repetition of Exchange Rule 460. Exchange Rule 460 has been amended several times over the years and the Exchange inadvertently failed to make conforming changes to Section 402.09(E).[4] We now propose to replace the current text of Section 402.09(E) with the up-to-date text of Rule 460.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[5] of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular in that it is designed 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 and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed amendment is consistent with the investor protection objectives of Section 6(b)(5) because it is designed to ensure that listed companies are able to expeditiously change their DMM unit when senior management of the listed company believes it is desirable to do so. An effective relationship between the listed company and the DMM is important to the maintenance of a high quality market for the company's securities and is therefore in the interests of investors.

The replacement of references to ''specialists'' with references to ''DMMs'' and the amendment of the text of Section 402.09(E) are non-substantive changes to update the terminology and reflect the Exchange's current Rule 460 and therefore have no implications for the protection of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The proposed rule change is designed to permit listed companies to apply for a change in the DMM unit allocated to their securities on the basis of a notice signed by any officer with the title of Corporate Secretary or higher rather than requiring that it be signed in all cases by the CEO, as is currently the case. The proposed amendment simply provides more flexibility in providing the required paperwork and conforms the signing requirements with respect to the commencement and severing of a listed company's relationship with its DMM unit, but does not change any of the substantive rights of the listed company or the DMM unit in any way. As such, the Exchange does not expect the rule change to have any significant impact on competition. The other proposed changes are non-substantive changes to update terminology and reflect the Exchange's current Rule 460 and therefore have no significant impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the

[3] *See* Securities Exchange Act Release No. 58845 (October 24, ([sic] 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46).

[4] *See* Securities Exchange Act Release No. 58328 (August 7, 2008), 73 FR 48260 (August 18, 2008) (SR–NYSE–2008–45). *See also* Securities Exchange Act Release No. 58845 (October 24, ([sic] 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46). *See also* Securities Exchange Act Release No. 66709 (April 2, 2012), 77 FR 20870 (April 6, 2012) (SR–NYSE–2012–06).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Exchange believes that providing greater flexibility in the preparation of the paperwork needed to request a change of DMM unit is in the interests of investors as it is important to the maintenance of a high quality market for an issuer's stock that the issuer has a good relationship with its DMM. As the Exchange notes in its filing, the proposal would better conform the process for changing a DMM to that which is used for initially selecting a DMM. In particular, the officer's signature that would be required to change a company's DMM must be that of a senior official at the company with a rank of Corporate Secretary or above. Furthermore, the other rule changes proposed by the Exchange are also conforming changes that would make the Manual more consistent with the Exchange's current rules. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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–NYSE–2015–63 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–NYSE–2015–63. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2015–63, and should be submitted on or before January 4, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Brent J. Fields,

Secretary.

[FR Doc. 2015–31329 Filed 12–11–15; 8:45 am]

BILLING CODE 8011–01–P

[13] 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).

[14] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76588; File No. SR–C2–2015–034]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Certificate of Incorporation of Its Parent Company

December 8, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on November 25, 2015, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the certificate of incorporation of its parent Company, CBOE Holdings, Inc. (''CBOE Holdings''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 21, 2015, CBOE Holdings' stockholders approved proposed amendments to the Certificate. On October 22[sic], 2015, in accordance with Article Eleventh of the Certificate, the Exchange submitted a rule filing proposing to make the approved amendments to the Certificate.[3] The Exchange notes however, that it inadvertently omitted in its rule filing two changes to the Certificate in the Exhibit 5 that had been approved by CBOE Holdings' shareholders. In order to conform the current Certificate to the Certificate approved by CBOE Holdings' shareholders in May 2015, CBOE Holdings proposes to correct the omitted changes. First, in Article Third, the Exchange had omitted to eliminate the word ''other'' from the following language ''The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any other lawful act or activity for which corporations may be organized under the GCL.'' The Exchange believes that the reference to ''other'' in this section is unnecessary and that the change is non-substantive and clarifying in nature. The Exchange notes that the proposed change does not affect the rights of shareholders.

Next, CBOE Holdings proposes to correct an error related to the ownership concentration limitation. Particularly, CBOE Holdings had proposed to remove references to the 10% ownership concentration limitation applicable before CBOE Holdings' initial public offering (''IPO'') in 2010, as discussed in SR–C2–2015–026.[4] This change did not change the current ownership concentration limitation, which is 20%. In Article Sixth, subparagraph (b)(iii), the Exchange inadvertently omitted references to both 10% and 20%. Specifically, the language ''10% or 20% (as applicable at such time)'' was eliminated in its entirety. CBOE Holdings notes that only ''10% or'' and ''(as applicable at such time)'' should have been eliminated (*i.e.,* reference to 20% should have remained). Accordingly, CBOE Holdings proposes to add ''20%'', the current ownership concentration limitation, back into Article Sixth, Subparagraph (b)(iii).

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.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] 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)[7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, CBOE Holdings believes the proposed amendments to its Certificate are non-substantive and clarifying in nature, alleviating potential confusion. Additionally, CBOE Holdings believes that conforming the current Certificate to the Certificate approved by CBOE Holdings' shareholders on May 21, 2015, alleviates potential confusion. The alleviation of potential confusion removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Because the proposed rule change relates to the governance of CBOE Holdings and not to the operations of the Exchange, 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.

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 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 if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

In its filing, the Exchange requested that the Commission waive both the 5 business day prefiling requirement as well as the 30-day operative delay so that the Exchange can expeditiously obtain effectiveness, as required by CBOE Holdings' governing documents, for two changes approved by CBOE Holdings' shareholders to the Certificate of Incorporation of CBOE Holdings that the Exchange failed to correctly mark in the recent filing it submitted to seek effectiveness of the overall package of shareholder-approved changes.

The Commission believes that waiving the 5 business day prefiling requirement and the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow two non-controversial proposed conforming edits to the CBOE Holdings Certificate of Incorporation to take effect without delay. The Commission notes the Exchange previously filed to amend the Certificate and that filing has since become effective. The Exchange represents that the change to Article Third is non-substantive and non-controversial. The change to Article Sixth corrects an obvious typographical error, as the language continued to reference the ownership concentration limit but failed to include the limit's numerical expression. That limit is contained elsewhere in Article Sixth (b), including in the opening paragraph. Accordingly, adding a reference to the long-standing ''20%'' back to paragraph (b)(iii) is a conforming edit to fill an obvious gap created by a rule text marking error in the Exchange's recent filing. The two proposed edits do not raise any new or novel issues, and allowing these edits to be made without further delay will allow the Exchange to promptly update the Certificate of Incorporation of CBOE Holdings. For this reason, the

[3] *See* Securities Exchange Act Release No. 76281 (October 27, 2015), 80 FR 211 [sic] (November 2, 2015) (SR–C2–2015–026).

[4] *Id.*

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

Commission designates the proposed rule change to be operative upon filing.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2015–034 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–C2–2015–034. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2015–034 and should be submitted on or before January 4, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Brent J. Fields,

Secretary.

[FR Doc. 2015–31326 Filed 12–11–15; 8:45 am]

BILLING CODE 8011–01–P

[10] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12) and (59).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 17Ad–11, SEC File No. 270–261, OMB Control No. 3235–0274.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17Ad–11 (17 CFR 240.17Ad–11) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17Ad–11 requires every registered recordkeeping transfer agent to report to issuers and its appropriate regulatory agency in the event that the aggregate market value of an aged record difference exceeds certain thresholds. A record difference occurs when an issuer's records do not agree with those of securityholders as indicated, for instance, on certificates presented to the transfer agent for purchase, redemption or transfer. An aged record difference is a record difference that has existed for more than 30 calendar days. In addition, the rule requires every recordkeeping transfer agent to report to its appropriate regulatory agency in the event of a failure to post certificate detail to the master securityholder file within five business days of the time required by Rule 17Ad–10 (17 CFR 240.17Ad–10). Also, a transfer agent must maintain a copy of any report required under Rule 17Ad-11 for a period of not less than three years following the date of the report, the first year in an easily accessible place.

Because the information required by Rule 17Ad–11 is already available to transfer agents, any collection burden for small transfer agents is minimal. Based on a review of the number of Rule 17Ad–11 reports the Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation received since 2012, the Commission staff estimates that 10 respondents will file a total of approximately 12 reports annually. The Commission staff estimates that, on average, each report can be completed in 30 minutes. Therefore, the total annual hourly burden to the entire transfer agent industry is approximately six hours (30 minutes × 12 reports). Assuming an average hourly rate of $25 for a transfer agent staff employee, the average total internal cost of the report is $12.50. The total annual internal cost of compliance for the approximate 10 respondents is approximately $150.00 (12 reports × $12.50).

The retention period for the recordkeeping requirement under Rule 17Ad–11 is three years following the date of a report prepared pursuant to the rule. The recordkeeping requirement under Rule 17Ad–11 is mandatory to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB number.

Background documentation for this information collection may be viewed at the following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: (i) *Shagufta_Ahmed@comb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to *PRA_*

Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 8, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–31360 Filed 12–11–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Schedule 14D–1F, OMB Control No. 3235–0376, SEC File No. 270–338.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Schedule 14D–1F (17 CFR 240.14d–102) is a form that may be used by any person (the ''bidder'') making a cash tender or exchange offer for securities of any issuer (the ''target'') incorporated or organized under the laws of Canada or any Canadian province or territory that is a foreign private issuer, where less than 40% of the outstanding class of the target's securities that is the subject of the offer is held by U.S. holders. Schedule 14D–1F is designed to facilitate cross-border transactions in the securities of Canadian issuers. The information required to be filed with the Commission provides security holders with material information regarding the bidder as well as the transaction so that they may make informed investment decisions. Schedule 14D–1F takes approximately 2 hours per response to prepare and is filed by approximately 2 respondents annually for a total reporting burden of 4 hours (2 hours per response × 2 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 8, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–31362 Filed 12–11–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Regulation S–ID, OMB Control No. 3235–0692, SEC File No. 270–644.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation S–ID (17 CFR 248), including the information collection requirements thereunder, is designed to better protect investors from the risks of identity theft. Under Regulation S–ID, SEC-regulated entities are required to develop and implement reasonable policies and procedures to identify, detect, and respond to relevant red flags (the ''Identity Theft Red Flags Rules'') and, in the case of entities that issue credit or debit cards, to assess the validity of, and communicate with cardholders regarding, address changes. Section 248.201 of Regulation S–ID includes the following information collection requirements for each SEC-regulated entity that qualifies as a ''financial institution'' or ''creditor'' under Regulation S–ID and that offers or maintains covered accounts: (i) Creation and periodic updating of an identity theft prevention program (''Program'') that is approved by the board of directors, an appropriate committee thereof, or a designated senior management employee; (ii) periodic staff reporting to the board of directors on compliance with the Identity Theft Red Flags Rules and related guidelines; and (iii) training of staff to implement the Program. Section 248.202 of Regulation S–ID includes the following information collection requirements for each SEC-regulated entity that is a credit or debit card issuer: (i) Establishment of policies and procedures that assess the validity of a change of address notification if a request for an additional or replacement card on the account follows soon after the address change; and (ii) notification of a cardholder, before issuance of an additional or replacement card, at the previous address or through some other previously agreed-upon form of communication, or alternatively, assessment of the validity of the address change request through the entity's established policies and procedures.

SEC staff estimates of the hour burdens associated with section 248.201 under Regulation S–ID include the one-time burden of complying with this section for newly-formed SEC-regulated entities, as well as the ongoing costs of compliance for all SEC-regulated entities. With respect to the one-time burden hours, staff estimates that each newly-formed financial institution or creditor would incur a burden of 2 hours to conduct an initial assessment of covered accounts. Staff estimates that approximately 644 SEC-regulated financial institutions and creditors are newly formed each year, and the total estimated one-time burden to initially assess covered accounts is therefore 1,288 hours. Staff also estimates that each financial institution or creditor that maintains covered accounts would incur an additional initial burden of 29 hours to develop and obtain board approval of a Program and to train the staff of the financial institution or creditor. Staff estimates that approximately 580 SEC-regulated financial institutions and creditors that maintain covered accounts are newly formed each year, and thus the total estimated one-time burden to develop

and obtain board approval of a Program and train staff is 16,820 hours. Thus, the total initial estimated burden for all newly-formed SEC-regulated entities is 18,108 hours (1,288 hours + 16,820 hours).

With respect to ongoing annual burden hours, SEC staff estimates that each financial institution or creditor would incur a burden of 1 hour to periodically assess whether it offers or maintains covered accounts. Staff estimates that there are approximately 9,960 SEC-regulated entities that are either financial institutions or creditors, and the total estimated annual burden to periodically assess covered accounts is therefore 9,960 hours. Staff also estimates that each financial institution or creditor that maintains covered accounts would incur an additional annual burden of 9.5 hours to prepare and present an annual report to the board and to periodically review and update the Program. Staff estimates that there are approximately 8,964 SEC-regulated entities that are financial institutions or creditors that offer or maintain covered accounts, and thus the total estimated additional annual burden for these entities is 85,158 hours. Thus, the total ongoing annual estimated burden for all SEC-regulated entities is 95,118 hours (9,960 hours + 85,158 hours).

The collections of information required by section 248.202 under Regulation S–ID will apply only to SEC-regulated entities that issue credit or debit cards. SEC staff understands that SEC-regulated entities generally do not issue credit or debit cards, but instead partner with other entities, such as banks, that issue cards on their behalf. These other entities, which are not regulated by the SEC, are already subject to substantially similar change of address obligations pursuant to other federal regulators' identity theft red flags rules. Therefore, staff does not expect that any SEC-regulated entities will be subject to the information collection requirements of section 248.202, and accordingly, staff estimates that there is no hour burden related to section 248.202 for SEC-regulated entities.

In total, SEC staff estimates that the aggregate annual information collection burden of Regulation S–ID is 113,226 hours (18,108 hours + 95,118 hours). This estimate of burden hours is made solely for the purposes of the Paperwork Reduction Act and is not derived from a quantitative, comprehensive, or even representative survey or study of the burdens associated with Commission rules and forms. Compliance with Regulation S–ID, including compliance with the information collection requirements thereunder, is mandatory for each SEC-regulated entity that qualifies as a ''financial institution'' or ''creditor'' under Regulation S–ID (as discussed above, certain collections of information under Regulation S–ID are mandatory only for financial institutions or creditors that offer or maintain covered accounts). Responses will not be kept confidential. 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 control number.

Written comments are invited on: (i) 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) the accuracy of the agency's estimate of the burden of the collection of information; (iii) ways to enhance the quality, utility, and clarity of the information collected; and (iv) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

All submissions should refer to File Number 270–644. This file number should be included on the subject line if email is used. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov*). All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Dated: December 8, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–31361 Filed 12–11–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Form T–3; OMB Control No. 3235–0105, SEC File No. 270–123.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collections of information discussed below.

Form T–3 (17 CFR 269.3) is an application for qualification of an indenture under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*). The information provided under Form T–3 is used by the Commission to determine whether to qualify an indenture relating to an offering of debt securities that is not required to be registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Form T–3 is filed on occasion. The information required by Form T–3 is mandatory. This information is publicly available on EDGAR. Form T–3 takes approximately 43 hours per response to prepare and is filed by approximately 12 respondents. We estimate that 25% of the 43 hours per response (11 hours) is prepared by the filer for a total annual reporting burden of 132 hours (11 hours per response × 12 responses).

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 control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: December 8, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–31358 Filed 12–11–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76593; File No. SR–Phlx–2015–94]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change To Make Permanent the Pilot Program Eliminating Minimum Value Sizes for Opening Transactions in New Series of FLEX Options

December 8, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 25, 2015, NASDAQ OMX 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 is filing with the Commission a proposal amend [sic] Phlx Rule 1079 (FLEX Index, Equity and Currency Options) to make permanent a pilot program that eliminates minimum value sizes for opening transactions in new series of FLEX index options and FLEX equity options (together known as ''FLEX Options'').[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Phlx Rule 1079 (FLEX Index, Equity and Currency Options) to make permanent a pilot program that eliminates minimum value sizes for opening transactions in new series of FLEX Options (the ''Pilot Program'' or ''Pilot''), and to indicate that the minimum size of a request for quote (''RFQ'') is one contract. The Exchange is requesting the Commission to permanently approve the Pilot Program. The Exchange believes that the Pilot Program has been successful and well received by its membership and the investing public for the period that it has been in operation as a pilot program.[4]

Rule 1079 deals with the process of listing and trading FLEX equity, index, and currency options on the Exchange. Rule 1079(a)(8)(A) currently sets the minimum opening transaction value size in the case of a FLEX Option in a newly established (opening) series if there is no open interest in the particular series when a RFQ is submitted (except as provided in Commentary .01 to Rule 1079): (i) $10 million underlying equivalent value, respecting FLEX market index options, and $5 million underlying equivalent value respecting FLEX industry index options;[5] (ii) the lesser of 250 contracts or the number of contracts overlying $1 million in the underlying securities, with respect to FLEX equity options (together the ''minimum value size'').[6]

Presently, Commentary .01 to Rule 1079 states that by virtue of the Pilot Program ending January 31, 2016, or the date on which the pilot is approved on a permanent basis, there shall be no minimum value size requirements for FLEX Options as noted in subsections (a)(8)(A)(i) and (a)(8)(A)(ii) of Rule 1079. The Exchange now proposes to make the Pilot Program permanent.[7] To accomplish this change, the Exchange is proposing to eliminate the rule text describing the Pilot Program, which is contained in Commentary .01 to Rule 1079. The Exchange is proposing to indicate that the minimum value size requirements for a RFQ for FLEX Options as noted in subsections (a)(8)(A)(i) and (a)(8)(A)(ii) of Rule 1079 is one contract for all FLEX Options. Thus, as a result of the proposed change to make the Pilot Program permanent, subsections (a)(8)(A)(i) and (a)(8)(A)(ii) of Rule 1079 would state, in pertinent part, that if there is no open interest when an RFQ is submitted then the minimum size of an RFQ is: (i) One contract in the case of FLEX market index options, and one contract in the case of FLEX industry index options; and (ii) One contract in the case of FLEX equity options.[8]

In support of approving the Pilot Program on a permanent basis, and as required by the Pilot Program's approval order, the Exchange is submitting to the Commission a Pilot Program report (''Report''), which is a public report detailing the Exchange's experience with the Pilot.[9] The Report covers only opening transactions in new series, as per the Pilot. Specifically, the Exchange is providing the Commission with a Report that includes: (i) Data and analysis on the open interest and trading volume in (a) FLEX equity options that have an opening transaction with a minimum size of 0 to 249 contracts and less than $1 million in underlying value; (b) FLEX index options that have an opening

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In addition to FLEX Options, FLEX currency options are also traded on the Exchange. These flexible index, equity, and currency options provide investors the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices; and may have expiration dates within five years. *See* Rule 1079. FLEX currency options traded on the Exchange are also known as FLEX FX Options. The pilot program discussed herein does not encompass FLEX currency options.

[4] The Pilot Program was instituted in 2010 and last extended in 2015. *See* Securities Exchange Act Release Nos. 62900 (September 13, 2010), 75 FR 57098 (September 17, 2010) (SR–Phlx–2010–123) (notice of filing and immediate effectiveness of proposal instituting Pilot Program); and 75794 (August 31, 2015), 80 FR 53606 (September 4, 2015) (SR–Phlx–2015–74) (notice of filing and immediate effectiveness extending Pilot Program through January 31, 2016).

[5] Market index options and industry index options are broad-based index options and narrow-based index options, respectively. *See* Rule 1000A(b)(11) and (12).

[6] Subsection (a)(8)(A) also provides a third alternative: (iii) 50 contracts in the case of FLEX currency options. However, this alternative is not part of the Pilot Program and therefore is not changed by this proposal.

[7] The Exchange notes that any positions established under this Pilot would not be impacted by the expiration of the Pilot. For example, a 10-contract FLEX equity option opening position that overlies less than $1 million in the underlying security and expires in January 2016 could be established during the Pilot. If the Pilot Program were not made permanent or extended, the position would continue to exist and any further trading in the series would be subject to the minimum value size requirements for continued trading in that series.

[8] In proposing to make the Pilot Program permanent, the Exchange is simply indicating that if there is no open interest when an RFQ is submitted then the minimum size of an RFQ will be one contract for FLEX market index options, FLEX industry index options, and FLEX equity options.

[9] A copy of the Report is attached as Exhibit 3.

transaction with a minimum opening size of less than $10 million in underlying equivalent value; and (ii) analysis of the types of investors that initiated opening FLEX Options transactions (*i.e.,* institutional, high net worth, or retail).[10]

The Exchange believes that there is sufficient investor interest and demand in the Pilot Program to warrant its permanent approval and indicate one contract as the minimum size of an RFQ for all opening transactions in new series of FLEX equity Options and FLEX index Options. The Exchange believes that, for the period that the Pilot Program has been in operation, it has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange has not experienced any adverse market effects with respect to the Pilot Program.

The Exchange believes that eliminating the minimum value size requirements for opening transactions in new FLEX series on a permanent basis is important and necessary to the Exchange's efforts to create a product and market that provide its membership and investors interested in FLEX-type options with an improved but comparable alternative to the over-the-counter (''OTC'') market in customized options, which can take on contract characteristics similar to FLEX Options but are not subject to the same restrictions. By making the Pilot Program permanent, market participants would continue to have greater flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market. The Exchange believes that market participants would benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to, the following: (i) Enhanced efficiency in initiating and closing out positions; (ii) increased market transparency; and (iii) heightened contra-party creditworthiness due to the role of The Options Clearing Corporation (''OCC'') as issuer and guarantor of FLEX Options. The Exchange also believes that the Pilot Program is wholly consistent with comments by then Secretary of the Treasury Timothy F. Geithner, to the U.S. Senate. In particular, Secretary Geithner has stated that:

> Market efficiency and price transparency should be improved in derivatives markets by requiring the clearing of standardized contracts through regulated [central counterparties] and by moving the standardized part of these markets onto regulated exchanges and regulated transparent electronic trade execution systems for OTC derivatives and by requiring development of a system for timely reporting of trades and prompt dissemination of prices and other trade information. Furthermore, regulated financial institutions should be encouraged to make greater use of regulated exchange-traded derivatives. Competition between appropriately regulated OTC derivatives markets and regulated exchanges will make both sets of markets more efficient and thereby better serve end-users of derivatives.[11]

The Exchange believes that the elimination of the minimum value size requirements for opening FLEX transactions in new FLEX series on a permanent basis would provide FLEX-participating members with greater flexibility in structuring the terms of FLEX Options that best comports with their and their customers' particular needs. In this regard, the Exchange notes that the minimum value size requirements for opening FLEX transactions in new FLEX series were originally put in place to limit participation in FLEX Options to sophisticated, high net worth investors rather than retail investors. However, the Exchange believes that the restriction is no longer necessary and is overly restrictive. The Exchange has also not experienced any adverse market effects with respect to the Pilot Program eliminating the minimum value size requirements for opening FLEX transactions in new FLEX series. Again, based on the Exchange's experience to date and throughout the Pilot Program period, the minimum value size requirements are at times too large to accommodate the needs of members and their customers—who may be institutional, high net worth, or retail—that currently participate in the OTC market. In this regard, the Exchange notes that, prior to establishing the Pilot Program, exchanges that allow FLEX options have received numerous requests from broker-dealers representing institutional, high net worth and retail investors indicating that the minimum value size requirements for opening transactions in new FLEX series prevented them from bringing transactions that are already taking place in the OTC market to an exchange environment.

The Exchange believes that eliminating the minimum value size requirements for opening transactions in new FLEX series on a permanent basis would further broaden the base of investors that use FLEX Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options, where similar size restrictions do not apply. The Exchange also believes that this may open up FLEX Options to more retail investors. The Exchange does not believe that this raises any unique regulatory concerns because existing safeguards—such as certain position limit, exercise limit, and reporting requirements—continue to apply.[12] In addition, the Exchange notes that FLEX Options are subject to the options disclosure document (''ODD'') requirements of Rule 9b–1 under the Act.[13] No broker or dealer can accept an order from a customer to purchase or sell an option contract relating to an options class that is the subject of a definitive ODD (including FLEX Options), or approve the customer's account for the trading of such an option, unless the broker or dealer furnishes or has furnished to the customer a copy of the definitive ODD. The ODD contains a description, special features, and special risks of FLEX Options. Lastly, similar to any other options, FLEX Options are subject to supervision and suitability requirements, such are in Rule 1025 (Supervision of Accounts) and Rule 1026 (Suitability).

In proposing the Pilot Program itself and in now proposing to make it permanent, the Exchange is cognizant of the need for market participants to have substantial options transaction capacity and flexibility to hedge their substantial investment portfolios, on the one hand, and the potential for adverse effects that the minimum value size restrictions were originally designed to address, on the other. However, the Exchange has not experienced any adverse market effects with respect to the Pilot Program. The Exchange is also cognizant of the OTC market, in which similar restrictions on minimum value size do not apply. In light of these considerations and Secretary Geithner's comments on moving the standardized parts of OTC contracts onto regulated exchanges, the Exchange believes that making the Pilot Program permanent is appropriate and reasonable and will provide market participants with additional flexibility in determining whether to execute their customized

[10] The Report thus discusses only those FLEX option transactions that happened because the Pilot was in place.

[11] *See* letter from Secretary Geithner to the Honorable Harry Reid, United States Senate (May 13, 2009), located at *http://www.financialstability.gov/docs/OTCletter.pdf.*

[12] Certain position limit, aggregation and exercise limit requirements continue to apply to FLEX Options in accordance with Rule 1001 (Position Limits) and Rule 1002 (Exercise Limits).

[13] 17 CFR 240.9b–1.

options in an exchange environment or in the OTC market. The Exchange believes that market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to, enhanced efficiency in initiating and closing out positions, increased market transparency, and heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of FLEX Options.

Pursuant to this filing, the Exchange is proposing to adopt the existing Pilot Program on a permanent basis. Specifically, the Exchange proposes to eliminate in subsections (a)(8)(A)(i) and (a)(8)(A)(ii) of Rule 1079 references to different minimum sizes applicable to opening FLEX transactions in FLEX market index Options, FLEX industry index Options, and FLEX equity Options, and to indicate that the minimum size for all three such options will be one contract; and to eliminate the Pilot Program set forth in Commentary .01 to Rule 1079.[14] The proposal to make the Pilot Program permanent and thereby eliminate the minimum value size applicable to opening transactions in new FLEX series on the Exchange is similar to a rule change by the NYSE Arca and CBOE when adopting a similar pilot program on a permanent basis.[15]

For the foregoing reasons, the Exchange believes that the proposed changes to the minimum value size for opening transactions in new series of FLEX equity and index Options are reasonable and appropriate, promote just and equitable principles of trade, and facilitate transactions in securities while continuing to foster the public interest and investor protection, and therefore should be adopted on a permanent basis. The Exchange will continue to monitor the usage of FLEX Options and review whether changes need to be made to its Rules or the ODD to address any changes in retail FLEX Option participation or any other issues that may occur as a result of the elimination of the minimum value sizes on a permanent basis.

[14] As noted, in the case of FLEX currency options, however, which are not in the Pilot Program, the minimum value would be 50 contracts. Subsection (a)(8)(A)(ii) to Rule 1079.

[15] *See* Exchange Act Release No. 72537 (July 3, 2014), 79 FR 39442 (July 10, 2014) (SR–NYSEArca–2014–25) (order approving proposal to make permanent NYSE Arca's FLEX no minimum value pilot). *See also* Exchange Act Release No. 67624 (August 8, 2012), 77 FR 48580 (August 14, 2012) (SR–CBOE–2012–040) (order approving proposal to make permanent CBOE's FLEX no minimum value pilot).

2. Statutory Basis

The Exchange's proposal is consistent with Section 6(b) of the Act[16] in general, and furthers the objectives of Section 6(b)(5) of the Act[17] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. Specifically, the Exchange believes that the permanent approval of the Pilot Program, which eliminates minimum value size requirements for opening FLEX transactions in new FLEX series, would provide greater opportunities for investors to manage risk through the use of FLEX Options. Further, the Exchange notes that it has not experienced any adverse effects from the operation of the Pilot Program. The Exchange believes that making the Pilot Program permanent does not raise any unique regulatory concerns.

The Exchange also believes that eliminating the minimum value size requirements for opening FLEX transactions in new FLEX series, thus affording all market participants with an equal opportunity to tailor opening FLEX transactions to meet their own investment objectives without being encumbered by a minimum contract size, will help to remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, affording market participants who trade FLEX Options the same investment tools available to their counterparts on the NYSE Arca and CBOE will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will help to remove impediments to a free and open market and a national market system. The Exchange believes that adopting rules similar to those approved for and in use at NYSE Arca and CBOE, as discussed, does not raise any unique regulatory concerns. Lastly, the Exchange also believes that the proposed rule change, which provides all market participants, including public investors, with additional opportunities to trade customized options in an exchange environment and subject to exchange based rules, is appropriate in the public interest and for the protection of investors.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal would give traders and investors the opportunity to more effectively tailor their trading, investing and hedging through FLEX options traded on the Exchange. Specifically, the proposal is structured to offer the same enhancement to all market participants, regardless of account type, and will not impose a competitive burden on any participant. The Exchange believes that adopting similar FLEX rules to those of NYSE Arca and CBOE will allow the Exchange to more efficiently compete for FLEX Options orders. In addition, the Exchange believes that adopting the Pilot Program on a permanent basis will enable the Exchange to compete with the OTC market, in which similar restrictions on minimum value size do not apply.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve or disapprove the proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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–2015–94 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–2015–94. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2015–94, and should be submitted on or before January 4, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Brent J. Fields,

Secretary.

[FR Doc. 2015–31333 Filed 12–11–15; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76589; File No. SR–CBOE–2015–110]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Certificate of Incorporation of Its Parent Company

December 8, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on November 25, 2015, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the certificate of incorporation of its parent Company, CBOE Holdings, Inc. (''CBOE Holdings''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 21, 2015, CBOE Holdings' stockholders approved proposed amendments to the Certificate. On October 22 [sic], 2015, in accordance with Article Eleventh of the Certificate, the Exchange submitted a rule filing proposing to make the approved amendments to the Certificate.[3] The Exchange notes however, that it inadvertently omitted in its rule filing two changes to the Certificate in the Exhibit 5 that had been approved by CBOE Holdings' shareholders. In order to conform the current Certificate to the Certificate approved by CBOE Holdings' shareholders in May 2015, CBOE Holdings proposes to correct the omitted changes. First, in Article Third, the Exchange had omitted to eliminate the word ''other'' from the following language ''The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any other lawful act or activity for which corporations may be organized under the GCL.'' The Exchange believes that the reference to ''other'' in this section is unnecessary and that the change is non-substantive and clarifying in nature. The Exchange notes that the proposed change does not affect the rights of shareholders.

Next, CBOE Holdings proposes to correct an error related to the ownership concentration limitation. Particularly, CBOE Holdings had proposed to remove references to the 10% ownership concentration limitation applicable before CBOE Holdings' initial public offering (''IPO'') in 2010, as discussed in SR–CBOE–2015–092.[4] This change did not change the current ownership concentration limitation, which is 20%. In Article Sixth, subparagraph (b)(iii), the Exchange inadvertently omitted references to both 10% and 20%. Specifically, the language ''10% or 20% (as applicable at such time)'' was eliminated in its entirety. CBOE Holdings notes that only ''10% or'' and ''(as applicable at such time)'' should have been eliminated (*i.e.,* reference to 20% should have remained). Accordingly, CBOE Holdings proposes to add ''20%'', the current ownership concentration limitation, back into Article Sixth, Subparagraph (b)(iii).

[3] *See* Securities Exchange Act Release No. 76282 (October 27, 2015), 80 FR 211 [sic] (November 2, 2015) (SR–CBOE–2015–092).

[4] *Id.*

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.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] 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)[7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, CBOE Holdings believes the proposed amendments to its Certificate are non-substantive and clarifying in nature, alleviating potential confusion. Additionally, CBOE Holdings believes that conforming the current Certificate to the Certificate approved by CBOE Holdings' shareholders on May 21, 2015, alleviates potential confusion. The alleviation of potential confusion removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Because the proposed rule change relates to the governance of CBOE Holdings and not to the operations of the Exchange, 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.

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.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

In its filing, CBOE requested that the Commission waive both the 5 business day prefiling requirement as well as the 30-day operative delay so that CBOE can expeditiously obtain effectiveness, as required by CBOE Holdings' governing documents, for two changes approved by CBOE Holdings' shareholders to the Certificate of Incorporation of CBOE Holdings that CBOE failed to correctly mark in the recent filing it submitted to seek effectiveness of the overall package of shareholder-approved changes.

The Commission believes that waiving the 5 business day prefiling requirement and the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow two non-controversial proposed conforming edits to the CBOE Holdings Certificate of Incorporation to take effect without delay. The Commission notes CBOE previously filed to amend the Certificate and that filing has since become effective. CBOE represents that the change to Article Third is non-substantive and non-controversial. The change to Article Sixth corrects an obvious typographical error, as the language continued to reference the ownership concentration limit but failed to include the limit's numerical expression. That limit is contained elsewhere in Article Sixth (b), including in the opening paragraph. Accordingly, adding a reference to the long-standing ''20%'' back to paragraph (b)(iii) is a conforming edit to fill an obvious gap created by a rule text marking error in CBOE's recent filing. The two proposed edits do not raise any new or novel issues, and allowing these edits to be made without further delay will allow CBOE to promptly update the Certificate of Incorporation of CBOE Holdings. For this reason, the Commission designates the proposed rule change to be operative upon filing.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

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–2015–110 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–2015–110. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of

[10] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2015–110 and should be submitted on or before January 4,2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Brent J. Fields,

Secretary.

[FR Doc. 2015–31327 Filed 12–11–15; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12) and (59).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2015–0059]

Advance Notification Regarding Reporting by State ABLE Programs Under Section 529A of the Internal Revenue Code

AGENCY: Social Security Administration.

ACTION: Notice; request for comments.

SUMMARY: This notice provides advance notification to State Achieving a Better Life Experience (ABLE) programs of the general types of information we anticipate requiring that the State programs include in their monthly electronic reports of ABLE account balances and distributions. We are also requesting information from the public and State ABLE programs about these general types of information and whether these electronic reports should include any other information.

DATES: Comments must be received by January 13, 2016.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. No matter which method you choose, please state that your comments refer to Docket No. [SSA–2015–0059] so that we may associate your comments with the correct document.

Caution: You should be careful to include in your comments only information that you wish to make publicly available We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the Search function to find docket number [SSA–2015–0059]. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Address your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Eric Skidmore, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 597–1833. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act) was enacted on December 19, 2014, as part of the Tax Increase Prevention Act of 2014 (Public Law 113–295). The ABLE Act permits a State, or an agency or instrumentality of a State, to establish and maintain a new type of savings program, called an ABLE program. Under an ABLE program, contributions can be made to a tax-advantaged ABLE account that is established for the purpose of providing secure funding for disability-related expenses on behalf of the account's designated beneficiary that will supplement but not supplant benefits provided through other sources. The designated beneficiary of an ABLE account, who is also the owner of the account, must have been disabled or blind prior to his or her attaining age 26. The ABLE Act further provides that the Social Security Administration will exclude the first $100,000 in an ABLE account—for any period when the designated beneficiary maintains, makes contributions to, or receives distributions from his or her ABLE account—for purposes of the Supplemental Security Income (SSI) program. We shall also exclude distributions for qualified non-housing-related disability expenses for purposes of the SSI program.

Section 529A(d)(4) of the Internal Revenue Code provides that ''States shall submit electronically on a monthly basis to the Commissioner of Social Security, in the manner specified by the Commissioner, statements on relevant distributions and account balances from all ABLE accounts.'' Before accepting these electronic reports, we will enter into a data exchange agreement with each State. This agreement will specify the content, format, and the security and privacy requirements for these reports. However, we recognize that general guidance in advance of entering into these agreements may be helpful to the States as they design their ABLE programs, and we do not want uncertainty concerning these reports to delay the States' implementing their programs. Therefore, we are issuing this advance notice to inform State ABLE programs of the general types of information we anticipate requesting they include in their monthly reports of ABLE account balances and distributions.

NOTICE: We currently anticipate that our data exchange agreements will require that the States provide in their monthly electronic reports information, concerning each ABLE account:

- Name of the designated beneficiary;
- Social Security number of the designated beneficiary;
- date of birth of the designated beneficiary;
- name of the person who has signature authority (if different from the designated beneficiary);
- unique account number assigned by the State to the ABLE account;
- account opened date;
- account closed date;
- balance as of the first moment of the month (that is, the balance as of 12:00 a.m. local time on the first of the month);
- date of each distribution in the reporting period; and
- amount of each distribution in the reporting period.

Dated: December 4, 2015.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

[FR Doc. 2015–31351 Filed 12–11–15; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 9376]

30-Day Notice of Proposed Information Collection: Request for Entry Into Children's Passport Issuance Alert Program

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to January 13, 2016.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Derek Rivers, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/PMO), U.S. Department of State, SA–17, 10th Floor, Washington, DC 20036 or at *RiversDA@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Request for Entry into Children's Passport Issuance Alert Program.
- *OMB Control Number:* 1405–0169.
- *Type of* Request: Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services, CA/OCS/PMO.
- *Form Number:* DS–3077.
- *Respondents:* Concerned parents or their agents, institutions, or courts.
- *Estimated Number of Respondents:* 6,000.
- *Estimated Number of Responses:* 6,000.
- *Average Hours per Response:* 30 minutes.
- *Total Estimated Burden:* 3,000 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: The information requested will be used to support entry of the name of a minor (an unmarried person under 18) into the Children's Passport Issuance Alert Program (CPIAP). CPIAP provides a mechanism for parents or other persons with legal custody of a minor to obtain information regarding whether the Department has received a passport application for the minor. This program was developed as a means to prevent international abduction of a minor or to help prevent other travel of a minor without the consent of a parent or legal guardian. If a minor's name and other identifying information has been entered into the CPIAP, when the Department receives an application for a new, replacement, or renewed passport for the minor, the application will be placed on hold for up to 90 days and the Office of Children's Issues may attempt to notify the requestor of receipt of the application. Form DS–3077 will be primarily submitted by a parent or legal guardian of a minor. 22 C.F.R § 51.28, which is the regulation that implements the statutory two parent consent requirement and prescribes the bases for an exception is one of the main legal authorities that this form is based from.

Methodology: The completed form DS–3077 can be filled out online and printed or completed by hand. The form must be manually signed and submitted to the Office of Children's Issues by email, fax or mail.

Dated: December 3, 2015.

Henry Hand,

(Acting) Managing Director, Bureau of Consular Affairs, Department of State.

[FR Doc. 2015–31383 Filed 12–11–15; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 9377]

30-Day Notice of Proposed Information Collection: Local U.S. Citizen Skills/Resources Survey

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to January 13, 2016.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Derek Rivers, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/PMO), U.S. Department of State, SA–17, 10th Floor, Washington, DC 20036 or at *RiversDA@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Local U.S. Citizen Skills/Resources Survey.
- *OMB Control Number:* 1405–0188.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).
- *Form Number:* DS–5506.

- *Respondents:* United States Citizens.
- *Estimated Number of Respondents:* 2,400.
- *Estimated Number of Responses:* 2,400.
- *Average Hours per Response:* 15 minutes.
- *Total Estimated Burden:* 600 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: The Local U.S. Citizen Skills/Resources Survey is a systematic method of gathering information about skills and resources from U.S. citizens that will assist in improving the well-being of other U.S. citizens affected or potentially affected by a crisis.

Methodology: This information collection can be completed by the respondent electronically or manually. The information will be collected on-site at a U.S. Embassy/Consulate, by mail, fax, or email.

Dated: December 2, 2015.

Henry Hand,

(Acting) Managing Director, Bureau of Consular Affairs, Department of State.

[FR Doc. 2015–31382 Filed 12–11–15; 8:45 am]

BILLING CODE 4710–06–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning Policy Recommendations for Deepening the U.S.-Africa Trade and Investment Relationship

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments; notice of hearing.

SUMMARY: The Office of the United States Trade Representative (USTR), with the participation of other U.S. Government agencies, will convene a public hearing and seek public comment to assist in the preparation of its report to Congress on policy levers for deepening the U.S.-Africa trade and investment relationship.

DATES: Written comments are due by 11:59 p.m., Tuesday, January 19, 2016. Persons wishing to testify orally at the hearing must provide written notification of their intention, as well as a summary of their testimony, by 11:59 p.m., Tuesday, January 19, 2016. The hearing will be held on Thursday, January 28, 2016, beginning at 9:30 a.m. in the Main Hearing Room, 500 E Street SW., Washington, DC 20436.

ADDRESSES: Written comments and notifications of intent to testify should be submitted electronically via the Internet at *www.regulations.gov.* If you are unable to provide submissions at *www.regulations.gov,* please contact Yvonne Jamison at (202) 395–3475, to arrange for an alternative method of transmission.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments, please contact Yvonne Jamison at (202) 395–3475. All other questions regarding this notice should be directed to Bennett Harman, Deputy Assistant United States Trade Representative for Africa, at (202) 395–9612.

SUPPLEMENTARY INFORMATION:

1. Background

The African Growth and Opportunity Act (AGOA) (Title I of the Trade and Development Act of 2000, Pub. L. 106–200) (19 U.S.C. 2466a *et seq.*), as amended, authorizes the President to designate sub-Saharan African countries as beneficiary sub-Saharan African countries eligible for duty-free treatment for certain additional products not included for duty-free treatment under the Generalized System of Preferences (GSP) (Title V of the Trade Act of 1974 (19 U.S.C. 2461 *et seq.*) (the ''1974 Act'')), as well as for the preferential treatment for certain textile and apparel articles. Many developments since AGOA was enacted in 2000—including a significant increase in the number of trade agreements signed by both the United States and sub-Saharan African countries with third parties and reductions in preference programs by other developed countries such as the European Union and Canada—signal the importance for the United States to assess many policies and approaches, including those beyond preferences, to deepen the U.S.-sub-Saharan Africa trade and investment relationship. Such policies and approaches could maintain and enhance the competitiveness of U.S. companies and investors in the region while promoting sustainable, transformative development in the region. Congress also has signaled an interest in exploring such policies and approaches, and pursuant to section 110(b) of the Trade Preferences Extension Act of 2015, Public Law 114–27, required USTR to submit certain information about the prospect for free trade agreements with sub-Saharan African countries.

Accordingly, USTR is undertaking a comprehensive analysis to examine how to deepen our trade and investment relationship with sub-Saharan African countries. USTR is hereby soliciting public comment to assist in the preparation of its report.

2. Public Comment and Hearing

USTR invites written comments and/or oral testimony of interested persons on issues including, but not limited to, the following: (a) Why a deeper trade and investment relationship is critical both for African growth and for U.S. interests; (b) which trade and investment policy areas should serve as building blocks to deepen this relationship; (c) what goals should the U.S. and African partners establish with respect to each building block; and (d) what mechanisms and approaches could be used to best achieve these goals. Written comments must be received no later than 11:59 p.m., Tuesday, January 19, 2016.

A hearing will be held on Thursday, January 28, 2016, in the Main Hearing Room, 500 E Street SW., Washington, DC 20436, in the facilities of the U.S. International Trade Commission. Persons wishing to testify at the hearing must provide written notification of their intention by 11:59 p.m., Tuesday, January 19, 2016. The intent to testify notification must be made in the ''Type Comment'' field under docket number USTR–2015–0019 on the *www.regulations.gov* Web site and should include the name, address and telephone number of the person presenting the testimony. A summary of the testimony should be attached by using the ''Upload File'' field. The name of the file should also include who will be presenting the testimony. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the government representatives.

3. Requirements for Submissions

Persons submitting a notification of intent to testify and/or written comments must do so in English and must identify (on the first page of the submission) ''Post-AGOA Trade and Investment.'' In order to be assured of consideration, comments should be submitted by 11:59 p.m., Tuesday, January 19, 2016.

In order to ensure the timely receipt and consideration of comments, USTR strongly encourages commenters to make on-line submissions, using the *www.regulations.gov* Web site. To submit comments via *www.regulations.gov,* enter docket number USTR–2015–0019 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled ''Comment Now!'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use Regulations.gov'' on the bottom of the home page).

The *www.regulations.gov* Web site allows users to provide comments by filling in a ''Type Comment'' field, or by attaching a document using an ''Upload File'' field. USTR prefers that comments be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''Type Comment'' field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the ''Type Comment'' field.

For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC''. Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. Filers of submissions containing business confidential information must also submit a public version of their comments. The file name of the public version should begin with the character ''P''. The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments or reply comments. Filers submitting comments containing no business confidential information should name their file using the name of the person or entity submitting the comments.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

As noted, USTR strongly urges submitters to file comments through *www.regulations.gov,* if at all possible. Any alternative arrangements must be made with Yvonne Jamison in advance of transmitting a comment. Ms. Jamison should be contacted at (202) 395–3475. General information concerning USTR is available at *www.ustr.gov.* Comments will be placed in the docket and open to public inspection, except business confidential information. Comments may be viewed on the *www.regulations.gov* Web site by entering the relevant docket number in the search field on the home page.

Bennett M. Harman,

Acting Assistant U.S. Trade Representative for African Affairs.

[FR Doc. 2015–31324 Filed 12–11–15; 8:45 am]

BILLING CODE 3290–F6–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA 2015–0268]

Agency Information Collection Activities; Revision of a Currently-Approved Information Collection: Motor Carrier Identification Report

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval and invites public comment. The FMCSA requests approval to revise an ICR titled, ''Motor Carrier Identification Report,'' which is used to identify FMCSA regulated entities, help prioritize the agency's activities, aid in assessing the safety outcomes of those activities, and for statistical purposes. This ICR is being revised due to a Final Rule titled, ''Unified Registration System (80 FR 63695) dated October 21, 2015, which changed the effective and compliance dates for the on-line Unified Registration System (URS) from October 23, 2015, in the URS Final Rule, (78 FR 52608) dated August 23, 2013, to September 30, 2016.

DATES: Please send your comments to this notice by January 13, 2016. OMB must receive your comments by this date to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2015–0268. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Secrist, Office of Registration and Safety Information, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Telephone: 202–385–2367; email *jeff.secrist@dot.gov.* Office hours are from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Title: Motor Carrier Identification Report.

OMB Control Number: 2126–0013.

Type of Request: Revision of a currently-approved information collection.

Respondents: Motor carriers and commercial motor vehicle drivers.

Estimated Number of Respondents: 489,925.

Estimated Time per Response: To complete Form MCS–150—20 minutes and 7.5 minutes for the biennial update. To complete Form MCS–150B (HM Permit Application), interstate carriers that have already completed the Form MCS–150 will need 6 minutes and intrastate carriers that have never completed a Form MCS–150 will need about 16 minutes and 5 minutes for the biennial update. Form MCS–150C—Intermodal Equipment Providers will need 20 minutes the first time they file this report and 7.5 minutes for the biennial update.

Expiration Date: December 31, 2015.

Frequency of Response: On occasion and biennially.

Estimated Total Annual Burden: 31,271 hours [31,123 hours for Form MCS–150 + 146 hours for Form MCA–150B + 2 hours for Form MCS–150C = 31,271].

Background: Title 49, United States Code Section 504(b)(2) provides the Secretary of Transportation (Secretary) with authority to require carriers, lessors, associations, or classes of these entities to file annual, periodic, and special reports containing answers to questions asked by the Secretary. The Secretary may also prescribe the form of records required to be prepared or compiled and the time period during which records must be preserved (See § 504(b)(1) and (d)). The FMCSA will use this data to administer its safety programs by establishing a database of entities that are subject to its regulations. This database necessitates that these entities notify the FMCSA of their existence. For example, under 49 CFR 390.19(a), FMCSA requires all motor carriers beginning operations to file a Form MCS–150 entitled, Motor Carrier Identification Report.'' This report is filed by all motor carriers conducting operations in interstate or international commerce before beginning operations. It asks the respondent to provide the name of the business entity that owns and controls the motor carrier operation, address and telephone of principal place of business, assigned identification number(s), type of operation, types of cargo usually transported, number of vehicles owned, term leased and trip leased, driver information, and certification statement signed by an individual authorized to sign documents on behalf of the business entity.

The Department of Transportation and Related Agencies Appropriations Act for fiscal year 2002, Public Law 107–87, 115 Stat. 833, dated December 18, 2001, directed the agency to issue an interim final rule (IFR) to ensure that new entrant motor carriers are knowledgeable about the Federal Motor Carrier Safety Regulations (FMCSRs) and standards. On May 13, 2002, the agency published an IFR titled, ''New Entrant Safety Assurance Process'' (67 FR 31978).

On August, 23, 2013, the agency published a Final Rule titled, ''Unified Registration System,'' (URS) which requires interstate motor carriers, freight forwarders, brokers, intermodal equipment providers, hazardous materials safety permit applicants, and cargo tank facilities to file for registration via a new online Form MCSA–1. The Form MCSA–1 will replace the existing Forms MCS–150B and MCS–150C in this ICR. However, the Form MCS–150 will be retained for the small number of Mexico-domiciled carriers that seek authority to operate beyond the United States municipalities on the United States-Mexico border and their commercial zones because they are not included within the scope of the URS Final Rule.

On October 21, 2015, the agency issued a Final Rule titled, ''Unified Registration System,'' (80 FR 63695) which changed the effective and compliance dates of the 2013 URS Final Rule in order to allow FMCSA additional time to complete the information technology (IT) systems work required to fully implement that rule. This change will require the continued use of the Forms MCS–150, MCS–150B and MCS–150C in this ICR until September 30, 2016, because these forms are still needed to support registration processes for entities subject to FMCSA's regulations. After this date, all forms except the MCS–150 in this ICR will be folded into the Form MCSA–1 in the OMB Control Number 2126–0051 titled, ''FMCSA Registration/Updates,'' ICR. The Form MCS–150 will be retained for the small number of Mexico-domiciled carriers that seek authority to operate beyond the United States municipalities on the U.S.-Mexico border because they are not included in the scope of the URS. This revised ICR captures the burden due to the use of the Form MCS–150B and Form MCS–150C until September 30, 2016, and the use of the Form MCS–150 by the Mexico-domiciled carriers after the implementation of the URS Final Rule.

On August 21, 2015, FMCSA published a **Federal Register** notice allowing for a 60-day comment period on this ICR. The agency received one comment in response to this notice. The anonymous commenter only stated ''Good.'' The FMCSA in response agrees with the anonymous commenter.

Public Comments Invited: FMCSA requests that you comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for FMCSA to perform its functions, (2) the accuracy of the estimated burden, (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information, and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued under the authority delegated in 49 CFR 1.87 on: December 4, 2015.

G. Kelly Regal,

Associate Administrator, Office of Research and Information Technology.

[FR Doc. 2015–31341 Filed 12–11–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA- 2015–0338]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 45 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before January 13, 2016.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2015–0338 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line 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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Fax: 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. 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 below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://*

www.regulations.gov at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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.*

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it 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.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 45 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

Shannon M. Anfindsen

Ms. Anfindsen, 22, has had ITDM since 1997. Her endocrinologist examined her in 2015 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Anfindsen understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Anfindsen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2015 and certified that she does not have diabetic retinopathy. She holds an operator's license from Georgia.

Jessie L. Arrant, Jr.

Mr. Arrant, 54, has had ITDM since 2009. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Arrant understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Arrant meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Georgia.

Joseph M. Benech

Mr. Benech, 54, has had ITDM since 2011. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Benech understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Benech meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Rhode Island.

Mark L. Birch

Mr. Birch, 45, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Birch understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Birch meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Shane M. Burgard

Mr. Burgard, 41, has had ITDM since 1989. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Burgard understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Burgard meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Minnesota.

Jonathan W. Cottom

Mr. Cottom, 43, has had ITDM since 1978. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cottom understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cottom meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he stable proliferative diabetic retinopathy. He holds an operator's license from Pennsylvania.

David J. Davenport

Mr. Davenport, 64, has had ITDM since 2007. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Davenport understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Davenport meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Washington.

Wesley O. Davis

Mr. Davis, 61, has had ITDM since 2007. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Davis understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Davis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from South Carolina.

Steven P. DelPizzo

Mr. DelPizzo, 35, has had ITDM since 2008. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. DelPizzo understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. DelPizzo meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Savering F. Demiter

Mr. Demiter, 62, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Demiter understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Demiter meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Brandon A. Dipasquale

Mr. Dipasquale, 22, has had ITDM since 2007. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Dipasquale understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dipasquale meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from New York.

Gregory P. Doyle

Mr. Doyle, 58, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Doyle understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Doyle meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Colorado.

Scott A. Fetner

Mr. Fetner, 47, has had ITDM since 2008. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Fetner understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fetner meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Alabama.

Alfredo Flores

Mr. Flores, 50, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Flores understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Flores meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

Timothy D. Funk

Mr. Funk, 55, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Funk understands

diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Funk meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Illinois.

James D. Gage

Mr. Gage, 48, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gage understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gage meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a chauffeur's license from Michigan.

Leslie G. Goodwin

Mr. Goodwin, 77, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Goodwin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Goodwin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Kansas.

Diane M. Greenberg

Ms. Greenberg, 55, has had ITDM since 2014. Her endocrinologist examined her in 2015 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Greenberg understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Greenberg meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2015 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from Virginia.

Brent P. Griswold

Mr. Griswold, 27, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Griswold understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Griswold meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Earl E. Hudson, III

Mr. Hudson, 47, has had ITDM since 2009. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hudson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hudson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Carolina.

Gregory A. Huffman

Mr. Huffman, 43, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Huffman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Huffman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Texas.

Donald R. Kuehn

Mr. Kuehn, 60, has had ITDM since 2010. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kuehn understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kuehn meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Robert D. Lair, Jr.

Mr. Lair, 52, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lair understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lair meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Arkansas.

Mark A. Leman

Mr. Leman, 49, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function

that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Leman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Leman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Terry D. Leuthold

Mr. Leuthold, 57, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Leuthold understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Leuthold meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Montana.

Michael S. Massa

Mr. Massa, 49, has had ITDM since 2004. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Massa understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Massa meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Jordan L. Moss

Mr. Moss, 26, has had ITDM since 2001. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Moss understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Moss meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Georgia.

Ted A. Moyer

Mr. Moyer, 40, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Moyer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Moyer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Florida.

Lynette A. Occhipinti

Ms. Occhipinti, 52, has had ITDM since 2013. Her endocrinologist examined her in 2015 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Occhipinti understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Occhipinti meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2015 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from Washington.

Derek D. Patrick

Mr. Patrick, 55, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Patrick understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Patrick meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a CDL from Michigan.

Joseph M. Petrucci

Mr. Petrucci, 73, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Petrucci understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Petrucci meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Hampshire.

James W. Prather

Mr. Prather, 61, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Prather understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Prather meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Ohio.

Edward O. Prosser

Mr. Prosser, 53, has had ITDM since 2002. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Prosser understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Prosser meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Rhode Island.

Dennis L. Ruff

Mr. Ruff, 67, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ruff understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ruff meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Washington.

William J. Shrader

Mr. Shrader, 51, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Shrader understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shrader meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from California.

Ronald L. Smith

Mr. Smith, 58, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Smith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

Wayne D. Smith

Mr. Smith, 67, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Smith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Vermont.

Carnnell A. Taite

Mr. Taite, 64, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Taite understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Taite meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Michigan.

Garrett J. Tousignant

Mr. Tousignant, 47, has had ITDM since 2008. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Tousignant understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tousignant meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Illinois.

Franklin G. Towell

Mr. Towell, 79, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Towell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Towell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Robert S. Townsend

Mr. Townsend, 71, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Townsend understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Townsend meets the

requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Hampshire.

Zachary C. Warrick

Mr. Warrick, 35, has had ITDM since 1987. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Warrick understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Warrick meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Nebraska.

Zachary C. White

Mr. White, 30, has had ITDM since 2004. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. White understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. White meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from California.

Mark K. Wittig

Mr. Wittig, 58, has had ITDM since 2009. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wittig understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wittig meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2015–0338 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2015–0338 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Issued on: December 2, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–31340 Filed 12–11–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0113; Notice 1]

Nitto Tire U.S.A, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Receipt of petition.

SUMMARY: Nitto Tire U.S.A., Inc. (Nitto), has determined that certain Nitto NT05 passenger car tires manufactured between December 14, 2014 and August 1, 2015, do not fully comply with paragraph S5.5(e) of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles.* Nitto filed a report [1] pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

DATES: The closing date for comments on the petition is January 13, 2016.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to: 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 Deliver:* Deliver comments by hand to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- *Electronically:* Submit comments electronically by: Logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated above will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

SUPPLEMENTARY INFORMATION:

I. Overview

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Nitto submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Nitto's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Tires Involved

Affected are approximately 1,059 Nitto NT05 size 295/35ZR18 99W passenger car tires manufactured between December 14, 2014 and August 1, 2015.

III. Noncompliance

Nitto explains that the noncompliance is that the sidewall markings on the subject tires do not include the correct generic name for the plies in the tread and sidewall area of the tires as required by paragraph S5.5(e) of FMVSS No. 139. Specifically, the subject tires are marked with ''Tread 2 Steel 2 Rayon 1 Nylon; Sidewall 3 Rayon.'' The correct marking should be ''Tread 2 Steel 2 Polyester 1 Nylon; Sidewall 3 Polyester.''

IV. Rule Text

Paragraph S5.5(e) of FMVSS No. 139 requires in pertinent part:

S5.5 *Tire markings.* Except as specified in paragraphs (a) through (i) of S5.5, each tire must be marked on each sidewall with the information specified in S5.5(a) through (d) and on one sidewall with the information specified in S5.5(e) through (i) according to the phase-in schedule specified in S7 of this standard. . . .

(e) The generic name of each cord material used in the plies (both sidewall and tread area) of the tire; . . .

V. Summary of Nitto's Analyses

Nitto stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

(1) Nitto believes that in the Safety Act Congress acknowledged that there are cases where a vehicle or equipment may fail to comply with a safety standard, but that the impact on motor vehicle safety is so slight that an exemption from the notice and remedy requirements of the Safety Act is justified.

(2) Nitto states that the subject tires meet all other performance and regulatory requirements of FMVSS No. 139.

(3) Nitto has not received any complaints, claims, or warranty adjustments related to this noncompliance.

(4) Nitto believes that NHTSA has previously granted inconsequential noncompliance petitions for noncompliances that it believes are similar to the subject noncompliance.

Nitto has additionally informed NHTSA that it has corrected the noncompliance so that future production of the subject tires will comply with all applicable labeling requirements of FMVSS No. 139.

In summation, Nitto believes that the described noncompliance of the subject tires is inconsequential to motor vehicle safety, and that its petition, to exempt Nitto from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to

[1] Originally dated September 15, 2015 under the name of its parent company Toyo Tire Holdings of Americas Inc., and refiled under its own name on November 5, 2015).

the subject tires that Nitto no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Nitto notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: Delegations of authority at 49 CFR 1.95 and 501.8.

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2015–31349 Filed 12–11–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of One Individual Pursuant to Executive Order 13581, ''Blocking Property of Transnational Criminal Organizations''

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (OFAC) is publishing the name of one individual whose property and interests in property are blocked pursuant to Executive Order 13581 of July 24, 2011, ''Blocking Property of Transnational Criminal Organizations.''

DATES: The designations by the Director of OFAC, pursuant to Executive Order 13581, of the one individual identified in this notice were effective on December 9, 2015.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance and Evaluation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs is available via facsimile through a 24-hour fax-on-demand service, tel.: 202–622–0077.

Background

On July 24, 2011, the President issued Executive Order 13581, ''Blocking Property of Transnational Criminal Organizations'' (the ''Order''), pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06). The Order was effective at 12:01 a.m. eastern daylight time on July 25, 2011. In the Order, the President declared a national emergency to deal with the threat that significant transnational criminal organizations pose to the national security, foreign policy, and economy of the United States.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, of persons listed in the Annex to the Order and of persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to satisfy certain criteria set forth in the Order.

On December 9, 2015, the Director of OFAC, in consultation with the Attorney General and the Secretary of State, designated, pursuant to one or more of the criteria set forth in subparagraphs (a)(ii)(A) through (a)(ii)(C) of Section 1 of the Order, one individual whose property and interests in property are blocked pursuant to the Order.

The listing for this individual on OFAC's List of Specially Designated Nationals and Blocked Persons appears as follows:

Individual

1. GOTO, Tadamasa (Japanese: 後藤忠正; Japanese: 後藤忠政) (a.k.a. GOTOU, Chyuei; a.k.a. "AJA, Chuei" (Japanese: アジャ忠叡); a.k.a. "CHUEI" (Japanese: 忠叡); a.k.a. "OKNHA, Chuei"), Cambodia; DOB 16 Sep 1942; POB Tokyo, Japan; citizen Cambodia (individual) [TCO] (Linked To: YAKUZA).

Dated: December 9, 2015.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2015–31348 Filed 12–11–15; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900—NEW]

Agency Information Collection Activity; Withdrawal

AGENCY: Department of Veterans Affairs.

ACTION: Notice; withdrawal.

SUMMARY: The Department of Veterans Affairs published collection of information notices in a **Federal Register** on February 12, 2015 and August 3, 2015 that contained errors. With this notice, we are withdrawing those documents.

FOR FURTHER INFORMATION CONTACT: Brian McCarthy at (202) 461–6345.

SUPPLEMENTARY INFORMATION: The **Federal Register** Notices published for Patient Aligned Care Team: Helping Veterans Manage Chronic Pain, Engaging Caregivers Veterans with Dementia, Patient Centered Medical Home Operation Enduring Freedom/Operation Iraqi Freedom Veterans with Post Traumatic Stress Disorder: Bridging Primary and Behavioral Health Care were incorrect. The 60 day **Federal Register** Notice (80 FR 7909) was published on February 12, 2015 and the 30 day **Federal Register** Notice (80 FR 46107) was published on August 3, 2015. The new notices will be published at a later date.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records, Management, Department of Veterans Affairs.

[FR Doc. 2015–31387 Filed 12–11–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Reasonable Charges for Medical Care or Services; V3.18, 2016 Calendar Year Update and National Average Administrative Prescription Drug Charge Update

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This Department of Veterans Affairs (VA) notice updates the data for calculating the ''Reasonable Charges'' collected or recovered by VA for medical care or services. This notice also updates the ''National Average Administrative Costs'' for purposes of calculating VA's charges for prescription drugs that were not administered during treatment but provided or furnished by VA to a veteran.

FOR FURTHER INFORMATION CONTACT: Romona Greene, Chief Business Office 10NB, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 382–2521. This is not a toll free number.

SUPPLEMENTARY INFORMATION: Section 17.101 of 38 Code of Federal Regulations sets forth the ''Reasonable Charges'' for medical care or services provided or furnished by VA to a veteran: ''For a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses for care) under a health plan contract; For a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or For a nonservice-connected disability incurred as a result of a motor vehicle accident in a state that requires automobile accident reparations insurance.'' Section 17.101 provides the methodologies for establishing billed amounts for several types of charges; partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by Healthcare Common Procedure Coding System (HCPCS) Level II codes.

Section 17.101 provides that the actual charge amounts at individual VA facilities based on these methodologies and the data sources used for calculating those actual charge amounts will either be published as a notice in the **Federal Register** or will be posted on the Internet site of the Veterans Health Administration Chief Business Office at *http://www.va.gov/CBO/apps/rates/index.asp.* Certain charges are hereby updated as stated in this notice and will be effective on January 1, 2016.

In cases where VA has not established charges for medical care or services provided or furnished at VA expense (by either VA or non-VA providers) under other provisions or regulations, the method for determining VA's charges is set forth at 38 CFR 17.101(a)(8).

Based on the methodologies set forth in § 17.101, this notice provides an update to charges for 2016 HCPCS Level II and Current Procedural Terminology (CPT) codes. Charges are also being updated based on more recent versions of data sources for the following charge types: Partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by HCPCS Level II codes. As of the date of this notice, the actual charge amounts at individual VA facilities based on the methodologies in § 17.101 will be posted at *http://www.va.gov/CBO/apps/rates/index.asp* under the heading ''Reasonable Charges Data Tables'' and identified as ''V3.18 Data Tables (Outpatient and Professional).''

The list of data sources used for calculating the actual charge amounts listed above also will be posted at *http://www.va.gov/CBO/apps/rates/index.asp* under the heading ''Reasonable Charges Data Sources'' and identified as ''Reasonable Charges V3.18 Data Sources (Outpatient and Professional) (PDF).''

Acute inpatient facility charges and skilled nursing facility/sub-acute inpatient facility charges remain the same as set forth in the notice published in the **Federal Register** on September 21, 2015 (80 FR 57051). The effective date of those charges is October 1, 2015. The data tables containing those actual charges are posted at *http://www.va.gov/CBO/apps/rates/index.asp* under the heading ''Reasonable Charges Data Tables'' and identified as ''V3.17 Data Tables (Inpatient).'' The data sources used to calculate these charges are posted at *http://www.va.gov/CBO/apps/rates/index.asp* under the heading ''Reasonable Charges Data Sources and identified as ''Reasonable Charges Data Sources V3.17 (Inpatient) (PDF).

We are also updating the list of VA medical facility locations. The list of VA medical facility locations, including the first three digits of their zip codes as well as provider based/non-provider based designations, will be posted on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www.va.gov/CBO/apps/rates/index.asp* under the heading ''VA Medical Facility Locations,'' and identified as ''VA Medical Facility Locations V3.18 (Jan16).''

As indicated in 38 CFR 17.101(m), when VA provides or furnishes prescription drugs not administered during treatment, ''charges billed separately for such prescription drugs will consist of the amount that equals the total of the actual cost to VA for the drugs and the national average of VA administrative costs associated with dispensing the drugs for each prescription.'' Section 17.101(m) includes the methodology for calculating the national average administrative cost for prescription drug charges not administered during treatment.

VA determines the amount of the national average administrative cost annually for the prior fiscal year (October through September) and then applies the charge at the start of the next calendar year. The national average administrative drug cost for calendar year 2016 is $14.29. This change will be posted at *http://www.va.gov/CBO/payerinfo.asp* and identified as ''CY 2016 Average Administrative Cost for Prescriptions.''

Consistent with § 17.101, the national average administrative cost, the updated data tables, and supplementary tables containing the changes described in this notice will be posted online, as indicated in this notice. This notice will be posted at *http://www.va.gov/CBO/apps/rates/index.asp* under the heading ''Federal Registers, Rules, and Notices'' and identified as, ''V3.18 **Federal Register** Notice 01/01/16 (Outpatient and Professional), and National Administrative Cost (PDF).'' The national average administrative cost, updated data tables, and the supplementary tables containing the changes described will be effective until changed by a subsequent **Federal Register** notice.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Nabors II, Chief of Staff, Department of Veterans Affairs, approved this document on November 30, 2015, for publication.

Dated: December 9, 2015.

William F. Russo,

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

[FR Doc. 2015–31385 Filed 12–11–15; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 80 Monday,

No. 239 December 14, 2015

Part II

Environmental Protection Agency

40 CFR Part 80

Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2015–0111; FRL–9939–72–OAR]

RIN 2060–AS22

Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under section 211 of the Clean Air Act, the Environmental Protection Agency (EPA) is required to set renewable fuel percentage standards every year. This action establishes the annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel that apply to all motor vehicle gasoline and diesel produced or imported in the years 2014, 2015, and 2016. The EPA is establishing a cellulosic biofuel volume for all three years that is below the applicable volume specified in the Act, and is also rescinding the cellulosic biofuel standard for 2011. Relying on statutory waiver authorities, the EPA is adjusting the applicable volumes of advanced biofuel and total renewable fuel for all three years. The 2016 standards are expected to spur further progress in overcoming current constraints in renewable fuel distribution infrastructure, which in turn is expected to lead to substantial growth over time in the production and use of renewable fuels. In this action, we are also establishing the applicable volume of biomass-based diesel for 2017. Finally, we are setting the compliance and attest reporting deadlines for the years 2013, 2014, and 2015, as well as finalizing regulatory amendments to clarify the scope of the existing algal biofuel pathway.

DATES: This final rule is effective on February 12, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2015–0111. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed in the electronic docket and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4131; email address: *macallister.julia@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

Does this Action Apply to Me? Entities potentially affected by this final rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol, biodiesel, renewable diesel, and biogas. Potentially regulated categories include:

Category	NAICS [1] Codes	SIC [2] Codes	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refineries.
Industry	325193	2869	Ethyl alcohol manufacturing.
Industry	325199	2869	Other basic organic chemical manufacturing.
Industry	424690	5169	Chemical and allied products merchant wholesalers.
Industry	424710	5171	Petroleum bulk stations and terminals.
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry	221210	4925	Manufactured gas production and distribution.
Industry	454319	5989	Other fuel dealers.

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria in 40 CFR part 80. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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I. Executive Summary

The Renewable Fuel Standard (RFS) program began in 2006 pursuant to the requirements in Clean Air Act (CAA) section 211(o) that were added through the Energy Policy Act of 2005 (EPAct). The statutory requirements for the RFS program were subsequently modified through the Energy Independence and Security Act of 2007 (EISA), resulting in the publication of major revisions to the regulatory requirements on March 26, 2010.[1] [2] EISA's stated goals include moving the United States toward ''greater energy independence and security, to increase the production of clean renewable fuels.'' Since the initial promulgation of the RFS program regulations in 2007, domestic production and use of renewable fuel in the U.S. has increased substantially. According to the Energy Information Administration (EIA), fuel ethanol production in the U.S. more than doubled in volume from approximately 6.5 billion gallons in 2007 to about 14.3 billion gallons in 2014.[3] Growth in biodiesel and renewable diesel production in the U.S. has increased more than two and a half times, from approximately 0.5 billion gallons in 2007 to 1.46 billion gallons in 2014.[4] Today, nearly all of the approximately 139 billion gallons of gasoline used for transportation purposes contains 10 percent ethanol (E10).

The fundamental objective of the RFS provisions under the CAA is clear: To increase the use of renewable fuels in the U.S. transportation system every year through at least 2022 in order to reduce greenhouse gases (GHGs) and increase energy security. Further, renewable fuels from facilities that commenced construction after 2007 must be better performing in terms of their greenhouse gas emissions, as compared on a lifecycle basis, to the petroleum based fuels they are replacing. Cellulosic biofuels are required to have 60 percent or greater greenhouse gas (GHG) emissions benefits on a lifecycle basis than the petroleum based fuels they replace; advanced biofuels (including biomass-based diesel) must have a 50 percent or greater benefit; and conventional biofuels (other than grandfathered facilities) must have a 20 percent or better benefit. Increased use of renewable fuels means less use of fossil fuels, which generally results in lower GHG emissions over time, especially when advanced biofuel production and use becomes more commonplace. By aiming to diversify the country's fuel supply, Congress also intended to increase the nation's energy security. Renewable fuels represent an opportunity for the U.S. to move away from fossil fuels towards a set of lower GHG transportation fuels, and a chance for a still-developing low GHG technology sector to grow. These lower GHG renewable fuels include corn starch ethanol, the predominant renewable fuel in use to date, but Congress envisioned the majority of growth over time to come from advanced biofuels, as the non-advanced (conventional) volumes remain constant in the statutory volume tables starting in

[1] 75 FR 14670, March 26, 2010.

[2] A full description of the statutory basis of the RFS program and EPA's actions to develop and implement the regulatory program are provided in a memorandum to the docket. See, ''Statutory basis of the RFS program and development of the regulatory program,'' memorandum from Madison Le to EPA docket EPA–HQ–OAR–2015–0111.

[3] EIA's Monthly Energy Review, April 2015, Table 10.3.

[4] 2007 volume represents biodiesel only, from EIA's Monthly Energy Review, April 2015, Table 10.4. 2014 volume represents biodiesel and renewable diesel domestic production from EMTS.

2015 while the advanced volumes continue to grow.[5]

The statute includes annual volume targets,[6] and requires EPA to translate those volume targets (or alternative volume requirements established by EPA in accordance with statutory waiver authorities) into compliance obligations that refiners and importers must meet every year. In this action, EPA is establishing the annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel that apply to all motor vehicle gasoline and diesel produced or imported in the years 2014, 2015, and 2016. We are also establishing the applicable volume of biomass-based diesel for 2017.

In the June 10, 2015 notice of proposed rulemaking (NPRM), we proposed standards based on an approach that sought to achieve the Congressional intent of increasing renewable fuel use over time in order to address climate change and increase energy security, while at the same time accounting for the real-world challenges that have slowed progress toward such goals.[7] Those challenges have made the volume targets established by Congress for 2014, 2015, and 2016 beyond reach. In the NPRM we proposed to use waiver mechanisms that Congress provided to allow for the volume targets to be reduced if necessary. The proposed volume requirements were lower than the statutory targets but set at a level that we believed would spur growth in renewable fuel use, consistent with Congressional intent.

In this action, we are finalizing standards that make use of the statute's waiver provisions. The final standards differ from the proposed standards based on new information, consideration of public comments, and corrected calculations. Details of these changes are provided below. By finalizing the percentage standards for 2016 by November 30, 2015, we are returning to the statutory timeline for issuing standards under the RFS program.[8]

We received a substantial number of comments on our proposed use of the statute's waiver authorities, with commenters both supporting and opposing our approach. In addition to comments on our proposed use of waiver authorities, we received comments on multiple other areas of the proposal, including our proposed treatment of carryover RINs, our proposed approach to determining the volume requirements, and other areas. We address these comments in this preamble as well as in a response-to-comment (RTC) document, which can be found in the docket for this action.

While we are using the statutory waiver authorities in establishing final 2014, 2015, and 2016 standards for cellulosic biofuel, advanced biofuel, and total renewable fuel, as we proposed to do, the volumes we are finalizing differ from the proposed volumes in order to reflect updated and corrected information, and to provide year-to-year growth consistent with the statute's intent. Key corrections and updates include:

- Updating our assessment of volumes of renewable fuel that can be blended at various concentrations into petroleum fuel and our calculation of all of the percentage standards to take into account changes in EIA's projected gasoline and diesel demand for 2016.
- Correcting an error in determining actual volumes of ethanol supplied in 2014. EPA acknowledged this error in July 2015 by placing a memo in the docket.[9] Correcting the error leads to a higher 2014 total renewable fuel volume requirement than the level in the NPRM.
- Accounting for higher than expected supply of biodiesel and renewable diesel in 2015, providing a basis for expecting similar growth in biodiesel and renewable diesel volumes in 2016.

For 2016, we are finalizing volume requirements that are significantly higher than proposed, and that represent significant growth compared to actual renewable fuel use in 2015. While some stakeholders commented that reductions from the statutory targets would lead to a stagnation in growth, we disagree with this view. We proposed a 2016 volume requirement for total renewable fuel that was 1.1 billion gallons greater than the proposed 2015 volume requirement—a significant level of growth in one year. Our final 2016 volume requirements are also ambitious, with substantial growth in all four categories relative to 2015. We are also setting a final volume requirement for BBD for 2017 that continues the growth in that category of renewable fuel. The final volume requirements are shown in Table I–1 below.

TABLE I–1—FINAL VOLUME REQUIREMENTS [a]

	2014	2015	2016	2017
Cellulosic biofuel (million gallons)	33	123	230	n/a
Biomass-based diesel (billion gallons)	1.63	1.73	1.90	2.00
Advanced biofuel (billion gallons)	2.67	2.88	3.61	n/a
Renewable fuel (billion gallons)	16.28	16.93	18.11	n/a

[a] All values are ethanol-equivalent on an energy content basis, except for BBD which is biodiesel-equivalent.

Our decision to finalize volumes for total renewable fuel that rely on exercising the general waiver authority is based on the same fundamental reasoning we relied upon in the June 10, 2015 proposal. Despite significant increases in renewable fuel use in the United States, real-world constraints, such as the slower than expected development of the cellulosic biofuel industry and constraints in the marketplace needed to supply certain biofuels to consumers, have made the timeline laid out by Congress impossible to achieve. These challenges remain, even as we recognize the success of the RFS program over the past decade in boosting renewable fuel use, and the recent signs of progress towards development of increasing volumes of advanced, low GHG-emitting fuels, including cellulosic biofuels.

We believe that the RFS program can and will drive renewable fuel use and, indeed, we have considered the ability of the market to respond to the standards we set when we assessed the

[5] In this document we follow the common practice of using the term ''conventional'' renewable fuel to mean any renewable fuel that is not an advanced biofuel.

[6] CAA section 211(o)(2)(B).

[7] See 80 FR 33100.

[8] We are also setting the BBD volume requirement for 2017 in this final rule. Under the statute, it was required to be set by November 1, 2015.

[9] See Docket Item No. EPA–HQ–OAR–2015–0111–1219.

amount of renewable fuel that can be supplied. Therefore, while this final rule applies the tools Congress provided to make adjustments to the statutory volume targets in recognition of the constraints that exist today, we believe the standards we are finalizing today will drive growth in renewable fuels, particularly advanced biofuels which achieve the lowest lifecycle GHG emissions. In our view, while Congress recognized that supply challenges may exist as evidenced by the waiver provisions, it did not intend growth in the renewable fuels market to be stopped by those challenges, including those associated with the ''E10 blendwall.'' [10] The fact that Congress chose to mandate increasing and substantial amounts of renewable fuel clearly signals that it intended the RFS program to create incentives to increase renewable fuel supplies and overcome constraints in the market. The standards we are finalizing will provide those incentives.

The final volume requirements will push the fuels sector to produce and blend more renewable fuels in 2016 in a manner that is consistent with the goals Congress envisioned. The final volumes are less than the statutory targets for 2016 but higher than what the market would produce and use in the absence of such market-driving standards. The 2016 standards are expected to spur further progress in overcoming current challenges and lead to continued growth in the production and use of qualifying renewable fuels, including higher-level ethanol blends. In this regard the final standards are intended to fulfill the spirit and intent of Congress and provide guidance to market participants.

Various commenters in the biofuels industry disagreed with our assessment that the approach described in the NPRM, in which we proposed to reduce the statutory targets using the available waiver authorities, would nevertheless support growth in renewable fuels. We address these comments throughout this document and the response to comments (RTC) document. We emphasize, however, that our fundamental goal is to implement the RFS program in such a way as to promote growth of renewable fuel use over time. We have conducted significant technical analysis, both in the proposed rule and in this final rule, to better understand and characterize the renewable fuels market and the RFS program, all in an effort to implement the program on a schedule that matches as nearly as possible that set forth in the statute.[11] We believe the approach taken in this final rule—in which we use the general waiver authority only to the extent necessary in light of real world constraints to make the requirements reasonably achievable, and we use the cellulosic waiver authority for advanced biofuel in a manner that allows advanced biofuel to significantly backfill for missing volumes of cellulosic biofuel—will achieve that goal.

The RFS program can be thought of as a market forcing policy. The objective of the program is to introduce increasing volumes of renewable fuels, with a focus on cellulosic and other advanced renewable fuels, into the marketplace. Congress made the decision that this is an appropriate policy objective, and put in place a program to achieve that policy goal. A key issue in implementing any program designed to advance new technologies and increase use of existing technologies, however, is the question of lead time. Technologies are typically phased in over time—in many cases over many years—to allow for the development of the technology and the steady growth in penetration of that technology into the marketplace. New technologies do not typically start at 90 or 100 percent penetration rates; they can take time to overcome investment, technical, and market hurdles to their development, deployment and use. The greater the number and type of these challenges, the longer the lead time must be to achieve the desired policy goal. In establishing the RFS program, Congress not only recognized that biofuels would need to phase in over time, and thus established a ramp-up of renewable fuel volume targets over time, but also established provisions in the law allowing EPA to waive in whole or in part implementation of those targets under certain circumstances. Our exercising of those waiver authorities is not an attempt to undermine program growth, as some commenters argue, but rather a recognition of real world constraints that necessitate an adaptive approach to managing the program. Growth will, and must, continue under the law, but Congress recognized that in some cases, driving the introduction of a new technology requires an acknowledgment that new technologies can in some cases require longer lead times to achieve success. Trying to force growth at rates that prove infeasible would only undermine the certainty in the RFS program that is needed to sustain long-term growth.

As stated in the NPRM, this final rule comes during a period of transition for the RFS program. In the program's early years, compliance with the advanced biofuel and total renewable volume requirements could be readily achieved in large part by blending increasing amounts of ethanol into gasoline and biodiesel into diesel fuel. As the program progresses, however, significantly increasing renewable fuel volumes will require pushing beyond current constraints on ethanol and biodiesel use and will require sustained growth in the development and use of advanced, non-ethanol renewable fuels, including drop-in renewable fuels. This final rule acknowledges this transition by finalizing volume requirements based not only on the volumes of renewable fuels that have already been achieved in 2014 and the months in 2015 leading up to this final action, but also on the volumes that can be supplied in 2016 as the market addresses infrastructure and other constraints. Our final rule includes volumes of renewable fuel that will require either ethanol use at levels significantly beyond the level of the E10 blendwall, or significantly greater use of non-ethanol renewable fuels, such as biodiesel and renewable diesel, than has occurred to date, depending on how the market responds to the standards we set. The standards we are finalizing are consistent with the purpose of the statute: to significantly increase the amount of renewable fuel used in the supply of transportation fuel over time, particularly renewable fuels with the lowest lifecycle GHG emissions.

Since the amount of renewable fuel that can be produced and imported is larger than the volume that can be consumed due to limited demand for transportation fuel and constraints on supply of renewable fuels to vehicles and engines, there is necessarily competition among biofuels for retail consumption in the United States. In setting the biomass-based diesel volume requirement we have worked to achieve an appropriate and reasonable balance between setting a volume requirement that would provide support for the established BBD industry, while also providing opportunities under the

[10] The ''E10 blendwall'' represents the volume of ethanol that can be consumed domestically if all gasoline contains 10% ethanol and there are no higher-level ethanol blends consumed such as E15 or E85.

[11] See, for example, the supporting documents ''A Preliminary Assessment of RIN Market Dynamics, RIN Prices, and Their Effects,'' ''An Assessment of the Impact of RIN Prices on the Retail Price of E85,'' and ''Correlating E85 consumption volumes with E85 price''. These documents discuss the expected impacts of the price of RINs on the transportation fuels and renewable fuels marketplace, the potential for the RFS program to incentivize additional production and use of renewable fuels, and the observed impacts of the RFS on the fuels market over the past several years.

advanced biofuel volume requirement to incentivize continued development and production of emerging biofuels. The approach we have used to determine the final volumes is consistent with Congressional intent in establishing the RFS program in that it provides an opportunity for a diverse array of renewable fuel types to be used for compliance. Competition is good for market participants, including obligated parties and consumers, as it permits the market to determine the most efficient, lowest cost, best performing fuels for meeting the increasingly higher volume requirements anticipated over time under the program. However, it is also important to provide support to existing successful biofuels and to provide incentives for those fuels, especially advanced biofuels, which produce the greatest reductions in GHGs. To this end, as discussed in Section III, we are finalizing specific volume requirements for biomass-based diesel (BBD) through 2017.

As indicated in the NPRM, in establishing the standards for 2014, we must acknowledge that the compliance year has passed and any standard EPA sets for 2014 can no longer influence renewable fuel production or use in that year. Therefore, we are issuing a final rule for 2014 that reflects those volumes of renewable fuel that were actually supplied in 2014. Details regarding how we calculated the final ''actual'' volumes used in 2014 are discussed in Section II.C below.

With regard to 2015, the proposed volume requirements were based in part on actual volumes supplied in the first part of the year, and in part based on a determination of growth that was possible (and which could be incentivized through the NPRM) in the balance of the year. Actual data on supply after release of the June 10, 2015 NPRM indicates that the market responded to the NPRM by increasing supply in comparison to the period prior to the release of the NPRM. The final standards for 2015 have been set based on updated production and consumption data available as of issuance of this final rule, and a projection of what is expected to be produced and used through the end of 2015, taking into account the inability of the market to respond to this final action in light of the little time remaining in the year.

For 2016, our approach is to set final volumes that take into account both the constraints in the supplies that exist, and the ability of the RFS program to incentivize growth. Where appropriate we also take into consideration other factors such as the impact of the BBD standard on incentivizing the production and use of other advanced biofuels, and the benefits provided by advanced biofuels in backfilling some of the volume that Congress envisioned would be provided in 2016 by cellulosic biofuels.

This final rule represents EPA's commitment and continued support for steady growth in renewable fuel use. We recognize that the RFS standards are only one element among many that factor into the success of renewable fuel development and use over time. The standards that EPA sets each year are an important part of the overall picture, but this program is complemented and supported by programs managed by the U.S. Departments of Agriculture (USDA) and Energy (DOE), as well as myriad of efforts and initiatives at the regional and local level and within the private sector. DOE has invested considerable resources to help deploy the advanced technologies needed to achieve the statutory aims of lower carbon fuels, and has leveraged several billion dollars more in private support for development of advanced renewable fuels. USDA's Biofuel Infrastructure Partnership program will provide $100 million in grants for the expansion of renewable fuel infrastructure, and their Biorefinery Assistance Program has provided loan guarantees for the development and construction of commercial scale biorefineries with a number of the new projects focused on producing fuels other than ethanol. Greater GHG benefits are expected to be realized as the production and use of advanced biofuels accelerates, and the volume requirements that we are finalizing support this goal.

A. Purpose of This Action

The national volume targets of renewable fuel that are intended to be achieved under the RFS program each year (absent an adjustment or waiver by EPA) are specified in CAA section 211(o)(2). The statutory volumes for 2014, 2015, and 2016 are shown in Table I.A–1. The cellulosic biofuel and BBD categories are nested within the advanced biofuel category, which is itself nested within the total renewable fuel category. This means, for example, that each gallon of cellulosic biofuel or BBD that is used to satisfy the individual volume requirements for those fuel types can also be used to satisfy the requirements for advanced biofuel and total renewable fuel.

TABLE I.A–1—APPLICABLE VOLUMES SPECIFIED IN THE CLEAN AIR ACT

[Billion gallons] [a]

	2014	2015	2016
Cellulosic biofuel	1.75	3.0	4.25
Biomass-based diesel	≥1.0	≥1.0	≥1.0
Advanced biofuel	3.75	5.5	7.25
Renewable fuel	18.15	20.5	22.25

[a] All values are ethanol-equivalent on an energy content basis, except values for BBD which are given in actual gallons.

Under the RFS program, EPA is required to determine and publish annual percentage standards for each compliance year. The percentage standards are calculated to ensure use in transportation fuel of the national ''applicable volumes'' of the four types of biofuel (cellulosic biofuel, BBD, advanced biofuel, and total renewable fuel) that are set forth in the statute or established by EPA in accordance with the Act's requirements. The percentage standards are used by obligated parties (generally, producers and importers of gasoline and diesel fuel) to calculate their individual compliance obligations. Each of the four percentage standards is applied to the volume of non-renewable gasoline and diesel that each obligated party produces or imports during the specified calendar year to determine their individual volume obligations with respect to the four renewable fuel types. The individual volume obligations determine the number of RINs of each renewable fuel type that each obligated party must acquire and retire to demonstrate compliance.

Today EPA is establishing the annual applicable volume requirements for cellulosic biofuel, advanced biofuel, and total renewable fuel for 2014, 2015, and 2016, and for BBD for 2014, 2015, 2016,

and 2017. Table I.A–2 lists the statutory provisions and associated criteria relevant to determining the national applicable volumes used to set the percentage standards in this final rule.

TABLE I.A–2—STATUTORY PROVISIONS FOR DETERMINATION OF APPLICABLE VOLUMES

Applicable volumes	Clean Air Act reference	Criteria provided in statute for determination of applicable volume
Cellulosic biofuel	211(o)(7)(D)(i)	Required volume must be lesser of volume specified in CAA section 211(o)(2)(B)(i)(III) or EPA's projected volume in coordination with other federal agencies.
	211(o)(7)(A)	EPA may waive the statutory volume in whole or in part if implementation would severely harm the economy or environment of a State, region, or the United States, or if there is an inadequate domestic supply.
Biomass-based diesel [12]	211(o)(2)(B)(ii) and (v)	Required volume for years after 2012 must be at least 1.0 billion gallons, and must be based on a review of implementation of the program, coordination with other federal agencies, and an analysis of specified factors.
	211(o)(7)(A)	EPA may waive the statutory volume in whole or in part if implementation would severely harm the economy or environment of a State, region, or the United States, or if there is an inadequate domestic supply.
Advanced biofuel	211(o)(7)(D)(i)	If applicable volume of cellulosic biofuel is reduced below the statutory volume to the projected volume, EPA may reduce the advanced biofuel and total renewable fuel volumes in CAA section 211(o)(2)(B)(i)(I) and (II) by the same or lesser volume. No criteria specified.
	211(o)(7)(A)	EPA may waive the statutory volume in whole or in part if implementation would severely harm the economy or environment of a State, region, or the United States, or if there is an inadequate domestic supply.
Total renewable fuel	211(o)(7)(D)(i)	If applicable volume of cellulosic biofuel is reduced below the statutory volume to the projected volume, EPA may reduce the advanced biofuel and total renewable fuel volumes in CAA section 211(o)(2)(B)(i)(I) and (II) by the same or lesser volume. No criteria specified.
	211(o)(7)(A)	EPA may waive the statutory volume in whole or in part if implementation would severely harm the economy or environment of a State, region, or the United States, or if there is an inadequate domestic supply.

By re-proposing the 2014 standards along with a proposed rule for the 2015 and 2016 standards, we were not only able to formulate a proposed rule for public comment that takes into account the fact that 2014 is over, but we were also able to coordinate the treatment of 2014 with the treatment of 2015, where part of the year has likewise already passed. We therefore withdrew the November 29, 2013, NPRM,[13] and the June 10, 2015, NPRM replaced and superseded that earlier proposed rule. The timing of this final rule is being issued consistent with terms of a final consent decree entered into by the EPA on April 10, 2015. This consent decree resolves pending litigation concerning EPA's failure to establish standards for 2014 and 2015 by the statutory deadlines and includes a requirement for EPA to promulgate final standards for 2014 and 2015 by November 30, 2015.[14]

As shown in Table I.A–2, the statutory authorities that provide direction to EPA for how to modify or set the applicable standards differ for the four categories of renewable fuel. Under the statute, EPA must annually determine the projected volume of cellulosic biofuel production for the following year. If the projected volume of cellulosic biofuel production is less than the applicable volume specified in section 211(o)(2)(B)(i)(III) of the statute, EPA must lower the applicable volume used to set the annual cellulosic biofuel percentage standard to the projected volume of production during the year. In Section IV of this final rule, we present our analysis of cellulosic biofuel production and the final applicable volumes for 2014, 2015, and 2016. This analysis is based on an assessment of actual cellulosic biofuel supply in 2014 and parts of 2015, estimates from EIA, an evaluation of producers' production plans and progress to date following discussions with cellulosic biofuel producers, and review of comments we received in response to the NPRM.

With regard to BBD, CAA section 211(o)(2)(B) specifies the applicable volumes of BBD to be used in the RFS program only through year 2012. For subsequent years the statute sets a minimum volume of 1 billion gallons, and directs EPA to set the required volume after review of the renewable fuels program, consultation with USDA and DOE as well as consideration of a number of factors. In Section III of this preamble we discuss our assessment of statutory and other relevant factors and our final volume requirements for BBD for 2014, 2015, 2016, and 2017. We are finalizing growth in the required volume of BBD in such a way that both the BBD market and other advanced biofuels will grow.

Regarding advanced biofuel and total renewable fuel, Congress provided several mechanisms through which

[12] Section 211(o)(7)(E) also authorizes EPA to issue a temporary waiver of applicable volumes of BBD where EPA determines that there is a significant feedstock disruption or other market circumstance that would make the price of BBD fuel increase significantly.

[13] See 78 FR 71732 (November 29, 2013) and 79 FR 73007 (December 9, 2014).

[14] See *American Fuel and Petrochemical Manuf. et al.* v. *EPA* (No. 15–cv–394, D.D.C.). The consent decree also requires that EPA respond by November 30, 2015 to the plaintiffs' petition seeking a waiver in part of the 2014 statutory volume targets.

those volumes could be reduced if necessary. If we lower the applicable volume of cellulosic biofuel below the volume specified in CAA section 211(o)(2)(B)(i)(III), we also have the authority to reduce the applicable volumes of advanced biofuel and total renewable fuel by the same or a lesser amount. We refer to this as the ''cellulosic waiver authority.'' We may also reduce the applicable volumes of any of the four renewable fuel types under the ''general waiver authority'' provided at CAA section 211(o)(7)(A) if EPA finds that implementation of the statutory volumes would severely harm the economy or environment of a State, region, or the United States, or if there is inadequate domestic supply. Section II of this final rule describes our use of the cellulosic waiver authority to reduce volumes of advanced biofuel and total renewable fuel and the general waiver authority to further reduce volumes of total renewable fuel. Exercise of our waiver authorities is necessary to address important realities, including:

- Substantial limitations in the supply of cellulosic biofuel,
- Insufficient supply of other advanced biofuel to offset the shortfall in cellulosic biofuel, and
- Practical and legal constraints on the ability of the market to supply renewable fuels to the vehicles that can use them.

We believe these realities justify the exercise of the authorities Congress provided us to waive the statutory volumes. At the same time, we are mindful that the primary objective of the statute is to increase renewable fuel use over time. For the total renewable fuel requirement in this rule, we are using the waiver authorities only to the extent necessary to derive applicable volumes that reflect the maximum supply that can reasonably be expected to be produced and consumed by a market that is responsive to the RFS standards. This is a very challenging task not only in light of the myriad complexities of the fuels market and how individual aspects of the industry might change in the future, but also because we cannot precisely predict how the market will respond to the volume-driving provisions of the RFS program. Thus the determination of the final total renewable fuel volume requirement is one that we believe necessarily involves considerable exercise of judgment. Based on our assessment of available renewable fuel supply, and after consultation with the Departments of Agriculture and Energy, we believe that adjustments to the statutory targets for total renewable fuel are warranted for 2014, 2015, and 2016. While the final volume requirements for 2014 and 2015 are either equal to actual supply or (for 2015) a projection from actual supply, the volume requirement for 2016 will lead to growth in supply beyond the levels achieved in the past, based on the expectation that the market can and will respond to the standards we set.

For the advanced biofuel volume requirements, we are using the cellulosic waiver authority to derive a volume requirement for 2014 that is based on actual supply; a volume requirement for 2015 that is based on actual supply during months for which data are available, and a projection from those levels for the remaining months in the year; and a volume requirement for 2016 that is reasonably attainable and which to a significant extent will result in backfilling the shortfall in cellulosic biofuel volumes with other advanced biofuels that also provide substantial GHG emission reductions.[15]

B. Summary of Major Provisions in This Action

This section briefly summarizes the major provisions of this final rule. We are establishing applicable volume requirements for cellulosic biofuel, BBD, advanced biofuel, and total renewable fuel for 2014, 2015, and 2016, as well as the applicable volume requirement for BBD for 2017. This action also includes a final response to several requests we received in 2013 for a waiver of the 2014 standards. We are also finalizing an amendment to the regulations designed to clarify the scope of the algal biofuel pathway. Finally, we are establishing new deadlines for annual compliance reporting and attest reporting for the 2013, 2014 and 2015 compliance years.

1. Final Approach to Setting Standards for 2014, 2015, and 2016

Because 2014 has passed, this final rule cannot alter the volumes of renewable fuel produced and consumed during 2014. We believe it is appropriate, therefore, that the standards we establish for 2014 reflect the actual supply of renewable fuel in 2014. Although we believe that the standards we set for advanced biofuel and total renewable fuel must be ambitious to be consistent with the intent of Congress in establishing the RFS program, we also recognize that the final standards we set cannot affect the past. Therefore, in this action we are basing the applicable volume requirements for 2014 on actual renewable fuel use, as determined by data on the number of Renewable Identification Numbers (RINs) generated from the EPA-Moderated Transaction System (EMTS), minus the number of RINs retired to account for renewable fuel export as reported by the Census Bureau, or retired for other purposes unrelated to demonstrating compliance with the annual standards as reported through EMTS.[16] While this approach would result in exactly the number of 2014 RINs available for compliance that would be needed for compliance with the 2014 standards, we recognize that it does not guarantee that every individual obligated party will have the exact number of 2014 RINs needed for compliance with its individual RVOs. Thus there may be some cost associated with the reallocation of 2014 RINs to those obligated parties that need them. However, such variations in RIN holdings between obligated parties can occur in any year. We do not believe it would be appropriate to exercise our waiver authority to reduce the 2014 standards below the number of 2014 RINs that were generated and are available for compliance. Rather, we believe that we should rely on the market to sort out the distribution of RINs among obligated parties as was the intent in establishing the RIN trading mechanism. We are revising the deadline for obligated parties to demonstrate compliance with the RFS standards to afford obligated parties additional time to engage in transactions to acquire the RINs they need for compliance.[17]

For the 2015 standards, we proposed volume requirements in the June 10, 2015 NPRM that projected growth in renewable fuel use over the calendar year, even though the proposed volume requirements were issued mid-way through the year. The market appears to have responded to the proposal as monthly supply after the NPRM was about 5% higher than monthly supply before the NPRM. We believe that the final rule, however, will be issued too late in the year to have any further effect on supply in 2015. Therefore, in deriving the final 2015 volume requirements we used the data on actual

[15] As discussed in Section II.B.1, EPA has considerable discretion in exercising the cellulosic waiver authority, and is not constrained to consider any particular factor or list of factors in doing so.

[16] A RIN is a unique number generated by the producer and assigned to each gallon of a qualifying renewable fuel under the RFS program, and is used by refiners and importers to demonstrate compliance with the volume requirements under the program. RINs may be retired for a number of reasons, including to account for renewable fuel spills or to correct for RIN generation errors.

[17] Other compliance flexibilities also exist, including use of carryover RINs and the ability for parties that do not have a 2013 compliance deficit to carry a 2014 deficit forward into 2015.

supply that is available to us (through September 2015), along with a projection of supply for the remaining months of 2015 based on actual supply in the months for which we have data and historical trends regarding seasonal renewable fuel supply. In other words, the 2015 volume requirements are based on a combination of actual volumes supplied and an extrapolation of likely volumes for the remainder of the year that assumes that our final standards are issued too late in the year to have further influence on the renewable fuel supply.

For 2016, our final volume requirements are issued on the statutory schedule, allowing the full compliance year for obligated parties and the market to react to the standards we set. Therefore, we assume that the standards can influence greater renewable fuel use than would be the case in the absence of the standards. For advanced biofuel and total renewable fuel, our assessment of 2016 supply simultaneously reflects the statute's purpose to drive growth in renewable fuels, while also accounting for constraints in the market that make the volume targets specified in the statute beyond reach, as described more fully in Section II. Our determination regarding the BBD volume requirement has been based on consultation with USDA and DOE and an analysis of a set of factors stipulated in CAA section 211(o)(2)(B)(ii), as described in more detail in Section III. Finally, as described in Section IV, the cellulosic biofuel volume requirement is based on a projection of production in 2016 that reflects a neutral aim at accuracy.

2. Advanced Biofuel and Total Renewable Fuel

Since the EISA-amended RFS program began in 2010, we have reduced the applicable volume of cellulosic biofuel each year in the context of our annual RFS standards rulemakings to the projected production levels, and we have considered whether to also reduce the advanced biofuel and total renewable fuel statutory volumes pursuant to the waiver authority in section 211(o)(7)(D)(i). In the past we have determined that reductions in the statutory targets for advanced biofuel and total renewable fuel were not necessary. However, for 2014 and later years this is not the case. For 2014, this final rulemaking is too late to influence the market, and renewable fuel supply must necessarily be determined based on historical data. This is also largely the case for 2015, though we have included a projection for the latter part of the year for which data on actual use is not available. For both of these years, the supply of advanced and total renewable fuels was insufficient to satisfy the statutory targets.

For 2016 we have determined that the volume of ethanol in the form of E10 or higher ethanol blends that can be supplied to vehicles, together with the volume of non-ethanol renewable fuels that can be supplied to vehicles, is insufficient to attain the statutory targets for both total renewable fuel and advanced biofuel. As a result, we are using the waiver authorities provided in CAA section 211(o)(7) to set lower volume requirements for these renewable fuel categories in 2016. We expect future standards to both reflect and anticipate progress of the industry and market in providing for continued expansion of the supply of renewable fuels.

Our determination in this final rule that the required volumes of advanced biofuel and total renewable fuel should be reduced from the statutory targets is based on a consideration of the ability of the market to supply such fuels through domestic production or import; the ability of available renewable fuels to be used as transportation fuel, heating oil, or jet fuel; and the ability of the standards to bring about market changes in the time available.[18] Increasing renewable fuel supply requires all aspects of the market to be in place to support those increased volumes. Yet the renewable fuel marketplace is very complex, and includes such diverse elements as feedstock (*e.g.* corn, soybeans) production and transport, renewable fuel production and import facilities, distribution capacity (*e.g.,* pipeline, rail, barge, and tank truck), terminal storage, facilities at terminals to blend renewable fuel into gasoline and diesel, vehicles/engines designed to use renewable fuel, and consumer fuel consumption. Compounding this complexity is the fact that these elements are typically under the control of different entities, making coordinated investment decisions more difficult. A constraint anywhere in this system can lead to shortfalls in renewable fuel supply in comparison to the statutory targets. As described in more detail in Section II.B, we believe that the availability of qualifying renewable fuels and constraints on their supply to vehicles that can use them are valid considerations under both the cellulosic waiver authority under section 211(o)(7)(D)(i) and the general waiver authority under section 211(o)(7)(A). We are using the waiver authorities in a limited way that reflects our understanding of how to reconcile real marketplace constraints with Congress' intent to cause growth in renewable fuel use over time.

We have established applicable volumes for advanced biofuel and total renewable fuel for 2016 that would result in significant volume growth over the levels supplied in previous years. Moreover, the 2016 volume requirement for total renewable fuel is, in our judgment, as ambitious as can reasonably be justified, and reflects the growth rates that can be attained under a program explicitly designed to compel the market to respond. The advanced biofuel volume requirement is set at a level that will allow reasonably attainable volumes of advanced biofuel to backfill for missing cellulosic biofuel volumes.

3. Biomass-Based Diesel

As for advanced and total renewable fuel in 2014 and 2015, we believe that it is appropriate to establish the 2014 and 2015 volume requirements of BBD to reflect actual supply (including a projection for the latter part of 2015 that is primarily based on supply in the earlier part of the year for which data is available). For 2016 and 2017, to preserve the important role that BBD plays in the RFS program, as well as to support the volume requirements for advanced biofuel, we believe that it is appropriate to increase the BBD volume requirement for each year. However, we also believe that it is of ongoing importance that opportunities for other types of advanced biofuel, such as renewable diesel co-processed with petroleum, renewable gasoline blendstocks, and renewable heating oil, as well as others that are under development be incentivized and expanded. Thus, based on a review of the implementation of the program to date and all the factors required under the statute, we are not only finalizing the 2014 and 2015 BBD volume requirement at the actual volumes of 1.63 and 1.73 billion gallons,[19] respectively, but we are also finalizing increases in the applicable volume of BBD to 1.9 and 2.0 billion gallons for years 2016 and 2017, respectively. We believe that these increases support the overall goals of the program while also maintaining the incentive for development and growth in production

[18] While the fuels that are subject to the percentage standards are currently only non-renewable gasoline and diesel, renewable fuels that are valid for compliance with the standards include those used as transportation fuel, heating oil, or jet fuel.

[19] The 2015 BBD standard is based on actual data for the first 9 months of 2015 and a projection for the latter part of the year for which data on actual use is not available.

of other advanced biofuels. We believe establishing the volumes at these levels will encourage BBD producers to manufacture higher volumes of fuel that will contribute to the advanced biofuel and total renewable fuel requirements, while also leaving considerable opportunity within the advanced biofuel mandate for investment in and growth in production of other types of advanced biofuel with comparable or potentially superior environmental or other attributes.

4. Cellulosic Biofuel

The cellulosic biofuel industry continues to transition from research and development (R&D) and pilot scale operations to commercial scale facilities, leading to significant increases in production capacity. RIN generation from the first commercial scale cellulosic biofuel facility began in March 2013. Cellulosic biofuel production increased substantially in 2014, with over 33 million gallons in that year. This volume included a significant number of cellulosic biofuel RINs generated for cellulosic CNG/LNG from biogas through a new pathway approved by EPA in 2014.[20] For 2014 we are finalizing a cellulosic biofuel standard of 33 million gallons, consistent with the total number for RINs generated in 2014 that may be used toward satisfying an obligated party's cellulosic biofuel obligation (both cellulosic biofuel (D3) and cellulosic diesel (D7) RINs). We are also finalizing a cellulosic biofuel standard of 123 million ethanol-equivalent gallons for 2015 and 230 million ethanol-equivalent gallons in 2016 based on the information we have received regarding individual facilities' capacities, production start dates and biofuel production plans, as well as input from other government agencies, and EPA's own engineering judgment.

As part of estimating the volume of cellulosic biofuel that will be made available in the U.S. in 2015 and 2016, we researched all potential production sources by company and facility. This included sources still in the planning stages, facilities under construction, facilities in the commissioning or start-up phases, and facilities already producing some volume of cellulosic biofuel. Facilities primarily focused on R&D were not the focus of our assessment, as production from these facilities represents very small volumes of cellulosic biofuel, and these facilities typically have not generated RINs for the fuel they have produced. From this universe of potential cellulosic biofuel sources, we identified the subset that is expected to produce commercial volumes of qualifying cellulosic biofuel for use as transportation fuel, heating oil, or jet fuel by the end of 2016. To arrive at projected volumes, we collected relevant information on each facility. We then developed projected production ranges based on factors such as the current and expected state of funding, the status of the technology being used, progress towards construction and production goals, facility registration status, production volumes achieved, and other significant factors that could potentially impact fuel production or the ability of the produced fuel to qualify for cellulosic biofuel RINs. We also used this information to group these companies based on production history and to select a value within the aggregated projected production ranges that we believe best represents the most likely production volumes from each group for each year. EPA also received a projection of liquid cellulosic biofuel production in 2016 from EIA, which helped form the basis of our production for these types of cellulosic biofuels. Further discussion of these factors and the way they were used to determine our final cellulosic biofuel projections for 2014, 2015, and 2016 can be found in Section IV.

5. Annual Percentage Standards

The renewable fuel standards are expressed as a volume percentage and are used by each producer and importer of fossil-based gasoline or diesel to determine their renewable fuel volume obligations. The percentage standards are set so that if each obligated party meets the standards, and if EIA projections of gasoline and diesel use for the coming year prove to be accurate, then the amount of renewable fuel, cellulosic biofuel, BBD, and advanced biofuel actually used will meet the volumes required on a nationwide basis.

Four separate percentage standards are required under the RFS program, corresponding to the four separate renewable fuel categories shown in Table I.A–1. The specific formulas we use in calculating the renewable fuel percentage standards are contained in the regulations at 40 CFR 80.1405 and repeated in Section V.B.1. The percentage standards represent the ratio of renewable fuel volume to projected non-renewable gasoline and diesel volume. The volume of transportation gasoline and diesel used to calculate the final percentage standards was provided by EIA. The final percentage standards for 2014, 2015, and 2016 are shown in Table I.B.5–1. Detailed calculations can be found in Section V, including the projected gasoline and diesel volumes used.

TABLE I.B.5–1—FINAL PERCENTAGE STANDARDS

	2014 (%)	2015 (%)	2016 (%)
Cellulosic biofuel	0.019	0.069	0.128
Biomass-based diesel	1.41	1.49	1.59
Advanced biofuel	1.51	1.62	2.01
Renewable fuel	9.19	9.52	10.10

6. Response to Requests for a Waiver of the 2014 Standards

Concurrently with the November 29, 2013, proposed rule for 2014 RFS standards, we also published a separate **Federal Register** Notice[21] indicating that the American Petroleum Institute (API) and the American Fuel & Petrochemical Manufacturers (AFPM) had submitted a joint petition requesting a partial waiver of the 2014 applicable RFS volumes, and that several individual refining companies had also submitted similar petitions. We noted that any additional similar requests would also be docketed and considered together with requests already received. EPA has subsequently received additional waiver petitions, including those submitted by eight Governors.[22]

[20] See 79 FR 42128 (July 18, 2014).

[21] 78 FR 71732 (November 29, 2013) and 78 FR 71607 (November 19, 2013), respectively.

[22] EPA has received, to date, waiver petitions from Governors Deal (GA), Fallin (OK), Perry (TX),

The petitions generally asserted that for 2014 there is an inadequate domestic supply of renewable fuel and therefore RINs, due both to the E10 blendwall and constraints on the supply of higher-level ethanol blends, and of non-ethanol renewable fuels. Many of the petitioners argued that this inadequate supply of renewable fuel (and RINs) will lead to an inadequate supply of gasoline and diesel, because refiners and importers, faced with a shortage of RINs, will reduce their production of gasoline and diesel for the domestic market. They argued that this will in turn severely harm the economy.

As calendar year 2014 has passed, we believe it is appropriate to set the applicable volume requirements at the volumes that were actually supplied in 2014. We do not believe that use of 2014 renewable fuel volumes severely harmed the economy, and we believe that it is straightforward to conclude that there was an adequate supply of the volumes of renewable fuel that were actually used in 2014. For total renewable fuel, cellulosic biofuel and advanced biofuels, this approach results in volume requirements as close to the statutory volume targets as possible absent using the availability of carryover RINs as a justification for setting higher requirements. We considered that option, but, as described in detail in Section II.H., we do not interpret carryover RINs to be part of the ''supply'' of renewable fuel for purposes of assessing whether an inadequate domestic supply exists to justify a waiver under section 211(o)(7)(A) and, although they are a relevant consideration in determining whether or not we should exercise our discretion to grant a waiver under either the general waiver authority or the cellulosic waiver authority, we have determined that the current bank of carryover RINs serves important program functions, and that the requirements for 2014–2016 should not be intentionally set at levels that would require a draw-down in the current bank of carryover RINs. We also considered, given the late nature of this rulemaking with respect to 2014, the possibility of setting the 2014 requirements at the levels originally proposed in November 2013, as suggested by some obligated party commenters that asserted that they used those proposed levels for planning purposes. However, we do not believe it would have been reasonable for obligated parties to assume that the November 2013 proposed volumes would be finalized unchanged. The statutory volume targets for cellulosic biofuel, advanced biofuel and total renewable fuel, as well as NPRM preamble statements for these fuels and biomass-based diesel, clearly provided notice to obligated parties that the final volume requirements could be substantially different than proposed. Nevertheless, we have extended the 2014 compliance demonstration deadline to allow such parties additional time to acquire the RINs needed for compliance. In light of all of these considerations, we have determined that it is appropriate to establish volume requirements for 2014 that reflect actual renewable fuel supply in that year.

To the extent that EPA's independent action to reduce statutory volumes satisfies the petition requests, those requests are now moot and EPA is taking no further action with respect to them. EPA is denying the waiver petitions to the extent they seek differing reductions in applicable volumes than are set forth in this final rule. We believe it is unnecessary to evaluate concerns raised by certain petitioners that implementation of the statutory applicable volumes would cause severe economic harm, since such concerns were predicated on underlying concerns of inadequate domestic supply and such supply concerns are directly addressed by this final rule.

7. Changes to Regulations

In addition to finalizing the aforementioned volume requirements and associated percentage standards, we are also finalizing amendments to the RFS requirements to address two issues. First, we are finalizing changes with respect to the previously-approved algal oil pathways in Table 1 to 40 CFR 80.1426 to clarify that only biofuels produced from oil from algae grown photosynthetically qualify for the RFS program under the algal oil pathways in Table 1 to 40 CFR 80.1426. Since EPA assumed that algae would be grown photosynthetically when it evaluated the lifecycle greenhouse gas emissions associated with the existing algal oil pathways, we are clarifying the regulatory description of these pathways to align with EPA's technical assessment and interpretation of the scope of the pathways.

We are aware of companies that plan to produce biofuels from algae that use non-photosynthetic types of metabolism. Companies wishing to produce biofuels from algae grown with a non-photosynthetic stage of growth must apply to EPA for approval of their pathway pursuant to 40 CFR 80.1416. EPA has not conducted a full lifecycle GHG analysis of emissions associated with biofuel produced using non-photosynthetic algae. Such analysis would need to be completed in order to determine whether fuels produced using these microorganisms meet the lifecycle GHG threshold for advanced biofuels.

We are also finalizing revisions to the annual compliance reporting deadlines for obligated parties and renewable fuel exporters, and the attest engagement reporting deadlines for obligated parties, RIN-generating renewable fuel producers and importers, other parties holding RINs, renewable fuel exporters, and independent third-party auditors for the 2013, 2014, and 2015 compliance years. The deadlines vary for each of these parties depending on the applicable compliance period, and some parties will be required to submit partial annual reports representing a portion of the 2014 compliance year. A detailed description of our changes to reporting deadlines can be found in Section VI.B.

8. Assessment of Aggregate Compliance Approach

By November 30 of each year we are required to assess the status of the aggregate compliance approach to land-use restrictions under the definition of renewable biomass for both the U.S. and Canada. In today's action we are providing the final announcements for these administrative actions.

As part of the RFS regulations, EPA established an aggregate compliance approach for renewable fuel producers who use planted crops and crop residue from U.S. agricultural land. This compliance approach relieved such producers (and importers of such fuel) of the individual recordkeeping and reporting requirements otherwise required of producers and importers to verify that such feedstocks used in the production of renewable fuel meet the definition of renewable biomass. EPA determined that 402 million acres of U.S. agricultural land was available in 2007 (the year of EISA enactment) for production of crops and crop residue that would meet the definition of renewable biomass, and determined that as long as this total number of acres is not exceeded, it is unlikely that new land has been devoted to crop production based on historical trends and economic considerations. We indicated that we would conduct an annual evaluation of total U.S. acreage that is cropland, pastureland, or conservation reserve program land, and that if the value exceed 402 million

Otter (ID), LePage (ME), Martinez (NM), Herbert (UT), and Haley (SC). In addition to the waiver petition from API/AFPM, EPA has also received waiver petitions from the following companies: Delek, ExxonMobil, Holly Frontier, Lion Oil Petroleum, Marathon Oil, NCRA, PBF Holding Company, Phillips 66, and Tesoro.

acres, producers using domestically grown crops or crop residue to produce renewable fuel would be subject to individual recordkeeping and reporting to verify that their feedstocks meet the definition of renewable biomass. As described in Section VII.A, based on data provided by the USDA, we have estimated that U.S. agricultural land did not exceed the 2007 baseline acreage in 2013, 2014, or 2015. This assessment means that the aggregate compliance provision can continue to be used in the U.S. for calendar years 2014, 2015, and 2016.

On September 29, 2011, EPA approved the use of a similar aggregate compliance approach for planted crops and crop residue grown in Canada. The Government of Canada utilized several types of land use data to demonstrate that the land included in their 124 million acre baseline is cropland, pastureland or land equivalent to U.S. Conservation Reserve Program land that was cleared or cultivated prior to December 19, 2007, and was actively managed or fallow and non-forested on that date (and is therefore RFS2 qualifying land). As described in Section VII.B, based on data provided by Canada, we have estimated that Canadian agricultural land did not exceed the 2007 baseline acreage in 2013, 2014, or 2015. This assessment means that the aggregate compliance provision can continue to be used in Canada for calendar years 2014, 2015, and 2016.

C. Authority for Late Action and Applicability of the Standards

Under CAA section 211(o)(3)(B)(i), EPA must determine and publish the annual percentage standards by November 30 of the preceding year, and under CAA section 211(o)(3)(B)(ii) it must establish applicable volumes for biomass-based diesel 14 months in advance of the corresponding compliance year. EPA did not meet these statutory deadlines for the 2014 and 2015 percentage standards, or for the BBD applicable volumes established in this rule. Nevertheless, the percentage standards established through this rulemaking will apply to all gasoline and diesel produced or imported in calendar years 2014, 2015, or 2016 as applicable, and the 2017 applicable volume will form the basis for the BBD percentage standard that is required by statute to be established by November 30, 2016, that will apply to all biodiesel produced or imported in 2017.

We acknowledge that this rule is being finalized later than the statutory deadlines noted above. However, the statute requires that EPA established percentage standards applicable to each calendar year, and applicable volumes for BBD, and we do not believe we are relieved of these obligations by missing the statutory deadlines. Moreover, parties have been producing and using renewable fuels, and generating and acquiring RINs for compliance even in the absence of the annual standards being in place, with the expectation that the requirements would ultimately be finalized. We believe it is important not to upset these reasonable expectations, both for the parties involved and for the long-term integrity of the RFS program. The delay does not deprive EPA of authority to issue applicable volumes and standards for these calendar years. The United States Court of Appeals for the District of Columbia Circuit upheld the 2013 RFS standards even though they were issued more than eight months after statutory deadline. *Monroe Energy* v. *EPA,* 750 F.3.d 909 (D.C. Cir. 2014). The court noted that it had resolved the question of EPA's authority to issue RFS standards after the statutory deadline for issuing the annual RFS standards in *NPRM* v. *EPA,* 630 F.3d 145 (D.C. Cir. 2010). In that case, the court explained that courts have declined to treat a statutory direction that an agency ''shall'' act within a specified time period as a jurisdictional limit that precludes action later. Id. at 154 (citing *Barnhart* v. *Peabody Coal,* 537 U.S. 149, 158 (2003)). Moreover, the court noted that the statute here requires that EPA regulations ''ensure'' that transportation fuel sold or introduced into commerce ''on an annual average basis, contains at least the volumes of renewable fuel'' that are required pursuant to the statute. Id. at 152–153. This statutory directive requires EPA action, even if late. Therefore EPA believes it has authority to issue RFS standards for calendar years 2014 and 2015, and BBD applicable volumes for 2014–2017, notwithstanding EPA's delay.

EPA is exercising its authority to issue standards applicable to past time periods in a reasonable way. Thus, for 2014, EPA is establishing renewable fuel obligations that reflect actual renewable fuel used as transportation fuel, heating oil, or jet fuel during that time period, and the final August 1, 2016 compliance deadline for 2014 (which is two months later than proposed) will allow time for obligated parties to complete necessary transactions to meet obligations. For 2015 we are similarly taking into account actual renewable fuel use during the time that has already passed in 2015, and establishing an extended compliance demonstration deadline of December 1, 2016—a full year after signature of today's rule, and 11 months after the close of the 2015 compliance period. Renewable fuel producers generated RINs throughout 2014, and have also been generating 2015 RINs since the beginning of the calendar year. To varying degrees, obligated parties have been acquiring RINs since the beginning of 2014 in anticipation of the final volume requirements and standards. While we acknowledge the uncertainty that the market has experienced due to the delay, our final rule bases the applicable volume requirements for 2014 and 2015 on an assessment of past production. As a result, there will be an adequate quantity of RINs available to satisfy those portions of the final requirements. In addition, there are a number of program flexibilities that will facilitate compliance. There is a bank of carryover RINs that will make the RIN market more fluid, and facilitate the acquisition of RINs that can be used to comply with the 2014 RVOs. That same bank of carryover RINs can be rolled forward to assist in compliance with 2015 and 2016 requirements. We acknowledge that there is a theoretical possibility that parties that accumulate RINs through their own blending activities could decide to bank the maximum quantity of RINs for their own future use or for future sale, and that if this practice were widespread that there could be a shortfall in available RINs for parties who do not engage in renewable fuel blending activities themselves and have not entered into sufficient contracts with blenders or other parties to acquire sufficient RINs. Such practices are possibilities in any year, and in any competitive marketplace, and we believe that obligated parties have had sufficient experience with the RFS program to have learned to take appropriate precautionary measures to avoid such results. Even where they have not done so, and find compliance with a given year's standards infeasible, they may avail themselves of the option of carrying a compliance deficit forward for that compliance year to the next. Some commenters asserted that BBD volume requirements for 2014 and 2015 should be set at the level proposed in November, 2013, rather than levels actually supplied in those years. Some commenters suggested that all 2014 volume requirements should be set equal to those proposed in 2013. As described in Section III, EPA disagrees with these commenters that obligated parties lacked notice that EPA could set final volume requirements for these

years higher than proposed in 2013, or that setting the requirements to reflect actual supply would pose an unreasonable burden on obligated parties, particularly in light of the nested nature of the standards. Sufficient RINs were generated in these years to allow compliance, and carryover RINs, deficit carryforwards and delayed compliance demonstration deadlines are all in place to facilitate compliance. In sum, we believe that EPA's final approach is authorized and reasonable, though late.

D. Outlook for 2017 and Beyond

We recognize the important public policy goals at the heart of the RFS program, and we acknowledge that a number of challenges must be overcome in order to fully realize the potential for greater use of renewable fuels in the United States. We also recognize that the RFS program plays a central role in creating the incentives for realizing that potential. The standards being finalized today require that significant progress is made in overcoming those challenges. We expect future standards to both reflect and anticipate progress of the industry and market in providing for continued expansion in the supply of renewable fuels, and we intend to set standards in future years that continue to capitalize on the market's ability to respond to those standards with expansions in production and infrastructure.

We believe that the supply of renewable fuels can continue to increase in the coming years despite the constraints associated with shortfalls in cellulosic biofuel production and other advanced biofuels, and constraints associated with supplying renewable fuels to the vehicles and engines that can use them. As described in Section II.E, we believe that the market is capable of responding to ambitious standards by expanding all segments of the market needed to increase renewable fuel supply and modify fuel pricing to provide incentives for the production and use of renewable fuels.

In future years, we would expect to use the most up-to-date information available to project the growth that can realistically be achieved considering the ability of the RFS program to spur growth in the volume of ethanol, biodiesel, and other renewable fuels that can be supplied and consumed by vehicles as we have for the 2016 volumes in this rule. In particular we will focus on the emergence of advanced biofuels including cellulosic biofuel consistent with the statute. Many companies are continuing to invest in efforts ranging from research and development to the construction of commercial-scale facilities to increase the production potential of next generation biofuels. We will continue to evaluate new pathways especially for advanced biofuels and respond to petitions, expanding the availability of feedstocks, production technologies, and fuel types eligible under the RFS program.

We also intend to take additional steps to facilitate the development and use of advanced biofuels. In particular, we will be initiating action to allow the production of renewable fuels to occur in steps at more than one facility. Partial conversion of a renewable feedstock into a so-called ''biointermediate'' at remote facilities for subsequent final processing into renewable biofuel at the primary production facility has been identified by several industry members as an important option to reduce the cost and enhance the availability of cellulosic and other advanced biofuels. However, under the existing RFS regulations, renewable fuels must generally be produced from renewable feedstocks at a single facility in order to be eligible to generate RINs. We are currently working on a rulemaking that would propose amendments to the RFS program to allow for more favorable treatment of such biointermediates. We believe a rulemaking is necessary to provide clarity for stakeholders and for proper compliance and enforcement oversight.

We believe that the use of biointermediates to produce renewable fuels holds considerable promise for the future growth in production of the cellulosic and advanced biofuels required under the RFS program. While near-term production may be modest, significant potential for further growth in the long-term exists, as these technologies can lower the cost of utilizing cellulosic and other feedstocks for the production of renewable fuels by reducing the storage and transportation costs associated with cellulosic biomass and taking advantage of existing ethanol and petroleum refinery assets to convert the biomass to renewable fuel. This makes biointermediates a critical component of the growth of the RFS program in the future and in particular the growth of cellulosic biofuel volumes.

In addition to ongoing efforts to evaluate new pathways for advanced biofuel production, we are aware that other actions can also play a role in improving incentives provided by the RFS program to overcome challenges that limit the potential for increased volumes of renewable fuels. A number of commenters provided ideas in this regard, including suggestions that EPA take regulatory action to modify the administration of the cellulosic waiver credit (CWC) program to better provide stronger support for actual volume purchases, and to change the RFS program's point of obligation from its current focus on producers and importers of gasoline and diesel. Both of these issues are beyond the scope of this rulemaking. However, we will continue to actively monitor the functioning of the market, assess all relevant data, and review our options as necessary.

II. Advanced Biofuel and Total Renewable Fuel Volumes for 2014–2016

The national volume targets of advanced biofuel and total renewable fuel to be used under the RFS program each year through 2022 are specified in CAA section 211(o)(2). However, two statutory provisions authorize EPA to reduce these volumes under certain circumstances. EPA may reduce these volumes to the extent that we reduce the applicable volume for cellulosic biofuel pursuant to CAA section 211(o)(7)(D), or if the criteria are met for use of the general waiver authority under CAA section 211(o)(7)(A). We have evaluated the capabilities of the market and have concluded that the volumes for advanced biofuel and total renewable fuel specified in the statute cannot be achieved in 2014, 2015, or 2016. As a result we are exercising our discretion under these statutory provisions to reduce the applicable volumes of advanced biofuel and total renewable fuel to reflect the fact that this final rule cannot have an impact on renewable fuel use in the past, and to address constraints on the supply of renewable fuels in the future that are driven by both limitations in production or importation of these fuels and factors that limit supplying them to vehicles that can consume them.

While we are using our waiver authorities under the law to reduce applicable volumes from the statutory levels, we are setting the final volume requirements at levels that are intended to drive significant growth in renewable fuel use beyond what would occur in the absence of such requirements, as Congress intended. The final volume requirements recognize the ability of the market to respond to the standards we set while staying within the limits of feasibility. The net impact of these final volume requirements is that the necessary volumes of both advanced biofuel and conventional (non-advanced) renewable fuel would significantly increase over levels used in the past. The volumes that we are finalizing today are shown below.

TABLE II–1—FINAL VOLUME REQUIREMENTS

[Billion gallons]

	2014	2015	2016
Advanced biofuel	2.67	2.88	3.61
Total renewable fuel	16.28	16.93	18.11

A. Fulfilling Congressional Intent To Increase Use of Renewable Fuels

Although there is scant legislative history for the Energy Independence and Security Act (EISA) to confirm the facts that were considered by Congress at the time of enactment, we believe that when Congress specified the renewable fuel volume targets that the RFS program was to attain, that it likely was with the understanding that the growth reflected in the statutory tables of applicable volumes would be well beyond any previously demonstrated ability of the industry to produce, distribute, and consume renewable fuels. For example, the annual average growth reflected in the statutory volumes for the time period between 2009 and 2022 is 1.6 billion gallons per year for advanced biofuel and 1.9 billion gallons per year for total renewable fuel. However, in the period 2001 to 2007 leading up to enactment of EISA, annual average supply growth rates were far lower: 0.8 billion gallons per year for ethanol (what has to date been the principal non-advanced renewable fuel under the RFS program), and 0.07 billion gallons per year for biodiesel (the principal advanced biofuel to date under the RFS program).[23] The supply of other renewable fuels during this timeframe was close to zero. In other words, Congress set targets that envisioned growth at a pace that far exceeded historical growth and prioritized that growth as occurring principally in advanced biofuels (contrary to historical growth patterns). Congressional intent is evident in the fact that the non-advanced volumes remain at a constant 15 billion gallons in the statutory volume tables starting in 2015 while the advanced volumes continue to grow through 2022 to a total of 21 billion gallon. It is apparent, therefore, that Congress intended changes in the extent and pace of growth of renewable fuel use that would be unlikely to occur absent the new program.

Moreover, it is highly unlikely that Congress expected the very high volumes that it specified in the statute to be reached only through the consumption of E10; indeed the statute does not explicitly require the use of ethanol at all. At the time EISA was passed in 2007, EIA's Annual Energy Outlook for 2007 (AEO 2007) projected that 17.3 billion gallons of ethanol was the maximum that could be consumed in 2022 if all gasoline contained E10 and there was no E0, E15, or E85.[24] Furthermore, the AEO 2007 did not reflect the fuel economy standards that were also enacted in EISA, which has further reduced the amount of gasoline consumed based on more strict vehicle fuel economy and efficiency standards. However, 17.3 billion gallons is far less than the 36 billion gallons of renewable fuel that Congress targeted for use in 2022.[25] Thus, if the statutory targets for 2022 were to be achieved, 18.7 billion gallons of renewable fuel would need to be consumed in 2022 either as higher level ethanol blends (E11–E85), or as non-ethanol fuels. Such levels were far beyond the industry's abilities at the time of EISA's enactment, strongly suggesting that Congress expected the RFS program to drive substantial market changes in a relatively short period of time.

Some commenters stated that EPA would be acting in a manner inconsistent with Congressional intent to increase renewable fuel use if we finalized volumes below the statutory volume targets. These commenters believed Congress set these targets at a level that would help incentivize investments such as building out new and existing capacity, installing storage/distribution infrastructure and advancing technology—all of which would help to increase volumes and achieve the targets within the specified timeframe in the statute. We agree that Congress set ambitious volume targets as a mechanism to push renewable fuel volume growth under the RFS program. However, Congress also provided EPA with waiver authority, in part to address the situation where supply of renewable fuel does not match these ambitious target levels. As a result we disagree with commenters who asserted that any EPA action to lower applicable volumes is not aligned with Congressional intent. The final volume requirements are set consistent with the Congressionally-established waiver authorities. The volumes required by this rule are ambitious and to attain them will require new investments and a responsive market.

Congress did not explicitly indicate, in EISA or in any other document associated with the legislation, the sort of changes that may have been expected to occur to reach 36 billion gallons by 2022. Today we know that possible approaches to significantly expand renewable fuel use fall into a number of areas, such as:

- Increased use of E15 in model year 2001 and later vehicles,
- Increased use of E85 or other higher level ethanol blends in flex-fuel vehicles (FFVs),
- Increased production and/or importation of non-ethanol biofuels (*e.g.,* biodiesel, renewable diesel, renewable gasoline, and butanol) for use in conventional vehicles and engines,
- Increased use of biogas in CNG vehicles,
- Increased use of renewable jet fuel and heating oil,
- Increased use of cellulosic and other non-food based feedstocks, and
- Co-development of new technology vehicles and engines optimized for new fuels.

Some commenters stated that the changes in these areas (which were also noted in the NPRM) cannot help to achieve growth in renewable fuel use within the timeframe necessary to help meet the 2015 and 2016 volumes requirements. Commenters further stated that some of these ideas should not be supported at all, such as increasing imports of biofuels because

[23] Based on data from the Energy Information Administration.

[24] Assumes that AEO2007's 2022 demand for gasoline energy was fulfilled entirely by E10. AEO2007 however, projected that considerably less gasoline used in 2022 would be E10. We have converted the projected 2022 gasoline energy demand into an equivalent volume of E10 to determine the maximum volume of ethanol that could have been consumed in 2022, based on the AEO2007, if all gasoline was E10.

[25] Congress specified that a minimum of 1 billion gallons of the 2022 total would be biomass-based diesel, but did not otherwise specify what specific fuel types would comprise the total. For example, although Congress envisioned substantial growth in cellulosic biofuels, that fuel category is defined by reference to the feedstock used and the GHG reductions obtained; finished cellulosic biofuels could include such diverse products as ethanol, renewable gasoline, naphtha, compressed natural gas, or electricity.

doing so would be inconsistent with Congressional intent to increase energy security through domestic biofuels. We agree with commenters that we will not see dramatic changes in every area we highlighted in the timeframe necessary to increase renewable fuel supply through 2016, but we believe that developments in some of these areas have been and will continue to occur, and that such changes will contribute to attaining the volumes finalized in this rule. We disagree with commenters that supporting imports of biofuels is inconsistent with Congressional intent. The statute does not discriminate between domestically-produced and imported biofuels and an increased diversity of fuels, including those imported from a variety of countries, helps improve energy security. For further discussion of imports, see Sections II.E.3.iii and II.F.

In the near term we expect that increases in E85 and biodiesel will dominate efforts to increase the use of renewable fuel, with smaller roles played by other renewable fuels (*e.g.,* increased E15 use and other non-ethanol renewable fuels such as naphtha). In the longer term, sustained ambitious volume requirements are necessary to provide the certainty of a guaranteed future market that is needed by investors; the development of new technology won't occur unless there is clear profit potential, and it requires multiple years to build new production, distribution, and consumption capacity. We believe that the approach we take to setting the standards must be consistent with Congress' clear goal of ambitiously increasing the use of renewable fuel over time. To this end, the approach presented in this action makes use of the statutory waiver authorities only to the degree necessary.

We believe that over time use of both higher level ethanol blends and non-ethanol biofuels can and will increase, consistent with Congress' intent in enacting EPAct and EISA. As stated above, while Congress provided waiver authority to account for supply and other challenges, we do not believe that Congress intended that the E10 blendwall or any other particular limitation would present a barrier to the expansion of renewable fuels. The fact that Congress set volume targets reflecting increasing and substantial amounts of renewable fuel use clearly signals that it intended the RFS program to create incentives to increase renewable fuel supplies and overcome supply limitations. Notwithstanding these facts, Congress also authorized EPA to adjust statutory volumes as necessary to reflect situations where only partial progress had been made towards eliminating supply limitations, as well as to address situations involving unexpected severe economic or environmental harm resulting from program implementation.

B. Statutory Authorities for Reducing Volume Targets

Congress specified increasing annual volume targets in the statute for total renewable fuel, advanced biofuel, and cellulosic biofuel for every year through 2022, and for biomass-based diesel (BBD) through 2012, and authorized EPA to set volume requirements for subsequent years after consideration of several specified factors. However, Congress recognized that circumstances could arise that might require a reduction in the volume targets specified in the statute as evidenced by the waiver provisions in CAA section 211(o)(7). As described below, we believe that limitations in production and importation of cellulosic biofuels provide EPA with authority to waive volumes of cellulosic biofuel, total renewable fuel, and advanced biofuel volumes pursuant to section 211(o)(7)(D). In addition, limitations in the production and importation of qualifying renewable fuels, along with factors that limit supplying those fuels to the vehicles that can consume them constitute circumstances that warrant a waiver of the total renewable fuel requirement under section 211(o)(7)(A).

With regard to ethanol, a number of market factors combine to place significant restrictions on the continued growth in the volume of ethanol that can be supplied to vehicles at the present time. The maximum amount of ethanol that can be consumed if all gasoline was E10, the limited number and limited geographic distribution of retail stations that offer higher ethanol blends such as E15 and E85, and the limited number of FFVs that have access to E85. Additionally, available information indicates that biodiesel also faces marketplace constraints in the rate at which it can grow, not only in the past (*e.g.,* 2013 when despite rapid growth it was still insufficient to achieve the total and advanced standards) but also in the future. These constraints on the availability of biodiesel to U.S. consumers include a combination of competing uses for feedstocks, international competition for biodiesel, the inconsistent nature of the biodiesel tax credit, limited investments to ensure quantity and quality of biodiesel product, limited infrastructure to distribute and blend biodiesel, and the limited ability of the market to consume biodiesel. Based on our assessment of the maximum amount of renewable fuel that can be supplied in 2014, 2015 and 2016 in light of these constraints, we believe that circumstances exist that warrant a reduction in the statutory applicable volumes of total renewable fuel and advanced biofuel for 2014, 2015 and 2016.

EPA is separately using two complementary legal authorities to set required volumes of advanced biofuel and total renewable fuel at levels below the volume targets provided in the statute: The cellulosic waiver authority under CAA section 211(o)(7)(D)(i), and the general waiver authority under CAA section 211(o)(7)(A). This section discusses both of these statutory authorities and briefly describes how we have used them to determine appropriate reductions in advanced biofuel and total renewable fuel in comparison to the statutory volumes.

1. Cellulosic Waiver Authority

Under CAA section 211(o)(7)(D)(i), if EPA determines that the projected volume of cellulosic biofuel production for the following year is less than the applicable volume provided in the statute, then EPA must reduce the applicable volume of cellulosic biofuel to the projected volume available during that calendar year. We refer to this provision as the agency's ''cellulosic wavier authority'' under the statute.

Section 211(o)(7)(D)(i) also provides that ''[f]or any calendar year in which the Administrator makes such a reduction, the Administrator may also reduce the applicable volume of renewable fuel and advanced biofuels requirement established under paragraph (2)(B) by the same or a lesser volume.'' Using this authority, the reductions in total renewable fuel and advanced biofuel can be less than or equal to, but no more than, the amount of reduction in the cellulosic biofuel volume. In prior actions EPA has interpreted this provision as authorizing EPA to reduce both total renewable fuel and advanced biofuel, by the same amount, if EPA reduces the volume of cellulosic biofuel.

The cellulosic waiver provision was discussed by the United States Court of Appeals for the District of Columbia Circuit, in the context of its review of EPA's 2013 annual RFS rule. As the Court explained,

> [T]he Clean Air Act provides that if EPA reduces the cellulosic biofuel requirement, as it did here, then it ''may also reduce'' the advanced biofuel and total renewable fuel quotas ''by the same or a lesser volume.'' 42 U.S.C. 7545(o)(7)(D)(i). There is no requirement to reduce these latter quotas, nor

does the statute prescribe any factors that EPA must consider in making its decision. See id. In the absence of any express or implied statutory directive to consider particular factors, EPA reasonably concluded that it enjoys broad discretion regarding whether and in what circumstances to reduce the advanced biofuel and total renewable fuel volumes under the cellulosic biofuel waiver provision. *Monroe* v. *EPA,* 750 F.3d 909, 915 (D.C. Cir. 2014).

For the 2013 RFS rule, the Court determined that EPA had reasonably declined to use the cellulosic waiver authority to reduce the advanced and total renewable fuel statutory applicable volumes by analyzing ''the availability of renewable fuels that would qualify as advanced biofuel and renewable fuel, the ability of those fuels to be consumed, and carryover RINs from 2012.'' Id. at 916.

Some stakeholders commented that EPA may only exercise the cellulosic waiver authority to reduce total and advanced volumes in circumstances described in section 211(o)(7)(A) (that is, where there is inadequate domestic supply or severe harm to the environment or economy), or that it must in considering use of the cellulosic waiver authority consider the factors specified in section 211(o)(2)(B)(ii) that are required considerations when EPA sets applicable volumes for years in which the statute does not do so. Contrary to these comments, the D.C. Circuit found in *Monroe* that the statute does not prescribe any factors that EPA must consider in making its decision; EPA has broad discretion under section 211(o)(7)(D)(i) to determine when and under what circumstances to reduce the advanced and total renewable fuel volumes when it reduces the statutory applicable volume of cellulosic biofuel.

In general, we do not believe that it would be consistent with the energy security and greenhouse gas reduction goals of the statute to reduce the applicable volumes of renewable fuel set forth in the statute absent a substantial justification for doing so. When using the cellulosic waiver authority, we believe that there would be a substantial justification to exercise our discretion to lower volumes of total and advanced renewable fuels in circumstances where there is inadequate projected production or import of potentially qualifying renewable fuels, or where constraints exist that limit the ability of those biofuels to be used for purposes specified in the Act (*i.e.,* in transportation fuel, heating oil or jet fuel). In particular, we believe that the cellulosic waiver authority is appropriately used to provide adequate lead time and a sufficient ramp-up period for non-cellulosic biofuels to be produced and constraints on their use for qualifying purposes eliminated, so they can fill the gap presented by a shortfall in cellulosic biofuels. As discussed in Section IV, we are reducing the applicable volume of cellulosic biofuel for 2014, 2015, and 2016, and thus are authorized to reduce the required volumes of advanced biofuel and total biofuel by the same or a lesser amount under the provisions of section 211(o)(7)(D)(i).[26] For this rulemaking, we have ascertained the availability of other advanced biofuel to satisfy some of the cellulosic biofuel volume shortfall, taking into consideration the constraints (including distribution and infrastructure constraints) that limit the use of non-cellulosic advanced biofuels to completely fill the cellulosic volume shortfall and are exercising our cellulosic waiver authority to reduce the advanced biofuel applicable volume to a level we have determined to be reasonably attainable.[27]

We are also using this authority to reduce total renewable volumes by the same amount. In past actions we have interpreted the cellulosic waiver authority as requiring equal reductions in advanced and total renewable fuel, based on concerns that EPA waiver decisions should not allow non-advanced biofuels to backfill volumes intended by Congress to be satisfied by advanced biofuels. In addition to this consideration, the equal reduction in total renewable fuel is justifiable under the cellulosic waiver authority based on an assessment of volumes that can be produced and imported, and consideration of the extent to which those volumes can be distributed and used as specified in the Act. However, this level of reduction is insufficient to address all of the supply limitations associated with total renewable fuel. Therefore, we are also using the general waiver authority as justification for further reductions in total renewable fuel volumes, as discussed in the next section.[28]

Some commenters argued that to the extent volume reductions are needed at all, EPA could rely solely on the cellulosic waiver authority to provide such reductions.[29] These commenters suggested that a reduction of the total renewable fuel and advanced biofuel volumes by the full amount of the waiver of cellulosic biofuel targets would result in volumes that are ''reasonably achievable,'' and that consequently additional reductions under the general waiver authority would be unnecessary. However, commenters' interpretation of a ''reasonably achievable'' volume assumed that a large number of carryover RINs would be used, and largely ignored the practical and legal constraints on the consumption of renewable fuel. As discussed in Section II.E, we have determined that we should not set standards for the 2014–2016 time period so as to intentionally draw down the current bank of carryover RINs. We also present a detailed discussion of the constraints on renewable fuel supply in this and subsequent sections. Additionally, we believe that a reduction of the advanced biofuel volume by the full amount of the waiver of cellulosic biofuels is not necessary; higher advanced volumes can be attained by substituting other advanced biofuels for the shortfall in cellulosic biofuel, and moreover requiring their use at higher levels furthers the GHG reduction objectives of the Act. What commenters suggested would result in increased volumes of conventional renewable fuel, and decreased volumes of advanced fuels as compared to the levels EPA is finalizing today. Given the superior GHG performance of advanced biofuels, and the important role of the current volume of carryover RINs to RFS program operation, EPA does not believe that the commenters' suggested approach would be either an appropriate exercise of its waiver authorities or be in the best interest of the RFS program.

2. General Waiver Authority

CAA section 211(o)(7)(A) provides that EPA, in consultation with the Secretary of Agriculture (USDA) and the

[26] EPA had proposed to use both the cellulosic waiver authority and the general waiver authority as a basis for reducing the advanced biofuel applicable volume. However, such an approach is unnecessary given that the reductions in advanced biofuel volumes in 2014, 2015 and 2016 are less than the reductions in cellulosic biofuel applicable volumes in those years. Thus, for the final rule, EPA is relying only on the cellulosic waiver authority in section 211(o)(7)(D) as a basis for its reductions in the advanced biofuel applicable volumes.

[27] We have considered the possible role of carryover RINs in avoiding the need to reduce the statutory applicable volumes, as we did in setting the 2013 RFS standards. However, we have determined that the current volume of the carryover RIN bank is needed as a program buffer to ensure flexibility to address unforeseen circumstances, and provide RIN market liquidity, and so should not be used as a basis for setting volume requirements higher than can be achieved through renewable fuel production and use. For further discussion of our assessment of the use of carryover RINs, see Section II.H.

[28] The volume reduction for advanced biofuels is not larger than the final reduction in the applicable volume of cellulosic biofuel, thus, EPA could rely on the cellulosic waiver authority alone for its final action with respect to advanced biofuel.

[29] See, *e.g.,* Comments from Growth Energy, RFA, POET, Novozymes, The Andersons, ACORE.

Secretary of Energy (DOE), may waive the applicable volume specified in the Act in whole or in part based on a petition by one or more States, by any person subject to the requirements of the Act, or by the EPA Administrator on her own motion. Such a waiver must be based on a determination by the Administrator, after public notice and opportunity for comment, that:

- Implementation of the requirement would severely harm the economy or the environment of a State, a region, or the United States; or
- There is an inadequate domestic supply.

In today's final action, we are using the general waiver authority based on the statute's authorization for the Administrator to act on her own motion on a finding of inadequate domestic supply.[30] As required by statute, we have consulted with both USDA and DOE in taking this action. We are using this authority to provide an additional increment of volume reduction for total renewable fuel beyond the reduction accomplished through the use of the cellulosic waiver authority.

Because the general waiver provision provides EPA the discretion to waive the volume requirements of the Act ''in whole or in part,'' we interpret this section as granting EPA authority to waive any or all of the four applicable volume requirements in appropriate circumstances. Thus, for example, unlike the cellulosic waiver authority, a reduction in total renewable fuel pursuant to the general waiver authority is not limited to the reduction in cellulosic biofuel.

EPA has had only limited opportunity to date to interpret and apply the waiver provision in CAA section 211(o)(7)(A)(ii) related to ''inadequate domestic supply,''has never before done so in the context of deriving an appropriate annual RFS standard.[31] As explained in greater detail below, we believe that this undefined ambiguous provision is reasonably and best interpreted to encompass the full range of constraints that could result in an inadequate supply of renewable fuel to the ultimate consumers, including fuel infrastructure and other constraints. This would include, for instance, factors affecting the ability to produce or import qualifying renewable fuels as well as factors affecting the ability to distribute, blend, dispense, and consume those renewable fuels in vehicles.

The waiver provision at CAA section 211(o)(7)(A)(ii) is ambiguous in several respects. First, it does not specify what the general term ''supply'' refers to. The common understanding of this term is an amount of a resource or product that is available for use by the person or place at issue.[32] Hence the evaluation of the supply of renewable transportation fuel, a product, is best understood in terms of the person or place using the product. In the RFS program, various parties interact across several industries to make renewable transportation fuel available for use by the ultimate consumers in transportation fuel. Supplying biofuel to obligated parties and terminal blenders is one part of this process, while supplying renewable fuel to the ultimate consumer as part of their transportation fuel is a different and later aspect of this process. For example, the biofuels ethanol and biodiesel are typically supplied to obligated parties or blenders as a neat fuel, but in almost all cases are supplied to the consumer as a blend with conventional fuel (ethanol blended in gasoline or biodiesel blended in diesel). The waiver provision does not specify what product is at issue (for example, neat biofuel or renewable fuel that is blended with transportation fuel) or the person or place at issue (for example, obligated party, blender or ultimate consumer), in determining whether there is an ''inadequate domestic supply.''

We believe that our interpretation is consistent with the language of section 211(o), and Congressional intent in enacting the program. It is evident from section 211(o) that Congress's intent was not simply to increase production of biofuel, but rather to provide that certain volumes of biofuel be used by the ultimate consumer as a replacement for the use of fossil-based fuel in the United States. The very definition of ''renewable fuel'' requires that the fuel be ''used to replace or reduce the quantity of fossil fuel present in a transportation fuel.'' CAA section 211(o)(1)(J). In addition the definition of ''additional renewable fuel'' specifies that it is fuel that is ''used to replace or reduce the quantity of fossil fuel present in home heating oil or jet fuel.'' CAA section 211(o)(1)(A.). Thus, there is no ''renewable fuel'' and the RFS program does not achieve the desired benefits of the program unless biofuels like ethanol and biodiesel are actually used to replace fossil-based transportation fuels, heating oil or jet fuel in the United States.[33] For example, the greenhouse gas reductions and energy security benefits that Congress sought to promote through this program are realized only through the use by consumers of renewable fuels that reduce or replace fossil fuels present in transportation fuel, heating oil or jet fuel in the United States. Imposing RFS volume

[30] We note that there are also pending requests pursuant to CAA section 211(o)(7(A) from a number of parties for EPA to exercise its waiver authorities to reduce applicable volumes for 2014. While the Administrator is acting on her own motion, she also resolves those petitions through and/or consistent with this final rule establishing 2014 volume requirements.

[31] Some commenters referred to EPA's 2010 RFS2 rule, 75 at 14698, where we stated that ''. . . it is ultimately the availability of qualifying renewable fuel, as determined in party by the number of RINs in the marketplace, that will determine the extent to which EPA should issue a waiver of RFS requirements on the basic of inadequate domestic supply,'' as indicating that EPA had previously determined that carryover RINs must be counted as part of ''supply.'' We disagree. The quoted language makes no explicit reference to carryover RINs, and the content indicates that the point of passage was to explain that it is in the interest of biofuel producers to generate RINs for all qualifying biofuel to avoid or minimize the possibity that EPA would grant waivers. The commenter attempts to make too much of this generally-worded sentence; it does not specify in what way the EPA will consider the ''RINs in the marketplace'' as ''part'' of its assessment of the availability of renewable fuels. Indeed, contrary to the commenters' suggestion, the focus on the ''availability of renewable fuels'' in this sentence could suggest that only those RINs in the marketplace representing liquid volumes used in the compliance year (and not carryover RINs representing historic volumes) should be taken into considertion. In any case, this sentence is entirely consistent with the approach we are taking today to interpret ''supply'' to refer to the volume of biofuels that is available and which can be expected to satify all of the definitional requirements to be renewable fuel (including ultimate use as transportation fuel, heating oil or jet fuel). To the extent we find inadequate supply of such fuels, we then determine whether or not we should exercise our discretion to issue a waiver, and we explicitly consider the availability of carryover RINs as part of that assessment. To extent the interpretation of general waiver authority we are asserting in this final rule appears inconsistent with our statement in 2010, or inconsistent with any other past statement made at a time when we were not actually exercising the authority, we intend for the interpretation we are clearly setting forth today to be clarification/modification of such prior statements.

[32] For example, see *http://oxford dictionaries.com/us/definition/american_english/supply* (a stock of a resource from which a person or place can be provided with the necessary amount of that resource: ''*There were fears that the drought would limit the exhibition's water supply.''*); *http://www.macmillandictionary.com/us/dictionary/american/supply* (''*A limited oil supply has made gas prices rise.'' and ''Aquarium fish need a constant supply of oxygen.''*).

[33] For this reason, EPA's implementing regulations specify that RINs may not be generated for biofuels with multiple possible end uses, such as biogas or electricity, absent a demonstration that they will be used by the ultimate consumers as transportation fuel. See 40 CFR 80.1426(f)(10)(ii)(B), (f)(11)(i)(B) and (f)(11)(ii)(B). Similarly, although RINs are generated upon production for biofuels like denatured ethanol that do not have uses other than as transportation fuel, our regulations require the retirement of RINs for any volumes of such fuels that are exported, since exported biofuels are not used as transportation fuel in the U.S. See 72 FR 23909 col 2–3; 40 CFR 80.1430. See also §§ 80.1460(c)(2), and 80.1460(g), specifying that use of RINs representing fuel used for non-qualifying purposes for compliance with RVOs is a prohibited act.

requirements on obligated parties without consideration of the ability of the obligated parties and other parties to deliver the biofuel to the ultimate consumers would achieve no such benefits and would fail to account for the complexities of the fuel system that delivers qualifying fuels to consumers. We do not believe it would be appropriate to interpret the RFS general waiver provision in such a narrow way. We are thus interpreting ''inadequate domestic supply'' in light of the definitions of ''renewable fuel'' and ''additional renewable fuel'' and the requirements of CAA section 211(o)(2)(A)(i) that requires that the fuel be ''used to replace or reduce the quantity of fossil fuel present in a transportation fuel'' or in ''home heating oil or jet fuel'' in the United States.

In determining whether ''supply'' is adequate, we believe that we should consider only those volumes of biofuel that are expected to satisfy all of the relevant statutory definitions and requirements. There are two principal components to the definition of renewable fuel and additional renewable fuel: That it be made from renewable biomass and that it be used in transportation fuel. CAA section 211(o)(1)(J); CAA section 211(o)(1)(A). Ignoring the extent to which a fuel can actually be used in transportation fuel (or in heating oil or jet fuel) in the inadequate domestic supply inquiry would involve ignoring a critical element of the definition, and begs the question of whether in assessing ''supply'' EPA should also ignore the renewable biomass component of the definition of renewable fuel or other requirements specified in the Act such as the requirement that transportation fuel containing renewable fuel be used in the United States and that sub-categories of renewable fuel achieve specified levels of GHG reduction. We believe that ignoring any component of the definition of renewable fuel or the other provisions of the Act that affect the types of renewable fuels that qualify under the Act would be inconsistent with the objective of the waiver provision, which is to determine if sufficient qualifying fuels are present. For example, if there was abundant production of biofuel that was not made from renewable biomass (and therefore did *not* qualify as renewable fuel under the Act), but insufficient volumes of fuel that was made from renewable biomass and met other requirements, we believe that EPA would be authorized to grant a waiver on the basis of inadequate domestic supply since compliance would not be possible notwithstanding the abundance of non-qualifying biofuel. This situation is directly comparable to the one we are experiencing at present where an abundance of biofuels are produced that cannot actually be used in transportation fuel, heating oil or jet fuel in the United States. The biofuels that cannot actually be used for qualifying uses, due to constraints discussed in Sections II.E and II.F, are not ''renewable fuels'' and, we believe, are appropriately excluded from our assessment of ''supply.''

The waiver provision also does not specify what factors are relevant in determining the adequacy of the supply. Adequacy of the supply would logically be understood in terms of the parties who use the supply of renewable qualifying fuels. Adequacy of supply could affect various parties, including obligated parties, blenders, and consumers. Adequacy of the renewable fuel supply with respect to the consumer might well involve consideration of factors different from those involved when considering adequacy of the upstream supply of biofuels to the obligated parties. We believe that interpreting this waiver provision as authorizing EPA to consider the adequacy of supply of renewable fuel to the ultimate consumer appropriately allows consideration of upstream supply constraints to all of the relevant parties, including the adequacy of supply of biofuels to obligated parties and blenders, as well as the ability to deliver qualifying renewable fuels to the consumer. This is particularly appropriate in the context of a fuel program that is aimed at increasing the use of renewable fuel by consumers in transportation fuel, heating oil or jet fuel. In our view, this is the most reasonable and appropriate construction of this ambiguous language in light of the overall policy goals of the RFS program.

EPA has reviewed other fuel related provisions of the Clean Air Act with somewhat similar waiver authorities, and they highlight both the ambiguity of the RFS general waiver authority and the reasonableness of applying it broadly to include adequacy of supply to the ultimate consumer of qualifying fuels. For example, CAA section 211(k)(6) provides EPA with authority for EPA to defer the application of reformulated gasoline (RFG) in states seeking to opt-in to the program. There are two categories of states that may opt-in: Those with nonattainment classifications indicating a more serious and/or longstanding air quality problem (leading to classification as a Marginal, Moderate, Serious or Severe nonattainment area) and those that do not have such serious concerns, but which are nevertheless within the ''ozone transport region'' established by CAA section 184(a). For the states with more serious problems that seek to opt-in to the RFS program, section 211(k)(6)(A)(ii) allows EPA to defer application of RFG requirements if EPA determines that ''there is insufficient domestic *capacity to produce* reformulated gasoline.'' (Emphasis added.) However, for states with less serious ozone nonattainment concerns that are part of the ozone transport region, EPA may defer application of RFG requirements if EPA finds that there is ''insufficient *capacity to supply* reformulated gasoline.'' (Emphasis added.) We believe Congress likely intended the ''capacity to supply'' RFG as being broader in scope than the ''capacity to produce'' RFG. This is consistent with the common understanding of the word ''supply'' noted above as the amount of a resource or product that is available for use by the person or place at issue. Thus, while a source can have a ''capacity to produce,'' regardless of whether it has a market for its product, the concept of ''supply'' carries with it an implication that there is a person intending to make use of the product. The term ''capacity to supply'' would therefore be expected to include consideration of the infrastructure needed to deliver RFG to vehicles in the state within the ozone transport region that is seeking to opt in to the program. This distinction in the context of CAA section 211(k)(6) is logical, since Congress can be expected to have put a higher premium on use of RFG in states with the more serious ozone nonattainment issues, thereby constraining EPA discretion to defer RFG requirements to the limited situation where there is ''insufficient capacity to produce'' RFG. For states with less serious problems, it would be logical for Congress to have provided EPA with somewhat more latitude to defer application of RFG, and Congress referred to this broader set of circumstances as situations where there is an ''insufficient capacity to supply'' RFG. The language of the RFS general waiver provision, in comparison, involves use of a single ambiguous phrase, ''inadequate domestic supply,'' without elaboration or clarification as to whether it refers solely to production capacity or also includes additional factors relevant to the ability to supply the renewable fuel in transportation fuel, heating oil or jet fuel to the ultimate consumer. As in the RFG provision, however, the adequacy of

supply referred to in the RFS general waiver provision can logically—and we believe should—be read to include factors beyond capacity to produce that impact the ability of consumers to use the fuel for a qualifying purpose.[34] This would be consistent with Congress's apparent intent in using the term ''supply'' in the context of the RFG provision.

CAA section 211(c)(4)(C)(ii) provides EPA with waiver authority to address ''extreme and unusual fuel or fuel additive supply circumstances . . . which prevent the distribution of an adequate supply of the fuel or fuel additive to consumers.'' The supply circumstances must be the result of a natural disaster, an Act of God, a pipeline or refinery equipment failure or another event that could not reasonably have been foreseen, and granting the waiver must be ''in the public interest.'' In this case, Congress clearly specified that the adequacy of the supply is judged in terms of the availability of the fuel or fuel additive to the ultimate consumer, and includes consideration of the ability to distribute the required fuel or fuel additive to the ultimate consumer. The RFS waiver provision does not contain any such explicit clarification from Congress, thus its broad and ambiguous wording provides EPA the discretion to reasonably interpret the scope of the RFS waiver provision as relating to supply of renewable fuel to the ultimate consumer.

CAA section 211(m)(3)(C) allows EPA to delay the effective date of oxygenated gasoline requirements for certain carbon monoxide nonattainment areas if EPA finds ''an inadequate domestic supply of, or distribution capacity for, oxygenated gasoline . . . or fuel additives'' needed to make oxygenated gasoline. Here, Congress chose to expressly differentiate between ''domestic supply'' and ''distribution capacity,'' indicating that each of these elements was to be considered separately. This would indicate that the term inadequate supply, although ambiguous for the reasons discussed above, could in appropriate circumstances be read as more limited in scope. In contrast to the RFS waiver provision, the section 211(m) waiver provision includes additional text that makes clear that EPA's authority includes consideration of distribution capacity—reducing the ambiguity inherent in using just the general phrase ''inadequate domestic supply.'' Presumably this avoids a situation where ambiguity would result in an overly narrow administrative interpretation. The oxygenated gasoline waiver provision is also instructive in that it clarifies that it applies separately to both finished oxygenated fuel and to oxygenated fuel blending components. That is, there could be an adequate supply of the oxygenate, such as ethanol, but not an adequate supply of the blended fuel which is sold to the consumer. The RFS waiver provision employs the phrase ''inadequate domestic supply'' without further specification or clarification, thus providing EPA the discretion to determine whether the adequacy of the supply of renewable fuel can reasonably be judged in terms of availability for use by the ultimate consumer, including consideration of the capacity to distribute the product to the ultimate consumer. In contrast to the section 211(m) waiver provision, Congress arguably did not mandate that the RFS waiver provision be interpreted as providing authority to address problems affecting the supply of renewable fuel to the ultimate consumer. However, given the ambiguity of the RFS provision, we believe that it does provide EPA the discretion to adopt such an interpretation, resulting in a policy approach consistent with that required by the less ambiguous section 211(m) waiver provision.[35]

As the above review of various waiver provisions in Title II of the Clean Air Act makes clear, Congress has used the terms ''supply'' and ''inadequate supply'' in different waiver provisions. In the RFS general waiver provision, Congress spoke in general terms and did not address the scope of activities or persons or places that are the focus in determining the adequacy of supply. In other cases, Congress provided, to varying degrees, more explicit direction. Overall, the various waiver provisions lend support to the view that it is permissible, where Congress has used just the ambiguous phrase ''inadequate domestic supply'' in the general waiver provision, to consider supply in terms of distribution of renewable transportation fuel, heating oil and jet fuel in the United States and use by the ultimate consumer, and that the term ''inadequate supply'' of a fuel need not be read as referring to just the capacity to produce biofuels or the capacity to supply biofuels to obligated parties and blenders.

We are aware, as a number of commenters pointed out, that prior to final adoption of the Energy Independence and Security Act of 2007, Congress had before it bills that would have provided for a waiver in situations where there was ''inadequate domestic supply or distribution capacity to meet the requirement.''[36] EPA is not aware of any conference or committee reports, or other legislative history, explaining why Congress ultimately enacted the language in EISA in lieu of this alternative formulation. There is no discussion, for example, of whether Congress did or did not want EPA to consider distribution capacity, whether Congress believed the phrase ''inadequate domestic supply'' was sufficiently broad or the definition of renewable fuel sufficiently clear that a reference to distribution capacity would be unnecessary or superfluous, or whether Congress considered the alternative language as too limiting, since it might suggest that constraints other than ''distribution capacity'' on delivering renewable fuel to the ultimate consumer should not be considered for purposes of granting a

[34] The reasons why we believe the statute should be interpreted in this way can be illustrated by examining the differences between the RFG opt-in situation and the RFS program. Limiting EPA's consideration to ''capacity to produce'' in the context of deferring RFG implementation in a state with serious air quality concerns is not likely to cause implementation problems because: (1) Infrastructure upgrades necessary to shift from use of conventional gasoline to RFG are relatively modest, (2) the statute provides for up to one year between EPA's receipt of an opt-in request and the effective date of a rule requiring use of RFG, allowing time for the needed infrastructure upgrades, and (3) opt-ins typically occur one state at a time, allowing available infrastructure expansion resources to be focused in a relatively small geographic area. In contrast allowing RFS waivers only where there is insufficient ''capacity to produce'' renewable fuel would be extremely problematic because: (1) The ethanol industry has the ability to produce far more ethanol than can currently be distributed and consumed in the U.S., (2) ethanol is already being supplied at E10 levels, and any further growth in ethanol use requires the time consuming installation of costly new E15 or E85 pumps and tanks, (3) the number of vehicles that can use higher ethanol bends is limited, (4) the statute envisions only one month between establishment of annual standards and the start of a compliance year, allowing limited time for infrastructure enhancements, and (5) the RFS is a nationwide program, and infrastructure improvements would be needed throughout the country at the same time to increase the nation's ability to consume renewable fuels at levels corresponding with production capacity. An analogous situation applies for biodiesel as discussed in section II.E.3.

[35] In CAA section 211(h)(5)(C)(ii), Congress authorized EPA to delay the effective date of certain changes to the federal requirements for Reid vapor pressure in summertime gasoline, if the changes would result in an ''insufficient supply of gasoline'' in the affected area. As with the RFS general waiver provision, Congress did not specify what considerations would warrant a determination of insufficient supply. EPA has not been called upon to apply this provision to date and has not interpreted it.

[36] H.R. 6 and S. 606 as reported by Senate Envt. & Public Works in Senate Report 109–74.

waiver.[37] Given the lack of interpretive value typically given to a failure to adopt a legislative provision, and the lack of explanation in this case, we find the legislative history to be uninformative with regard to Congressional intent on this issue. It does not change the fact that the text adopted by Congress, whether viewed by itself or in the context of other fuel waiver provisions, is ambiguous.

We believe that it is permissible under the statute to interpret the term ''inadequate domestic supply'' to authorize EPA to consider the full range of constraints, including legal, fuel infrastructure and other constraints, that could result in an inadequate supply of qualifying renewable fuels to consumers in the United States in the form of transportation fuel, heating oil or jet fuel. Under this interpretation, we do not limit ourselves to consideration of the capacity to produce or import biofuels but also consider practical and legal constraints affecting the volume of qualifying renewable fuel supplied to the ultimate consumer in the United States.

As described in more detail in Section II.E. below, although at least for 2014 and possibly 2015 and 2016, there is sufficient capacity to produce and import biofuels such as ethanol to meet the statutory applicable volume of total renewable fuel, there are practical and legal constraints on the ability of sufficient volumes to be delivered to and used in transportation fuel by vehicles in the United States, or in jet fuel or heating oil. 10% ethanol blends (E10) can legally be used in all gasoline vehicles, but only some subsets of vehicles and nonroad equipment can legally use up to either 15% ethanol (for 2001 and newer light-duty vehicles, which represent about 85% of the in-use fleet) or up to 85% ethanol (for flex fuel vehicles, which represent about 6% of all light-duty cars and trucks).[38] Similarly, according to ASTM standards diesel fuel blends up to 5% biodiesel (B5) are simply considered to be diesel fuel, but only a subset of diesel vehicles and engines have been designed and warranted to use higher concentrations. In addition there are marketplace and infrastructure constraints, including access to limited numbers of retail fuel pumps, that limit the use of higher level (>10%) ethanol blends. These considerations prevent the fuel market from supplying vehicles and engines with the volumes of qualifying ethanol and other renewable fuels needed to meet the statutory level of total renewable fuel, and as such they result in an inadequate domestic supply of qualifying renewable fuel, since insufficient renewable fuel can actually be delivered to consumers and used in transportation fuel, heating oil or jet fuel in the United States. We have evaluated this situation, and in this final rule are using the general waiver authority to address this inadequate domestic supply situation.

A number of stakeholders disagreed that a review of other CAA waiver authorities supports the conclusion that the term ''inadequate domestic supply'' is ambiguous, and that it can be interpreted to include consideration of infrastructure and other constraints related to the delivery to and use of renewable fuel by vehicles. They argued that inadequate domestic supply unambiguously refers to the production capacity of biofuels that could become renewable fuel if put to qualifying uses. Commenters also focused on section 211(m)(3)(C)(i), which provides for a waiver of the requirement to use oxygenated gasoline in certain carbon monoxide nonattainment areas where there is ''an inadequate domestic supply of, or distribution capacity for, oxygenated gasoline.'' They argued that this provision demonstrates that infrastructure considerations are distinct from supply, and that Congress would have used similar language in section 211(o)(7)(A) if it intended EPA to consider infrastructure and other constraints as a basis for an RFS waiver. These stakeholders asserted that there can be no inadequate domestic supply if there is sufficient biofuels produced and available for purchase by obligated parties and, consequently, that any difficulty that obligated parties may experience in delivering renewable fuels to consumers is irrelevant under CAA section 211(o)(7)(A). However, these stakeholders' analysis is clearly not persuasive when sections 211(m)(3)(C)(i) and 211(o)(7)(A) are considered together with all of the CAA provisions containing similar waiver provisions. For example, as discussed above, in section 211(k)(6) Congress used the term ''capacity to produce'' in one RFG waiver context for opt-in states and ''capacity to supply'' in another context. This suggests that the term ''supply'' does not unambiguously mean the same thing as ''produce,'' as these commenters argue. The term ''supply'' can mean something different, and logically does in the context of section 211(k)(6) where the two waiver provisions at issue use these different terms and apply in different contexts, to states with considerably different levels of air quality concern. The different ways that the term ''supply'' is used in the various CAA provisions indicates that in section 211(o)(7)(A) the word ''supply'' is ambiguous and may reasonably be interpreted consistent with the Act's objectives.

Some stakeholders have asserted that interpreting the general waiver authority to allow consideration of all constraints on the use of ethanol by the ultimate consumer would amount to focusing on ''demand'' rather than ''supply'' and would, therefore, be impermissible under the Act. EPA does not agree that a broad consideration of such factors as physical limitations in infrastructure (*e.g.,* availability of E15 and E85 pumps), legal barriers to use of renewable fuel, or ability of vehicles to use renewable fuel at varying concentrations, represent consideration of ''demand'' rather than ''supply.'' These factors operate as practical and legal limits to how much biofuel can be distributed to and used by consumers in the United States, and therefore clearly relate to how much biofuel can be ''supplied'' to them as renewable fuel. Although there may be some element of consumer preference (*i.e.,* demand) reflected in the historic growth patterns of renewable fuel infrastructure and the current status of the infrastructure, it is nevertheless the case as of today that there are a limited number of fueling stations selling high-ethanol blends (approximately 3,000 retail stations), and as a result, the number of stations operates as a constraint on how much ethanol can be delivered. Similarly, only flex fuel vehicles (FFVs) can legally use fuel with ethanol concentrations greater than 15 percent. The population of FFVs has grown considerably in recent years, but is still only a small fraction of the passenger vehicle fleet and there is an even smaller number of FFVs that have ready access to an E85 retail outlet. As a result, the number of FFVs with access to E85 also operates as a constraint on how much ethanol can be delivered. These constraints limit the supply of ethanol to vehicles in the 2014–2016 time period and, we believe, are appropriately considered in evaluating the need for an RFS waiver under section 211(o)(7)(A).

Some stakeholders have stated that even if the term ''inadequate domestic supply,'' were ambiguous, EPA's final interpretation is not reasonable because it would either reward obligated parties for their intransigence in planning to

[37] There are, for example, legal constraints on the amount of certain renewable fuels that may be blended into transportation fuels. These are discussed in Section II.E.1.

[38] See, *e.g.,* EPA partial waiver decisions at 75 FR 68094 (Nov. 4, 2010) and 76 FR 4662 (Jan. 26, 2011).

supply the volumes set forth in the statute, or because EPA's interpretation would effectively enshrine the status quo, and would prevent the growth in renewable fuel use that Congress sought to achieve in establishing the program. We agree that obligated parties have had years to plan for the E10 blendwall and that there clearly are steps that obligated parties could take to increase investments needed to increase renewable fuel use above current levels, as we have noted in prior actions, and note in Section II.B.5.[39] We also note, however, that biofuel producers could also have taken appropriate measures, and that nothing precludes biofuel producers from independently marketing E85 or increasing the production of non-ethanol renewable fuels. The regulatory structure created in the RFS1 program places the responsibility on producers and importers to ensure that transportation fuel sold or introduced into commerce contains the required volumes of renewable fuel, but does not require obligated parties to take specific actions other than acquiring RINs. EPA agrees that its approach to interpreting the term 'inadequate domestic supply' should be consistent with the objectives of the statute to grow renewable fuel use over time by placing appropriate pressure on all stakeholders to act within their spheres of influence to increase biofuel production and use of renewable fuels, while also providing the relief to obligated parties that was intended through the statutory waiver authorities to address supply difficulties that cannot be remedied in the time period over which a waiver would apply. We believe that our final action appropriately reflects these concepts.

3. Assessment of Past Versus Future Supply

EPA is taking somewhat different approaches for its assessment of renewable fuel supply for past time periods covered by this rule as compared to future time periods. For 2014 and most of 2015, our assessment of the ''supply'' available for RFS compliance must necessarily focus on the number of RINs actually generated that are available for compliance with the applicable standards because this final rule cannot influence the volumes of renewable fuel produced and consumed in the past. To set the volume requirements at a higher level would require either noncompliance, which EPA deems an unreasonable approach, or the drawdown of the bank of carryover RINs. Although the availability of carryover RINs is a relevant consideration in determining the extent to which a waiver is justified, *see Monroe* 750 F.3d at 917, we believe that the current bank of carryover RINs serves an important function under the program, including providing a means of compliance in the event of natural disasters and other unforeseen circumstances, and that in the present circumstances EPA should not set the annual standards at levels that would clearly necessitate a reduction in the current bank of carryover RINs. See Section II.H for further discussion of our consideration of carryover RINs in this final rule.

For 2014, we have set the volume requirements for renewable fuel as equal to the number of RINs generated that are available for compliance. With respect to 2015, because this final rule is being signed at the end of November, it cannot influence renewable fuel use during prior months, and, given lead-time considerations cannot reasonably be expected to influence renewable fuel use in the remaining month of the year. Accordingly, we have assessed the supply of total renewable fuel in 2015 by determining the number of RINs generated and available for compliance in the part of 2015 for which data are available and projecting that renewable fuel will be used at the same rate for the remainder of the year.[40]

In the context of a forward-looking annual RFS standards rulemaking issued consistent with the statutory schedule, such as for 2016 in this rule, we believe that the evaluation of ''supply'' for purposes of determining the appropriate volume reduction of total renewable fuel under section 211(o)(7)(A) should compare the statutory targets, and the ability of the market to both produce and consume renewable fuels, in the context of a market that is responsive to the standards that we set. In the context of this assessment, while we have examined the circumstances and issues related to individual sources of renewable fuel, our determination of the final volume requirements is based on an assessment of overall volumes that can be achieved given the interactions that occur between individual sources under the influence of the standards we set.

4. Combining Authorities for Reductions in Total Renewable Fuel

EPA is reducing the applicable volumes of total renewable fuel for 2014, 2015 and 2016 using two separate authorities. We are making initial reductions in total renewable fuel for these years that are equal to the volume reductions in advanced biofuel, using the cellulosic waiver authority.[41] We are also further reducing total renewable fuel volumes based on a determination of inadequate domestic supply, including consideration of both the limitations in the production and import of biofuels and factors that constrain supplying available volumes for the qualifying uses (as transportation fuel, heating oil or jet fuel) specified in the Act. These considerations are relevant to an assessment of inadequate domestic supply. We believe that using the general waiver authority to reduce the applicable volumes of total renewable biofuel in these years is an appropriate response to these circumstances. We are using the cellulosic biofuel waiver authority to reduce the statutory volumes for total renewable fuel by an initial increment of 1.08 billion gallons in 2014, 2.62 billion gallons in 2015 and 3.64 billion gallons in 2016. In addition, as the volume reduction required to address supply limitations for total renewable fuel is greater than can be achieved using the cellulosic waiver authority, we are using the general waiver authority exclusively as the basis for further reducing the applicable volume of total renewable fuel by an additional 0.79 billion gallons in 2014, 0.95 billion gallons in 2015 and 0.50 billion gallons in 2016.

[39] See, for instance, 77 FR 70773 (November 27, 2012), column 1.

[40] We projected that our NPRM would incentivize some growth in renewable fuel use during the latter half of 2015, and available data indicates that indeed the monthly average supply after the NPRM was released was about 5% higher than the monthly average supply in the first half of the year.

[41] In the final rule we are only using our cellulosic waiver authority to make the initial reduction in the total renewable fuel volume, but note that this reduction could also be justified under the general waiver authority due to inadequate domestic supply.

TABLE II.B.4–1—FINAL TOTAL VOLUME REQUIREMENTS

[Billion gallons]

	2014	2015	2016
Statutory Applicable Volumes	18.15	20.5	22.25
Initial Use of Cellulosic Waiver Authorities	17.07	17.88	18.61
Use of General Waiver Authority	16.28	16.93	18.11

5. Inability To Reach Statutory Volumes

In order to use the general waiver authority in CAA section 211(o)(7)(A) to reduce the applicable volumes of total renewable fuel, we must make a determination that there is either ''inadequate domestic supply'' or that implementation of the statutory volumes would severely harm the economy or environment of a State, a region or the United States. This section summarizes our determination that there is an inadequate domestic supply of total renewable fuel in the time period 2014–2016, and thus that the statutory volume targets are not achievable with volumes supplied in these three years. Additionally, this determination that the statutory volume targets are not achievable with volumes supplied also supports our use of the cellulosic waiver authority under CAA section 211(o)(7)(D) to reduce the applicable volumes of advanced and total renewable fuel.

As described in Section II.C below, actual supply of renewable fuel in 2014, determined by an assessment of RINs generated minus RINs retired for non-compliance reasons such as exports of renewable fuel or spills, was below the applicable volume targets in the statute. For total renewable fuel, actual supply was 1.87 billion gallons below the statutory volume target of 18.15 billion gallons, while for advanced biofuel, actual supply was 1.08 billion gallons below the statutory volume target of 3.75 billion gallons. As we noted in the NPRM, the requirements we establish at this time for 2014 cannot change what occurred in the past, and as a result our assessment of the ''supply'' available for RFS compliance during 2014 must necessarily focus on actual renewable fuel use. While many stakeholders agreed with this position, some did not. Those that disagreed generally pointed to the bank of carryover RINs as additional ''supply'' that could be used to increase the 2014 standards above actual wet gallon supply in 2014, or to the fact that renewable fuel volumes that were exported in 2014 would have been available for compliance purposes if EPA had set the 2014 standards by the statutory deadline of November 30, 2013. As described in Section II.H, we do not believe it would be appropriate to intentionally reduce the current bank of carryover RINs to increase the applicable 2014 volume requirements above the supply of wet gallons to consumers in 2014. Regarding exports of renewable fuels, many of those volumes were produced specifically for the purpose of export rather than being produced for general domestic distribution. Stakeholders who suggested that they would have been used for compliance purposes provided no evidence that they would have been available for compliance given export agreements and/or contracts. Furthermore, as discussed in Section II.E.1, legal and practical constraints on the domestic use of renewable fuel are operating in the 2014–2016 time period to limit renewable fuels that have been produced from actually being supplied to consumers. Finally, regardless of any possibility that they could have been used if EPA had acted by the statutory deadline to establish RFS requirements for 2014, it is undisputed that RINs representing fuel exported in 2014 are not currently available for compliance, and it is the current circumstances that are relevant in determining what the applicable volume requirements for 2014 should be. Thus, we do not believe that these arguments warrant an increase in the applicable 2014 volume requirements above the volume of wet gallons actually supplied to consumers in 2014. In sum, we have determined that there was a 1.87 billion gallon shortfall in the supply of total renewable fuel in 2014, and that a waiver of the 2014 statutory target for total renewable fuel is therefore warranted pursuant to section 211(o)(7)(A) on the basis of inadequate domestic supply. In addition, we believe the same set of facts support a waiver of the total renewable fuel applicable volume using the cellulosic waiver authority in section 211(o)(7)(D), and we are also asserting that waiver authority in support of 1.08 billion gallons of this volume reduction (which is equal to the reduction in the advanced biofuel volume using the cellulosic waiver authority, as described below).

Because this final rulemaking is being released after almost all of 2015 has passed, the factual situation for 2015 is essentially the same as it is for 2014: the requirements we establish at this time for 2015 cannot change what occurred in the past, and in addition it is being issued too late to influence the fuels market in the remaining month of the year. Therefore, our assessment of the ''supply'' available for RFS compliance during 2015 is based on actual renewable fuel use for the months for which data are available, together with a projection for the remainder of the year. In sum, we have concluded that the statutory volumes for 2015 cannot be met with available supply, and that a waiver is justified.

The statute sets a target of 22.25 billion gallons of total renewable fuel in 2016. We have determined that this volume cannot be achieved under even the most optimistic assumptions given current and near-future circumstances. To make this determination, we first assumed that every gallon of gasoline would contain 10% ethanol, and also assumed production and use of BBD[42] volumes at the highest annual historical level, which occurred in 2014. When these supplies of renewable fuel are taken into account, a significant additional volume of renewable fuel would still be needed for the statutory volume targets to be met.

TABLE II.B.5–1—ADDITIONAL VOLUMES NEEDED IN 2016 TO MEET STATUTORY TARGET FOR TOTAL RENEWABLE FUEL

[Million ethanol-equivalent gallons]

Statutory target for total renewable fuel	22,250
Maximum ethanol consumption as E10[a]	−14,000
Historical maximum biomass-based diesel supply[b]	−2,490
Additional volumes needed	5,760

[a] Derived from projected gasoline energy demand from EIA's Short-Term Energy Outlook (STEO) from October 2015.

[b] Represents the 1.63 billion gallons of biodiesel and renewable diesel supplied in 2014.

[42] BBD includes both advanced biodiesel and advanced renewable diesel.

Based on the current and near-future capabilities of the industry, we expect that only a relatively small portion of the additional volumes needed would come from non-ethanol cellulosic biofuel, non-ethanol advanced biofuels other than BBD, and non-ethanol conventional renewable fuels; non-ethanol supply other than BBD was 237 million gallons in 2013, 165 million gallons in 2014, and 323 million gallons in 2015. In total these sources could account for several hundred million gallons, as demonstrated by supply of these sources in previous years.[43] Aside from these relatively small sources, renewable fuel that could fulfill the need for 5.76 billion gallons in 2016 would be ethanol or BBD. As discussed below, we do not believe that these fuels could be produced and used in sufficient quantities to attain this volume.

If all of the additional volumes needed were biodiesel, the industry would need to supply a total of about 5.5 billion physical gallons in 2016. As described more fully in Section II.D, actual supply of biodiesel through the end of 2015 is expected to be about 1.73 billion gallons. While this final rule will be released before 2016, we nevertheless do not believe that the market could supply 5.5 billion gallons of biodiesel in 2016; as described more fully in Section II.E.3 below, the constraints on biodiesel supply are such that 5.5 billion gallons is beyond reach. For instance, there currently exist only about 2.7 billion gallons of registered biodiesel production capacity in the U.S. In addition to expanding the registered production capacity, the industry would need to restart all idled facilities, secure sufficient feedstocks including diverting them from current uses, implement significantly expanded distribution, blending, and retail sales infrastructure, and establish new contracts for distribution and sales.

Just as importantly, biodiesel volumes on the order of 5.5 billion physical gallons in 2016 are far in excess of what could actually be consumed in this short timeframe. This volume of BBD would constitute about 10% of the diesel pool in 2016.[44] Although most medium and heavy-duty engine manufacturers now warrant the use of blends up to B20 in their more recent models, the largest of these manufacturers does not, and neither do some light-duty engine manufacturers. Furthermore, much of the in-use fleet is made up of highway and nonroad diesel engines that were produced in the past and are warranted for no more than 5% biodiesel.[45] Also, as pointed out by CountryMark Cooperative Holding Corporation, biodiesel concentrations in the winter months are sometimes kept to lower levels by engine owners due to cold weather operability and storage concerns, and some parties avoid selling biodiesel at all during winter months. Constraints on the use of biodiesel at concentrations above 5% due to engine warranty limitations, plus resistance on the part of some parties to using biodiesel in winter months, means that a nationwide average of 10% biodiesel in the diesel pool, for an entire calendar year, is not reasonably achievable in 2016. We acknowledge that the National Biodiesel Board has extensive efforts underway working with the vehicle and engine manufacturers to continue to expand product offerings capable of operating on B20, working with their membership to improve fuel quality, expanding infrastructure to address cold temperature issues, and working with dealers and technicians to clear away obstacles standing in the way of expanding biodiesel acceptance in the marketplace.[46] There are also efforts to increase the use of biodiesel in heating oil. These will continue to bear fruit, allowing the biodiesel volume to continue to rise over time, but not to the levels that would be needed in 2016 if 5.5 billion gallons of biodiesel were to be required.

Alternatively, if all of the additional volumes shown in Table II.B.5–1 were ethanol, the U.S. would need to consume volumes of E85 far higher, in our estimation, than the market is capable of supplying: In 2016 it would need to be about 8.7 billion gallons.[47] [48] These volumes are about 60 times higher than actual E85 consumption in 2014, and would require many of those FFVs that do not have an E85 retail outlet anywhere close by (due to the fact that only 2% of retail stations currently offer E85) to use it.[49]

The additional volume of 5.76 billion gallons in 2016 could also be satisfied through production and use of a combination of BBD and E85. However, even in this case the volumes are untenable. For instance, one possible combination for 2016 would be 4.4 billion gallons of E85 and 3.6 billion gallons of biodiesel. While both of these volumes are considerably less than the maximums that would be required if the market supplied only one or the other, both levels are beyond the reach of the market under current circumstances.[50] Based on this assessment, we do not believe that the statutory volumes for advanced biofuel and total renewable fuel can be met in 2016.

In response to the NPRM, some parties said that EPA had not sufficiently described why the statutory target for advanced biofuel cannot be reached in 2016. In the NPRM we did point out that more than 70% of the additional ethanol-equivalent volumes that would be needed to reach the statutory targets would need to be advanced biofuel, and discussed the impracticability of attaining those volumes. After a consideration of comments received, we have determined that for our final volume requirements for 2016, about 80% of the 5.76 billion gallons of additional volumes would need to be advanced biofuel in order to reach the statutory target of 7.25 billion gallons of advanced biofuel.[51] However, we agree that it is appropriate to elaborate on the limitations in the supply of advanced biofuel that have led us to conclude that the statutory target for advanced biofuel cannot be reached in 2016. A more detailed discussion of constraints on supply of advanced biofuel can be found in Section II.F.

The RINs available for meeting the advanced biofuel standard include all cellulosic biofuel RINs, all biomass-based diesel RINs, and all advanced biofuel RINs. Cellulosic biofuel that is expected to be available, including all

[43] Details of actual supply in 2013, 2014, and 2015 can be found in the docket.

[44] Based on EIA's October 2015 Short-Term Energy Outlook (online interactive table), nationwide diesel consumption is projected to be 56.3 bill gal in 2015 and 57.7 bill gal in 2016.

[45] While some stakeholders provided information on when certain manufacturers began permitting the use of biodiesel blends higher than B5 in their engines, stakeholders provided no data on which models or model years were affected, nor did any stakeholder provide an analysis of the fraction of the current in-use fleet whose warranties specifically permit the use of B5 versus higher blend levels. Based on the fact that engine manufacturers have only been warranting their new engines for B20 for the last five years or so, and heavy-duty engines typically have a long lifespan, a significant fraction of the in-use fleet must be warranted for no more than B5. *See* further discussion of this issue in Section II.E.3.

[46] ''NBB Technical Update for EPA, April 30, 2015'' in docket EPA–HQ–OAR–2015–0111. *See* also comments submitted by NBB in response to the June 10, 2015 NPRM.

[47] In general when discussing efforts to increase the use of ethanol beyond the blendwall we focus on the volume of E85 that is consumed, since volumes of E15 are likely to be small by comparison. *See* additional discussion of this issue in Section II.E.2.iv below.

[48] Due to relative ethanol content (74% versus 10%) and the fact that E85 displaces some E10, each gallon of ethanol above the E10 blendwall requires the use of 1.51 gallons of E85.

[49] Further discussion of E85 can be found in Section II.E.2.v.

[50] *See* further discussion of E85 in Section II.E.2.v and further discussion of biodiesel in II.E.3.

[51] Assumes that all ethanol consumed as E10 in Table II.B.5–1 is conventional (non-advanced).

biogas, is accounted for within the context of the determination of the cellulosic biofuel standard as discussed in Section IV. While there are some opportunities for moderate growth through the end of 2016 in such advanced biofuels as domestically-produced ethanol, heating oil, naphtha, and renewable diesel, it is possible that only about a hundred million gallons will be available from these sources.[52] Thus the primary sources of advanced biofuel that are in a position to help meet the advanced biofuel standard are imported sugarcane ethanol and biomass-based diesel.

The statutory target for advanced biofuel in 2016 is 7.25 billion gallons. After accounting for cellulosic biofuel, the BBD volume requirement, and potential other domestically-produced advanced biofuels, the total volume of advanced biofuel that would be needed to meet the statutory target of 7.25 billion gallons is 4.07 billion gallons.

TABLE II.B.5–2—ADDITIONAL VOLUMES NEEDED TO MEET STATUTORY TARGETS FOR ADVANCED BIOFUEL IN 2016

[Million ethanol-equivalent gallons]

Statutory target for advanced biofuel	7,250
Requirement for cellulosic biofuel	230
Requirement for biomass-based diesel	[a] 2,850
Potential other advanced (ethanol and non-ethanol)	100
Additional volumes needed	4,070

[a] Represents 1.9 bill gal of biodiesel.

We do not believe that 4.07 billion gallons of additional advanced biofuel can be supplied in 2016, even if the burden of meeting this requirement were shared between biomass-based diesel and imports of sugarcane ethanol. For instance, if sugarcane ethanol imports reached 1.5 billion gallons in 2016, the total volume of BBD would need to be 3.6 billion gallons.[53] We do not believe that either of these levels is achievable in 2016. Notwithstanding UNICA's comments to the contrary as discussed in Section II.F, imports of sugarcane ethanol have been highly variable in the past and appear to be highly dependent on factors others than the RFS program. Moreover, as explained in the NPRM, the highest volume of sugarcane ethanol that has ever been imported to the U.S. was 680 million gallons in 2006, and since that time international demand has increased substantially.[54] Similarly, we do not believe that 3.6 billion gallons of BBD are possible in 2016. The total amount of domestic biodiesel production capacity in the U.S. that is registered under the RFS program is about 2.7 billion gallons.[55] Not only would the market need to supply 900 million gallons more than existing registered capacity, but substantial feedstocks would need to be diverted from the current uses to the production of biodiesel. Even if some portion of the increase were supplied from imports, the total volume of biodiesel supplied to diesel engines would more than double in comparison to that supplied in 2014, requiring that distribution, blending, storage, and dispensing routes would need to be expanded in an extremely short period.[56] We do not believe that this is possible in 2016. As a result, we do not believe that the statutory target for advanced biofuel can be met in 2016.[57]

In response to the NPRM, a number of stakeholders placed the blame for the market's inability to meet the statutory targets on both the EPA for not meeting the statutory deadlines for setting standards and obligated parties for not investing sufficiently in the required infrastructure. While we agree that the delay in setting standards has created some uncertainty and could have led to a slowdown in investment in both production capacity and infrastructure for blending and dispensing renewable transportation fuels, we do not believe that the statutory targets could have been met in 2014, 2015, and 2016 if only EPA had established the applicable standards on the statutory schedule. Stakeholders who took the position that the statutory targets were achievable in 2014 and 2015 generally based that position on the potential for a substantial draw-down in the bank of carryover RINs. As described in the NPRM and in Section II.H, we believe that it would be inappropriate to intentionally drawn down the current bank of carryover RINs in order to raise the applicable volume requirements above the levels that could be met with RINs generated for actual renewable fuel supplied in 2014, 2015, and 2016. Many of these same stakeholders also argued that the statutory targets could be met if the EPA merely set the standards at the statutory levels. They argued, in essence, that the market's ability to respond to the standards EPA sets is effectively unlimited and that the market will rise to meet the expectations placed upon it. As described in Section II.E.1, we believe that the market is in fact limited in its ability to respond to the standards that EPA sets for 2016. Setting the volume requirements at the statutory targets would not compel the market to respond with sufficient changes in production levels, infrastructure, and fuel pricing at retail to result in the statutory volumes actually being consumed in 2016, but would instead lead to noncompliance and/or additional petitions for a waiver of the standards.

Many stakeholders also decried obligated parties' failure to invest in the infrastructure needed to permit expanded use of higher ethanol blends such as E15 and E85. They argued that EPA should not reward obligated parties for their recalcitrance by reducing the applicable volume requirements below the statutory targets. In taking these positions, stakeholders cited both the statutory requirement that obligations be placed on ''refineries, blenders, and importers, as appropriate'' and EPA's regulations which (with limited exceptions) further narrow the applicability of the obligations to producers and importers of gasoline and diesel. Suggestions in the NPRM that renewable fuel producers could contribute to efforts to expand infrastructure were generally met by these commenters with references to the statutory language and their belief that all responsibility for investing in expanded infrastructure rests on obligated parties.

We agree that the statutory language, in combination with the regulatory structure, generally places the

[52] The total ethanol-equivalent volume of advanced biofuel other than imported sugarcane ethanol was 87 mill gal in 2013, 79 mill gal in 2014, and projected to be 53 mill gal in 2015. We expect some growth in the industries providing these fuels, such that supply is likely to be somewhat higher in 2016 than it was in the recent past.

[53] (4.07 bill gal needed − 1.5 bill gal sugarcane ethanol)/1.5 = 1.71 bill gal biodiesel + 1.9 bill gal BBD requirement = 3.6 bill gal biodiesel needed. The 1.5 factor used in this equation represents the equivalence value of biodiesel.

[54] ''Global ethanol consumption 2006–2012,'' docket EPA–HQ–OAR–2015–0111.

[55] *See* ''Registered biodiesel production capacity as of 8–24–15'' in EPA docket EPA–HQ–OAR–2015–0111.

[56] Supply of biodiesel and renewable diesel in 2015 is projected to be 1.8 bill gal. The current infrastructure is sufficient to manage this level, and is likely to be capable of managing volumes above 2.0 bill gal. However, 3.6 bill gal of biodiesel is far larger than the current infrastructure is prepared to manage.

[57] We note that if an obligated party could not be attain compliance in 2016, it could carry a deficit into 2017 if it did not carry a deficit into 2016, and that deficit would need to be satisfied in 2017 along with the 2017 requirements. However, establishing the 2016 total renewable fuel volume requirement at the statutory volume target would result in massive deficits among many parties, and would likely only defer for one year the need for a substantial waiver of the total renewable fuel volume requirements. Accordingly, we do not believe that the flexibility offered by deficit carryovers is a valid basis for setting the 2016 volume requirements at the statutory targets.

responsibility on producers and importers of gasoline and diesel to ensure that transportation fuel sold or introduced into commerce contains the required volumes of renewable fuel. Obligated parties have a variety of options available to them, both to increase volumes in the near term (*i.e.* through the period being addressed by this final rule) and the longer term. The standards that we are establishing today reflect both the responsibility placed on obligated parties as well as the short-term activities available to them, and we expect obligated parties to be taking actions now that will help to increase renewable fuel volumes in future years. However, this general responsibility does not require obligated parties to take actions specific to E15 and/or E85 infrastructure, as the RFS program does not require ethanol specifically. Moreover, we do not believe the statute should be interpreted to require that refiners and importers change the nature of their businesses so as to comply with RFS requirements, as this would be a far-reaching result that Congress can be expected to have clearly specified if it was intended. For example, to the extent that commenters imply that refiners should be required to build or purchase renewable fuel production facilities, take ownership of retail stations, produce or sell cars capable of using high-ethanol blends, or plant cropland to provide feedstock for increased renewable fuel production, we would disagree. Rather, if other parties engaged in these activities fail to adjust those activities to allow the statutory volume targets to be met, we believe the result is an inadequate domestic supply of renewable fuel that justifies granting a waiver pursuant to section 211(o)(7)(A). The primary role that obligated parties play in the RFS program is to acquire RINs, and it is this demand for RINs that in turn drives demand for renewable fuel and which should stimulate other parties to increase their activities to supply it.

Nevertheless, there are actions that obligated parties can take that are more directly related to their roles as importers and refiners, such as investing in or otherwise influencing business practices in such a way as to promote increases in renewable fuel use. We noted several ways in which this could happen in the NPRM.[58] In response, obligated parties described why the suggestions were not practical or would not provide any benefits for 2016. We disagree. There are actions that obligated parties can take in the near-term to increase renewable fuel use and which are consistent with their current businesses. These could include modifying their requirements for branded retail stations to make it easier to offer and advertise sales of E15, E85, and biodiesel, creating a consortium to pool funds for investment in infrastructure at retail, and coprocessing renewable biomass with fossil fuel in their existing facilities to produce a fuel that is partly renewable. These are certainly not the only options available to obligated parties, and we expect them to make ongoing efforts to further the goals of the RFS program. It would also be in the interests of renewable fuel producers to take similar, related, and/or complementary steps to increase the ability of the marketplace to supply their products to the vehicles and engines that can use them, notwithstanding the fact that the legal and regulatory responsibility for the purchase of RINs rests upon obligated parties.

6. Inability To Reach Volumes Using Only the Cellulosic Waiver Authority

In the NPRM we proposed that for each of years 2014, 2015, and 2016 we would reduce both the advanced biofuel and total renewable fuel volumes by the same amount using the cellulosic waiver authority, and then further reduce the total renewable fuel volumes using just the general waiver authority. However, we requested comment on whether it would be appropriate in the final rule to use the cellulosic waiver authority alone. In response to the NPRM, a number of parties agreed that some reductions from the statutory targets are warranted, but, they suggested that reductions under the cellulosic waiver authority would be sufficient, and that the market would be capable of meeting the applicable volume requirements using this approach with the use of carryover RINs to meet any shortfalls in actual renewable fuel supply. Stakeholders who suggested this approach included Growth Energy and the Renewable Fuels Association, among others.

We continue to believe that the applicable standards should be based on available information on actual renewable fuel supplied in 2014 and 2015, as described more fully in Sections II.C and II.D below. Today's rule cannot influence renewable fuel use in either year. Furthermore, we do not believe it would be appropriate to intentionally draw down the bank of carryover RINs as a means for increasing the applicable volume requirements for 2014, 2015, and 2016 beyond the actual renewable fuel supply, since we believe that the current bank of carryover RINs provides important program benefits, as discussed in Section II.H. Even if we were to use the availability of carryover RINs as a basis for setting the standards for 2014 and 2015 at the statutory targets instead of setting them at actual renewable fuel supply, then, assuming we entered the 2014 compliance year with 1.74 billion carryover RINs, the amount of carryover RINs available for 2016 would only be on the order of 0.1 billion RINs. This would be insufficient to maintain the statutory volumes for 2016 contrary to the commenter's claims. Since the appropriate volume reductions in total renewable fuel (to levels representing actual renewable fuel supply) can only be achieved through the use of the general waiver authority, we continue to believe that it would be inappropriate to use only the cellulosic waiver authority.

With regard to 2016 specifically, stakeholders that supported the use of the cellulosic waiver authority alone differed in whether the advanced biofuel and total renewable fuel requirements ought to be reduced by the full amount permitted under the cellulosic waiver authority, or instead only the amount needed to bring the advanced biofuel volume requirement to a level consistent with projected supply. Those supporting the former view pointed out that advanced biofuels in excess of the advanced biofuel standard can be used to meet the non-advanced portion of the total renewable fuel standards. While we agree that this is the case, explicitly and intentionally establishing a volume requirement for advanced biofuel that is below the level that we believe is reasonably attainable would be inconsistent with the goals of the RFS program. Since advanced biofuels have significantly superior GHG reduction performance, we believe we should structure our decision so as to promote the production and use of advanced biofuel volumes that can be reasonably supplied. Therefore, our assessment of the use of the cellulosic waiver authority alone focused on a case in which advanced biofuel and total renewable fuel are both reduced only to the degree necessary to yield an appropriate volume of advanced biofuel (*i.e.,* both are reduced by a lesser amount than the reduction in cellulosic biofuel). Furthermore, for the reasons described in Section II.H, the scenario does not envision a draw-down in the bank of carryover RINs.

Using the advanced biofuel volume requirement of 3.61 billion gallons that we have determined to be reasonably attainable in 2016, and which we are finalizing today, represents a volume

[58] *See* third column of page 33129 of the June 10, 2015 NPRM.

reduction of 3.64 billion gallons in comparison to the statutory target of 7.25 billion gallons. A corresponding reduction in the statutory target for total renewable fuel would result in a total volume of 18.6 billion gallons.

TABLE II.B.6–1—HYPOTHETICAL 2016 VOLUME REQUIREMENTS USING ONLY THE CELLULOSIC WAIVER AUTHORITY

[Billion gallons]

Advanced biofuel:	
Volume Requirement	3.61
Statutory Target	7.25
Reduction	3.64
Total renewable fuel:	
Volume Requirement	18.61
Statutory Target	22.25
Reduction	3.64

Using only the cellulosic waiver authority, the need for non-advanced (conventional) renewable fuel would be 15.0 billion gallons (18.61 − 3.61). If only ethanol was used in 2016 to supply this volume of conventional renewable, more than 1.6 billion gallons of E85 would be required.[59] This level is in excess of what we believe is possible in 2016 under even the most optimistic assumptions as described more fully in Section II.E.2.iii. Accounting for expected 2016 volumes of cellulosic ethanol and other advanced ethanol would make it even more difficult for 15 billion gallons of conventional ethanol to be used.

Under a hypothetical scenario wherein reductions were made only under the cellulosic waiver authority, the required volumes of non-ethanol renewable fuel would be in excess of the levels we believe can be achieved in 2016. Even in the unlikely event that E85 volumes reached 400 million gallons,[60] a very high but perhaps possible level, there would need to be 385 million ethanol-equivalent gallons of non-ethanol supplied, equivalent to about 250 million gallons of biodiesel (the predominant source of non-ethanol renewable fuel, which in this case could be either advanced biofuel or conventional renewable fuel).

TABLE II.B.6–2—INABILITY UNDER EVEN HIGHLY UNLIKELY SUPPLY CONDITIONS TO MEET AN 18.61 BILLION GALLON REQUIREMENT FOR TOTAL RENEWABLE FUEL IN 2016

[Million gallons]

E10	[a] 139,688
E85	[b] 400
Total ethanol	14,265
Non-ethanol cellulosic biofuel	210
Advanced and conventional biodiesel and renewable diesel	[c] 3,750
Total renewable fuel	18,225
Shortfall in comparison to the 18.61 bill gal needed under the cellulosic waiver authority	385

[a] This level is less than the amount of ethanol that can be used as E10 in all 2016 gasoline, because some of that gasoline is used in this scenario to make E85.

[b] Assumed to contain 74% denatured ethanol.

[c] Represents 2.5 billion gallons, the maximum supply that is reasonably achievable as described in Section II.E.3.

When added to the 2.5 billion gallons of biodiesel and renewable diesel (3.75 billion RINs) that, as discussed in Section II.E.3, is the maximum we believe can reasonably be achieved in 2016, the total volume of 2.75 billion gallons of biodiesel and renewable diesel is beyond the reach of a responsive market. Attaining a total of 2.75 billion gallons of biodiesel and renewable diesel in 2016 would require that all of the idled registered biodiesel capacity in the U.S. be brought into production at the beginning of 2016, with the attendant hiring of workers, arranging for feedstock purchases including diverting many feedstocks from existing uses, and arranging routes for distribution, blending, and sale of the finished product. In combination with other challenges as described in Section II.E.3, it is highly unlikely that 2.75 billion gallons of biodiesel supply could be achieved in 2016. Especially when combined with the fact that 400 million gallons of E85 is highly unlikely, we do not believe that this scenario is tenable.

A number of stakeholders said that using the cellulosic waiver authority alone would ensure that 15 billion gallons of corn-ethanol would be used in the U.S. in 2016. Although the implied requirement for conventional renewable fuel would be 15 billion gallons under this scenario, domestic use of corn-ethanol would be essentially no different than it would be under the volume requirements we are finalizing today using both the cellulosic waiver authority and the general waiver authority. This is due to the fact that the legal and practical constraints on the supply of ethanol to consumers are not likely to be relieved to a greater extent with higher standards than they are with the standards we are adopting today, as described more fully in Section II.E.2 below. While the supply of renewable fuel, including ethanol, can increase over time under the influence of the standards we set, the volume requirements for 2016 would not be achievable if only the cellulosic waiver authority were used. Thus we believe that using the cellulosic waiver authority alone would provide no practical advantage to the corn-ethanol industry, but instead would simply lead to a draw-down in the bank of carryover RINs and/or noncompliance.

C. 2014 Advanced Biofuel and Total Renewable Fuel Volume Requirements

In the NPRM, we proposed to base the applicable volume requirements for 2014 on the number of RINs supplied in 2014 that are expected to be available for use in complying with the standards. We based this approach on the notion that the standards we set cannot affect actual supply of renewable fuel in 2014, and that consequently the only result of setting a higher standard would be to require a draw-down in the bank of carryover RINs, which we explained would not be in the best interests of the program.

While many stakeholders agreed with our proposed approach, some did not. The primary objection was that carryover RINs should be counted as part of the ''supply'' available for compliance with the 2014 standards and, therefore, that the 2014 statutory volume targets cannot or should not be waived so long as the existing supply of RINs in 2014 that are available for compliance plus carryover RINs is sufficient to attain the statutory targets. As described in Section II.H below, we continue to believe that it would be imprudent and contrary to the long term objectives of the program to intentionally set renewable fuel volume requirements at a level higher than the estimated supply of renewable fuel based on an intentional draw down of the current bank of carryover RINs to achieve compliance. The statute does not define the term ''supply,'' and it is logical to interpret the term to mean the supply of actual renewable fuel to the vehicles that can use it. However, in assessing whether this supply is ''inadequate,'' and whether EPA should use its discretion to waive the statutory targets, it is appropriate to consider the extent to which the available bank of

[59] It is also possible that the use of E15 could rise to help provide a means for consuming 15.0 bill gal of ethanol. However, as described in Section II.E.2.v, it is highly unlikely that increases in E15 could rise high enough to significantly reduce the amount of E85 needed.

[60] As discussed in a memorandum to the docket, 400 mill gal of E85 in 2016 would likely require significant and unprecedented reductions in the retail price of E85 compared to E10 and increases in the number of service stations offering E85. *See* ''Correlating E85 consumption volumes with E85 price,'' memorandum from David Korotney to docket EPA–HQ–OAR–2015–0111. See also further discussion of E85 in Section II.E.2.iii.

carryover RINs can be drawn down without negatively impacting program operation.[61] Thus, we do not interpret carryover RINs to be part of the ''supply'' referenced in the term ''inadequate domestic supply,'' but we do consider them as a factor that may influence our discretion regarding whether or not to issue a waiver when we have found that an inadequate supply of renewable fuel exists. However, as described in detail in Section II.H, we have assessed the number of carryover RINs available at the current time, and have determined that this bank of carryover RINs should not be intentionally drawn down by setting volume requirements at a level higher than the supply of renewable fuel in the 2014–2016 time period. In other words, for purposes of this rule, we have determined that the availability of carryover RINs does not provide a good basis for EPA to either decline to exercise its discretion to reduce volumes under the general waiver authority in CAA section 211(o)(7)(A), or to use that authority in a manner that would result in volume requirements for total renewable fuel at a level higher than the supply of renewable fuel in 2014.[62]

A secondary objection to setting the 2014 volume requirements at the level of actual supply focused on our proposed calculation of the number of RINs generated in 2014 that would actually be available for compliance with the standards. Specifically, some parties argued that all RINs generated in 2014 should be counted as being available for compliance regardless of whether some were retired for purposes other than compliance with the annual percentage standards by obligated parties. In addition to exports, such ''non-compliance'' RIN retirements could occur for a variety of reasons, such as:

- Spills
- Contaminated or spoiled fuel
- Enforcement obligation
- Fuel not used as transportation fuel, heating oil, or jet fuel
- Improperly generated or otherwise invalid RINs
- Volume corrections
- RINs generated by foreign producers for volumes exported to other countries

Parties taking this position argued that, had the 2014 standards been in place by the statutory deadline of November 30, 2013, at least some of the RINs retired for non-compliance reasons would instead have been used for compliance purposes. We disagree. The earlier issuance of 2014 standards would not have changed events such as spills, improperly generated RINs, or enforcement obligations, and is very unlikely to have resulted in fuel being used in transportation fuel, heating oil, or jet fuel rather than for some non-qualifying use. It is theoretically possible that qualifying renewable fuel that was exported in 2014 might instead have been used in the U.S. had the applicable standards been in place and had been at a level that discouraged exports. However, even if this were so, it would nevertheless be inappropriate to identify exported renewable fuel as being available for compliance since the standards that we set now cannot cause a change in 2014 exports. If we were to include exported renewable fuel in the volume available for compliance with the 2014 standards, obligated parties would be forced to draw down the bank of carryover RINs to account for those exports. As described above and in Section II.H, we do not believe this would be appropriate.

Some stakeholders who argued for the consideration of carryover RINs in setting the 2014 standards did so recognizing that 2014 supply of renewable fuel would be unaffected, but said that doing so might actually increase supply in 2015 or 2016 above levels that would occur otherwise. More specifically, these stakeholders expressed concern that obligated parties would respond to increasing volume requirements in 2015 and 2016 by using carryover RINs rather than entering into contracts or other arrangements to increase the actual supply of renewable fuel. Given the value of carryover RINs to obligated parties as a compliance flexibility tool that is available to address unforeseen RIN shortfalls such as those that may be caused by natural disasters and other supply problems, and considering that obligated parties are likely to consider that increasing RFS requirements in the future could make compliance more difficult in coming years, we do not believe it is likely that obligated parties would intentionally draw down their carryover RIN banks as an alternative to purchasing RINs generated from increasing supplies of renewable fuel. As described further below, we are setting the applicable volume requirements for 2014, 2015, and 2016 at levels that we believe can be supplied by actual gallons of renewable fuel used in those years, without the need for carryover RINs.

In the NPRM, we explained that the total number of RINs that will be retired to cover exports of renewable fuel in 2014 will only be recorded in EMTS after the compliance demonstration deadline for 2014 has passed. As described in Section VI.B, we are amending the current rules in this action to specify March 1, 2016 as the deadline for renewable fuel exporters to demonstrate compliance with those 2014 RVOs not already satisfied. Since we recognized in the NPRM that the compliance deadline for all 2014 RIN exports would not have passed by the time we issued the final 2014 standards, we proposed to estimate likely RIN retirements for renewable fuel exports by using renewable fuel export information from EIA. Ethanol export data reported by EIA is derived from surveys collected by the Census Bureau. These surveys distinguish between ethanol that is denatured and ethanol that is undenatured, with approximately 460 million gallons being described as denatured and approximately 350 million gallons being described as undenatured for 2014. In the NPRM we assumed that all 810 million gallons of ethanol exported in 2014 had been denatured in the United States. We based this approach on the expectation that ethanol producers had an incentive to denature all ethanol for tax purposes, and thus would only sell undenatured ethanol if it was contractually designated for export. Because denatured ethanol meets the regulatory definition of renewable fuel, we assumed that RINs had been generated for this entire volume, and that an equal number of RINs would need to be retired by the exporters of this renewable fuel. RINs retired for exported renewable fuel are not available for use by obligated parties in complying with their 2014 obligations. Thus we calculated the supply of renewable fuel for 2014 by subtracting the exported volumes represented by both categories of ethanol from the amount of RINs generated for domestic production or imports of renewable fuel in 2014.

In response to the NPRM, some stakeholders indicated that they believed we had erred in assuming that all exported ethanol was denatured in the U.S., and had RINs generated for it prior to export. Based on these comments and further investigation into

[61] The statute provides that EPA ''may'' waive the statutory volume targets if it finds inadequate domestic supply or other conditions justifying a waiver under CAA section 211(o)(7)(A). Thus, exercise of the waiver authority is discretionary.

[62] For the same reasons, EPA has not assumed a draw-down in the current bank of carryover RINs in deciding the extent to which it should exercise its discretion under CAA section 211(o)(7)(D) to reduce the statutory targets for advanced biofuel and total renewable fuel.

the manner in which the Census Bureau data are collected, we believe that the Census Bureau survey data are likely to be more reliable than we previously believed with regards to whether exported batches were denatured or undenatured. That is, we believe the Census Bureau data provides the best information available on the amount of denatured versus undenatured ethanol that was exported in 2014. Therefore, the volume of undenatured ethanol the Census Bureau reported as exported in 2014 should not be subtracted from the total number of RINs generated for fuel ethanol in 2014 for purposes of calculating the available supply of renewable fuel for 2014. We have made this correction to the calculation of 2014 supply by only subtracting the approximately 460 million gallons of exported denatured ethanol from those generated in 2014, rather than the full volume of about 810 million gallons of denatured and undenatured ethanol exported.

Several stakeholders raised a similar issue with respect to biodiesel exports, contending that producers never generated RINs for some biodiesel that was exported, and thus all biodiesel exports should not have been subtracted from the number of biodiesel RINs generated in 2014 in assessing the 2014 domestic supply of biodiesel. These parties based their argument on comparisons between EIA export data and biodiesel RINs separated from biodiesel intended for export as recorded in EMTS for previous years. As pointed out by these stakeholders, a comparison of data from EMTS and EIA for 2011 through 2013 does appear to suggest incongruous measurements of biodiesel exports.

TABLE II.C–1—BIODIESEL EXPORTS

[Million gallons]

	2011	2012	2013
EMTS (based on RINs separated from exported biodiesel)	15	46	106
EIA	73	128	196
Difference	58	82	91

As a preliminary matter, we note that the discrepancy between EMTS data on biodiesel RINs separated for biodiesel intended for export and EIA data on biodiesel exports is much smaller for 2014 than it was for previous years—the difference is only 10 million gallons.[63] However, we do not believe that these discrepancies between EIA and EMTS data can credibly be used to suggest that EPA's approach to assessing biodiesel supply in 2014 was flawed. Since exporters can receive biodiesel without assigned RINs and can retire RINs to address exports of renewable fuel using RINs acquired on the open RIN market, the EMTS data on the number of RINs separated from biodiesel as shown in the table above is likely to underestimate the actual number of RINs retired for exports. We also note that almost all biodiesel that is produced in the U.S. qualifies for RIN generation, unlike the situation for ethanol where RINs may be generated for denatured ethanol, but not for undenatured ethanol. Finally, since October of 2014 renewable fuel exporters have been required to retire RINs for all exported renewable fuel within 30 days of the exportation. As a result, we were able to compare RINs retired for exports that occurred in 2015 (not merely RINs separated from exported renewable fuel) to renewable fuel exports as reported by the International Trade Commission (ITC).[64] We determined that exports as recorded in EMTS are nearly identical to exports as recorded by ITC.[65] In sum, we conclude that it is reasonable to assume that RINs were generated and then retired for essentially all of the exported biodiesel, and that it continues to be appropriate to use unmodified export volume data from EIA in estimating RIN supply in 2014.

Finally, some parties argued that their operations for 2014 vis-a-vis acquisition of RINs were based on the standards that were proposed in the November 29, 2013 NPRM, and that it would be inappropriate for EPA to set applicable percentage standards for advanced biofuel and total renewable fuel for 2014 that are more stringent than those proposed in November 2013. We disagree. First, the statutory table of applicable volumes has long provided notice to obligated parties that EPA could establish requirements at least that high, and many commenters on the November 2013 NPRM urged EPA to set standards that would require use of those volumes. In addition, it is well understood that requirements in a final rule can differ significantly from those that are proposed. Also, the November 2013 NPRM explicitly provided both a range of possible volume requirements for advanced biofuel and total renewable fuel as well as an indication that the final volume requirements could include a modification of those ranges. For example:

> ''However, we request comment on whether it would be more appropriate to utilize either the mode or median (50th percentile), or some other value in the appropriate range shown in Table IV.B.4–3 that best reflects renewable fuel volumes that could reasonably be supplied under this program.'' (78 FR 71770)
>
> ''However, we request comment on whether one of the alternative values shown in Table IV.C.2.c–2, or some other approach, would be more appropriate as the basis for the required volume of advanced biofuel in the final rule.'' (78 FR 71777)
>
> ''With regard to the mean, we request comment on whether it is the most appropriate way to determine the volume within each of the ranges that we would require in the final rule, or whether instead one of the alternatives shown in Tables IV.B.4–3 or IV.C.2.c–2, or some other approach, would be more appropriate.'' (78 FR 71777)

While we proposed volumes representing the mean within the ranges, we also took comment on alternative approaches to selecting final values from within those ranges. More importantly, we are setting the applicable volume requirements for 2014 at levels consistent with the number of RINs generated in 2014 that are available for compliance. While it is true that the 2014 RINs available for compliance may not currently be distributed among obligated parties according to their individual compliance obligations, they are nevertheless available for compliance, and obligated parties can buy and sell RINs in order to ensure compliance. This process is exactly how the RIN

[63] Because exporters of renewable fuel can separate RINs immediately from fuels that are exported, this estimate is unlikely to change by the time that they submit their compliance demonstrations for 2014.

[64] EIA uses the data collected by Census on exports.

[65] ''Comparison of export data between EMTS and ITC for 2015,'' docket EPA–HQ–OAR–2015–0111.

system was designed to operate when originally established in 2007. Obligated parties have had since at least the time of publication of the June 10, 2015 NPRM to understand with greater certainty their likely obligations under today's final rule, and this period should have been sufficient for obligated parties to ready themselves for compliance. To the extent individual obligated parties may still have difficulty acquiring sufficient RINs for compliance, they can avail themselves of the deficit carry-forward provision in the regulations.[66] In addition, we note that the availability of carryover RINs should help to render the RIN market fluid. Finally, we note that we have extended the compliance demonstration deadline for obligated parties for the 2013 standards by one month, and the compliance demonstration deadline for the 2014 standards by two months, as compared to the proposed dates. These extensions will allow obligated parties additional time to engage in needed RIN transactions to come into compliance with 2014 requirements.

The total number of RINs generated in 2014 that are available for compliance includes those that were generated for renewable fuel produced or imported in 2014 as recorded in the EPA-Moderated Transaction System (EMTS), minus any RINs that have already been retired for non-compliance reasons or would be expected to be retired to cover exports of renewable fuels. As described in the NPRM, the total number of RINs actually retired to cover exports of renewable fuel in 2014 will only be recorded in EMTS after the compliance demonstration deadline for 2014 has passed. Since the compliance deadline for all 2014 RIN exports has not yet passed, we have based our estimate of RIN retirements for renewable exports on renewable fuel export information from EIA.[67]

Actual supply in 2014 is shown in Table II.C–2 below. Further details are provided in a memorandum to the docket.[68] Since EIA does not distinguish exports by D code, we assumed that all ethanol exports represent D6 ethanol, and all biodiesel exports represent D4 BBD, since the vast majority of ethanol available for export was produced from corn and the vast majority of biodiesel available for export was produced to meet the requirements of advanced biofuel. As a result, we expect that any errors introduced by these assumptions will be very small.

TABLE II.C–2—2014 ACTUAL SUPPLY

[Million RINs]

D code [a]	Domestic production [c]	Imports [c]	Adjustments [b c]	Exports	Net supply
3 & 7	33	0	0	0	33
4	2,214	496	92	126	2,492
5	79	64	0	0	143
6	14,017	336	287	457	13,609
All advanced biofuel (D3+D4+D5+D7)	2,326	560	92	126	2,669
All Renewable fuel (D3+D4+D5+D6+D7)	16,344	897	380	582	16,278

[a] D3 and D7 represent cellulosic biofuel. D4 represents biomass-based diesel. D5 represents advanced biofuel that is not cellulosic biofuel or biomass-based diesel. D6 represents non-advanced (conventional) renewable fuel.
[b] As described earlier in this section, adjustments represent spills, enforcement obligations, etc.
[c] Values in this table differ from those in the NPRM due to ongoing retrospective corrections that are made to data recorded in EMTS.

Based on these volumes, we are setting the applicable volume requirements for advanced biofuel and total renewable fuel for 2014, as shown in Table II.C–3 below. Additional discussion of the final cellulosic biofuel and BBD volume requirements for 2014 can be found in Sections IV.D and III.C, respectively.

TABLE II.C–3—FINAL VOLUME REQUIREMENTS FOR 2014

[Billion gallons]

Advanced biofuel	2.67
Total renewable fuel	16.28

D. 2015 Advanced Biofuel and Total Renewable Fuel Volume Requirements

In the NPRM, we said that we expected that the market could achieve some growth in 2015 in comparison to 2014 volumes despite the fact that the proposal was being released well into 2015. Our proposed volumes for 2015 represented moderate growth in supplies of both advanced biofuel and total renewable fuel deemed possible based on annual growth in previous years, but tempered by the fact that the market would not have the lead-time envisioned by the statute. Although the proposed volumes could not be construed as requirements, we believed that they would provide signals to the market concerning the levels that EPA believed were achievable, and that the market would respond to these signals. In fact this appears to have been the case, as monthly supply in the months following release of the NPRM was higher than monthly supply prior to the NPRM.

This final rule is being released after 11 months of the year has passed. As was the case for 2014, the final standards that we set for 2015 cannot affect supply that occurred over the previous 11 months, and there is insufficient lead time available to impact renewable fuel use in the remaining one month. Thus we believe that the basic approach we have taken in this final rule to establishing 2014 requirements should also be applied to 2015, with differences only to account for there being an incomplete data set for 2015. The more general issues (*e.g.,* consideration of carryover RINs, determination of export volumes, etc.) that were raised by stakeholders for the determination of the 2014 volume requirements, and our assessment of those issues, also apply to 2015. As for 2014, the final volume requirements for 2015 for advanced biofuel and total renewable fuel effectively represent what the market actually achieved (for months for which data are available) and a projection of supply based on historical information for the remaining

[66] Although the deficit carry-forward provision would not be available for parties who carried forward a deficit from 2013, such parties have known well in advance that they would be required to satisfy both their 2013 and 2014 obligations in 2014, so should have planned early to acquire a sufficient volume of RINs to cover all contingencies regarding possible 2014 requirements. Any excess 2014 RINs purchased could be banked for use in complying with 2015 requirements.

[67] *http://www.eia.gov/dnav/pet/pet_move_expc_a_EPOORDB_EEX_mbbl_m.htm.*

[68] ''2014 RIN Supply,'' docket EPA–HQ–OAR–2015–0111.

months where data were not yet available.

While this final rule is being released after 11 months of the year has passed, the data for determining actual supply was only available for the first 8 to 9 months of the year. EMTS data on RIN generation and various adjustments for RINs that cannot be used for obligated party compliance was available through September, while data on renewable fuel exports from the Census Bureau was available through August.[69] In order to determine total supply for 2015, it was necessary to estimate supply for the remaining months of the year using the data on actual supply that is available for 2015 and supply trends from 2013 and 2014. These supply trends were used to identify seasonal variations in supply that allowed us to project supply in those months in 2015 for which actual supply data are not available. Details of this assessment are provided in the docket, and are summarized below.[70]

TABLE II.D–1—PROJECTED SUPPLY FOR 2015

[Million ethanol-equivalent gallons]

	RINs generated	Adjustments	Exports	Net supply
Advanced biofuel	3,121	92	145	2,884
Total renewable fuel	17,815	379	504	16,931

In the NPRM we requested comment on whether the volume requirements that we were proposing for 2015 appropriately reflected challenges associated with the marketplace increasing renewable fuel supply in response to the rulemaking in the time available. Parties that believed we should set the applicable volume requirements for 2014 at the statutory targets typically said the same for the 2015 volume requirements, arguing that carryover RINs could meet any shortfall in the supply of renewable fuel. Others agreed that the proposed 2015 volume requirements were reasonable and pointed to the fact that the situation for 2015 was essentially the same as for 2014 in that the standards would be set after most of the year had passed and beyond a date where the final rule could influence renewable fuel use.

In general, it is our assessment that comments provided by stakeholders did not include any compelling arguments or information that would lead us to believe that the final volume requirements for 2015 should be set higher than actual supply (including a projection of actual supply for months where data are not available). While some stakeholders expressed a belief that higher standards can influence market dynamics in 2015, we do not believe that this is the case given that this final rule is being released after 11 months of the year has passed. The only possible basis for setting the final volume requirements higher than actual supply would be the availability of carryover RINs, which as described in Section II.H we believe should not be intentionally drawn down in the context of standard-setting at this time.

Some obligated parties argued that the final percentage standards for 2015 should be set at the proposed levels since they were using the proposed percentage standards to guide their acquisition of RINs in the second half of the year. These parties made a similar argument regarding the 2014 percentage standards. However, all regulated parties were aware that the final standards could differ from those we proposed based on comments we received, new information that became available, and new or different EPA analysis. Moreover, the statutory volume targets (which a number of commenters argued should be the basis for the final 2014 standards) provided notice of the maximum volumes that EPA could require in finalizing the rule. As with 2014, we are using the cellulosic waiver authority as the basis for reductions in advanced biofuel, and for an equal reduction in the total renewable fuel volume requirement. For total renewable fuel, we are also using the general waiver authority, based on a determination of inadequate domestic supply, to provide an additional increment of volume reduction to result in a volume requirement equal to our assessment of RINs generated in 2015 that will be available for compliance.

TABLE II.D.2—FINAL VOLUME REQUIREMENTS FOR 2015

[Billion gallons]

Advanced biofuel	2.88
Renewable fuel	16.93

E. Total Renewable Fuel Volume Requirement for 2016

The proposed 2016 volume requirement of 17.40 billion gallons was intended to represent the total supply of renewable fuel for use in transportation fuel in the United States, including both domestic production and imports of renewable fuel, in light of a policy that is intended to induce significant change. In determining the proposed 2016 volume requirements, we targeted substantial growth compared to 2014 and 2015, consistent with the fact that they are being set prospectively, on the schedule contemplated by Congress, and therefore can be expected to influence the increased production and use of renewable fuels in 2016.

Responses to the proposed 2016 volume requirement for total renewable fuel were mixed. Some stakeholders, such as The American Council on Renewable Energy and Trestle Energy, indicated that the proposed volumes appeared to be reasonable given the challenges associated with increasing supply. Stakeholders who were obligated parties, petroleum marketers and retailers, livestock owners, or engine owners typically said that the proposed volumes were too high. These stakeholders typically pointed to expected high costs, adverse impacts on vehicles or engines, or a general inability of the market to supply the proposed volumes. Many treated the constraints associated with the E10 blendwall as representing a firm barrier that could not or should not be crossed. In contrast, renewable fuel producers and farmers generally believed the

[69] We determined that using records from EMTS on 2015 RINs retired for exports would provide an inaccurate estimate of actual 2015 RINs retired for export in specific months. Exporters can record their RIN retirements at any time within the 30 days following an export of renewable fuel. As a result, exports that occurred in August 2015 may be recorded in EMTS in August or September, and exports that occurred in September 2015 may be recorded in EMTS in September or October. Given this, we believe that the Census Bureau data on exports provided a more accurate estimate of exports in specific months.

[70] ''Projection of annual renewable fuel supply in 2015,'' memorandum from David Korotney to docket EPA–HQ–OAR–2015–0111.

proposed volumes to be too low. These stakeholders typically pointed to production capacity and available feedstocks to support their views, and often argued that the power of the market to respond to the standards EPA sets is essentially unlimited in its ability to overcome any potential constraints on supply.

In general, we did not find arguments for reducing the volume requirements below the proposed levels compelling. Our response to comments associated with the E10 blendwall, demand for E0, and the use of higher ethanol blends such as E15 and E85 are discussed in more detail in Section II.E.2 below. In short, stakeholders provided no compelling evidence that a nationwide average ethanol concentration in gasoline cannot exceed 10.0% in 2016. Moreover, the RFS program will not force consumers to use E15 in engines where compatibility may be a concern, such as nonroad engines or vehicles manufactured before 2001, as some commenters suggested. The flexibility inherent in the program will also continue to permit the use of E0 if there is demand for it, addressing concerns about misfueling with higher ethanol blends. Further discussion of these issues can be found in the Response to Comments document.

While we do not believe that the total renewable fuel volume requirement for 2016 should be reduced below the proposed level, we continue to believe that challenges associated with growth in the supply of renewable fuels precludes attainment of the statutory volumes in 2016. Constraints including but not limited to the E10 blendwall, are real and can only be partially overcome by a responsive market in the near term. We acknowledged in the NPRM that the market would need to respond by increasing domestic production and/or imports of those biofuels that have fewer marketplace constraints, by expanding the infrastructure for distributing and consuming renewable fuel, and by improving the relative pricing of renewable fuels and conventional transportation fuels at the retail level to ensure that they are attractive to consumers. However, we also stated our belief in the NPRM that the market is not unlimited in its ability to respond to the standards we set, particularly over the relevant timeframe. Thus while there can be significant growth in renewable fuel supply from 2015 levels in 2016, we continue to believe that the statutory target for total renewable fuel cannot be reached in 2016.

In making a determination to exercise our authority to waive volumes, our objective is to exercise the general waiver authority only to the extent necessary to address the inadequacy in supply.[71] [72] As explained in the NPRM, we are seeking to determine the ''maximum'' volumes of renewable fuel that are reasonably achievable in light of supply constraints. To clarify, we are not aiming to identify the absolute maximum domestic supply that could be available in an ideal or unrealistic situation, or a level that might be anticipated under conditions that are possible, but unlikely to occur. Rather, we are attempting to identify what we think is the most likely maximum volume that can be made available under real world conditions, taking into account the ability of the standards we set to cause a market response and result in increases in the supply of renewable fuels. This is a very challenging task not only in light of the myriad complexities of the fuels market and how individual aspects of the industry might change in the future, but also because we cannot precisely predict how the market will respond to the volume-driving provisions of the RFS program. Thus the determination is one that we believe is not given to precise measurement and necessarily involves considerable exercise of judgment. To this end, we are setting achievable volumes of total renewable fuel in this package that reflect our best judgment as to the domestic supply of renewable fuels in 2016. There are a number of indications, described below, that the volumes we are finalizing today represent a reasonable estimate of this level.

In the NPRM we explained that our approach to determining the applicable volumes of total renewable fuel included estimating the market potential for overcoming the various constraints at play. This approach was based on consideration of the potential future contributions from sources of renewable fuel, including ethanol, biodiesel and renewable diesel, and other types of renewable fuels, in the aggregate rather than individually, and in the context of a market that is responsive to the standards that we set. We explained that we believed this approach to be more straightforward and more likely to provide a correct projection of the available domestic supply of renewable fuels in 2016 than the proposed approach we described in the November 29, 2013 proposal for the 2014 standards.

In response to the NPRM, many parties presented alternative suggestions for volume requirements for total renewable fuel in 2016, either higher or lower than the 17.40 billion gallons that we proposed, and generally based these suggestions on an approach more akin to that used in our November 29, 2013 proposal. That is, they made their own estimates of the achievable levels of various types of renewable fuels that could be produced or renewable fuel blends that could be consumed and used these estimates as the basis for suggesting higher or lower volume requirements. We recognize that an assessment of the contribution that individual sources can make to the total can be valuable in demonstrating both the achievability of the volume requirements and the extent to which they represent the supply of renewable fuels in 2016. In the November 2013 proposal we took a very granular approach to assessing the potential supply of renewable fuels by assessing the potential for growth of individual renewable fuels, quantifying the uncertainty around each assessment, and using a Monte Carlo simulation to assimilate the individual assessments. In our June 2015 proposal we took a much more holistic approach to assessing renewable fuel supply, recognizing that the individual components of the supply are interconnected and do not operate in isolation. We received many comments suggesting that the holistic approach was too broad, that the methodology EPA used in deriving the volume requirements was not sufficiently clear, and that EPA should more closely evaluate potential for growth in the use of individual fuel types as part of its analysis. We continue to believe that because of the complexities of the fuels market, the structure of the standards, and the inherent difficulties associated with predicting which of the many possible scenarios the market will choose to meet any given standard, a very granular approach is not likely to produce an accurate representation of the maximum volume that can reasonably be achieved. At the same time, we recognize the value in better identifying the information on which our technical judgements are based in making an overall assessment of the volume of renewable fuel that can be supplied in 2016.

For the final rule, therefore, we are individually analyzing the potential for growth in broad categories of renewable fuel: Ethanol, biodiesel, and other types of renewable fuels. We believe that

[71] Section 211(o)(7)(A) says, ''The Administrator . . . *may* waive the requirements . . .'' [emphasis added].

[72] As discussed in Section II.B.1, EPA has considerable discretion in exercising the cellulosic waiver authority, and is not constrained to consider any particular factor or list of factors in doing so.

these assessments have helped us to better estimate the most likely maximum achievable volume of renewable fuel that can be supplied in 2016 and, as described below, the revised approach, together with technical corrections, has led to a final volume for total renewable fuel that is somewhat larger than the volume in our proposed rule. The following sections discuss the state of the renewable fuel market in general, our evaluation of the supply of broad categories of renewable fuel in 2016, and our conclusions regarding the most likely maximum achievable supply of renewable fuel in 2016.

1. Renewable Fuel Market Challenges and Opportunities

The fuels marketplace in the United States is large, diverse, and complex, made up of many different players with different, and often competing, interests. Substantial growth in the renewable fuel volumes beyond current levels in 2016 and beyond will require action by many different parts of the fuel market, and a constraint in any one part of the market can limit the growth in renewable fuel supply. Whether the primary constraint is in the technology development and commercialization stage, as has been the case with cellulosic biofuels, or instead related to the infrastructure build out and fuel consumption, as is recently the case with ethanol in the United States, the end result is that these constraints limit the available supply of renewable fuel.

The constraints on supply to vehicles and engines range from legal limitations on the ethanol concentration that can be used in different types of gasoline-powered vehicles to market-based constraints associated with production, distribution, and use of renewable fuels and the ability for these fuels to compete with traditional petroleum-based fuels. A list of the many factors that affect the growth of renewable fuel supply in the United States in 2016 and beyond is shown in Table II.E.1–1 below.

Table II.E.1-1
Factors That Affect the Supply of Renewable Fuel

- Feedstock availability
  - For existing feedstocks
    - Increases in production
    - Diversion from food and other uses, including renegotiation of existing contracts
    - Expansion of distribution and storage infrastructure
  - For new feedstocks
    - Research and development of new feedstocks
    - Development of new harvesting equipment and practices
    - Development of new distribution and storage infrastructure
    - Contracts to enable reliable delivery
- Renewable fuel production
  - Technology research and development
  - Commercialization of new technology
  - Investment in new and expanded production facilities
  - Restarting idle facilities
- Renewable fuel imports
  - Investment in new and expanded production facilities abroad
  - Diversion from domestic and other foreign markets
    - Renegotiation of existing contracts
    - Satisfying competing mandates and incentives abroad
    - Changes in currency valuation domestically and abroad
  - Expansion of foreign distribution and export capacity
  - Expansion of U.S. import capacity and distribution from ports

- U.S. renewable fuel distribution infrastructure expansion
  - Barge, rail car, tanker truck, and pipeline expansion
  - Terminal tankage addition or displacement of existing product offerings
  - Terminal blending capacity expansion
- Refueling infrastructure availability
  - Expansion of retail outlets that offer renewable fuels blends
  - Addressing insurance and liability risks
- Consumption capacity
  - Existence of and expansion of vehicles/engines capable of using the fuel (e.g., FFVs, natural gas vehicles, and engines designed to be compatible with higher biodiesel blends)
  - Existence and expansion of qualifying non-transportation uses (e.g., heating oil)
  - Total transportation fuel use in the United States
- Marketing Effectiveness
  - Vehicle warranties (e.g., E15, B20)
  - Retail fuel prices
  - Product features and image
- Oil prices relative to the cost of production of biofuels

None of the market components listed in Table II.E.1–1 are in and of themselves an insurmountable barrier to growth of renewable fuels. Rather, they are challenges that can be overcome in a responsive marketplace given enough time and in many cases with considerable investment. In this regard the key question is not whether renewable fuel volumes can increase, but rather how quickly. Moreover, the speed with which the market can engage in actions to overcome these constraints is a function of whether and how effectively parties involved in the many diverse aspects of the renewable fuel marketplace respond to the incentives provided by the RFS and other programs designed to incentivize renewable fuel use.

To a certain degree, the RFS standards themselves can help provide certainty and help drive the necessary investments up and down the supply chain by creating expectation for what overall demand will be. However, the RFS standards are still limited in this regard in that they are issued on an annual basis immediately prior to the compliance year (thus offering little lead-time) and provide only an indirect signal to the various components of the marketplace. In order for volumes of many of the renewable fuels to grow it requires a rather complicated series of investments decisions and actions by a wide range of independent businesses in the marketplace, often by companies that are in direct competition with one another. This can make it difficult for the market to increase supply quickly. The significant fluctuations in the price of oil since 2010 further complicates the investment decisions necessary to enable further growth in the supply of renewable fuels.

Fuels that are or have been more easily integrated into the marketplace (*e.g.,* ethanol at 10 volume percent or renewable diesel that is fungible with diesel fuel) face fewer challenges to overcome to increase their supply and thus have generally been more attractive to investors than those that might require new and unique changes to the fuel distribution infrastructure and/or vehicle fleet. The greater market certainty associated with these more easily integrated fuels has allowed them to increase relatively quickly. This is consistent with our past experience under the RFS program where we saw rapid growth in E10 ethanol blends, low level biodiesel blends, and more recently CNG/LNG derived from biogas. However, introducing new types of biofuels and higher biofuel concentrations into the marketplace requires new production technology, new vehicles, new retail and distribution system infrastructure, and/or new retail-level incentives, and thus have been slower to expand.

Also, the signal from the RFS standard is for the general categories of cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuels. The standards are not specific to a fuel type (*e.g.,* ethanol, biodiesel, renewable diesel, biobutanol, biogas, etc.), feedstock (*e.g.,* corn, soy oil, wood

chips), or technology (*e.g.,* biochemical vs thermochemical). This is a strength of the RFS program, as it lets the market, rather than EPA, decide which fuel hold the most promise for future growth. As a result, however, the market is still left to determine which fuels to invest in, requiring action by multiple parties involved in fuel supply to ensure growth. We believe that the market can and will make these decisions, particularly as the picture as to which fuels and technologies hold the greatest potential for growth becomes clearer, but it will take time.

In addition to the market needing time to sort out its investment decisions, it should also be emphasized that it takes time for the market to implement investment decisions it has already made. Each market segment has a certain degree of implementation time associated with it. For instance, diverting relatively small amounts of feedstocks from existing uses could potentially occur in a matter of weeks in some cases and months in others, whereas diverting larger amounts or bringing some new feedstocks to market (*e.g.,* energy crops such as switchgrass) could require years. Restarting existing biofuel production facilities could likewise occur relatively quickly, while developing a new renewable fuel production technology (*e.g.,* cellulosic ethanol) takes years, and once developed it takes years more to produce commercial volumes of renewable fuel from them. Displacing some fuels with others in distribution and storage can often occur in a matter of weeks, but adding new distribution and storage capacity can take months or years. Using compatible fuels in the existing fleet of vehicles can occur almost seamlessly, but developing and expanding a new fleet of purpose-built vehicles will take years. Since this final rulemaking establishes standards for 2016 that will apply to gasoline and diesel fuel produced just one month from the signature of this rule, we do not believe that there is sufficient time for the 2016 standards to lead to dramatic changes in renewable fuel supply that are not already underway. But we do believe that the 2016 standards can drive some growth in the near term while setting the stage for greater growth in the longer term. As a result, the best opportunity for market growth is likely to be for those fuels where the market is already taking action to address any relevant constraints listed in Table II.E.1–1 above.

Cellulosic biofuel provides an example. Growth in cellulosic biofuel volumes and their contribution to the advanced biofuel standard has been limited, and certainly less than Congress envisioned, since the outset of the RFS program due to challenges related to technology development and commercialization. Despite a number of years and billions of dollars spent in research and development of cellulosic biofuel technologies, and several attempts at commercializing these technologies, deriving liquid fuels from cellulosic feedstocks has lagged well behind not only the statutory targets, but also our annual projections. These technologies are just now beginning to introduce significant volumes of liquid cellulosic biofuels to the market as described in Section IV. In contrast, more rapid growth has occurred with CNG/LNG derived from biogas, which was recategorized as a cellulosic biofuel in 2014. Biogas did not face the same renewable fuel production challenges as liquid biofuels, and since it could also utilize the existing natural gas distribution, vehicle, and refueling infrastructure use of cellulosic CNG/LNG derived from biogas as transportation fuel has increased rapidly since 2014. The inclusion of cellulosic biogas in our projections has allowed total cellulosic biofuel volumes to grow rapidly through 2015 and into 2016. However, even this significant and short term growth will become limited as cellulosic biogas will soon face constraints associated with sufficient consumption capacity since the fleet of natural gas vehicles that use CNG/LNG derived from biogas as a transportation fuel is currently limited, and it will likely take time for it to grow.

Even with the RFS standards in place to drive growth, the market itself still has considerable uncertainty in terms of how it will respond to those standards and whether and to what degree it can overcome the various constraints within the next year. These facts make it challenging for the Agency to project the supply of renewable fuel in 2016, as we cannot predict with precision the progress that can be made for every component in the market for all the different fuels, or for the renewable fuel supply as a whole. Every existing and potential renewable fuel is impacted by a number of factors that may limit the renewable fuel's growth potential over the coming year. If EPA were to establish standards that cannot be achieved it would likely result in a significant increase in renewable fuel and RIN prices, and obligated parties would be forced into RIN deficits or even non-compliance. This could serve to erode the certainty and stability for renewable fuel volume growth that the RFS standards are intended to provide. At the same time, there are also reasons for optimism that significant progress can be made in overcoming some of the constraints on renewable fuel use in the coming year. We do not think it would be appropriate to ignore either the potential for growth, or potential challenges on growth, in making our assessment of potential volumes. Because the RFS program allows for a variety of different paths to contribute to overall compliance with the standards, significant growth overall is possible in the coming year even if there is less certainty that individual paths might be able to grow significantly.

In the NPRM we discussed the fact that renewable fuel supply in 2013 [73] and 2014 fell short of the statutory targets, and that we believed that the constraints on supply that contributed to those shortfalls were very likely to continue in 2015 and 2016. Indeed supply in the first half of 2015 has also fallen short of what would be required on an annualized basis to meet the statutory targets, though it was larger than supply in 2014. In response, many stakeholders suggested that the only reason the statutory targets were not reached in 2013 and 2014 was because EPA missed the statutory deadlines for setting RFS standards for those years. They also cited the November 29, 2013 NPRM as establishing an expectation among regulated parties that EPA would not require the statutory targets to be met in 2014 and 2015, and that the market merely responded in the manner of a self-fulfilling prophecy.

In providing these comments, these stakeholders took the view that the market is essentially unlimited in its ability to respond to the standards that EPA sets. That is, if EPA were to establish the applicable volume requirements at the statutory targets and by the statutory deadlines, the market would be able to meet those volume requirements. We disagree. The constraints discussed above, and in greater detail in the following sections, are both real and are expected to continue for at least the next several years, even as volumes produced and used are expected to grow. Our investigations clearly demonstrate that the market is not unlimited in its ability to respond to the standards that we set.

A review of the market response to the RFS standards in 2013 demonstrates that constraints on supply are real. In 2013 EPA had never used its waiver

[73] Although EPA did not waive any renewable fuel requirements in 2013, EPA estimates that obligated parties will only be able to achieve compliance through substantial reliance on carryover RINs.

authorities to lower the statutory advanced and total renewable fuel volumes, and had not proposed to do so in its NPRM for the 2013 standards published on February 7, 2013. The market could have reasonably anticipated that EPA would maintain the statutory applicable volumes for calendar year 2013. Indeed, EPA's final rule, published in August of 2013, maintained the proposed approach, and set percentage standards requiring the use of the statutory applicable volumes of advanced and total renewable fuel. Furthermore, unlike some other years when the biodiesel tax credit has been enacted late in a calendar year, and made retroactive to fuel produced in that year, in 2013 the tax credit was enacted in January 2013 and, therefore, was in place to incentivize the production of biodiesel throughout the calendar year.[74] Thus, in 2013, both tax policy and RFS signals were in place to incentivize large growth in renewable fuel use. As shown in the figures below, there was no sudden increase in supply after the 2013 standards were released on August 15, 2013, consistent with the indications that the market expected EPA to finalize standards requiring use of the statutory applicable volumes. There was a moderate increase in the supply of BBD at the end of 2013, which we believe reflected both market anticipation of the expiration of the biodiesel tax credit at the end of 2013 and the end of the 2013 RFS compliance year. Supply of ethanol (the predominate source of D6 RINs) was essentially no different after August than it was before, and the supply of D5 RINs actually decreased after August. In short, the market had an opportunity to increase supply in order to reach the applicable 2013 standards, but did not do so in the timeframe that was available.[75] We believe this indicates that the market was operating at a peak level, and was constrained from accomplishing more.

[74] Public Law 112–240.

[75] We have considered the possibility that the market did not fully respond to the 2013 RFS standards despite the availability of the biodiesel tax credit in 2013 because of the availability of carryover RINs. We believe that the benefit to obligated parties of maintaining their banks of carryover RINs in 2013—especially in light of ever-increasing RFS volume requirements in future years and uncertainty regarding how EPA may interpret its waiver authorities—would have led obligated parties to strongly favor use of 2013 RINs over banked carryover RINs. We also considered the more limited corn stocks available for much of 2013 due to the 2012 drought. However, we note that ethanol exports were still occurring in 2013 even though ethanol imports increased substantially during this period. Thus, we do not believe that the availability of 2013 carryover RINs nor the historic 2012 drought in the United States undermines our conclusion that the renewable fuel market was constrained in 2013.

Figure II.E.1-1
Monthly Supply of D4 RINs in 2013

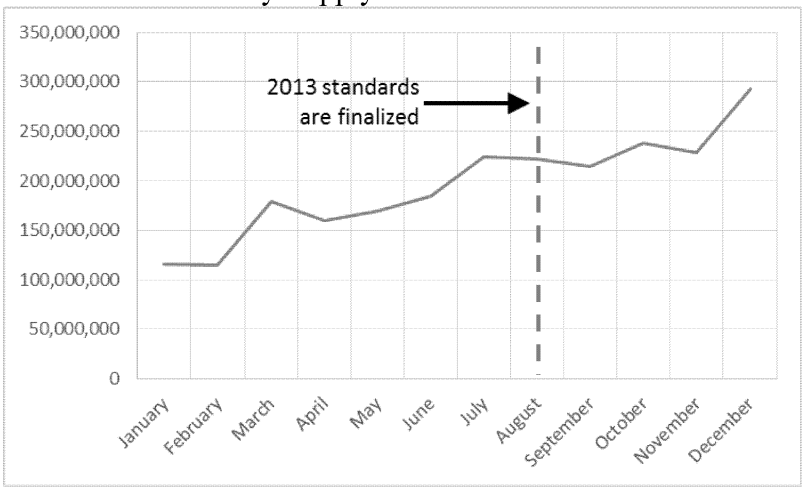


Figure II.E.1-2
Monthly Supply of D5 RINs in 2013

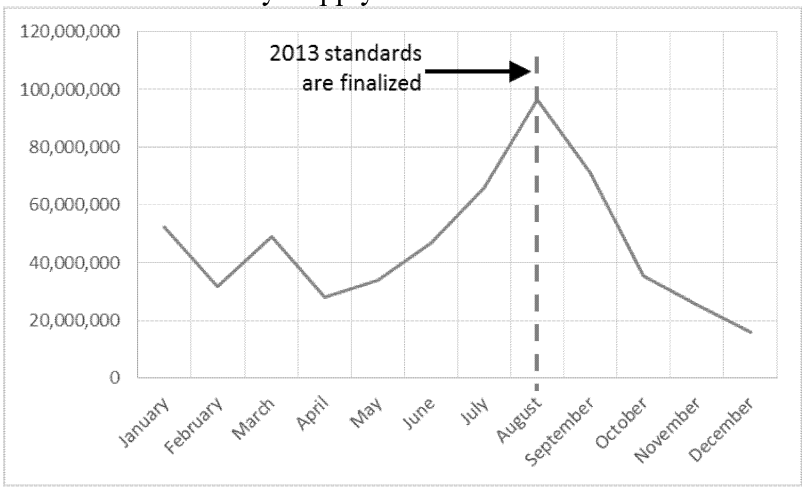
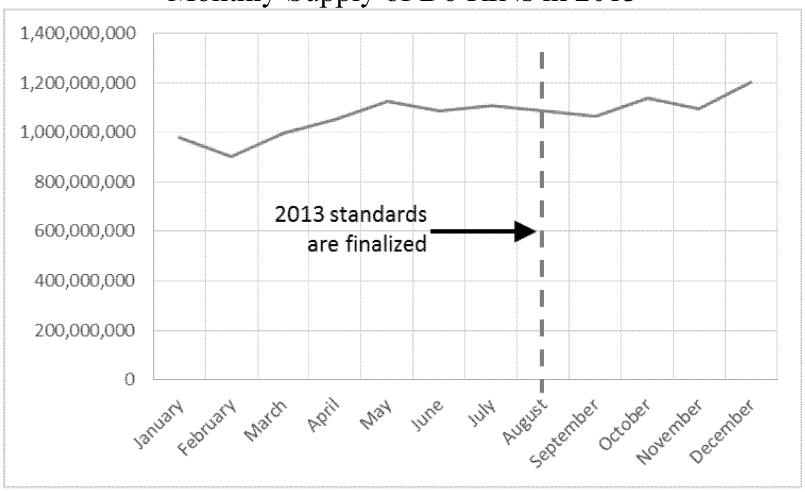


Figure II.E.1-3
Monthly Supply of D6 RINs in 2013



Some stakeholders said that the volume requirements for 2014, 2015, and 2016 that we proposed in the June 2015 NPRM reflected EPA's view that the various constraints represent absolute barriers to the expanded use of

ethanol specifically or renewable fuel in general. This was not the view we expressed in the NPRM and it is not our view now. Instead, these constraints mean that increasing the supply of renewable fuel will require time, and that the statutory volumes cannot be met according to the schedule reflected in the statute. As stated in the NPRM, we do believe that markets have a demonstrated ability to overcome some constraints with the appropriate policy drivers in place given sufficient time, and that the RFS program can drive renewable fuel use. However, the market's ability to overcome constraints is not unlimited, nor do we think change can be instantaneous, and thus it is appropriate to consider both the potential of the market to respond to the standards we set when we assess the amount of renewable fuel consumption that can be achieved, and the limitations in that potential in 2016. Thus, we are setting the total renewable fuel volume requirement for 2016 at a level that takes into account both the constraints on supply and the ability of the RFS program to incentivize RFS stakeholders to overcome those constraints.

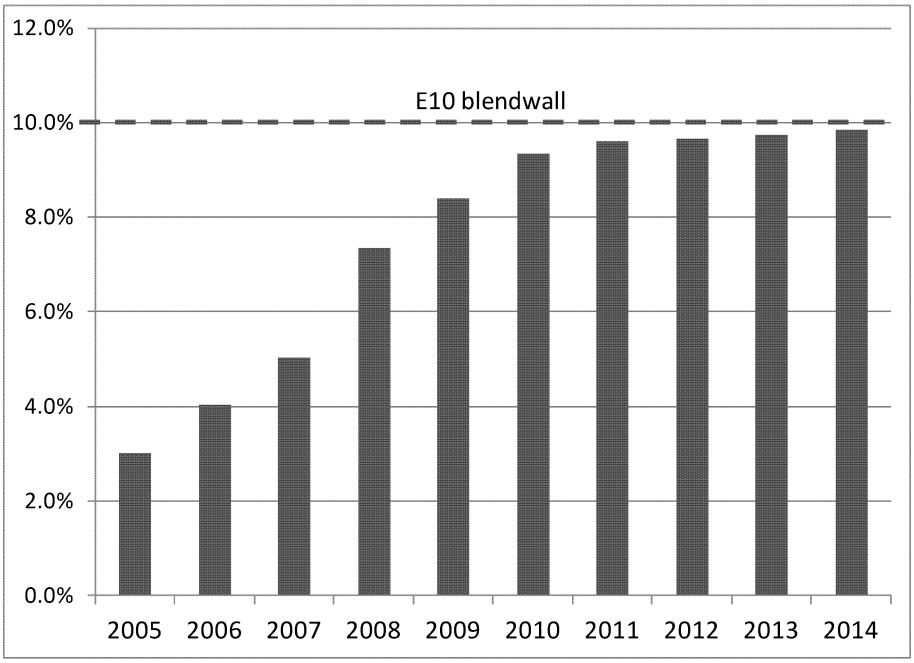
The following sections discuss in further detail our assessment of broad categories of renewable fuel expected to contribute to the total supply of renewable fuel in 2016. We also discuss the particular constraints that we expect will be relevant in projecting the supply of these renewable fuels in 2016.

2. Projecting Ethanol Supply

Ethanol is the most widely produced and consumed biofuel, both domestically and globally. Since the beginning of the RFS program, the total volume of renewable fuel produced and consumed in the United States has grown substantially each year, primarily due to the increased production and use of corn ethanol. Prior to 2013 the primary constraints to the supply of ethanol were the amount of ethanol that could be produced and imported into the United States, and the ability of the market to distribute the ethanol across the country. Virtually all existing retail infrastructure and vehicles were compatible with gasoline containing up to 10% ethanol, and therefore the ethanol supply grew with the production capacity of the domestic ethanol industry and the rapid build-out of the ethanol distribution and terminal blending capacity to supply E10. A combination of factors, including the demand certainty provided by the RFS and the ability to profitably market ethanol in E10 blends due to relatively high gasoline prices, relatively low corn prices, and the blenders tax credit (available through 2011), provided the economic incentive for the investment that led to rapid increases in ethanol production and distribution capacity, dramatically increasing the total supply of ethanol to vehicles.

However, as the gasoline market became saturated with E10 in 2013 and 2014, the constraints on the supply of ethanol began to change. The supply of ethanol depends on the overall demand for gasoline as well as the percentage of ethanol blended into gasoline. In order for the supply of ethanol to increase it now needs to be sold in higher level blends, such as E15 or E85. These fuels are not compatible with much of the existing retail infrastructure and cannot be used in all vehicles and engines. The low number of retail stations selling these higher level ethanol blends, along with poor price advantages for these higher level blends compared to E10, a limited number of FFVs, and ineffective marketing of these fuels represent the biggest challenges to the continued growth of the supply of ethanol as a transportation fuel in the United States. As can be seen in Figure II.E.2–1 below, the rate of growth in the use of ethanol as a percentage of the motor gasoline market decreased dramatically as it approached an average concentration of 10% nationwide.

Figure II.E.2-1
Ethanol Concentration of Gasoline



Source: EIA's Short Term Energy Outlook

Since 2013, the number of FFVs in the fleet and the number of retail stations offering E15 and E85 have grown, and we believe that this growth has been influenced in part by the RFS program. However, this growth has been very modest. The number of retail stations offering E85 was about 3,000 by the end of 2014, representing only about 2% of stations nationwide.[76] There were about 14 million FFVs in the fleet in 2014, representing about 6% of all light-duty cars and trucks. However, with only about 2% of retail stations offering E85 only a minority of those FFVs had an E85 refueling station nearby. Additionally, with E85 almost always priced higher than E10 on a cost per mile basis, only a fraction of the FFV owners with access to a refueling station offering E85 chose to purchase this fuel.[77] These constraints are unlikely to change significantly in 2016, though we do expect some growth in each of these areas under the influence of the standards we set under the RFS program, and as a result of a recent USDA program that will provide $100 million to develop infrastructure for higher ethanol blends, as discussed in Section II.E.2.v.

While the price of the RIN that is generated and assigned to a gallon of ethanol theoretically should allow E85 to be priced at a level to encourage consumers to purchase these fuel blends when available (cheaper than E10 on a per mile basis), data that EPA has reviewed suggest this is unlikely in 2016. In the sections that follow we first discuss the data supporting our conclusion that the RIN is currently an inefficient mechanism for reducing the price for higher level ethanol blends at retail, and therefore unlikely to be able to significantly impact the supply of ethanol in the United States in 2016. We then discuss in detail our projected supply of E0 (which impacts the supply of ethanol by reducing the gasoline pool into which ethanol can be blended), E10, E15, and E85. We note that throughout this discussion we do not differentiate between ethanol produced from corn, sugarcane, or any other feedstock. This is because we believe that the supply of ethanol in 2016 will not be limited by the amount or types of ethanol produced, but rather by other constraints as discussed below. Therefore, in projecting the ethanol supply for the purpose of setting the total renewable fuel volume requirement, the feedstocks used to produce the ethanol and any particular constraints related to these individual feedstocks are not relevant considerations.

i. Ethanol Supply as E10 in 2016

Based on comments received in response to the NPRM, it is clear that the E10 blendwall is viewed differently by different stakeholders. Some stakeholders, most notably refiners, expressed the belief that the constraints on sales of higher ethanol blends such as E15 and E85 are so substantial, and the time available to address those constraints for 2016 is so limited, that exceeding a pool-wide ethanol content of 10% is either unattainable or could occur only at great cost with corresponding increases in fuel prices and disruption to fuel supplies. Other stakeholders, primarily ethanol proponents, instead argued that substantially higher volumes of E15 and/or E85 can be reached in 2016 with available infrastructure, despite insufficient efforts in the past to expand infrastructure for E15 and E85. These stakeholders generally argued that higher standards would result in higher RIN prices, which in turn would result in greater price discounting for E15 and E85 in comparison to E10 and thus higher sales of those higher level ethanol blends. They further argued that higher RIN prices, even if significant, would not result in higher fuel prices to consumers.

Our view of the E10 blendwall falls between these two viewpoints. We believe that there are real constraints on the ability of the market to exceed a pool-wide ethanol content of 10%. However, these constraints do not have the same significance at all levels above 10% ethanol. Instead, for the state of infrastructure that can be available in 2016, the constraints represent a continuum of mild resistance to growth at the first increments above 10% ethanol and evolve to significant obstacles at higher levels of ethanol. This gradual nature of the impacts of the constraints is due to the fact that small increases in ethanol volumes above 10% are likely to be possible with changes in RIN prices, while larger increases are only possible with changes to infrastructure that cannot occur as quickly. The transition from mild resistance to significant obstacles occurs by degrees rather than all at once, and overcoming the constraints will likely require different solutions over different time periods. It is difficult to identify the precise boundary between volumes that can be achieved with mild difficulty in 2016 and those that likely cannot realistically be achieved over the next year. Ultimately the market will determine the extent to which compliance with the annual standards is achieved through the use of greater volumes of ethanol or other, non-ethanol renewable fuels.

The volume requirements that we are setting today, particularly for 2016, are intended to result in pressure on the market to exceed the E10 blendwall, but we do not believe the 2016 standards are capable of overcoming all constraints. Whether the market will respond to the standards we set by increasing the use of E15–E85 is unclear, as it is a function of actions taken by various fuel market participants, including obligated parties, renewable fuel producers, distributors and marketers, gasoline and diesel retailers, and consumers. Nevertheless, the standards we are setting acknowledge that opportunities exist to exceed the E10 blendwall as described more fully in Section II.G below.

Many stakeholders, regardless of their views on whether the E10 blendwall can or should be a consideration in the determination of applicable volume requirements, made the implicit assumption in their comments that the total volume of ethanol that would be used was identical to the volume of non-advanced (*i.e.,* conventional) renewable fuel that would be necessary. Not only is this assumption incorrect, but it oversimplifies the true nature of the standards and the process of determining appropriate levels for those standards. While the portion of the 2016 cellulosic biofuel standard that we expect to be ethanol is only 20 million gallons, significantly larger volumes of ethanol may be used to meet the advanced biofuel volume requirement. As discussed in Section II.F, total volumes of advanced ethanol can reasonably be expected to reach 200 hundred million gallons. It is also likely that a portion of the conventional renewable fuel pool will be non-ethanol as evidenced by production and imports of conventional biodiesel and renewable diesel in the past.

The amount of ethanol associated with the E10 blendwall (the volume of ethanol that could be consumed if all gasoline was E10) is driven by the total demand for gasoline, and thus, if all other considerations are equal, ethanol consumption will tend to increase if gasoline consumption increases and ethanol consumption will tend to decrease if gasoline consumption decreases. In the NPRM we used a projection of 2016 gasoline demand from the May, 2015 version of EIA's Short-Term Energy Outlook (STEO), as

[76] Source: DOE's Alternative Fuels Data Center.

[77] E85 would need to be priced at least 22% below E10 to be equivalent on a cost per mile basis. Instead, E85 price discounts have been less than 18% for the last several years according to E85prices.com.

this was the most recent version available at that time. For this final rule we have used the October, 2015 version of the STEO, again because it is the most recent data available.[78] As shown in the table below, projected 2016 gasoline demand increased by about 1.4% between May and October, most likely driven by lower crude oil prices.

TABLE II.E.2.i–1—PROJECTED 2016 GASOLINE DEMAND AND THE E10 BLENDWALL

	May, 2015	October, 2015	Difference
Demand for gasoline energy (Quad Btu)	16.617	16.852	+0.235
Equivalent volume of E10 (bill gal)	138,045	140,004	+1,959
E10 Blendwall (bill gal)	13,805	14,000	+195

Source: Calculated from volume projections in EIA's Short-Term Energy Outlook for the indicated months, which can be found at *http://www.eia.gov/forecasts/steo/outlook.cfm*. Assumes 3.558 mill Btu/barrel for denatured ethanol and 5.222 mill Btu/barrel for gasoline without ethanol.

In response to our proposed intention to use gasoline projections from EIA, several stakeholders indicated that EIA's projections of gasoline demand have historically tended to be lower than actual demand. They requested that we make an adjustment to EIA's projections to ensure that they are as accurate as possible. We investigated this issue and determined that by and large EIA's projections of gasoline demand have not, in fact, been lower than actual demand. As described in a memorandum to the docket, projected gasoline demand has more often been higher than actual demand, though the errors in demand projections were highly variable.[79] Even so, we do not believe it would be appropriate for EPA to make adjustments to EIA projections to account for potential over- or underestimation of projected gasoline demand. EIA staff are the experts in the analyses required for these particular projections, and EPA does not have the data or expertise necessary to suggest changes to them.

ii. The Impact of RIN Prices on E85 Retail Prices

The RIN system is the mechanism established by EPA for obligated parties to demonstrate compliance with the standards, and is designed to provide obligated parties flexibility in the means they use to achieve compliance. The RFS program, acting through the mechanism of the RIN system, also operates to provide an incentive for renewable fuel producers to increase the production of renewable fuels by, in effect, increasing the price blenders and obligated parties are willing to pay for renewable fuels.[80] Under the RFS program, renewable fuel producers sell not only the fuels they produce, such as ethanol or biodiesel, but also the RINs that are ''assigned'' to the renewable fuel. As the demand for RINs increases based on the obligations applicable to producers and importers of gasoline and diesel, the willingness of the market to pay for renewable fuels and the RINs assigned to them also increases. When working efficiently, this system allows renewable fuel producers to continue to profitably market renewable fuel at times that would otherwise result in negative margins, such as when the price of feedstock and other inputs to renewable fuel production are unusually high, the price of the petroleum fuels that renewable fuels replace is unusually low, or when market demand for renewable fuel is low. In this way the RFS program, through the RIN system, also assists renewable fuel producers seeking to finance the construction of new facilities, especially facilities capable of producing cellulosic or advanced biofuels, by providing certainty that there will be a market for increasing volumes of renewable fuels.

The RIN system should also incentivize the development of the renewable fuel distribution infrastructure by helping to decrease the net cost of renewable fuels. As mentioned above, when fuel blenders or obligated parties purchase renewable fuel directly from renewable fuel producers this fuel generally comes with an assigned RIN. When a fuel blender blends the renewable fuel with petroleum-based fuel to create finished transportation fuel, the blender is able to separate and sell the RIN that was previously assigned to the renewable fuel. Whatever price the fuel blender or obligated party receives when they sell the separated RIN can be thought of as reducing the net purchase price of the renewable fuel. For example, if a fuel blender purchases a gallon of ethanol with an attached RIN for $1.50 and, after blending the ethanol to create transportation fuel, sells the RIN for $0.50, the blender has effectively paid $1.00 for the gallon of ethanol without the RIN. The higher the price received for the RIN, the lower the effective cost of the renewable fuel compared to the petroleum fuel it displaces (and the higher the price of the petroleum fuel or blendstock necessary for the obligated party to recoup the cost of the RIN). Higher RIN prices therefore enable fuel blenders to market finished fuels that contain renewable fuel components at lower prices by allowing them to purchase renewable fuels for a lower effective price. A fuel blender can choose not to reduce the price of the blended fuel and keep the value associated with the RIN as profit, or they can attempt to increase their sales volumes and market share by passing along the lower effective purchase price of the renewable fuel to the customers in the price of their fuel blends.[81] If the blender retains all, or a significant portion, of the RIN value, the ability for the RIN to impact the retail prices and sales volumes of E85 (or other renewable fuels) will be reduced. By increasing the potential profitability of blending renewable fuels, however, higher RIN prices can incentivize the build out of the infrastructure necessary to blend and distribute renewable fuel

[78] We received 2015 and 2016 transportation fuel demand projections from EIA's Adam Sieminski on September 16, 2015, which included gasoline demand projections from the September 2015 STEO. However, we believe it is more appropriate to use gasoline demand projections from the more recent October 2015 STEO. Using the most up to date EIA data on projected gasoline and diesel demand allows our assessment of 2016 supply, and calculation of percentage standards, to be as accurate as possible.

[79] ''Analysis of historical errors in projections of gasoline and distillate demand from EIA,'' David Korotney, memorandum to EPA docket EPA–HQ–OAR–2015–0111.

[80] This is the case for years when the RFS standards are binding, or causing the market to consume renewable fuels in volumes beyond what they would otherwise choose to use, such as 2013. In years prior to 2013 where the RFS standard for total renewable fuel were not binding, the RINs generally reflect transaction costs.

[81] In competitive markets, such as the market for E10, fuel blenders must reflect the lower effective prices of renewable fuel (ethanol) in the price of the E10. For emerging markets, such as E85, there may be greater opportunities for fuel blenders to withhold profit due to a lack of market competition until such a time as other parties enter the E85 market.

blends as parties seek to enter or expand their position within this market.[82]

Finally, the RFS program, operating through the RIN system should also increase the consumption of renewable fuels by ultimately decreasing the cost of renewable fuel blends to consumers relative to the cost of fuel blends that do not contain renewable fuels. RIN prices can be used by blenders to decrease the effective cost of renewable fuel used to create transportation fuel. As more market participants enter the renewable fuel blending and distribution marketplace, and consumers learn to accurately compare the cost of E10 and other higher-level ethanol blends, over some period of time the competition among renewable fuel blenders and distributors should result in a greater portion of the reduced effective cost of renewable fuel blends enabled by the sale of the RIN to be passed on to fuel consumers. Retail prices for transportation fuel that contains renewable fuels should then reflect these cost reductions relative to transportation fuel containing lower volumes of renewable fuel (or no renewable fuel) in proportion to their renewable fuel content; transportation fuel containing a greater percentage of renewable fuels should be priced lower than transportation fuel containing a lesser percentage of renewable fuel. Motivated by the lower fuel prices for transportation fuel containing greater renewable fuel content (such as E85) relative to fuels containing less renewable fuel (such as E10), consumers who own flexible fuel vehicles (FFVs) will then choose to purchase increasing volumes of renewable fuel. If the price discount for renewable fuels is great enough for a long enough period of time, more consumers may also be motivated to purchase vehicles capable of utilizing fuels containing higher percentages of renewable fuels, such as FFVs.

Several commenters pointed to the ability of RIN prices to reduce the price of fuels containing higher concentrations of renewable fuels, such as E85, as a primary justification for establishing a higher total renewable fuel standard. They claimed that if EPA established a higher standard than proposed, RIN prices would rise, retail prices for E85 would fall relative to those for gasoline, and consequently consumers would purchase greater volumes of E85. In effect, these comments said, the RIN mechanism would ensure that greater volumes of renewable fuel would be consumed, the renewable fuels market would expand, and sufficient RINs would be generated to meet the higher standards. Some commenters also noted that since EPA agreed that higher RIN prices would not be expected to impact E10 prices there would be no economic harm in setting a higher total renewable fuel standard, and that this action was necessary in order to drive renewable fuel consumption beyond the E10 blendwall. In contrast, other commenters claimed that higher RIN prices would not have the desired effect of increasing the consumption of renewable fuels, at least not in the short term, and that high RIN prices could have adverse economic impacts, including higher diesel fuel prices, as EPA has already acknowledged.

If higher RIN prices, which would likely result from a higher total renewable fuel standard, are to lead to substantial increases in E85 consumption, two independent events must occur. First, the higher RIN prices must lead to lower E85 retail prices. If this does not happen consumers would have no incentive to purchase additional volumes of E85 as a result of higher RIN prices. Second, FFV owners must respond to these lower prices by purchasing E85 instead of E10 when E85 is available. Authors such as Babcock and Pouliot, who have written about the ability for RINs to drive significant increases in E85 sales volumes, optimistically assume that RIN prices are passed through to E85 prices and that consumers are highly responsive to E85 prices.[83]

EPA examined available data in an attempt to determine whether or not higher RIN prices resulted in lower E85 prices at retail, and whether lower E85 retail prices lead to substantial increases in E85 sales, as economic theory would suggest would be the case when FFV owners receive better value for purchasing E85 rather than E10. Our analysis suggests that the market was not sufficiently responsive to higher RIN prices to drive large increases in E85 sales volumes in the period of time at question. For instance, we found that between January 2013 and July 2015 only 44% of the RIN value was passed on to E85 customers in the form of lower E85 retail prices.[84] Recent work by other parties has reached similar conclusions.[85] We also found that while sales volumes of E85 did increase as the price discount for E85 relative to E10 increased, these sales increases were both less dramatic than many have assumed, and perhaps more importantly, did not increase sharply when the price discount exceeded energy parity, as others, including Babcock and Pouliot have assumed.[86] While we did not investigate all factors that might slow retail response to changing RIN prices, our observations lead us to conclude that if EPA were to increase the total renewable fuel volume requirement significantly, we would expect to see sharply higher RIN prices, but sales volumes of E85 would be expected to see only modest increases that would be insufficient to enable the market to reach the statutory targets.

While economic theory and the illustrations above support the idea that RINs can serve as a mechanism to increase the production, distribution, and consumption of renewable fuels, it is important to note that this result is dependent on the marketplace working both efficiently and quickly. In reality, there is a timing component associated with each of the steps outlined above. Renewable fuel producers and investors must see a sustained, profitable market for renewable fuels before they will be willing to invest in the construction of additional fuel production capacity, which may take years to construct and bring online. Fuel blenders and distributors must see sustained profit opportunities before they are willing to invest in new infrastructure to increase their capacity to blend and distribute renewable fuels. Market competition must increase before fuel blenders and distributors are willing to pass along all of the reduced effective price of renewable fuel (in essence, the value of RINs) to consumers at retail. New fueling infrastructure will need to be built to facilitate the growth in sales of

[82] For further background information on EPA's understanding of the RIN and renewable fuel market dynamics see ''A Preliminary Assessment of RIN Market Dynamics, RIN Prices, and Their Effects,'' Dallas Burkholder, Office of Transportation and Air Quality, US EPA. May 14, 2015, EPA Air Docket EPA–HQ–OAR–2015–0111.

[83] Babcock, Bruce A. and Sebastien Pouliot. *Feasibility and Cost of Increasing US Ethanol Consumption Beyond E10.* Card Policy Briefs, January 2014. 14–PB 17.

[84] ''An Assessment of the Impact of RIN Prices on the Retail Price of E85,'' Dallas Burkholder, Office of Transportation and Air Quality, US EPA. November 2015. EPA Air Docket EPA–HQ–OAR–2015–0111.

[85] Knittel, Christopher R., Ben S. Meiselman, and James H. Stock. The Passthrough of RIN Prices to Wholesale and Retail Fuels Under the Renewable Fuel Standard. Working Paper 21343. NBER Working Paper Series. Available online <*http://www.nber.org/papers/w21343.pdf*>

[86] Because E85 contains approximately 22% less energy per gallon than E10, economic theory would suggest that minimal volumes of E85 would be sold when the price discount for E85 relative to E10 was less than 22% and that sharply increasing sales volumes would occur when the price discount exceeds 22%. For more information on the observed relationship between E85 retail pricing and E85 sales volumes, see ''Correlating E85 consumption volumes with E85 price,'' memorandum from David Korotney to EPA Docket EPA–HQ–OAR–2015–0111.

fuels containing an increasing percentage of renewable fuel. And as exposure to renewable fuels increases, it will take some time for consumers to learn to identify value in fuel blends containing higher proportions of renewable fuels, as well as their vehicle's ability to handle these fuel blends and where they are available for purchase.

This suggests that while the RFS program can be effective at increasing the renewable content of transportation fuels over time, it likely cannot substantially increase the available supply of renewable transportation fuels to consumers in the United States to the volumes envisioned by Congress in the short term. The program, as Congress clearly indicated, is intended to grow over a period of years. Market participants require long term certainty in EPA's approach to establishing renewable fuel standards to allow them to effectively plan for the most efficient and least costly ways to provide the needed fuels and comply with the standards. EPA remains committed to promoting renewable fuel production and use in the United States, and we believe the RFS program will be effective in achieving this end. Due to the current state of the renewable fuel production, distribution, and consumption marketplace, we believe the required volumes of renewable fuel must be reduced below the statutory levels in the immediate near term. An approach that acknowledges supply constraints when determining the appropriate volume requirements is necessary, is consistent with the statute and Congressional intent, and is the intended outcome of this action.

iii. Ethanol Supply as E85 in 2016

While the use of one gallon of E15 can increase the amount of ethanol used by about 50% in comparison to an energy-equivalent gallon of E10, the use of one gallon of E85 can increase the amount of ethanol over that in an energy-equivalent gallon of E10 by about a factor of nine.[87] As a result, many stakeholders focused on the potential for increases in sales of E85 to quickly and significantly increase total ethanol consumption. Stakeholders who believed that our proposed volume requirements were too high similarly focused on E85 as being an impractical means of exceeding the E10 blendwall.

All stakeholders agreed that actual sales of E85 in the past have been low. A number of parties referenced E85 estimates made using EIA data of about 77 million gallons in 2014. This estimate was based on data collected from two sources: Refiners and blenders, and ethanol production facilities.[88] After further investigation, however, we believe that this estimate is lower than actual E85 use. EIA's Bulk Terminal and Blender Report is administered only to entities with at least 50,000 barrels of product storage capacity, so production at terminals, ethanol production facilities, or blenders that do not meet this threshold is not reported to EIA. EIA also does not collect information on E85 produced using reformulated gasoline or natural gasoline as the petroleum based component.[89] We believe that E85 produced using these petroleum blendstocks represents a significant portion of the total E85 produced in 2014. When considering the E85 production volumes reported to EIA in 2014 in light of the potential for production of E85 not covered by EIA's surveys, we believe that actual E85 sales were closer to about 150 million gallons in 2014. Details of our analysis can be found in a memorandum to the docket.[90]

Although 150 million gallons is about twice as high as the estimate discussed above based on EIA data, it still does not indicate an overall preference among FFV owners for E85 when E85 has been available. Indeed, based on other comments received it is clear that the experience at retail has been mixed. Some retailers, such as 3G Energy, found that E85 sales were good and they were able to make a profit from selling it. Others, such as U.S. Ethanol, found E85 sales to be very poor and have consequently converted E85 tanks to other uses. Other retailers, including some in the Midwest, have recently made decisions to market E0 in lieu of E85 due to greater relative consumer interest in E0 in the current economic climate. There was no consistent trend among comments provided by parties attempting to sell E85 on the attractiveness of the product to FFV owners.

Most stakeholders agreed that one important factor in low historical sales of E85 is the small number of retail stations offering it. According to DOE's Alternative Fuels Data Center, the number of E85 stations reached 2,941 in August of 2015. While the growth in E85 stations was substantial in late 2010 and early 2011—equivalent to about 400 new stations per year—since then growth in the number of E85 stations has been considerably slower at about 120 per year. Most recently growth may have plateaued due to the lower price of crude oil, reducing the attractiveness of E85 to consumers and thus the willingness of retailers to invest to make it available at their stations.

A number of stakeholders cited a recent grant program sponsored by USDA that is designed to provide a total of $100 million for updated and expanded infrastructure at retail for higher level ethanol blends.[91] This is an important program that not only demonstrates the U.S. commitment to expanding the use of renewable fuels, but helps to boost private investment in infrastructure by providing matching funds. It is expected to increase the number of stations offering higher level ethanol blends by 1,486, and to increase the number of underground tanks that can hold higher level ethanol blends by 515.[92] While the infrastructure changes are required to be completed by the end of 2016, there are also opportunities for extensions of up to two additional years. The program supports both E15 and E85 deployment. It is unclear how many new E15 and E85 stations would result from this USDA program in 2016. If E85 stations were installed in 2016 at a rate that rivaled the dramatic increases seen in 2010–2011, about 400 new E85 stations could be added in 2016. This would bring the total number of stations to about 3,300. However, it is not possible to make a precise projection at this time of the impacts of this grant program on the number of E85 stations that will be in operation in 2016.

Even if the number of E85 stations did reach 3,300 in 2016, it would represent an increase of only 12% in comparison

[87] We have assumed that the ethanol content of E85 is 74% on average, consistent with the approach taken by EIA. One gallon of E85 would replace 0.79 gallon of E10 due to the energy content difference. Ethanol content of one gallon of E85 would be 0.74 gal, while ethanol content of 0.79 gal of E10 would be 0.079 gal. 0.74/0.079 = 9.4.

[88] See EIA–810 form, Part 5, where refiners and blenders indicate production of ''Finished motor gasoline, Conventional, Greater than ED55'', *http://www.eia.gov/survey/form/eia_810/form.pdf*, and EIA–819 form, Part 6, where ethanol producers report ''Blending to produce finished motor fuel,'' ''Conventional, Greater than Ed55,'' *http://www.eia.gov/survey/form/eia_819/form.pdf.*

[89] As further evidence for the underestimate of E85 production at ethanol production facilities, we note that the reported E85 production in 2009 was −(minus)228 thousand barrels, strongly suggesting that the accounting involved is not based on E85 volumes alone.

[90] ''Estimating E85 Consumption in 2013 and 2014,'' Dallas Burkholder, Office of Transportation and Air Quality, US EPA. November 2015. EPA Air Docket EPA–HQ–OAR–2015–0111.

[91] ''USDA grant program—Biofuel Infrastructure Partnership'', docket EPA–HQ–OAR–2015–0111.

[92] ''BIP Awards by State,'' docket EPA–HQ–OAR–2015–0111. It is unclear how many of the 515 new tanks will be used for E15 versus E85, nor how many of the additional 1,486 stations will offer E15, E85, or both.

to those in operation as of August, 2015. It is reasonable to assume that a 12% increase in the number of E85 stations would result in overall sales of E85 increasing by 12%, all other things being equal. However, many stakeholders pointed to the power of high-priced RINs to motivate consumers to use more E85 and argued that larger growth was possible from the impact of high-priced RINs than from the growth in the number of E85 stations. More specifically, many ethanol proponents claimed that increasing the volume requirements above the levels proposed in the NPRM, even up to the statutory targets, would increase RIN prices, which in turn would translate into a larger retail price discount for E85 in comparison to gasoline. This larger price discount would make E85 more attractive to FFV owners, and thus sales of E85 would increase beyond a level that is merely proportional to the number of E85 stations.

As discussed in more detail in Section II.E.2.ii, we agree generally that the market could theoretically be expected to work in this way in response to higher standards. However, we have investigated the specific mechanisms involved and have concluded that the process is far more constrained in the immediate future than most ethanol proponents believe it to be. These constraints, discussed further below, make it inappropriate to estimate total potential E85 consumption based on the consumption capacity of all FFVs, or even just those FFVs with reasonable access to E85. It is similarly inappropriate to assume that the E85 throughput at a given retail station can be the same as typical throughput rates for E10. Such estimates demonstrate what is physically possible, not what is likely to occur given the way that the market actually operates under the influence of high RIN prices as evidenced by the limited growth in 2013 despite the standards that were in place.

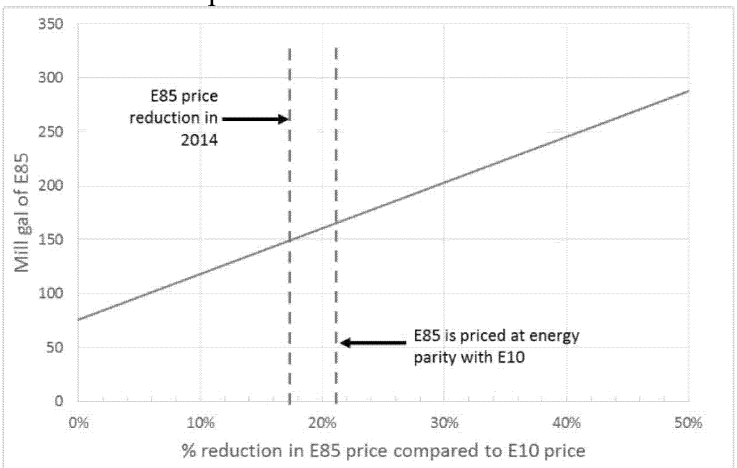
Based on an analysis of available data, we have determined that at this point in the market's development, the constraints on the ability of applicable standards to drive increased consumption of E85 in 2016 are twofold:

- Higher RIN prices are not likely to produce dollar-for-dollar equivalent reductions in E85 retail prices under current circumstances wherein the number of E85 stations is too few to compel competition between them.
- Reductions in E85 retail prices are associated with only moderate increases in E85 sales to FFV owners.

As discussed in a memorandum to the docket, we found that only a minority of the value of RINs has been passed on to FFV owners in the past in the form of lower E85 retail prices.[93] This effect appears to be due to the fact that there is often little incentive for wholesalers to pass the full value of the RIN on to retailers in the form of lower E85 prices, and/or retailers can maximize their overall profits by retaining much of the value of the RIN that they do receive rather than passing that value on to customers in an effort to increase sales of E85.

We have also found that greater E85 price discounts relative to gasoline have not been associated with the substantial increases in E85 sales volumes that would be needed to reach the total E85 consumption levels that some stakeholders said are possible. Based on an analysis of E85 consumption in five states (including the frequently cited E85 consumption data from Minnesota) and the E85 price reductions relative to gasoline in those states, as shown in Figure II.E.2.iii–1 below, we estimate that increasing the E85 price reduction from the 2014 nationwide average of 17.5% to 30% would have increased total 2014 E85 consumption to about 200 million gallons, an increase of only 33%. A recent paper published by Babcock and Pouliot estimated similar sales volumes for these price reductions, projecting that consumers would consume about 250 million gallons of E85 if it was priced at parity on a cost-per-mile basis with E10 (approximately 22% lower on a price-per gallon basis).[94]

Figure II.E.2.iii-1
Estimated Nationwide Relationship Between E85 Price Reductions and Consumption in 2014



It is possible that significant increases in the number of retail stations offering E85 could help to increase E85 consumption. It is also possible that the relationship between E85 consumption and prices in the five states analyzed is not indicative of consumer responses in other states, but instead the consumer responses in other states could be more dramatic. We examined the potential impacts of these factors and determined that collectively it may be possible for

[93] "An Assessment of the Impact of RIN Prices on the Retail Price of E85," Dallas Burkholder, Office of Transportation and Air Quality, U.S. EPA. November 2015. EPA Air Docket EPA–HQ–OAR–2015–0111.

[94] Babcock, Bruce and Sebastien Pouliot. *How Much Ethanol Can Be Consumed in E85?* Card Policy Briefs, September 2015. 15–BP 54.

nationwide E85 consumption to reach as high as 400 million gallons in 2016. This volume could only occur if all relevant factors were extremely favorable, and we do not consider this to be a likely outcome in 2016. Further discussion of these analyses can be found in a memorandum to the docket.[95]

Our observations and analysis lead us to conclude that if EPA were to dramatically increase the total renewable fuel volume requirement for 2016 above the level we proposed, in the near term we would expect to see sharply higher RIN prices, but this would not translate into dramatically higher E85 sales volumes in the near term. However, sustained higher RIN prices would, over the longer term, be expected to provide greater incentive for the market to expand infrastructure.

iv. E0 Demand in 2016

One of the ways that the RFS program can increase the supply of renewable fuels in the United States is by incentivizing the market to continue to transition from E0 (gasoline containing no ethanol) to E10 and other higher level ethanol blends. While the RFS program provides a significant incentive for this transition, the continued availability of E0 in certain markets is also something that we believe we must consider in determining the supply of ethanol in 2016. E0 continues to be marketed in many parts of the country, often at a significant cost premium to E10, including in the Midwest where ethanol is most readily available at the lowest cost. In the NPRM we discussed the potential for ongoing use of E0 through 2016 and into the future. We anticipated that E0 use would remain fairly limited and would tend to decrease over time given the widening use of ethanol overall. We also highlighted one particular market segment, recreational marine engines, that we believed would be particularly difficult to transition from E0. While most nonroad engines in use today can operate on E10, recreational marine engines are a potentially special subcategory. Because such engines are used in a water environment there is a greater potential for water contamination of the fuel. For gasoline that contains ethanol, the ethanol-water mixture may then separate from the gasoline and cause engine damage. As a result, some recreational marine engine owners seek out E0. We believe that we should take into consideration the ongoing preference for some E0 in this context.

In the NPRM we discussed our investigation into the volumes of E0 that are in demand by owners of recreational marine engines. We expressed our view that it is most likely that any recreational marine engines refueled at retail service stations would use only E10 since E0 is rarely offered at retail. Moreover, only a small minority of recreational marine engines refuel at marinas where E0 is more likely to be available. Based on this assessment, we estimated that about 124 million gallons of E0 would be consumed by recreational marine engines in 2016. We estimated that the impact of this volume of E0 used in such applications on the total supply of renewable fuel in 2016 would be very low, and would likely be offset by the small expected use of E15. As a result, we omitted E0 and E15 from the scenarios described in Table II.D.2–2 of the NPRM.

Stakeholders that commented on this topic generally agreed that E0 will continue to exist, but argued that our estimates of the likely volumes of E0 were too low. For instance, in their joint comments on the NPRM, the American Petroleum Institute and the American Fuel and Petrochemical Manufacturers (API/AFPM) suggested that there is ongoing demand for E0 at a level of at least 3% of the total gasoline pool. This would be the equivalent of about 4 billion gallons of E0, considerably higher than the 124 million gallons we estimated in the NPRM. They based this position on data from EIA on the supply of non-ethanol conventional gasoline from refineries, importers, and blenders, corrected to account for exports and stock changes. We investigated the EIA data on which the API/AFPM comments were based, and concluded that it is not an appropriate basis for determining the amount of E0 actually sold at retail, and thus cannot be used to estimate likely E0 sales. While the EIA data at issue does take into account the production of E10 by large terminals from E0 supplied by refiners, it does not account for E10 produced downstream at smaller facilities, truck blending, and blending at retail. Given that there are a number of states that require the supply of E0 at the wholesale level explicitly to permit downstream blending with ethanol, the estimates of E0 supply referenced by API/AFPM that were generated from EIA gasoline supply data overestimate the potential demand for E0 at retail.[96]

In response to the NPRM, a number of organizations disagreed with our assessment of the potential volume of E0 consumed by recreational marine engines. Several stakeholders pointed to EPA's own NONROAD model as providing much higher estimates of total gasoline consumption by these engines. We agree that total gasoline consumption by recreational marine engines is substantial—about 1.55 billion gallons according to a recent estimate from the EPA's NONROAD model.[97] However, we disagree that all of this volume is E0, and no stakeholders provided any data on actual consumption of E0 by recreational marine engines. Instead, stakeholders pointed to anecdotal evidence that owners of recreational marine engines preferentially seek out E0. One stakeholder referenced data purporting to show that states with the greatest number of retail stations offering E0 tend to also be states with the greatest number of registered boats. After reviewing these data we concluded that a weak correlation does exist, but that it nevertheless provides no straightforward mechanism to quantitatively determine the volume of E0 consumed by recreational marine engines. Notably, the same data suggest that not all marinas may offer E0. As described in a memorandum to the docket, we considered several different approaches to estimating the volume of E0 consumed by recreational marine engines.[98]

Based on the information provided by stakeholders and our own analyses, we believe that the volume of E0 consumed by recreational marine engines or otherwise demanded by the marketplace could be as high as several hundred million gallons in 2016. As a result, we have included some estimates of E0 in the volumes scenarios described in Section II.G below. Those scenarios demonstrate that our final volume requirements can be met even in cases where some volume of E0 remains in the marketplace.

v. Ethanol Supply as E15 in 2016

In the NPRM, we discussed the fact that E15 is approved for use in model year 2001 and newer motor vehicles, but that we expected the volume of E15 used in 2016 to be low. We based this assessment on the fact that the number of retail stations offering it at the time of the NPRM was only about 100 out of the approximately 152,000 retail stations in the U.S. We estimated that, at most, the use of E15 in 2016 would

[95] ''Correlating E85 consumption volumes with E85 price,'' memorandum from David Korotney to EPA Docket EPA–HQ–OAR–2015–0111.

[96] ''States that require ethanol-free gasoline,'' docket EPA–HQ–OAR–2015–0111.

[97] ''NONROAD estimate of fuel use in recreational marine,'' docket EPA–HQ–OAR–2015–0111.

[98] ''Estimating E0 use in recreational marine engines,'' memorandum from David Korotney to docket EPA–HQ–OAR–2015–0111.

increase total ethanol consumption by only about 10 million gallons. Since this volume was far lower than the volume requirements under consideration, and its impact in our analysis would likely be offset by the small expected use of E0, we omitted E0 and E15 from the scenarios described in Table II.D.2–2 of the NPRM.

While some stakeholders agreed with our assessment, others said that we had significantly underestimated the volume of E15 that could be consumed in 2016, and that doing so biased our proposed volume requirements low. These stakeholders, including the American Coalition for Ethanol and Growth Energy among others, pointed to both the large number of vehicles that are legally permitted to use E15 and opportunities for expanding the number of retail stations that offer E15.

The number of vehicles that are legally permitted to use E15 is large. Model year 2001 and later vehicles comprise about 85% of the current in-use fleet, or about 195 million vehicles. These vehicles have a total annual gasoline consumption capacity of more than 120 billion gallons, so changing their fuel consumption type from E10 to E15 could increase total ethanol consumption by more than 6 billion gallons. However, as pointed out by several stakeholders, being legally permitted by EPA to operate on E15 for emission compliance purposes under the CAA does not necessarily enable expanded use of E15. These stakeholders highlighted that the operator's manuals and manufacturer warranties for vehicles manufactured before 2012 make no mention of E15 because E15 did not exist at the time that those vehicles were manufactured. Manufacturers have been increasingly citing E15 as an acceptable fuel in owner's manuals for various models since 2012, but as of today these statements are not universal for all makes and models. Whether these facts would cause some vehicle owners to avoid E15 is not clear. This situation is similar to the historical situation with E10. E10 has been permitted under the CAA to be used in all highway vehicles and nonroad engines for many years. Nevertheless, it took years for the vehicle manufacturers, especially the nonroad engine manufacturers, to warrant the use of E10 in their products.

Regardless, we do not believe that the number of vehicles that are legally permitted to use E15, or the number of 2001 or later model year vehicle owners who would choose to use it, are the predominant factors in determining the volume of E15 that is likely to be consumed in 2016. Instead, it is the number of retail stations offering E15 in 2016 that is more likely to determine how much E15 is actually consumed. In the time since E15 was approved for use, the number of retail stations registered to offer E15 has only grown to about 120, or about 0.1% of all retail stations, based on information collected by the RFG Survey Association.[99] Based on comments received from retail station owners, this low number of retail stations offering E15 is most likely due to liability concerns. We stated our belief in the NPRM that the number of retail stations offering E15 is unlikely to increase dramatically by the end of 2016. The recently announced Biofuel Infrastructure Partnership (BIP) program managed by USDA is expected to increase the number of underground storage tanks that can hold higher level ethanol blends by 515 tanks, and to increase the number of stations offering higher level ethanol blends by 1,486 stations. However, it is not clear at present how many of these new tanks or stations offering higher level ethanol blends will expand E15 rather than or in addition to E85, nor how many will be operational in 2016 versus subsequent years. At this time, we continue to believe that the number of retail stations likely to offer E15 in 2016 is unlikely to increase fast enough to provide a significant increase in total ethanol consumption in 2016.

Some stakeholders said that the small number of retail stations currently offering E15 is not relevant when making estimates of potential E15 sales for 2016. They claimed that the equipment at most retail stations is already compatible with E15, and typically cited two studies as the basis for claiming that the number of stations offering E15 could expand significantly in 2016: one by the National Renewable Energy Laboratory (NREL), and another by Stillwater Associates.[100] [101] These stakeholders argued that the number of retail stations offering E15 could expand by many thousands by the end of 2016 if EPA were to create the appropriate incentives by setting the applicable volume requirements much higher than proposed.

In evaluating the potential for expansion of E15 offerings at retail, we think it is important to consider the views of those whose business entails making determinations about which fuels to offer at retail. This perspective was provided by the Petroleum Marketers Association of America, the Society of Independent Gasoline Marketers of America, and the National Association of Convenience Stores. These stakeholders made it clear that retailers will in general offer any fuel that has the potential for generating profit. However, in the specific case of E15, there are liability concerns that make it less likely to be offered.

It may be the case that much of the equipment at many retail stations is compatible with E15, as argued in the NREL and Stillwater studies. But stakeholders arguing that there is greater E15 potential than we assumed in the NPRM oversimplify the situation. In their comments, stakeholders representing retail like those mentioned above clarified that compatibility with E15 is not the same as being approved for E15 use. Recently-amended EPA regulations require that parties storing ethanol in underground tanks in concentrations greater than 10 percent demonstrate compatibility of their tanks with the fuel, through either a certification or listing of underground storage tank system equipment or components by a nationally recognized, independent testing laboratory for use with the fuel, written approval by the equipment or component manufacturer, or some other method that is determined by the agency implementing the new requirements to be no less protective of human health and the environment. The use of any equipment to offer E15 that does not satisfy these requirements, even if that equipment is technically compatible with E15, would pose potential liability for the retailer, including concerns related to liability for equipment damage. Few retailers would be willing to assume such liability, according to comments submitted by their national associations. This issue is of particular concern for underground storage tanks and associated hardware, as the documentation for their design and the types of materials used, and even their installation dates, is often unavailable.

Insofar as equipment can be verified as being compatible with E15 and is approved as such by a testing laboratory such as Underwriter's Laboratory, many retailers are still left with significant concerns about liability for misfueling. Notwithstanding EPA regulations that require pump labeling, a misfueling mitigation plan, surveys, product transfer documents, and approval of equipment configurations, retailer associations indicated that many retail

[99] ''Stations registered to offer E15,'' docket EPA–HQ–OAR–2015–0111.

[100] K. Moriarty and J. Yanowitz, ''E15 and Infrastructure,'' National Renewable Energy Laboratory, May 2015. Attachment 3 of comments submitted by the Renewable Fuels Association.

[101] Stillwater Associates, ''Infrastructure Changes and Cost to Increase RFS Ethanol Volumes through Increased E15 and E85 Sales in 2016,'' July 27, 2015. Submitted with comments provided by Growth Energy.

stations owners are nevertheless concerned about litigation liability for misfueling, either for vehicles manufactured before 2001 or for nonroad engines. This concern creates a disincentive for many retailers to offer E15. While such disincentives are not insurmountable, they do represent a constraint that we must take into consideration.

Apart from retail stations that may already have equipment that could be used to offer E15, some stakeholders pointed to the potential for new equipment to be installed at retail, citing a number of companies which have plans for adding E15 dispensing capabilities to retail stations. However, even if all planned installations sponsored by these companies occurred by the end of 2016, they would only expand the number of retail stations offering E15 by a few hundred based on information provided by stakeholders in their comments. The matching funds provided by the USDA BIP program described above may be leveraged by these stakeholders to allow these increases in E15 retail outlets and even more to materialize.[102] However, it is not clear how many additional stations will be able to offer E15 as a result of the BIP program in 2016 specifically, since the program provides for extensions of the equipment installation timelines into 2018. Even if most of the retail stations that have been targeted by the BIP program were upgraded to offer E15 and this occurred by the end of 2016, they would not all offer E15 for all of 2016. Instead, there would be a ramp up of stations offering E15 throughout 2016. Effectively, then, an average of only about 700 might be offering E15 for all of 2016. Since actual experience with E15 sales is so limited, we cannot conduct a detailed analysis of potential E15 volumes as we did for E85. However, we can make an estimate based on historical gasoline retail station throughout. If all of these retail stations also offered E10, and the fuel throughput was the same for both E10 and E15 at each retail station, the total increase in ethanol consumption due to increased use of E15 would be about 17 million gallons in 2016.[103]

We do not believe, based on past experience, that the core concerns retailers have with liability over equipment compatibility and misfueling would change if the RFS volume requirements were increased significantly. Therefore, setting higher volume requirements would be unlikely to result in dramatic increases in the number of additional retail stations offering E15 in 2016 beyond those that may be upgraded through USDA's BIP program. As a result, we do not believe that the E15 expansion can occur on the scale and timeframe that ethanol proponents believe it can. However, we do believe that retail infrastructure can and will change to offer more E15. To the degree that E15 is used, the volume of E85 that might be needed to reach a given volume of ethanol supply above the E10 blendwall would be less. Therefore, in the scenarios described in Section II.G below, we note that E15 could be used in addition to E85 to result in ethanol use above the E10 blendwall.

vi. Total Ethanol Supply in 2016

The total volume of ethanol that can be supplied in 2016 is a function of the respective volumes of E10, E15, and E85 that we believe can be supplied, while accounting for some E0. Assuming that the total demand for gasoline energy is independent of the amounts of each of these types of fuel (16.85 Quadrillion Btu based on the October, 2015 version of EIA's Short-Term Energy Outlook), estimating the volumes of E0, E15, and E85 that will be supplied provides an estimate of the remaining portion of the gasoline fuel pool which is E10.

As discussed earlier, we continue to believe that the volumes of E0 that are both in demand and needed to address potential water contamination in recreational marine engines will be very small in comparison to total gasoline demand. While information provided by stakeholders was not sufficient to permit us to precisely estimate E0 volumes, we investigated several different approaches in a memorandum to the docket that resulted in a range of about 100–300 million gallons. For the purposes of estimating total ethanol supply, we have assumed an E0 supply of 200 million gallons. Actual volumes of E0 used in recreational marine engines in 2016 may be higher or lower than this level, but we do not expect them to be significantly different than 200 million gallons. This would effectively reduce the total supply of ethanol by 20 million gallons relative to a scenario where all gasoline contained at least 10% ethanol.

Similarly, we continue to believe that supply of E15 will be very small in 2016. As described earlier, the primary limitation in E15 supply is the small number of retail stations offering it. While the number of E15 stations can grow significantly in 2016, we do not believe that it can reach the many thousands that some stakeholders said was possible given that the total number of such stations is about 120 currently and stakeholders representing retail service stations have cited potential liability as an ongoing concern. For the purposes of estimating total ethanol supply, it might be possible that total E15 supply in 2016 could reach 320 million gallons, based on an estimate of an average of about 700 stations offering E15 in 2016 as described in Section II.E.2.v. Actual volumes of E15 in 2016 may be higher or lower than this level, but 320 million gallons represents our best estimate of the most likely maximum volumes that can be reasonably be attained by a market responsive to the RFS. This would effectively increase the total supply of ethanol by 17 million gallons relative to a scenario where the volumes assumed here to be used as E15 are instead used as E10.

Finally, our detailed analysis of E85 has led us to conclude that the very large volumes suggested by some stakeholders are out of reach of the market in 2016, given the various constraints. Even if the number of stations offering E85 continues to grow and the price of E85 continues to fall relative to E10, it is highly unlikely that E85 volumes in 2016 can exceed several hundred million gallons. For the purposes of estimating total ethanol supply, we have estimated that total E85 supply in 2016 will reach 200 million gallons, based on an estimate of growth in the number of E85 stations to about 3,200 and an E85 price discount of 22% relative to E10.[104] Actual volumes of E85 in 2016 may be higher or lower than this level, but 200 million gallons represents our best estimate of the most likely maximum volumes that can be attained by a market responsive to the RFS standards. This amounts to an increase in ethanol supply of about 132 million gallons relative to a scenario where the volumes assumed here to be used as E85 are instead used as E10.

Based on these estimates of E0, E15, and E85 supply, we have determined that 139.33 billion gallons of E10 would be supplied in order to ensure that the full gasoline pool provides the 16.85 Quadrillion Btu that EIA has projected will be in demand in 2016. The

[102] "USDA announces state finalists for the Biofuel Infrastructure Partnership," docket EPA–HQ–OAR–2015–0111.

[103] Per-station annual gasoline throughput is about 916 thousand gallons. If a retail station offers both E10 and E15 at equivalent pricing on an energy basis, the annual sales of each would be 458 thousand gallons. For 700 stations, total E15 sales would be 320 mill gal, which would displace about 315 mill gal E10. $15\% \times 320 - 10\% \times 315 = 17$.

[104] A 22% reduction in the price of E85 relative to the price of E10 would ensure that the price of the two fuels are equivalent on the basis of energy content.

combined contributions from E10, E15, and E85 would produce a total ethanol supply in 2016 of 14.13 billion gallons, equivalent to a poolwide average ethanol content of about 10.09%. This volume of ethanol would be composed of cellulosic ethanol, advanced ethanol such as imported sugarcane ethanol, and conventional ethanol such as that produced from corn starch.

TABLE II.E.2.vi–1—GASOLINE VOLUMES USED TO DETERMINE ETHANOL SUPPLY IN 2016

	Fuel volume (mill gal)	Ethanol volume (mill gal)	Energy (quad Btu)
E0	200	0	0.03
E10	139,325	13,932	16.77
E15	320	48	0.04
E85	200	148	0.02
Total	140,045	14,128	16.85

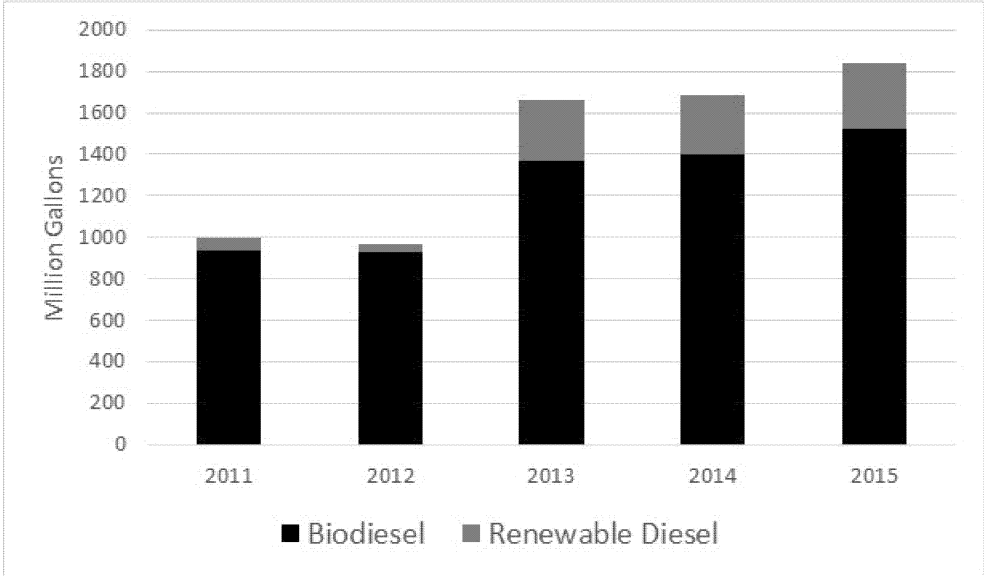
We recognize that the market may not necessarily respond to the final volume requirements for 2016 to produce the volumes of E0, E10, E15 and E85 noted in Table II.E.2.vi–1. However, we believe these volumes are reasonable estimates for use in deriving the final total renewable fuel volume requirement for 2016.

3. Biodiesel and Renewable Diesel

While the market constraints on ethanol supply are readily identifiable as being primarily in the areas of refueling infrastructure and ethanol consumption, it is more difficult to identify and assess the market components that limit potential growth in the use of biodiesel in 2016. Nevertheless, a review of the historical supply volumes of biodiesel and renewable diesel, particularly in 2013, indicates that the growth in supply of these fuels for use in transportation fuel in the United States has constraints.

In 2013 there were two very strong incentives for the increased production, import, and use of biodiesel and renewable diesel in the United States. For the first time in the history of the RFS program, the total renewable fuel standard could not be satisfied by using the minimum amount of biodiesel and renewable diesel required by the BBD volume requirement and blending ethanol as E10. Due to the challenges associated with expanding ethanol consumption through increased sales volumes of E15 and E85 mentioned above, there was a strong demand for non-ethanol fuels. RIN prices for all types of RINs rose as obligated parties sought to meet their RFS obligations. In addition to the incentives provided by the RFS requirements and resulting high RIN prices, the biodiesel blender's tax credit was in place throughout 2013, providing a strong economic incentive for biodiesel growth. With these strong incentives in place, the supply of biodiesel and renewable diesel used in transportation fuel in the United States increased significantly in 2013 (see Figure II.E.3–1 below).

Figure II.E.3-1
Biodiesel and Renewable Supply by Year (2011-2015)



Despite these large increases in the supply of biodiesel and renewable diesel, the number of RINs available to meet the obligated parties' renewable volume obligations fell short of the required volume by about 820 million RINs. This provides a strong indication that the biodiesel and renewable diesel supply in 2013 was limited; if this were not so then we would have expected that the strong demand for RINs in 2013 combined with the availability of the

biodiesel blenders tax credit would have resulted in sufficient production, import, and use of biodiesel and renewable diesel to satisfy the 2013 RFS volume requirements. The situation in 2014 and 2015 is more ambiguous, since there were no final RFS standards in place during 2014 and the first 11 months of 2015 and the availability of the biodiesel blenders tax credit for these years has been very uncertain. Nevertheless, we believe the growth in biodiesel and renewable diesel supplies in 2014 and 2015, together with the market performance in 2013, indicates that while there is significant opportunities for growth in the supply of biodiesel and renewable diesel, supply will be constrained in some way in 2016. The sections that follow discuss the many different factors that may constrain the supply of biodiesel and renewable diesel in 2016.

i. Feedstock Availability

Biodiesel and renewable diesel are produced from biogenic oils, fats, and greases. These can be oils, fats, and greases that are produced as by-products and collected from other industries, oils, fats, and greases recovered from waste streams, or virgin vegetable oils. Increasing the feedstock available for biodiesel and renewable diesel can be done both by diverting feedstocks from other existing uses, increasing the recovery rate of potential feedstocks from waste streams, or increasing the global supply of vegetable oils through greater oil crop cultivation and yields.

Several stakeholders claimed that the level of biodiesel feedstock supply that could be available in 2016 combined with the biodiesel and renewable diesel production capacity that already exists warrant an increase in the required volumes of advanced biofuel and total renewable fuel compared to those we proposed in the NPRM. For instance, the National Biodiesel Board (NBB), in support of their claim that up to 3.4 billion gallons of biodiesel could be available in 2016, submitted a study by LMC International entitled ''*Current and Future Supply of Biodiesel Feedstocks.*'' This study concluded that feedstock availability is not a limiting factor for increasing BBD volumes; there is increased availability of qualifying waste fats, greases, and inedible corn oil, as well as soy, canola and other vegetable oils. According to the study, in 2015 there is enough qualifying feedstock for 6.8 billion gallons of biodiesel globally, and by 2020, there is likely to be sufficient feedstock to support *at least* 8.5 billion gallons of biodiesel.

The LMC International study did not specifically provide estimates of feedstock available for use in the U.S. in 2016, making it difficult to determine how the study might affect our determination of applicable volume requirements for 2016. Moreover, we believe the LMC International study contains an erroneous assumption which contributes to an overestimation of feedstock availability. When estimating availability the study considers the maximum theoretical amount of oil that could be extracted from an oilseed, or ''oil in seed'', versus the amount of oil that is actually expected to be extracted/produced. In reality some amount of the soybean supply is not crushed to produce oil but instead is fed directly to livestock, while in other instances the soybean is crushed and oil is extracted but the oil is added to feed and thus does not enter the oil market. Adding additional soy bean crushing capacity is possible, but would require a strong market signal and take time to construct and bring online. It is unlikely that significant new soy bean oil crushing capacity could be brought online in time to impact the feedstock available for biodiesel and renewable diesel production in 2016. These assumptions result in oil supply estimates that are in some cases significantly higher than USDA estimates. For example, LMC International's estimates of U.S. soybean oil production is more than 80 percent greater than that reported by USDA–WASDE for recent years.

The LCM International study also did not attempt to project the quantity of feedstock that would actually be available for biodiesel and renewable diesel production in light of the demand for these feedstocks from other industries. Currently there is significant competing demand for the feedstocks that can be used to produce biodiesel and renewable diesel from the food, livestock feed and oleochemical industries. Existing feedstock supplies are typically already under contract and/or already set up for certain distribution pathways to end use. These can and do change over time, but they cannot reasonably be expected to do so immediately. Furthermore, even when feedstocks are moved into biodiesel and renewable diesel production, it often means a shifting around of feedstocks, rather than an overall growth in total feedstock production. The existing competing demand for these feedstocks does not go away. If, for example, soy oil feedstocks are drawn away from food use to biodiesel use in response to the recent FDA regulations (as discussed below), it may result in other oil that was being used to produce biodiesel, such as palm or canola oil, now shifting to food use.

Finally, the LMC study did not take into consideration the volumes of feedstocks already devoted to biodiesel and renewable diesel production in the U.S. and abroad. For perspective, according to Statista, 2014 production of biodiesel from the top 15 producing countries was 6.8 billion gallons.[105] This indicates that a considerable amount of the available global feedstock estimated by LMC is already being used for biofuel production, and that much of that biofuel is being used in countries outside the U.S. In essence, the study provides a hypothetical upper limit of BBD oil supply worldwide, not an assessment of the feedstocks available to be used to produce biodiesel and renewable diesel for consumption in the United States in 2016.[106]

The American Soybean Association similarly provided information on higher potential volumes of biodiesel feedstock in 2016. They pointed out that demand for U.S. soybean oil for food use began to decline following the U.S. Food and Drug Administration's (FDA) action in 2003 to require food manufacturers to include trans-fats on nutrition labels. They stated that the likely continued displacement of additional soy oil from food use would make additional soy oil available for biodiesel feedstock. We acknowledge the trend of declining soybean oil use in food, and believe it will continue as a result of a June 2015 FDA determination requiring the elimination by 2018 of all partially hydrogenated oil in food use. To the extent that soy oil is being phased down for food purposes, some supply of soy oil will likely become available for other uses, such as biodiesel production. However, the impact on biodiesel production volumes is not likely to be substantial, particularly for 2016, for two reasons. First, the FDA action will not be complete until 2018. Second, as mentioned above, the removal of some soy oil from food will likely be offset by an increase in the use of other oils in food, with a corresponding reduction in the availability of those other oils for use in making biodiesel. As a result

[105] The world's biggest biodiesel producers in 2014, by country. Statista, Accessed 9/22/2015 *http://www.statista.com/statistics/271472/biodiesel-production-in-selected-countries/*.

[106] We note that a significant portion of the global biodiesel production uses palm oil as a feedstock, which is not a qualifying feedstock in the RFS program. This this production volume is not directly comparable with 6.8 billion gallons of qualifying biodiesel feedstock identified in the LCM International study.

there may be no net impact on biodiesel feedstock supply but rather just a shifting of oils used for different purpose.

We also received comments challenging the availability of additional biodiesel feedstocks and thus the opportunity for increased BBD production. The International Council on Clean Transportation and the Union of Concerned Scientists submitted a study ''Projections of U.S. Production of Biodiesel Feedstock'' by Professor Brorsen at the University of Oklahoma. Professor Brorsen considered all the major sources of U.S. biodiesel feedstock and developed projections of their availability through 2019. The conclusion of the study is that the potential to expand biodiesel production from the feedstocks in the U.S. is quite limited without substantially increasing feedstock prices. The study estimated that the U.S. agricultural sector can increase production of fats/oils beyond 2014 levels by 30 million gallons in 2015, 29 million gallons for 2016, and 25 million gallons in 2017. Thus, according to the study, higher volumes of biodiesel in 2016 beyond the approximately 30 million gallons from the U.S. agricultural sector would have to come from diverting existing feedstocks from current uses, increasing the supply of recovered waste feedstocks, or increasing imports of feedstock or finished biodiesel or renewable diesel, which the study did not address.

We acknowledge that the world supply of oils, fats, and greases that are suitable feedstocks for biodiesel and renewable diesel production has grown and can continue to grow over time. Nevertheless, diverting biodiesel and renewable diesel feedstocks from current uses and increasing total feedstock availability will take time. We believe that this supply can continue to grow as more oilseed crops are planted, productivity from existing crops increases, and recovery rates of waste, fats, oils, and greases adds to the total available supply. The recent development and commercialization of the non-food grade corn oil extracted from distillers dried grains at ethanol plants has also added to the total supply of biodiesel and renewable feedstocks. At the same time, all biodiesel feedstocks are not created equal. They have different markets and require different product handling and process steps, techniques, and conditions to maintain necessary product quality. As individual production facilities are designed to operate on the sources of feedstock available in their local area, growth in other types of feedstocks, even if they have access to it and have production capacity to handle it, does not necessarily allow them to simply increase production.

As the volume of feedstocks expands, the infrastructure for storing the feedstock and distributing it to biodiesel and renewable diesel production facilities will also need to expand. This will require changes to a number of industries depending on the feedstock, potentially including rail cars, barges, trucks, and oil storage facilities. If supply of biodiesel and renewable diesel feedstocks are being sourced internationally, it would also involve expansion of import and export facilities.

It is also worth highlighting that over time the opportunity for continued growth in the feedstocks currently used to produce biodiesel and renewable diesel may begin to plateau, and the volumes of these fuels along with it unless there is a breakthrough in the development of new feedstocks. The bump up in supply brought about by large increases in palm oil production, corn oil extraction, and the increased recovery of waste fats, oils, and greases is limited, and may soon near its practical limit. There has been considerable research and development for many years in the potential for algal bio-oils and other new oilseed crops that could be grown on marginal lands that could serve as a feedstock for biodiesel and renewable diesel. However, the promise of large volumes of algal bio-oils and alternative oilseed crops remains in the future, well beyond the timeframe of the 2016 standards, and near term feedstock supply increases are likely to be incremental.

ii. Biodiesel and Renewable Diesel Production Capacity

As highlighted in the NPRM, the total capacity of all registered biodiesel and renewable diesel production facilities in the United States currently exceeds 2.7 billion gallons. In addition to the domestic production capacity, there is also significant registered capacity overseas. Historically domestic biodiesel production rates have been well short of the production capacity, with facility utilization rates often less than 50%. The reason for this is that the capital cost associated with biodiesel production is a relatively small portion of the cost of biodiesel, allowing facilities to build excess capacity to allow for expansion later as the market develops and grows. The economies of scale associated with biodiesel facilities are also fairly low relative to other types of renewable fuel, allowing biodiesel production facilities operating at low utilization rates or very small biodiesel facilities to be economically viable by taking advantage of low priced local feedstock supplies.

The situation is quite different however, for renewable diesel, where the hydrotreating necessary to convert the oil into diesel fuel requires considerably more capital, economies of scale require facilities to be relatively large, and the size and complexity of the facilities require much more time for financing, design, construction, and commissioning. This helps explain why renewable diesel production facilities are far fewer in number, have much larger production capacities on average, and why the volume of renewable diesel production has grown more slowly.

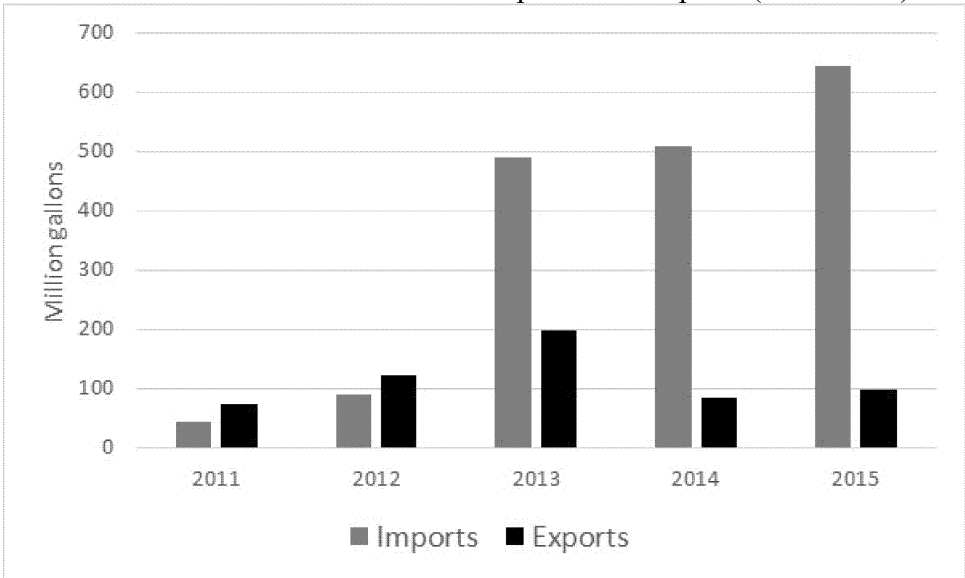
NBB in their comments pointed to the currently existing and registered production capacity as evidence to support its projection of how much biodiesel and renewable diesel could be supplied in 2016. However, while there is certainly potential to increase utilization of the existing production facilities it is uncertain what steps would have to be taken to increase production rates at these facilities. There is therefore uncertainty associated with the ability for an appreciable number of registered biodiesel and renewable diesel production facilities to simultaneously increase production rates given the constraints raised elsewhere in this section. Furthermore, different facilities are designed to handle different feedstocks (*e.g.,* facilities processing waste fats oils and greases require different pre-processing steps and different feedstocks produce fuels with different cold weather performance, necessitating different mitigating actions), and often process feedstocks sourced locally, so increasing volumes of other types of feedstocks, or feedstocks in other locations does not mean excess production capacity can immediately be utilized. Consequently, while we do not believe biodiesel and renewable diesel production capacity will likely be a constraining factor in biodiesel and renewable diesel production in 2016, reaching the 3.4 billion gallons suggested by NBB would likely require the addition of new production capacity.

iii. Biodiesel and Renewable Diesel Import Capacity

Another important market component in assessing biodiesel and renewable diesel supply is the potential for imported volumes and the diversion of biodiesel and renewable diesel exports to domestic uses. In addition to the approximately 500 million gallons imported into the U.S. in 2014, there

were about 80 million gallons exported from the United States to overseas markets in 2014. While 2015 is not yet over, similar trends have been experienced in 2015. Given the right incentives, it might be possible to redirect a portion of the biodiesel consumed in foreign countries to use in the U.S. in 2016. However, the amount of biodiesel and renewable diesel that can be imported into the United States is difficult to predict, as the incentives to import biodiesel and renewable diesel to the U.S. are a function not only of the RFS and other U.S. policies and economic drivers, but also those in the other countries around the world. These policies and economic drivers are not fixed, and change on a continual basis. Over the years there has been significant variation in both the imports and exports of biodiesel and renewable diesel as a result of varying policies and relative economic policies (See Figure II.E.3.iii–1 below). This includes a period from 2004 to 2008 when biodiesel and renewable diesel imports and exports were both simultaneously large due to the so-called ''splash and dash'' practices of importing biodiesel to the U.S., blending it with a small volume of petroleum based diesel to get the U.S. biodiesel blenders tax credit, and then exporting it to Europe where it received additional tax benefits. Because of biodiesel demand in other countries and potential biodiesel distribution constraints in the United States, maintaining or increasing import volumes of biodiesel and/or renewable diesel while at the same time decreasing export volumes may not be feasible in 2016. For example, as discussed above, the combination of the RFS mandate and the biodiesel blender's tax credit provided very large economic incentives for the use of biodiesel in the U.S. in 2013. Yet despite this incentive, biodiesel exports were also at historic highs. Furthermore, a portion of the reported imports and exports is simply trade across the border with Canada. The exported biodiesel satisfies biodiesel mandates in Canada, while also helping to minimize biodiesel transportation costs in situations where the available supply for markets near the border happens to lie in the other country. Thus, on an annual basis we experience both exports to Canada and imports from Canada simply due to market constraints related to biodiesel distribution.

Figure II.E.3.iii-1
Biodiesel and Renewable Diesel Imports and Exports (2011-2015)



Nevertheless, as evidenced in 2015 we have clearly been experiencing some upward growth in imports of biodiesel and renewable diesel. Much of the increase in biodiesel imports in 2015 has been from grandfathered facilities that are exempt from the 20% lifecycle GHG reduction requirement. Fuel from these facilities qualifies for D6 RINs that can be used to satisfy the total renewable fuel standard.

In order for foreign biodiesel and renewable diesel producer to increase their imports into the U.S., they will need to either increase their total production (which may require building new production capacity), or divert exports from domestic use and/or other foreign markets currently relying on these volumes to meet their own requirements. If the former, it may require the expansion of foreign distribution and export capacity which will take some time to put in place. If the latter, it will require a number of changes, including:

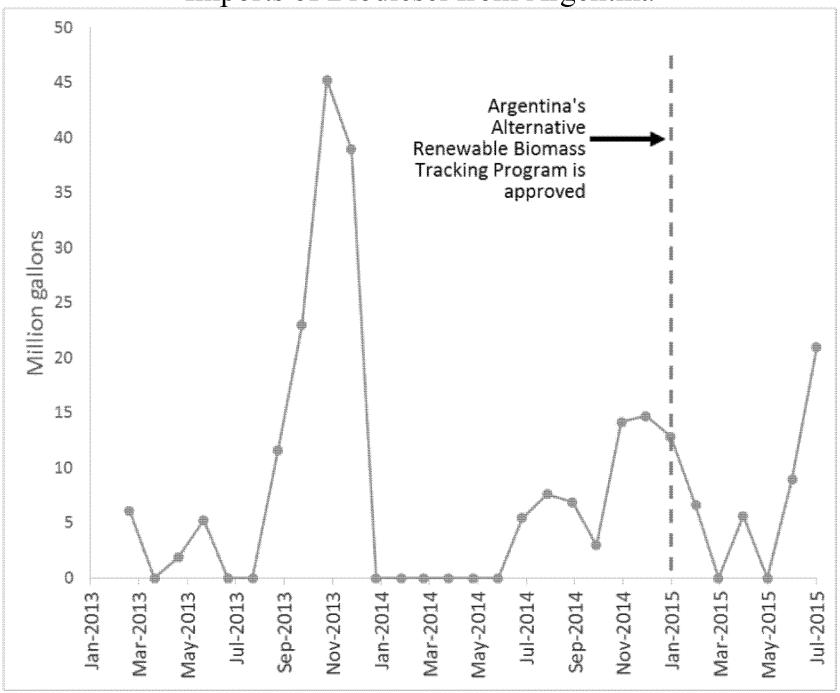
- A clear economic advantage (*e.g.,* higher prices) for exports to be directed to the U.S. relative to other destinations,
- Time to renegotiate existing contracts and commitments,
- Certainty that economic and political conditions won't change that ultimately undermine such a decision,
- Time to expand available U.S. import terminal facilities, including not only tankage, loading, and offloading infrastructure, but also the rail and truck fleet necessary to transport the fuel from the import terminal to new markets.

All of this can and is expected to occur over time, however the degree to which this can be accomplished in the coming year is uncertain.

To demonstrate the uncertainty associated with increasing biodiesel and renewable imports it is instructive to consider the case of imports from Argentina in recent years. Several stakeholders expressed concern that Argentina would significantly increase exports of biodiesel to the U.S. in 2016, and that this potential for increased imports must be accounted for in the determination of the applicable 2016

volume requirements.[107] This concern was based on the facts that pre-existing opportunities for export to European countries had recently been closed off, and the EPA had recently approved an alternative biomass tracking program for Argentina which commenters assumed would make it easier for Argentinean biodiesel producers to document that their product complies with the land use provisions associated with the RFS definition of renewable biomass. Some stakeholders suggested that imports of Argentinean biodiesel could be as high as several hundred million gallons in 2016. Our review of the available information, including that submitted by other stakeholders, does not support this view. For instance, the approval of the alternative biomass tracking program for Argentina was not followed by a sudden increase in imports to the U.S. as shown below. In fact, imports actually declined compared to months immediately preceding that approval.[108]

Figure II.E.3.iii-2
Imports of Biodiesel from Argentina



Source: Energy Information Administration

[107] There have also been imports of biodiesel from other countries, but by and large such biodiesel did not qualify as advanced biofuel.

[108] While it is possible that the full impact of EPA's approval of the alternative biomass tracking program for Argentina is not yet reflected in the data (*i.e.,* that it will take longer for the effects to be seen), we note that there are elements of the approved tracking program that are considerably more exacting than the pre-existing renewable biomass verification process, so we are not persuaded that EPA's approval will in fact lead to an increase in Argentinean biodiesel imports.

Additionally, the annualized volume of imported Argentinean biodiesel for 2015, based on data collected through July, is 94 million gallons. This level is far less that the potential volumes projected by the National Biodiesel Board and several others. Brazil has also just recently proposed increasing its biodiesel mandate from 7% to 8% in 2016, which may provide another attractive destination for exports of Argentinean biodiesel.[109] There are also indications that Argentina's production of biodiesel in 2015 will be significantly reduced compared to prior years.[110] Finally, Argentina has changed the applicable tax on exported biodiesel several times since the beginning of 2015, highlighting the uncertainty associated with projecting potential future imports into the U.S.[111] Based on these facts, we believe that the volume of biodiesel and renewable diesel imported from Argentina in 2016 is likely to be far less than the several hundred million gallons suggested by some commenters.

iv. Biodiesel and Renewable Diesel Distribution Capacity

While biodiesel and renewable diesel are similar in that they are both diesel fuel replacements produced from the same types of feedstocks, there are significant differences in their fuel properties that result in differences in the way the two fuels are distributed and consumed. Biodiesel is an oxygenated fuel rather than a pure hydrocarbon. It cannot currently be distributed through most pipelines due to contamination concerns with jet fuel, and often requires specialized storage facilities to prevent the fuel from gelling in cold temperatures. A number of studies have investigated the impacts of cold temperatures on storage, blending, distribution, and use of biodiesel, along with potential mitigation strategies.[112] [113] [114] Renewable diesel, in contrast, is a pure hydrocarbon fuel that is nearly indistinguishable from petroleum based diesel. As a result, there are fewer constraints on its growth with respect to distribution capacity.

Comments we received from stakeholders on biodiesel supply challenges related to biodiesel distribution, storage, or use due to cold temperatures reveal differing opinions on the degree to which this may be a constraint on the growth of biodiesel and renewable diesel. The National Biodiesel Board stated that there are no constraints related to the distribution of biodiesel and renewable diesel because options such as heated storage tanks and the use of biodiesel produced from feedstocks with better cold temperature properties are available to address the issue. They pointed specifically to some states which require the use of biodiesel year-round. Others, such as CountryMark, indicated that they or their members stop blending biodiesel in the winter months. These comments suggest that the constraints on biodiesel supply due to cold temperatures may not be as pronounced as suggested in the NPRM, but that they continue to exist. Furthermore, the existence of methods for addressing potential challenges related to the cold temperature issues associated with biodiesel does not mean that these solutions can be employed nationwide in 2016. Since the market will determine the specific types and amounts of renewable fuels to use to meet the applicable volume requirements, investments and actions needed to address cold weather issues will certainly be a consideration for some parties, and their hesitancy to blend biodiesel in winter months may constrain the total supply of biodiesel in 2016.

Another factor potentially constraining the supply of biodiesel is the number of terminals and bulk plants that currently distribute biodiesel. At present there are about 600 distribution facilities reported as selling biodiesel either in pure form or blended form.[115] Our review of these locations indicates that the vast majority of them are what we refer to as bulk plants. These are not the major gasoline and diesel distribution terminals, but rather much smaller terminals that receive diesel fuel mostly by truck from the major terminals. These 600 facilities are a small subset of the 1400 terminals and approximately 9000 bulk plants nationwide.[116] This small subset, however, appears to be concentrated in most of the population centers of the country, in addition to the Midwest. As a result, as the market continues to expand, it may require greater investment per volume of biodiesel supplied, as the new biodiesel distribution facilities will generally have access to smaller markets than the existing facilities, or face competition from existing distribution facilities.

Transportation of biodiesel to and from the terminals and bulk plants is also an important consideration. There are two aspects to the distribution infrastructure of importance here; the distribution of biodiesel in pure/near pure form from biodiesel production or import facilities to terminals and bulk plants, and the distribution from the terminals/bulk plants in blended form to retail stations. As mentioned above, the unique properties of biodiesel have precluded blends from being transported in common carrier pipelines either in pure form (B100) or in blended form (such as B5 or B20). NBB has been working with the pipeline industry for many years in an effort to enable biodiesel blends to be transported by pipeline, as the ability to transport biodiesel by pipeline would quickly open new markets in farther ranging locations. In 2013 a major pipeline approved the transport of low level biodiesel blends (B5) in limited pipeline segments that do not carry jet fuel.[117] While an important step, the pipeline segments that have been approved to ship biodiesel blends only serve a small portion of the U.S. market.

In lieu of pipeline transport, biodiesel currently relies primarily on rail car, barge, and especially tanker truck fleets for distribution from production and import facilities to blending terminals and bulk plants. Due to the unique properties of biodiesel, such transport typically has required the use of heated/insulated tanks, especially in winter to keep the product from gelling or freezing. This requirement for specialized equipment increases the cost of biodiesel distribution and further limits the speed at which biodiesel distribution can grow. Increasing biodiesel distribution capacity is not simply a matter of shifting barge/rail/truck infrastructure from other

[109] ''Brazil Proposes Raising Biodiesel Mandate To B10,'' docket EPA–HQ–OAR–2015–0111.

[110] ''Argentina's biodiesel output to drop 30% in 2015—Industry group,'' docket EPA–HQ–OAR–2015–0111.

[111] ''Argentina changes biodiesel export tax—Biofuels Digest,'' docket EPA–HQ–OAR–2015–0111.

[112] ''Biodiesel Cloud Point and Cold Weather Issues,'' NC State University & A&T State University Cooperative Extension, December 9, 2010.

[113] ''Biodiesel Cold Weather Blending Study,'' Cold Flow Blending Consortium.

[114] ''Petroleum Diesel Fuel and Biodiesel Technical Cold Weather Issues,'' Minnesota Department of Agriculture, Report to Legislature, February 15, 2009.

[115] List of biodiesel distributers from Biodiesel.org Web site (*http://biodiesel.org/using-biodiesel/finding-biodiesel/locate-distributors-in-the-us/distributors-map*). Accessed 10/8/15.

[116] Number of terminals from the American Fuel and Petrochemical Manufacturer's (AFPM) Web site, ''AFPM Industry 101, Fuels Facts'', (*http://education.afpm.org/refining/fuels-facts/*). Accessed 10/28/15. Number of bulk plants from the Regulatory Impact Analysis for the Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements, EPA420–R–00–026, December 2000.

[117] Sapp, Meghan. ''Colonial Pipeline to Start B5 Transportation in Georgia.'' *Biofuels Digest.* March 19, 2013. Available online: *http://www.biofuelsdigest.com/bdigest/2013/03/19/colonial-pipeline-to-start-b5-transportation-in-georgia/.*

competing uses, as it may require specialized and/or purpose built equipment. The result of this has been that in order to respond as quickly as possible to market demand, biodiesel distribution has often instead been met using the existing non-specialized tanker truck fleets where the haul distance is limited—limiting the time the fuel is exposed to cold temperatures. While the use of the existing tanker trucks expands the volume of biodiesel that can be transported, it also limits the distribution of biodiesel to a smaller geographic area near production and distribution facilities. This then translates into the need for more and disparately located production facilities and import terminals. Once blended with diesel fuel at the bulk plant, further distribution concerns are typically minimized by shorter transportation distances between the bulk plants and retail stations and lower biodiesel blend ratios that have fewer cold weather limitations.

The net result is that the expansion of terminals and bulk plants selling biodiesel and biodiesel blends, and the distribution infrastructure necessary to transport biodiesel to and from these facilities, is a significant challenge facing the rapid expansion of biodiesel. This is an area in which the biodiesel industry has made steady progress over time, and we anticipate that this steady progress can and will continue into the future, particularly with the ongoing incentive for biodiesel growth provided by the RFS standards. As with many of these potential supply constraints, however, increasing the biodiesel distribution capacity will require time, limiting the potential growth in 2016.

v. Biodiesel and Renewable Diesel Retail Infrastructure Capacity

For renewable diesel, we do not expect that refueling infrastructure (*e.g.* refueling stations selling biodiesel blends) will be a significant limiting factor in 2016 due to its similarity to petroleum based diesel and the relatively small volumes expected to be supplied in the United States. The situation is different, however, for biodiesel. Biodiesel is typically distributed in blended form with diesel fuel as varying blends from B2 up to B20. Biodiesel blends up to and including B20 can be sold using existing retail infrastructure, and generally does not require any upgrades or modifications at the retail level. Expanding the number of refueling stations offering biodiesel blends is therefore constrained less by the retail facilities themselves, and more by the lack of nearby wholesale distribution networks that can provide the biodiesel blends to retail.

EPA is currently unaware of reliable data on the number of retail stations that offer biodiesel blends nationwide. The Web site Biodiesel.org shows the names and locations of 1090 stations that currently offer biodiesel blends.[118] Based on the amount of biodiesel sold in the United States in recent years, however, we think this is a significant underestimate. This is likely due to the fact that diesel fuel that contains 5% or less biodiesel can be sold without special labeling. It is probable that many station selling biodiesel blends of 5% or lower are therefore not included in this count. Nevertheless, the relatively low number of terminals and bulk plants offering biodiesel is a strong indication that biodiesel blends are not available at retail stations nationwide. Biodiesel blends greater than B5 are still only available in a very small fraction of possible refueling locations. Of the approximately 4,800 truck stops nationwide, and the approximately 50,000 diesel retail stations, only 717 stations offer biodiesel in blends of B20 of greater.[119] While the number of refueling stations offering higher level biodiesel blends is relatively small, the fact that diesel sales volumes in the United States are dominated by truck stops and the very large centrally fueled fleets, suggests that expanding the refueling infrastructure for these biodiesel blends will be relatively straightforward as production and distribution allow. The biggest challenge may be the reluctance of retailers and fleets to switch to biodiesel blends due to concerns over fuel quality, vehicle warranties, liability, or other factors.

There is some indication that the number of refueling stations willing or able to market biodiesel may become a factor that constrains the growth of biodiesel supply in the United States, either in 2016 or in future years. A number of retail locations that market diesel fuel are only offering biodiesel blends that exceed 5% (B5), which is the maximum amount of biodiesel for which many diesel vehicles are warranted. For example, the LOVES truck stop chain is a major retailers of biodiesel. A recent review of their Web site indicated that 221 of their 354 stations were selling B15.[120] This is despite the fact that many of the newer,[121] and especially the older heavy-duty diesel truck engines were only designed and warranted for biodiesel blends up to B5. Similarly, in the state of Illinois nearly all sales of biodiesel blends are reported to be at B11 in order to benefit from the state tax subsidy, despite the fact that not all vehicles and engines have been designed and warranted for its use. The fact that some retailers are only offering biodiesel blends that are not approved for use in the engines of many of their customers may suggest that the rate at which the number of refueling stations offering biodiesel blends can be increased could be a significant constraining factor to the supply of biodiesel in 2016. Were more retail outlets willing and able to dispense biodiesel, then, increasing volumes of biodiesel could be distributed at concentrations of B5 or less without raising any warranty concerns.

vi. Biodiesel and Renewable Diesel Consumption Capacity

Virtually all diesel vehicles and engines now in the in-use fleet have now been warranted for the use of B5 blends. In fact both FTC and ASTM specification for diesel fuel (16 CFR part 306 and ASTM D975 respectively) allows for biodiesel concentrations of up to five volume percent (B5) to be sold as diesel fuel, with no separate labeling required at the pump. Biodiesel blends of up to 5% are therefore indistinguishable in this regard. In addition, NBB claims that nearly all manufacturers now warrant at least one of their current offerings for use with B20 blends. This is a significant factor in assessing the potential supply of biodiesel to vehicles in future years and has been a main focus of NBB's technical and outreach efforts for many years, and one of their true success stories. Using biodiesel blends above B5 in diesel engines may require changes in design, calibration, and/or maintenance practices.[122]

Even in instances where manufacturers warrant their engines to operate on B20 blends, they may have additional requirements to ensure the

[118] *http://biodiesel.org/using-biodiesel/finding-biodiesel/retail-locations/biodiesel-retailer-listings.*

[119] B20+ Station counts are from the Department of Energy Alternative Fuels Data Center Station Locator. Includes public, private, government, and utility owned stations.

[120] Information from Love's Web site: *http://www.loves.com/locateus/fuelpricesearch.aspx#* (Accessed 10/8/15).

[121] The largest heavy-duty diesel vehicle manufacturer in the U.S., Daimler, comprising roughly 40% of the market still does not warrant its engines for the use of biodiesel in concentrations greater than 5%.

[122] The vast majority of diesel fuel in the U.S. is consumed by heavy-duty vehicles and nonroad diesel engines. Only a very minor portion is consumed by light-duty diesel passenger vehicles.

quality of the biodiesel fuel being used and that additional engine maintenance will be performed. These requirements may make the use of biodiesel blends containing greater than 5% biodiesel challenging, while technically possible. For instance, Detroit Diesel, a large diesel engine manufacturer, implemented a formal, multifaceted B20 approval process for fleets seeking to use B20. The process involved an evaluation of biodiesel producers and marketers that are to provide biodiesel to the fleet in question, an assessment of biodiesel Certificate of Analysis for B100 and B20 blends (or fuel samples as needed), as well as a review of preventative maintenance practices at dispensing locations, including bulk tank cleaning intervals, dispensing filtration, water handling, and volume of fuel consumed at each location. In the B20 fleet approval process, Detroit Diesel also considered the particular vehicle application to ensure that fleet vehicles were not parked for too long as well as an assessment of the preventative maintenance intervals for engines to ensure that they are in-line with Detroit Diesel's published guidelines. Even in situations where approval to use B20 was granted, the approval did not provide blanket coverage for a geographically dispersed fleet; that is, a fleet that operated across several states was required to submit separate applications for each biodiesel producer, marketer, and dispenser supporting the fleet. Fleet operators that successfully completed the B20 approval process received a Statement of Warranty from Detroit Diesel's Director of Quality and were permitted to operate the fleet using B20. Ultimately Detroit Diesel cancelled the B20 fleet approval process citing biodiesel quality concerns.

Given the long life of diesel engines and the number of new engines not warranted for biodiesel blends above B5, turning over a significant portion of the fleet to engines designed and warranted for B20 is still many years off into the future. This means that in the near term the opportunity to sell B20 exclusively to vehicles warranted to run on these blends will likely be limited to centrally fueled fleets.[123] Increasing the supply of biodiesel, however, is not necessarily dependent on selling higher level biodiesel blends, as there is significant opportunity for expanding the use of biodiesel in lower level blends and for non-road applications. If the diesel pool contained 5% biodiesel nationwide consumption of biodiesel would reach approximately 2.9 billion gallons in 2016. Furthermore, in addition to their successful efforts with diesel vehicles and engines, NBB has had a significant market outreach effort to expand the use of biodiesel into heating oil applications (referred to as bioheat). While still a relatively small outlet for biodiesel consumption compared to diesel fuel, it is a growing market that affords significant additional opportunity for growth.

We received a number of comments on the NPRM related to the degree to which engine warranties may constrain biodiesel use in 2016; however no stakeholder provided any analyses demonstrating the fraction of in-use engines which are warranted for more than B5.[124] Instead, most biodiesel proponents stated only that most diesel engines being sold today are warranted for B20. Such warranties have not always existed, and the degree to which new diesel engines support B20 and higher blends may be over-stated. Detroit Diesel produces the engines for approximately 30% of the Class 8 trucks sold in the United States and currently does not support the use of biodiesel blends greater than B5 in their engines.[125] Thus, it is clear that some portion of the in-use fleet of diesel engine warranties do not approve the use of biodiesel blends greater than B5.[126] These engines represent a potential constraint on use of biodiesel, though we cannot quantify the level of constraint. Comments submitted by Growth Energy support this fact:

> ". . . the transportation fleet and heating oil equipment pools still contain significant percentages that are not warranted or deemed compatible with levels of biodiesel above 5%." [127]

The National Biodiesel Board argued that regardless of whether manufacturers place limits on the use of biodiesel blends as a condition of honoring their engine warranties, many of these diesel engines can still safely use higher biodiesel blends than those cited in those warranties. Thus, said NBB, ". . . the formally OEM recommended biodiesel level should not be construed or used as any sort of limitation for biodiesel volumes." We disagree, and believe that the OEM recommended biodiesel levels can have a significant impact on owner's willingness to use biodiesel blends. Despite anecdotal evidence regarding behavior of some diesel vehicle operators, it would be inappropriate for EPA to assume that diesel truck owners in general will knowingly use biodiesel blends at concentrations that exceed the limits cited in their engine warranties. It would be more prudent for EPA to assume that engine manufacturers are in the best position to judge which biodiesel blends are appropriate for use in their engines, and that engine owners will view their engine warranties in the same way. Evidence that some truck owners ignore the recommended limits on biodiesel concentrations when refueling their truck is not, we believe, a reasonable basis for assuming that engine warranties place no constraints on the use of higher biodiesel blends for the in-use truck fleet as a whole. Similarly, we do not believe that older engines with expired warranties can be assumed to have no constraints on biodiesel concentrations. Not only were older engines more likely to have been designed to operate on B5 or lower, but engine warranties continue to provide indications to truck owners of acceptable biodiesel concentrations even after they expire. Owner's manuals for those engines may also cite limits on biodiesel concentrations, and owner's manuals do not expire.[128]

vii. Biodiesel and Renewable Diesel Consumer Response

Consumer response to the availability of renewable diesel and low level biodiesel blends (B5 or less) has been generally positive, and this does not appear to be a significant impediment to growth in biodiesel and renewable diesel use. Because of its similarity to petroleum diesel, consumers who purchase renewable diesel are unlikely to notice any difference between renewable diesel and petroleum derived diesel fuel. Similarly, biodiesel blends up to B5 are unlikely to be noticed by consumers, especially since, as mentioned above, they may be sold without specific labeling. Consumer

[123] Although as stated above, some public retailers are choosing to sell only B11 or B20 blends and allowing the consumer the option of either going elsewhere or purchasing fuel for which their engines are not warranted.

[124] Such warranties apply to the engines, not the fuels, as pointed out by the National Biodiesel Board. Nevertheless, the engine warranties are contingent upon the use of approved fuels.

[125] Sales data received directly from the OEM.

[126] As noted above, FTC and ASTM specifications allow for biodiesel concentrations of up to five volume percent (B5) to be sold as diesel fuel, with no separate labeling required at the pump.

[127] "Non-Ethanol Potential for RFS Compliance," Stratus Advisors, July 16, 2015. Submitted by Growth Energy.

[128] EPA is not aware of any comprehensive analysis of the diesel engine/vehicle warranties for the in use fleet with respect to biodiesel blends. EPA did not have the time or resources to conduct a detailed evaluation of warranty constraints over the range of engines and model years currently in service for purposes of this rulemaking. EPA encourages stakeholders to gather this type of information to inform future annual RFS rules.

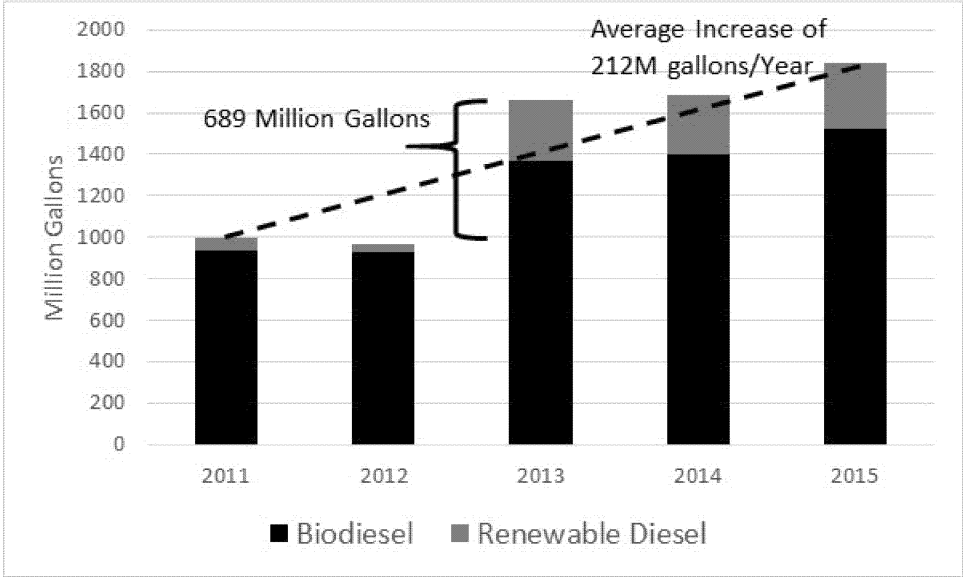
response to biodiesel blends is also likely aided by the fact that despite biodiesel having roughly 10 percent less energy content than diesel fuel, when blended at 5 percent the fuel economy impact of B5 relative to petroleum derived diesel is a decrease of only 0.5%, an imperceptible difference. Consumer response has been further aided by the lower prices that many wholesalers and retailers have been willing to provide to the consumers for the use of biodiesel blends. The economic incentives provided by the tax credit and the RIN have made it possible for some retailers to realize additional profits while selling biodiesel blends, while in many cases offering these blends at a lower price per gallon than diesel fuel that has not been blended with biodiesel.

viii. Projected Supply of Biodiesel and Renewable Diesel in 2016

Due to the large number of market segments where actions and investments may be needed to support the continued growth of biodiesel blends, it is difficult to isolate the specific constraint or group of constraints that will be the limiting factor or factors to the supply of biodiesel and renewable diesel in the United States in 2016. Not only are many of the potential constraints inter-related, but they are likely to vary over time. The challenges in identifying a single factor limiting the growth in the supply of biodiesel and renewable diesel in 2016 does not mean, however, that there are no constraints to the growth in supply.

A logical starting point in developing a projection of the available supply of biodiesel and renewable diesel in 2016 is a review of the volumes of these fuels supplied in previous years. In examining the data, both the absolute volumes of the supply of biodiesel and renewable diesel in previous years, as well as the rates of growth between years are relevant considerations. The volumes of biodiesel and renewable diesel (including both D4 and D6 biodiesel and renewable diesel) supplied each year from 2011 through 2015 are shown below.

Figure II.E.3.viii-1
Biodiesel and Renewable Supply by Year (2011-2015)



One way to use the historical data to project the available supply of biodiesel and renewable diesel in 2016 would be to start with the volume expected to be supplied in 2015 (1.84 billion gallons), the most recent year for which actual supply data are available and also the year with the largest supply of biodiesel and renewable diesel, and then assess how much the supply can be expected to increase in 2016 in light of the constraints discussed above. We could assume, for example, that past growth in the year or years leading up to 2015 reflects the rate at which biodiesel and renewable diesel constraints can reasonably be expected to be addressed and alleviated in the future. If this were the case, we could use either the largest observed annual supply increase (689 million gallons from 2012 to 2013) or the average supply increase (212 million gallons from 2011 to 2015) to calculate how much biodiesel and renewable diesel volumes could increase over 2015 levels in 2016. This would result in a projected supply of 2.53 billion gallons of biodiesel and renewable diesel if we used the highest observed annual growth rate, or 2.06 billion gallons of biodiesel and renewable diesel in 2016 if we used the average annual growth rate.

We recognize that the highest annual growth rate achieved in the past (or the average annual growth rate in the past) does not necessarily indicate the growth rate that can be achieved in the future. In the past biodiesel was available in fewer markets, allowing new investments to be targeted to have a maximum impact on volume. However, as the market becomes more saturated and biodiesel becomes available in an increasing number of markets, additional investments may tend to have less of an impact on volume, limiting the potential large increases in supply year over year. Much of the growth in biodiesel and renewable diesel supply in the past was enabled by addressing the existing constraints in ways that required relatively less investment than the challenges currently facing the market. In 2013 additional feedstock was available to be recovered from waste streams and there was still significant opportunity to distribute additional biodiesel blends containing 5% biodiesel or less. Future supply increases will likely require diverting potential biodiesel and renewable diesel feedstocks from

existing uses, revising production facilities to handle larger volumes of different feedstocks, potentially distributing the biodiesel to new terminal or bulk plants, and/or using biodiesel in blends greater than 5%. Thus, it may require greater investment for growth rates of biodiesel and renewable diesel in 2016 to equal the growth rate that occurred in 2013. However, any such conclusion would need to be tempered by the consideration of the extent to which legal and market forces were in place to drive future growth. This is especially true since the year with the historic maximum rate of growth was 2013—a year in which both tax incentives and RFS incentives were in place to incentivize growth. We believe the incentives provided by the standards in this final rule will be sufficient to enable this growth to occur, despite these challenges. However, to avoid volumes of biodiesel and renewable diesel from plateauing in the longer term, developments such as significant gains in oilseed productivity, the development of new oilseed crops, the approval from engine manufacturers to use B20 blends in all or nearly all diesel engines, and investments in renewable diesel production capacity may be necessary.

We received many comments on our NPRM that offered projections of the available biodiesel and renewable diesel supply in 2016. It was not always clear from reading the comments if the volume projections they offered represent their projection of the total supply of biodiesel and renewable diesel, as is relevant for determining the total renewable fuel supply in 2016, or if they represent a sub-set of the total biodiesel and renewable diesel availability (such as only BBD and not conventional biodiesel, only biodiesel and not renewable diesel, or the level at which they requested the BBD standard be set). Nevertheless, we have reviewed these comments and considered the volume projections offered and the supporting data provided in determining the supply of biodiesel and renewable diesel in the United States in 2016.

The National Biodiesel Board suggested that the volume of advanced biodiesel supplied to help meet the advanced biofuel volume requirement should be at least 2.7 billion gallons in 2016, based on the highest rate of D4 RIN generation achieved in a single month. They effectively assumed that the rate of RIN generation that occurred in December 2013 (220 million gallons) could be duplicated over a 12-month period, and that all of this product could be distributed and used in the United States in 2016. They stated that an additional 370–720 million gallons of biodiesel (550–1,080 million RINs) could be supplied from imported biodiesel. We disagree that these volumes can be supplied in 2016. We believe that using the highest production in a single month from the historical record is not a reasonable basis for projecting possible future supply over the course of an entire year for a number of reasons. Such an approach does not take into account the factors, described below, that allowed for that maximum single month production, including the expiring blenders tax credit and the inability to sustain that production level year-round. In addition, production inventories can be grown over a one-month time period in a manner that masks constraints in the fuel delivery infrastructure. As evidence, we note that the highest D4 RIN generation level in a single month (220 million gallons in December 2013) occurred immediately before one of the lowest monthly D4 RIN generation level that has occurred in the last several years (88 million gallons in January 2014). The average of those two months is the equivalent of about 1.85 billion gallons over the course of a year.

Moreover, the highest monthly D4 RIN generation level cited by the National Biodiesel Board included imports which have been highly variable and cannot be projected with reasonable certainty based on historical supply. The fact that the month used by NBB to project that 2.7 billion gallons of BBD could be supplied already includes a significant amount of imported volumes makes their estimate of additional imports particularly uncertain. The portion of the 1.85 billion gallon annual average RIN generation rate derived from annualizing December 2013 and January 2014 volumes that can be attributed to domestic production is 1.43 billion gallons, and even this number should be considered high because it does not account for exports of biodiesel and RINs retired because they were invalid or were otherwise not available for compliance. As a result of these factors, the actual demonstrated domestic supply (domestic production plus imports, less exports and corrections) of biodiesel and renewable diesel does not support an available supply of 3.1–3.4 billion gallons per year, as suggested by NBB.

In addition to the comments from NBB, we also received a number of other comments suggesting a higher supply of biodiesel may be available in 2016 than in previous years. Many commenters, such as the American Council on Renewable Energy, the American Soybean Association, the National Renders Association, John Deere, several state soybean associations, and others suggested that the BBD standard should require the use of at least 2 billion gallons in 2016. Other commenters, including Archer Daniels Midland, the California Biodiesel Alliance, Imperium Renewables, and others suggested that the BBD standard should require the use of 2.4 billion gallons in 2016. Since they were focused on the BBD standard, these numbers do not necessarily represent the commenters' views of the available supply of biodiesel and renewable diesel in 2016, but we believe they give a good indication of their views on the available supply. We also note that they are much more in line with the available supply volumes that we estimate below based on an extrapolation of growth rates from previous years.

Given the widely divergent comments and available data on the potential supply of biodiesel feedstocks, it is clear that there is a great deal of uncertainty in the degree to which those feedstock supplies can grow in 2016. A focus on potentially available feedstock supplies is insufficient as this is not the only factor to consider in assessing the potential volumes of biodiesel and renewable diesel in 2016. Neither biodiesel production capacity, nor the supply of oils, fats, and greases around the world, has ever been the sole constraint on biodiesel and renewable diesel supply to the U.S. Indeed, as discussed above, there are a number of constraints, ranging from competing demand for biodiesel and renewable diesel feedstocks to biodiesel and renewable diesel distribution infrastructure and engine compatibility, that we believe will constrain the supply of biodiesel and renewable diesel supply in 2016.

These constraints do not represent insurmountable barriers, but they do take time to overcome. The market has been making efforts to overcome these constraints in recent years as demonstrated by the fact that biodiesel and renewable diesel consumption in the U.S. has been steadily increasing. We agree with the biofuels industry that more opportunity for ongoing growth still exists, but we do believe that the constraints listed above will continue to be a factor in the rate of growth for 2016, but we also believe that existing biodiesel and renewable diesel production capacity should not be the basis for projecting achievable volumes

in 2016. Instead, we believe that the ongoing constraints listed above mean that the opportunity for growth 2016 is of a similar magnitude to that which we have experienced in recent years. For 2016 we are projecting the supply of biodiesel and renewable diesel for use in the United States could reasonably be as much as 2.5 billion gallons. We believe this value represents the maximum reasonably achievable volume of biodiesel and renewable diesel that can be supplied to the United States in 2016.

This volume of biodiesel and renewable diesel is approximately equal to the projected volume using the highest observed annual growth rate (2.53 billion gallons), and far higher than the projected volume using the average growth rate between 2011 and 2015 (2.06 billion gallons). We believe this is appropriate considering both the demonstrated ability of the market to respond to incentives for increased production, import, and use of biodiesel and renewable diesel, as demonstrated in 2013, and also the potential constraints to the continued growth of biodiesel and renewable diesel discussed above. These constraints, particularly the availability of qualifying feedstocks to processing facilities that can utilize them in light of competing demand for these feedstocks and the distribution infrastructure needed to increase the use of biodiesel and renewable diesel, may be more challenging to overcome in the future, but we believe growth in 2016 can still approach the record growth experienced in 2013. In 2013 increasing available supplies of feedstock, through means such as greater corn oil production rates at ethanol plants and increased recovery of waste fats and oils, and increasing biodiesel and renewable diesel distribution by adding biodiesel blending capacity at terminals and/or bulk plants in areas with large local demand for diesel fuel, were both relatively simple. For 2016 the RFS standard will necessitate similar and potentially even larger investments and actions to grow biodiesel and renewable diesel supply.

We recognize that the market may not necessarily respond to the final total renewable standard by supplying exactly 2.5 billion gallons of biodiesel and renewable diesel to the transportation fuels market in the United States, but may instead supply a slightly lower or higher volume of biodiesel and renewable diesel with corresponding changes in the supply of other types of renewable fuel. As a result, we believe there is less uncertainty with respect to achievability of the total volume requirement than there is concerning the projected 2.5 billion gallons of biodiesel and renewable diesel that we have used in deriving the final total renewable fuel volume requirement.

4. Projecting the Supply of Other Renewable Fuels

The RINs available for meeting the total renewable fuel standard include not only ethanol, biodiesel, and renewable diesel, but also RINs generated for a number of other renewable fuels. While the potential for each of these fuels is small relative to those covered above, the volumes must still be considered in assessing the total supply of renewable fuel in 2016. One such fuel is CNG/LNG derived from biogas when used as a transportation fuel. The potential for this fuel in 2016 is approximately 210 million gallons. This projection is discussed in more detail in Section IV, as this fuel generally qualifies as a cellulosic biofuel.

There also are some opportunities for moderate growth through the end of 2016 in a variety of other fuel types. Currently, the RFS regulations provide a RIN generating pathway for heating oil, naphtha, jet fuel, LPG, liquefied natural gas, renewable gasoline, butanol, and electricity. To date only heating oil, naphtha, and butanol have been produced to generate RINs, reaching a projected annual high of 23 mill gal based on data through September, 2015. Since these sources have not grown significantly over the last several years, we believe that the supply of other non-ethanol renewable fuels can reach about 25 million gallons in 2016.

5. Total Renewable Fuel Supply in 2016

The total volume of renewable fuel that can be supplied in 2016 is the combination of the estimated supply of each of the biofuel types described above: ethanol, biodiesel and renewable diesel, and other biofuels such as biogas, naphtha, and heating oil. Most of these biofuel types can be produced as either advanced biofuel or as conventional (D6) renewable fuel, depending on the feedstock and production process used. Our estimate of the supply of total renewable fuel shown in the table below includes contributions from both advanced biofuels and conventional renewable fuels.

TABLE II.E.5–1—VOLUMES USED TO DETERMINE TOTAL RENEWABLE FUEL SUPPLY IN 2016

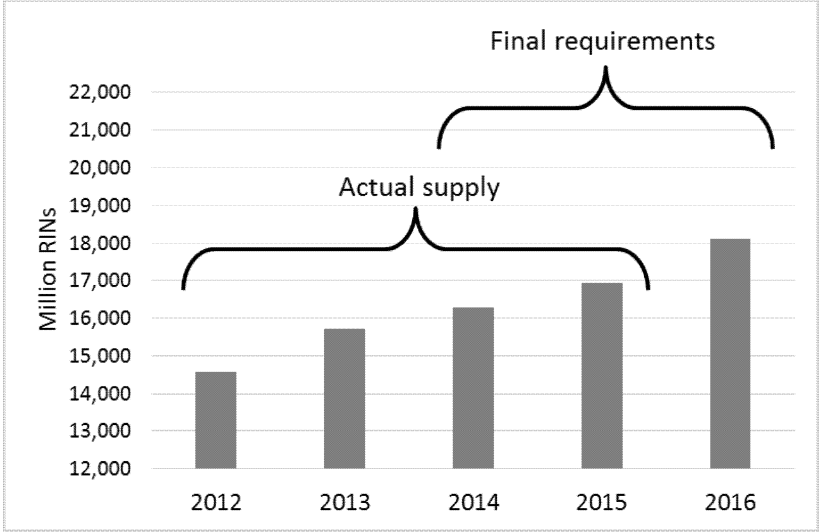
	Volume (million gallons)	Million RINs
Ethanol	14,128	14,128
Biodiesel and renewable diesel	2,500	3,750
Biogas	210	210
Other non-ethanol renewable fuels	25	25
Total	16,861	18,113

Based on this analysis, we are establishing a total renewable fuel volume requirement of 18.11 billion gallons for 2016. However, we note that the contributions from individual sources that are shown in Table II.E.5–1 were developed only for the purpose of determining a final volume requirement for 2016; they do not represent EPA's projection of precisely how the market will respond to the standards we set. We continue to believe, as we noted in the NPRM, that any estimate we make regarding particular fuel types is uncertain, but that overall the final volume requirement is attainable. The contributions from individual sources that we have used are illustrative of one way in which the volume requirement for total renewable fuel could be met. Actual market responses could vary widely, as described more fully in Section II.G.

The volumes of total renewable fuel that we are establishing for 2016 reflect our assessment of the maximum volumes that can reasonably be achieved, taking into account both the constraints on supply discussed previously and our judgment regarding the ability of the standards we set to result in marketplace changes in 2016.

As shown in Figure II.E.5–1, the volume requirements for 2016 would follow an upward trend consistent with that from previous years.

Figure II.E.5-1
Growth in Total Renewable Fuel[a]



[a] Values for 2012 and 2013 represent actual supply of renewable fuel in each year, not the applicable volume requirements.

F. Advanced Biofuel Volume Requirement for 2016

As described in Section II.B above, we are reducing volumes of total renewable fuel under both the cellulosic and the general waiver authority, and we are reducing volumes of advanced biofuel under the cellulosic waiver authority only. As noted in Section II.B, EPA has broad discretion in utilizing the cellulosic waiver authority, since Congress did not specify the circumstances under which it may or should be utilized nor the factors to consider in determining appropriate volume reductions. We are cognizant of the fact that increases in the statutory volume targets after 2015 are only in advanced biofuel, and that advanced biofuel provides relatively large GHG reductions in comparison to conventional renewable fuel. In light of these facts, our intention in utilizing the cellulosic waiver authority for 2016 is to place an emphasis on setting the 2016 advanced biofuel volume requirement at a level that is reasonably attainable taking into account uncertainties related to such factors as production, import, distribution and consumption constraints associated with these fuels.[129]

As described earlier, we are establishing a total renewable fuel volume requirement of 18.11 billion gallons for 2016. Our assessment of total renewable fuel is based on an estimate of 14.13 billion gallons of ethanol and 2.50 billion gallons of biodiesel and renewable diesel, in addition to smaller volumes of biogas and other types of renewable fuel.[130] Given that advanced biofuels are a subset of total renewable fuel, the 2016 volume requirement for advanced biofuels reflects our assessment of the portion of total ethanol and biodiesel, as well as other renewable fuels, that should be required as an advanced biofuel.

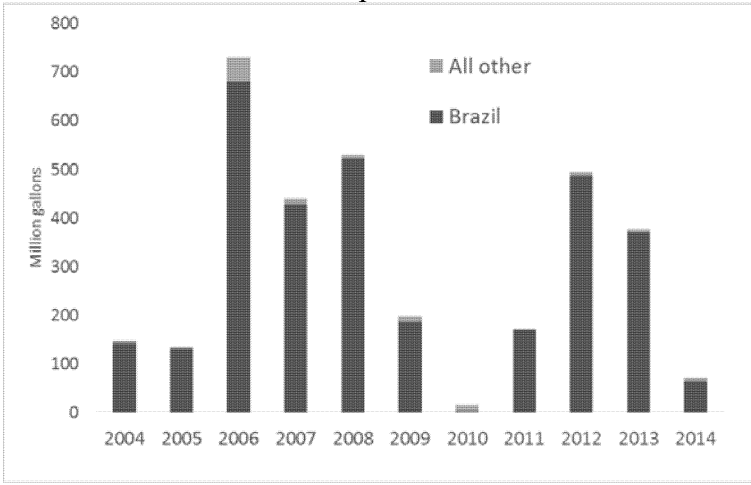
With regard to ethanol, the primary source of advanced biofuel is imported sugarcane ethanol.[131] As described in the NPRM, the supply of imported sugarcane ethanol continues to be highly uncertain and there is little indication that this uncertainty will change in 2016. For instance, both total ethanol imports and imports of Brazilian sugarcane ethanol have varied significantly since 2004, as shown in Figure II.F–1.

[129] Our approach in identifying ''reasonably attainable'' volumes of advanced biofuels using the cellulosic waiver authority is different than our approach under the general waiver authority of identifying the ''maximum reasonably achievable supply''. In exercising the cellulosic waiver authority in this rulemaking, we are not required, and do not intend, to necessarily identify the most likely ''maximum'' volumes of advanced biofuels that can be used in 2016. Although we generally seek in establishing the advanced biofuel volume requirement to require that available advanced biofuels backfill for shortfalls in cellulosic biofuels in 2016, our inquiry is not intended to be as exacting.

[130] This includes both advanced and conventional biodiesel and renewable diesel.

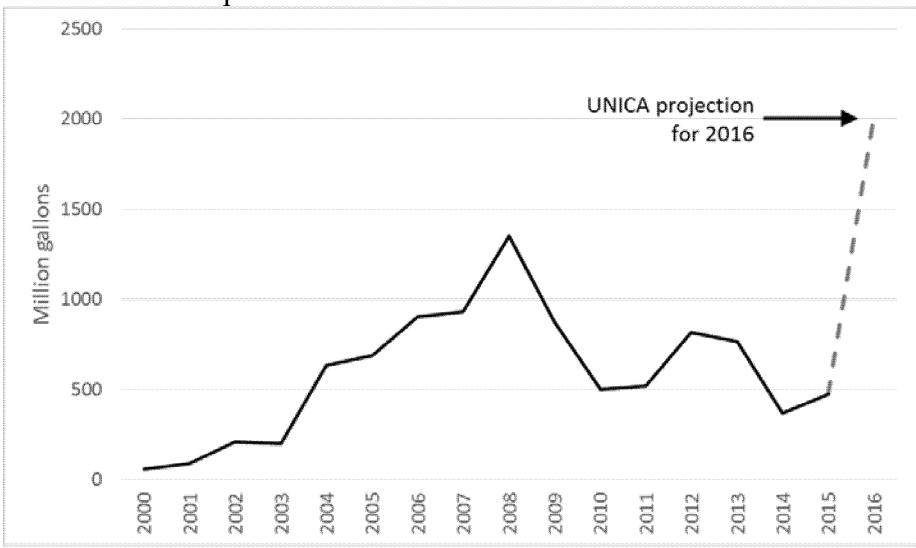
[131] In certain situations, advanced ethanol can also be produced from sorghum and food wastes.

Figure II.F-1
Historical Imports of Ethanol



The Brazilian Sugarcane Industry Association (UNICA) provided comments suggesting that 2 billion gallons of sugarcane ethanol could be supplied to the U.S. in 2016. After further investigation, we do not believe that this level of import is reasonably achievable in 2016. To begin with, exports of 2 billion gallons from Brazil to the U.S. would be significantly higher than total exports to all countries in all previous years, as shown below.

Figure II.F-2
Total Exports of Ethanol From Brazil to All Countries



Source: www.unicadata.com.br

In recent years, ethanol exports from Brazil to countries other than the U.S. averaged more than 300 million gallons each year. Brazil has recently increased ethanol exports to China and has also increased its own ethanol use requirements.[132] [133] If this were to continue in 2016, total exports from Brazil would need to reach 2.4 billion gallons in order to supply 2 billion gallons to the U.S. We do not believe that the information that UNICA provided supports this extremely high level of exports.

Although UNICA cites a variety of factors that can affect ethanol exports and which are beyond the control of Brazilian mills and the EPA, it nevertheless based its estimate of potential exports to the U.S. solely on a combination of Brazilian ethanol production capacity and opportunities created by the RFS program itself. We believe that UNICA has underestimated the uncertainty associated with other market factors, including the E10 blendwall in the U.S., changes in domestic demand for ethanol in Brazil, and competing world demand for sugar. With regard to sugar, it is true that Brazilian production has been declining for the last several years. However, between 2005 and 2015, Brazilian production of sugar has increased just as often as it has decreased, demonstrating that there is uncertainty with regard to worldwide demand for sugar. We

[132] ''Ethanol acts as lone bright spot amid China commodity gloom—Reuters,'' docket EPA–HQ–OAR–2015–0111.

[133] ''Brazil Hikes Ethanol Blend in Gasoline to 27%,'' DownstreamBusiness.com, March 12, 2015.

believe it would be imprudent to assume that the downward trend in sugar production in recent years will continue in 2016.

More importantly, while production of sugarcane has increased moderately in Brazil over the last several years, total gasoline consumption in Brazil also continues to climb.[134] This reduces the potential for substantial increases in exports of ethanol in 2016, as ethanol serves as a critical source of fuel supply in Brazil to offset shortages in petroleum. In fact, total consumption of petroleum in Brazil has increased at a rate of about 4.9% over the last several years, while the rate of sugarcane production has only grown at a rate of about 2.2%.[135]

Several stakeholders also pointed to the potential for so-called ''circle trade'' between the U.S. and Brazil as a reason to either reduce the applicable volume requirement for advanced biofuel in such a way as to limit imports of sugarcane ethanol, and/or to increase the required volume of BBD. In this circle trade, corn-based ethanol is exported from the U.S. to Brazil at the same time that sugarcane ethanol is exported from Brazil to the U.S. This has undoubtedly occurred in the past, though the circle trade volumes have represented only 21% of all ethanol imports and exports between the two countries that occurred between 2010 and 2014.[136] However, there has been a high degree of variability in sugarcane ethanol imports into the U.S., and also a high degree of variability in the export of corn ethanol to Brazil. In some years the U.S. exported more ethanol to Brazil than Brazil exported to the U.S., while in other years the opposite occurred. This indicates that there are a wide variety of factors driving imports and exports of ethanol, and ''circle trade'' does not appear to have been the major one in the past. Nevertheless, to the degree that circle trade increased in response to higher RFS volume requirements for advanced biofuel, the GHG benefits associated with the advanced biofuel volume requirement would be reduced.

As stated in the NPRM, the highest volume of Brazilian sugarcane ethanol that has ever been imported was 680 million gallons in 2006; in 2013 imports reached 435 million gallons.[137] However, in 2014 imports were only 64 million gallons, and the projected annual level of imports for 2015 is about 55 million gallons.[138] [139] Some sugarcane ethanol will likely be imported in 2016 in order to meet the requirements of California's Low Carbon Fuel Standard (LCFS), and all such imported sugarcane ethanol will qualify to meet the RFS standards. However, sugarcane ethanol volumes have also fallen off in recent years under California's program.[140] Given our assessment of UNICA's estimate of volumes it can export to the U.S. in 2016 as described previously, and our assessment of uncertainty in import volumes as evidenced by the highly variable historical supply, there is no indication (apart from UNICA's comments, discussed above) that imports of sugarcane ethanol in 2016 will be markedly different from historic levels. While the historical average level of ethanol imports over the last ten years is about 300 million gallons, the low levels of imports seen in 2014 and 2015 suggest that such volumes may not be available in 2016. Accordingly, for the purposes of determining the reasonably attainable volume of advanced biofuels, we believe it is reasonable to assume that a somewhat lower level of imports will occur than the historic average over the last ten years. Thus we estimate that about 200 million gallons of sugarcane ethanol will be available in 2016 for the purposes of determining the advanced biofuel volume requirement for 2016. However, actual imports of sugarcane ethanol could be higher or lower than this level as shown in the scenarios for how the market could respond in Section II.G.

With regard to advanced biodiesel and renewable diesel, past experience suggests that a high percentage of the supply of biodiesel and renewable diesel to the United States qualifies as advanced biofuel. In previous years biodiesel and renewable diesel produced in the United States has been almost exclusively advanced biofuel. It is also likely that some advanced biodiesel will be imported in 2016, as discussed in Section II.E.3.iii, however we believe that the volume of biodiesel imported from Argentina in 2016 is likely to be less than the several hundred million gallons suggested by some commenters (see Section II.E.3.iii for more detail on biodiesel and renewable diesel imports). Imports of conventional (D6) biodiesel and renewable diesel, however, have also increased in recent years, and are likely to continue to contribute to the supply of renewable fuel in the United States in 2016. By including a high percentage of the 2.5 billion gallon projected total supply of biodiesel and renewable diesel in the advanced biofuel category, consistent with past experience, we are incentivizing increased production and import of biodiesel and renewable diesel that is produced from feedstocks that qualify for advanced biofuel RINs in 2016, rather than conventional renewable fuel RINs, enhancing the GHG benefits of the RFS program.

The discussion of the many constraints on total biodiesel supply in Section II.E.3 above is also relevant in the determination of reasonably attainable volumes of advanced biodiesel. In this context, we believe that out of the total of 2.5 billion gallons of biodiesel and renewable diesel that we have determined can reasonably be assumed for purposes of establishing the total renewable fuel volume requirement, that 2.1 billion gallons could be advanced biofuel. While we expect domestically produced biodiesel and renewable diesel to remain the primary source of biodiesel and renewable diesel supplied to the United States in 2016, the potential constraints related to the distribution and use of biodiesel, discussed in Section II.E.3 above, may lead to an increasing demand for renewable diesel, which faces fewer potential constraints related to distribution and use than biodiesel. Much of the renewable diesel produced globally would qualify as conventional, rather than advanced biofuel, and we therefore expect that conventional renewable diesel will continue to be an important source of renewable fuel used in the United States in 2016. The volume of advanced biodiesel and renewable diesel which we are assuming for purposes of deriving the advanced biofuel standard for 2016 (2.1 billion gallons) would represent an increase of about 370 million gallons from that supplied in 2015, which is greater than the annual increase that occurred in the previous two years (91 million gallons from 2013 to 2014 and 104 million gallons from 2014 to 2015)

[134] ''Gasoline Demand in Brazil: an empirical analysis,'' Thaís Machada de Matos Vilela, Pontifical Catholic University of Rio de Janeiro, Figure 2.

[135] ''Brazilian sugarcane production and petroleum consumption,'' docket EPA–HQ–OAR–2015–0111.

[136] Between 2010 and 2014, circle trade represented about 21% of all ethanol imports and exports between the U.S. and Brazil. See ''Analysis of circle trade between the US and Brazil,'' docket EPA–HQ–OAR–2015–0111.

[137] Ethanol import data from EIA, representing imports directly from Brazil and indirectly through the Caribbean Basin Initiative (CBI) and the Central America Free Trade Agreement (CAFTA). *http://www.eia.gov/dnav/pet/pet_move_impcus_a2_nus_epooxe_im0_mbbl_m.htm.*

[138] Based on import data from EMTS.

[139] Notably, in response to the February 7, 2013 NPRM, UNICA projected that Brazil could supply 800 mill gal of sugarcane to the U.S. in 2014.

[140] ''Status Review of California's Low Carbon Fuel Standard,'' Institute of Transportation Studies, University of California Davis, April 2015.

but less than the highest annual increase that occurred in 2013 (about 560 million gallons from 2012 to 2013). This projected increase in the available volume of advanced biodiesel and renewable diesel accounts for the expected increased availability of feedstocks, such as soy oil, distillers corn oil, and waste oils, fats, and greases, that we expect will be available to biodiesel and renewable producers in 2016 (see Section II.E.3.i for a further discussion of feedstock availability). It also represents a significant increase from the highest levels of advanced biodiesel and renewable diesel supplied to date. We find this volume to be reasonably attainable for the reasons discussed in Section II.E.3.

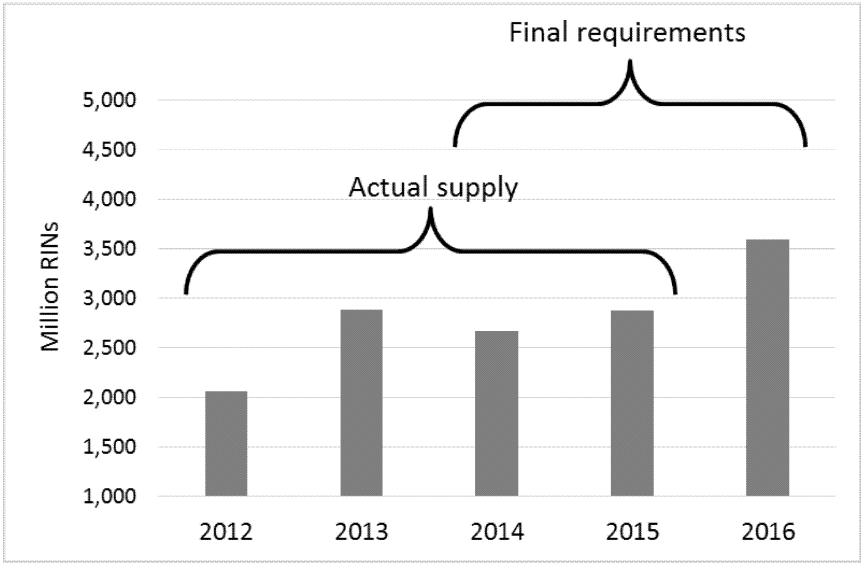
Due to the nested nature of the standards, all cellulosic biofuel qualifies to help meet the advanced biofuel volume requirement. As described in Section II.E.4, we have also estimated that about 25 million gallons of advanced biofuel other than ethanol, biodiesel, and renewable diesel can be supplied in 2016. We estimate that the combination of all these sources results in a reasonably attainable volume of advanced biofuel for 2016 of 3.61 billion gallons. This is the volume requirement that we are establishing for advanced biofuel for 2016. We note that the volumes actually used to satisfy this requirement may be different than those listed in Table II.F–1 below.

TABLE II.F–1—VOLUMES USED TO DETERMINE ADVANCED BIOFUEL SUPPLY IN 2016

	Volume (million gallons)	Million RINs
Cellulosic biofuel	230	230
Biodiesel and renewable diesel	2,100	3,150
Imported sugarcane ethanol	200	200
Other non-ethanol	25	25
Total	2,555	3,605

The volume of advanced biofuel that we are establishing for 2016 will require increases from current levels that are substantial yet attainable, taking into account the constraints on supply discussed previously, our judgment regarding the ability of the standards we set to result in marketplace changes, and the various uncertainties we have described. Figure II.F–3 shows that the advanced biofuel volume requirement for 2016 will be significantly higher than the actual supply of advanced biofuel in previous years.

Figure II.F-3
Growth in Advanced Biofuel[a]



[a] Values for 2012 and 2013 represent actual supply of renewable fuel in each year, not the applicable volume requirements.

G. Market Responses to the 2016 Advanced Biofuel and Total Renewable Fuel Volume Requirements

The transportation fuel market is dynamic and complex, and the RFS program is only one of many factors that determine the relative types and amounts of renewable fuel that will be used. Thus, while we set the applicable volume requirements for advanced biofuel and total renewable fuel, we cannot precisely predict how the market will choose to meet those requirements, as the RFS standards we set generally allow use of multiple fuel types for compliance. We can, however, delineate a range of possibilities, and doing so provides a means of demonstrating that the final volume requirements are attainable through multiple possible paths.

For our final 2016 total renewable fuel volume requirement of 18.11 billion gallons, there would be 1.05 billion ethanol-equivalent gallons needed beyond that supplied by E10, the BBD volume requirement of 1.9 billion physical gallons (equivalent to 2.85 billion D4 RINs as described in Section III.D.4), and that portion of the cellulosic biofuel volume which we would expect to be derived from non-ethanol biofuel (see Section IV.F).

TABLE II.G–1—BREAKDOWN OF RENEWABLE FUEL USE IN 2016 BASED ON FINAL VOLUMES

[Billion ethanol-equivalent gallons]

Total renewable fuel	18.11
Ethanol consumed as E10 [a]	−14.00
Non-ethanol cellulosic biofuel	−0.21
Biomass-based diesel [b]	−2.85
Additional renewable fuel that must be used	1.05

[a] Includes all sources of ethanol (cellulosic, advanced, and conventional).

[b] Represents the 1.90 billion physical gallons that is the minimum required under the BBD standard.

All of the constraints discussed in Section II.E.1 could play a role in determining how the market chooses to supply the additional 1.05 billion gallons needed. The options available to the market to fulfill the need for 1.05 billion gallons of renewable fuel include the following: [141]

- Increase the production and use of BBD above the final standard of 1.90 billion gallons [142]
- Increase import and use of sugarcane ethanol and/or domestic production and use of corn-ethanol, which would require a corresponding increase in E15 and/or E85
- Increase production and/or imports of conventional (D6) biodiesel and renewable diesel
- Increase the production of other non-ethanol biofuels, such as renewable heating oil, jet fuel, naphtha, butanol, and renewable fuels coprocessed with petroleum

In determining the amounts of each type of renewable fuel used to meet the total renewable fuel volume requirement, the market would also need to satisfy the final advanced biofuel standard of 3.61 billion gallons.

To illustrate the possible outcomes, we evaluated a number of scenarios with varying levels of E85/E15, E0, imported sugarcane ethanol, advanced biodiesel and renewable diesel, and conventional biodiesel and renewable diesel (likely to be made from palm oil). In doing so we sought to capture the range of possibilities for each individual source, based both on levels achieved in the past and how the market might respond to the final standards in 2016. Each of the rows in Table II.G–2 represent a scenario in which the final total renewable fuel and advanced biofuel volume requirements would be satisfied. While we cannot predict precisely how the market will respond to the standards we are setting, we believe that the market will respond, and will likely do so within the range of options shown in the table below. The flexibility afforded the market through the RFS program helps to make the standards we are finalizing today reasonably achievable.

TABLE II.G–2—VOLUME SCENARIOS ILLUSTRATING POSSIBLE COMPLIANCE WITH 3.61 BILL GAL ADVANCED BIOFUEL AND 18.11 BILL GAL TOTAL RENEWABLE FUEL

[Million gallons] [a] [b]

E85 [c]	E0	Total ethanol [d]	Sugarcane ethanol	Total biodiesel [e]	Minimum volume of advanced biodiesel [e]
200	100	14,122	100	2,502	2,170
200	100	14,122	300	2,502	2,037
200	300	14,102	0	2,516	2,237
200	300	14,102	100	2,516	2,170
200	300	14,102	300	2,516	2,037
200	300	14,102	495	2,516	1,907
400	100	14,255	0	2,414	2,237
400	100	14,255	100	2,414	2,170
400	100	14,255	300	2,414	2,037
400	100	14,255	495	2,414	1,907
400	300	14,234	100	2,427	2,170
400	300	14,234	300	2,427	2,037

[a] Assumes for the purposes of these scenarios that supply of other non-ethanol advanced biofuel (heating oil, naphtha, etc.) is 25 mill gal, and that the cellulosic biofuel final standard for 2016 is 230 mill gal, of which 20 mill gal is ethanol and the remainder is primarily biogas.

[b] Biomass-based diesel, conventional biodiesel, and total biodiesel are given as biodiesel-equivalent volumes, though some portion may be renewable diesel. Other categories are given as ethanol-equivalent volumes. Biodiesel-equivalent volumes can be converted to ethanol-equivalent volumes by multiplying by 1.5.

[c] Some higher ethanol blend volume here represented as E85 may alternatively be E15 (1 gal of E85 could be replaced with 12.8 gallons of E15)

[d] For the range of total ethanol shown in this table, the nationwide pool-wide average ethanol content would range from 10.07% to 10.18%. The majority of gasoline will contain 10% ethanol, and some gasoline will contain higher levels of ethanol such as E15 or E85. In comparison, the pool-wide average ethanol content in 2014 and 2015 (projected) was 9.97% and 10.01%, respectively. When the increase in ethanol use is combined with substantial increases in non-ethanol renewable fuels, the 2016 volume requirements are significantly higher than both 2014 and 2015.

[e] Includes supply from both domestic producers as well as imports.

The scenarios in the table above are not the only ways that the market could choose to meet the total renewable fuel and advanced biofuel volume requirements that we are finalizing today. Indeed, other combinations are possible, with volumes higher than the highest levels we have shown above or, in some cases, lower than the lowest levels we have shown. The scenarios above (and similar scenarios presented in the NPRM) cannot be treated as EPA's views on the only, or even most likely, ways that the market may respond to the final volume requirements for 2016, contrary to the views of some stakeholders who commented on the NPRM. Instead, the scenarios are merely

[141] Although obligated parties could draw down the bank of carryover RINs as an alternative means of compliance, as discussed elsewhere we believe that the incentives for obligated parties to retain their carryover RINs is sufficiently large that they will preferentially acquire and retire current-year RINs for compliance.

[142] We have determined in the context of deriving the advanced biofuel standard that 2.2 billion gallons are reasonably attainable. However, the market could operate such that larger volumes are made available.

illustrative of the various ways that it could play out. Our purpose in generating the list of scenarios above is only to illustrate a range of possibilities which demonstrate that the standards we are finalizing today are achievable despite the considerable increases relative to 2015.

Stakeholders who believed that the volume requirements we proposed in the NPRM were too high often described them as unprecedented or overly aggressive, implicitly treating the various legal and practical constraints to increased renewable fuel use as a barrier that cannot or should not be crossed. Some stakeholders said that any scenario in which a particular category of renewable fuel exceeded historical maximums or previously demonstrated production levels cannot be considered to be achievable. Based on this premise, such stakeholders dismissed all scenarios in the NPRM as being unachievable.

As described earlier, while we acknowledge that constraints on growth in renewable fuel supply are real, we do not believe that they create absolute barriers to growth in renewable fuel supply. Instead, the current constraints on growth in supply mean that each additional supply increment is likely to be more difficult to achieve than previous increments, and likely require more time to overcome than past constraints. The market most certainly can and will respond to the standards that we set by increasing supply, as has been demonstrated on other occasions. Growth in the biofuels market is also the primary objective of the statute, as we acknowledge throughout this action. However, the market is not unlimited in its ability to respond, and for this reason we have found it necessary to reduce the required volumes below the statutory targets.

The scenarios that we provided in the NPRM, and somewhat different scenarios presented above that reflect the final volume requirements, demonstrate that the market has various ways in which it could respond. The market can be expected to choose the lowest cost path to compliance for 2016, but some parties may choose paths that are intended to result in lower costs in the long term despite generating higher costs in the near term. For instance, regulated parties may respond to the standards we set with investments in production, distribution, and consumption infrastructure that is focused on longer term growth.

All of the volume levels in the scenarios shown above are within reach of a responsive market, though they may not all be equally likely. Below we discuss several of them to demonstrate that the final volume requirements for 2016 are achievable.

With regard to E85, according to EIA there will be about 16 million FFVs in the in-use fleet in 2016 with a total consumption capacity of about 14 billion gallons of E85.[143] However, since only about 2% of retail stations nationwide currently offer E85, only a minority of FFVs have easy access to E85. Under more favorable E85 pricing that could result from higher RIN prices, E85 sales volumes higher than those achieved in 2014 (about 150 million gallons) are certainly achievable. As described in Section II.E.2.iii we believe that 200 million gallons is the most likely maximum achievable volume of E85 in 2016. Even with some growth in the number of retail stations offering E85, however, E85 sales are unlikely to grow dramatically in 2016 due to the weak observed consumer response to E85 combined with the limited ability of the RIN mechanism under current conditions to reduce the retail price of E85 relative to E10 as described in Section II.E.2.ii. USDA's Biofuels Infrastructure Partnership grant program, an important program to expand ethanol retail infrastructure, could increase the number of E85 retail stations by perhaps as much as 400 in 2016 as discussed above, but such growth would still have a relatively small impact on total ethanol use.[144] As described in Section II.E.2.iii, under highly favorable though much less likely conditions related to growth in the number of E85 retail stations, retail pricing, and consumer response to that pricing, it is possible that E85 volumes as high as 400 million gallons could be reached in 2016.[145] Thus we have included scenarios in Table II.G–2 that include E85 volumes as high as 400 million gallons. Higher volumes of E85 sales in 2016 are very unlikely, but are possible if the market can overcome constraints associated with E85 pricing at retail and consumer responses to those prices.

As Table II.G–2 illustrates, the final standards could result in the consumption of as much as 2.5 billion gallons of biodiesel and renewable diesel, representing an increase of more than 600 million gallons over the projected 2015 supply of all D4 and D6 biodiesel and renewable diesel. While this would be a substantial increase, we believe that it is possible for the market to reach this level as discussed as in Section II.E.3. 2.5 billion gallons of biodiesel would represent about 4% of the nationwide pool of diesel fuel in 2016. Most diesel fuel could contain 5% biodiesel while still allowing some diesel fuel to contain no biodiesel to accommodate areas of the country where the distribution infrastructure is not yet established, as well as that used in northern states during the coldest months of the year. Also, B20 could be used in a number of centrally-fueled fleets composed of newer engines without violating manufacturer warranties, and additional volumes of biodiesel could be used in heating oil. In light of these additional volumes, it is possible that 2.5 billion gallons could be supplied in 2016.

We note that it would be inappropriate to construct a new scenario based on the highest volumes in each category that are shown in Table II.G–2 in order to argue for higher volume requirements than we are establishing today. Doing so would result in summing of values that we have determined are higher than the most likely maximum achievable volumes of the different fuel categories, resulting in a total volume that we believe would be extremely unlikely to be achievable. We have more confidence in the ability of the market to achieve 18.11 billion gallons of total renewable fuel through some combination of different types of renewable fuel than we have in the ability of the market to achieve a specific level of, say, biodiesel. Thus, for instance, while the highest biodiesel volume shown in Table II.G–2 is about 2.5 billion gallons, the market could choose a different level of total biodiesel and renewable diesel, offsetting the volumes with other fuels. The same is true for the highest level of E85 shown in Table II.G–2 of 400 million gallons, or the highest level of sugarcane ethanol of about 500 million gallons. In addition, the consumption of each fuel in Table II.G–2 is not independent of the consumption of the other fuels in the table. For example, greater domestic biodiesel production reduces the likelihood of large imports of biodiesel

[143] According to AEO2015, Table 42, total vehicle miles travelled by FFVs in 2016 will be about 7.95% of all light-duty gasoline-powered vehicles, equivalent to about 10.9 bill gal of E10 or 13.9 bill gal of E85.

[144] We acknowledge that the USDA program will increase the number of retail stations offering E15, potentially significantly. However, as described in Section II.E.2.iv, the impact on total ethanol supply in 2016 from increased use of E15 is likely to be considerably smaller than the impact on total ethanol supply from the use of E85. Thus some portion of the volumes of E85 shown in Table II.G–2 may instead be ethanol-equivalent volumes of E15.

[145] ''Correlating E85 consumption volumes with E85 price,'' memorandum from David Korotney to EPA Docket EPA–HQ–OAR–2015–0111.

because these two fuels compete against one another for access to feedstocks that can be used to make biodiesel in 2016 and for available distribution infrastructure and market share. The probability that the upper limits of all sources shown in Table II.G–2 could be achieved simultaneously is extremely unlikely.

As noted in the NPRM, the volume requirements that we are establishing today will likely result in RIN prices that are higher than historical levels. RIN price increases are an expected market response to a renewable fuel volume requirement that is higher than that in previous years and which is expected to require effort on the part of producers, distributors, blenders, and retailers to overcome constraints. While the RIN market mechanism provides incentives for the market to increase supply both in the near and long term, as stated earlier the RIN market mechanism is not without limitation, and the renewable fuel supply cannot be expected to increase proportionally at any RIN price. Particularly in the near term (specifically 2016), we do not believe that significantly higher RIN prices would likely compel the market to supply substantially higher volumes than we are finalizing today.

H. Treatment of Carryover RINs

We explained in the NPRM that we cannot precisely assess the volume of carryover RINs available for use in complying with the 2014, 2015, and 2016 standards, but that we estimated that approximately 1.8 billion would remain after compliance with the 2013 RFS standards. We proposed that the current bank of carryover RINs should be preserved as a compliance ''buffer'' and not intentionally drawn down by setting volume requirements at a level that is higher than can be satisfied through the production and use of physical gallons of fuel.[146] Many stakeholders provided comment on the topic of how EPA should consider carryover RINs as part of the standard-setting process. After considering these comments, we have decided for this rulemaking to treat carryover RINs in the manner proposed and not establish volume requirements that would be expected to require obligated parties to draw down the current bank of carryover RINs so as to achieve compliance.

1. Summary of Public Comments

Comments on this issue generally expressed two opposing points of view. Many commenters, including many obligated parties, contended that EPA should not assume a draw-down in the bank of carryover RINs in determining the appropriate level of volume requirements. On the other hand, other commenters including many renewable fuel providers urged EPA to rely on carryover RINs to push the standards higher than the levels of projected physical volumes and so minimize the extent to which statutory applicable volumes are reduced.

Representatives of obligated parties were nearly uniform in supporting EPA's proposal to not assume a draw-down in the current bank of carryover RINs in setting the 2014, 2015, and 2016 advanced biofuel and total renewable fuel standards. Virtually all of these commenters agreed that maintaining the bank of carryover RIN would provide them with needed compliance flexibility to address unforeseen events such as operational problems, market dislocations, supply limitations, or fraudulent RINs. Several commenters noted that if EPA were to rely on the use of carryover RINs to push for higher standards than reflected by actual renewable fuel supply, it would remove a flexibility that Congress had intended for obligated parties. Several commenters also noted that obligated parties vary in their ability to acquire RINs, with the result being that some obligated parties have a substantial number of carryover RINs, while others have few or none. They argued that setting the volume requirements with the expectation that all or a substantial number of carryover RINs would be used would make compliance even more difficult than it would otherwise be for those who must rely largely or totally on RIN purchases rather than on acquiring RINs through blending activities. Several commenters also argued that maintaining the bank of carryover RINs allows for better market trading liquidity and a cushion against future program uncertainty. They noted the importance of a relatively stable, liquid RIN market for achieving compliance with volume requirements, particularly where new and expanded avenues of supply are still being developed and built. In their view, carryover RINs have been important to maintaining a functioning market, and they cautioned EPA against reducing that pool at all or too much and thereby risking severe market disruption in the event of a drought or other unforeseen difficulties.

Commenters from the renewable fuel industry, on the other hand, urged EPA to assume a draw-down in the bank of carryover RINs in determining whether and to what extent to waive statutory volumes. They noted that EPA considered the availability of carryover RINs in previous decisions not to waive statutory volumes, and argued that EPA's proposed approach was inconsistent with this past practice. They pointed out that in order to comply with the statute's purpose to encourage growth in the use of renewable fuel in the transportation fuel supply, carryover RINs should be considered available for minimizing the extent to which statutory volume requirements are reduced. Some of these commenters further argued that the carryover RINs clearly are part of the renewable fuel ''supply'' available for compliance purposes, and therefore EPA must count them in determining whether there is an ''inadequate domestic supply'' for purposes of justifying use of the general waiver authority.

2. Updated Projection of Carryover RIN Volume

In the NPRM, EPA assessed the size of the RIN bank at approximately 1.8 billion carryover RINs. However, we have updated our assessment, and now believe that 1.74 billion is the maximum that might be available for possible use in complying with the standards for 2014, 2015 and 2016.[147] There is considerable uncertainty surrounding this number since there has not been a compliance demonstration since 2013 (for the 2012 RFS standards). As described in a memorandum to the docket, the 1.74 billion carryover RIN maximum value will effectively be reduced to an uncertain degree to satisfy deficit carry-forwards from 2012.[148] In addition, there have been enforcement actions in past years that have resulted in the retirement of RINs that were fraudulently generated and were therefore invalid, and parties who relied

[146] For the bank of carryover RINs to be preserved from one year to the next, individual carryover RINs are used for compliance before they expire and are essentially replaced with a newer vintage RIN that is then held for use in the next year. For example, if the volume of the RIN bank is unchanged from 2013 to 2014, then all of the approximately 1.74 billion vintage 2013 carryover RINs must be used for compliance in 2014, or they will expire. However, the same volume of 2014 RINs can then be ''banked'' for use in the next year.

[147] As noted elsewhere, we do not believe that the collective bank of carryover RINs will be drawn down to achieve compliance with 2014, 2015, and 2016 standards, since carryover RINs from one year will likely be rolled over into new carryover RINs for the next; we are describing here the size of the collective RIN bank, RINs that could theoretically be used for compliance purposes with 2014, 2015 and 2016 standards, though we do not believe that they will be.

[148] ''Estimating Carryover RINs Available for Use in 2014,'' Dallas Burkholder, Office of Transportation and Air Quality, U.S. EPA. November 2015. EPA Air Docket EPA–HQ–OAR–2015–0111.

on those invalid RINs for compliance were required to acquire valid substitutes to true up their past compliance demonstrations. Future enforcement actions could have similar results, and require that obligated parties settle past enforcement-related obligations in addition to the 2014–2016 standards, thereby creating greater demand for RINs than what EPA has determined represents the maximum reasonably achievable in this time period. The result of such enforcement actions, therefore, could be an effective reduction in the size of the collective bank of carryover RINs to a level further below 1.74 billion RINs.

3. EPA's Decision and Response to Comments

EPA has decided to maintain the proposed approach, and not set the volume requirements in the final rule with the intention or expectation of drawing down the current bank of carryover RINs. While we have not assumed an intentional drawdown in the overall bank of carryover RINs owned by obligated parties collectively in establishing the volume standards for 2014, 2015, and 2016, we understand that some obligated parties may choose to sell or use all or part of their individual banks of carryover RINs during this time period. To the extent that they do so, other obligated parties would be in a position to bank carryover RINs by using available renewable fuel or purchasing RINs representing such fuel, with the expected net result being no effective change in the size of the overall bank of carryover RINs that is owned collectively by obligated parties.

In finalizing this approach, we carefully considered the many comments received, including on the role of carryover RINs under our waiver authorities and the policy implications of our decision. Our responses to major comments are summarized here, with additional detailed responses in the Response to Comments document in the docket.

i. Importance of Carryover RINs

We agree with the many commenters who noted the importance of carryover RINs to individual compliance flexibility and operability of the program as whole. We believe that carryover RINs are extremely important in providing obligated parties compliance flexibility in the face of substantial uncertainties in the transportation fuel marketplace, and in providing a liquid and well-functioning RIN market upon which success of the entire program depends. As described in the 2007 rulemaking establishing the RFS regulatory program,[149] carryover RINs are intended to provide flexibility in the face of a variety of circumstances that could limit the availability of RINs, including weather-related damage to renewable fuel feedstocks and other circumstances affecting the supply of renewable fuel that is needed to meet the standards. Commenters have drawn our attention to operational problems, market dislocations, and fraudulent RINs as other types of unforeseen circumstances for which the availability of carryover RINs is important. Obligated parties make individual decisions about whether and how many RINs to acquire for their compliance management purposes, and a decision by EPA to effectively require the ''draw down'' of all or a substantial volume of individual carryover RIN banks by setting higher future volume requirements than can be satisfied with actual renewable fuel use would decrease their compliance options and increase their risk of noncompliance. An intentional drawdown of the carryover RIN bank under current circumstances would likely have long-term effects on the RFS program, as increasing standards are expected to make compliance more challenging and reduce the ability to generate new carryover RINs.

An adequate RIN bank also serves to make the RIN market liquid and to avoid the possible need for frequent standards adjustments. Just as the economy as a whole functions best when individuals and businesses prudently plan for unforeseen events by maintaining inventories and reserve money accounts, we believe that the RFS program will not function properly unless sufficient carryover RINs are held in reserve for potential use by the RIN holders themselves, or for possible sale to others that may not have established their own carryover RIN reserves. Were there to be no RINs in reserve, then even minor disruptions causing shortfalls in renewable fuel production or distribution, or higher than expected transportation fuel demand (requiring greater volumes of renewable fuel to comply with the percentage standards that apply to all volumes of transportation fuel, including the unexpected volumes) could lead to the need for a new waiver of the standards, undermining the market certainty so critical to the long term success of the RFS program. Furthermore, many obligated parties lack the ability to generate certain types of RINs. With a functioning liquid RIN market this is not a problem because we expect that these obligated parties will be able to comply by securing these RINs on the open market. However, a significant drawdown of the carryover RIN bank leading to a scarcity of RINs may stop the market from functioning in an efficient manner, even where the market overall could satisfy the standards. For all of these reasons, the collective carryover RIN bank provides a needed programmatic buffer that both facilitates individual compliance and provides for smooth overall functioning of the program. (Here and elsewhere we use the term ''buffer'' as shorthand reference to all of the benefits that are provided by a sufficient bank of carryover RINs.)

The importance of carryover RINs to the RFS program and to obligated parties can be illustrated by comparing them to either currency or inventory, as they can be seen as functioning in both roles in the RFS program. First, carryover RINs, like all RINs, are a form of ''currency'' that can be traded and that ultimately are used to settle compliance accounts at the close of each RFS compliance year. Individual banks of carryover RINs can be analogized to a typical individual bank account in which money is deposited and withdrawn. It is commonly understood that in managing both personal and business finances, that a reserve fund should be maintained to cover unforeseen circumstances. Thus, it is generally considered unwise to budget spending every dollar that is earned in a paycheck, since unforeseen events such as illness, injury, or a downturn in business could impact future earnings, and it is prudent to assume that such an event will occur in the future and to plan for them. This type of planning is particularly important in situations where credit is either unavailable or restricted, since in such circumstances there may be very limited alternatives to a reserve account. The RFS compliance system is structured to provide only limited ''credit'' for compliance obligations. Parties may defer compliance for one calendar year, but are required to pay back the deficit in the next compliance year while also meeting the next year's requirements.[150] Parties may also seek forgiveness of their RFS debt by petitioning EPA pursuant to CAA section 211(o)(7)(A) for a waiver to account for ''inadequate domestic supply'' or severe economic or environmental harm, but there is no guarantee that such waivers will be provided, or that they will be granted in time to provide the relief needed, and since such waivers are only available to address widespread concerns. They are

[149] 72 FR 23900, May 1, 2007.

[150] See CAA section 211(o)(5)(D).

not likely to be available to address individual circumstances. Thus, we believe that there are very good reasons for the program to allow for the market as a whole to have a reasonable number of carryover RINs available, and there are incentives for individual parties to seek to establish and retain a reserve bank of carryover RINs that can be used to address expected market downturns as well as unforeseen circumstances that may hinder or prevent compliance. Furthermore, just as the economy as a whole is stronger and more resilient when many individuals have significant monetary savings, we believe the RFS program, too, is stronger and more resilient to market swings and unforeseen events when obligated parties, collectively, have a sufficient bank of carryover RINs. Excessive savings are generally not positive for an economy, since they suggest that investments in future growth are not being made; however, insufficient savings run the risk of a market collapse in the face of economic downturns. An appropriate amount of savings is the desired goal. In our judgement, maintaining the current volume of carryover RINs will provide an appropriate collective savings account for the RFS program to provide benefits similar to desired collective savings in the economy.

We also believe the carryover RIN bank for the RFS program can be analogized to the working inventory that any business needs to operate. In the case of businesses, these are the raw materials, parts, or cash on hand needed to keep production going for the next day, the next week, or the next several months until new supplies can be delivered during normal operations and to allow for potential disruptions in supply of necessary materials. Failure to maintain an adequate working inventory of supplies could shut down operations, cause contracts to go unfulfilled, and create a lack of confidence in the business by would-be purchasers of their products that could ultimately lead to business failure. This is why successful businesses maintain inventories of supplies that they will need to maintain continuous production, and to account for unexpected disruptions in supply.[151] This phenomenon, known as convenience yield, is also why they typically maintain multiple sources of supply, rather than relying on just one. Maintaining an inventory and alternative sources is particularly important in situations where product supply is limited, unreliable, or uncertain, since the inventory allows continued operations despite these circumstances. While in theory the working inventories can be drawn down, and might need to be when circumstances dictate, these working inventories are not drawn down in the course of normal business operations and instead are maintained year after year to serve their intended purpose. We believe we are in this same situation for the existing bank of carryover RINs. Although the RFS program is structured such that compliance with the percentage standards is determined on an annual average (rather than a per-gallon) basis, it is nevertheless logical and prudent for obligated parties to view RINs as an essential ingredient of their product, and to attempt to match their RIN holdings to production volumes on an ongoing basis. The availability of carryover RINs can help provide needed assurance to obligated parties during the compliance year that they will eventually be able to comply with the RFS standards, while still planning to do so through the acquisition of current-year RINs. While individual obligated parties may not have a bank of carryover RINs at present, the access to carryover RINs in the marketplace from other sources can serve the same function.

ii. Role of Carryover RINs Under the Waiver Authorities

Some commenters disagreed with the proposed approach, suggesting that carryover RINs must be considered as part of ''supply'' in determining if there is an ''inadequate domestic supply'' justifying a waiver pursuant to CAA section 211(o)(7)(A). We disagree with these comments. As noted in Section II.B., the term ''inadequate domestic supply'' is not defined in the statute. Similarly, CAA section 211(o)(5), which provides the statutory basis for the carryover RIN regulatory provisions, requires that EPA establish a credit program as part of its RFS regulations, and that the credits be valid to show compliance for 12 months as of the date of generation, but is silent on the relationship of these credits to the ''inadequate domestic supply'' reference in section 211(o)(7)(A). Therefore, EPA finds no guidance in the text of these key statutory provisions on whether or not carryover RINs should be deemed part of the ''supply'' referenced in CAA section 211(o)(7)(A). In light of the statute's silence on this matter, it is appropriate for EPA to interpret the term so as to best fulfill the statute's objectives, including the general objective that the program runs efficiently.

We believe that the word ''supply'' in the phrase ''inadequate domestic supply'' can logically be read to refer only to actual renewable fuel (and not carryover RINs), since the focus of the entire RFS program is on increasing the amount of renewable fuel used in the transportation sector. Commenters suggested that the word ''supply'' could perhaps be interpreted to include both renewable fuel and carryover RINs on the grounds that all such RINs can be used for compliance purposes. However, it is clear that the result of this latter interpretation would be a complete drawdown in the collective bank of carryover RINs in a relatively short time period. In any year where actual renewable fuel supply was below the statutory levels and there was a balance of carryover RINs, reducing if not eliminating that balance would be a condition of exercising the general waiver authority. Because we firmly believe that maintaining a significant bank of carryover RINs provides a substantial benefit to the RFS program, as described above, in our judgment it best serves the interests of the program to interpret the term ''supply'' in the term ''inadequate domestic supply'' to include only actual renewable fuel, and not carryover RINs.

Although we do not believe that carryover RINs should be considered as part of the ''supply'' of renewable fuel in the context of a finding of ''inadequate domestic supply'' under the general waiver authority, we do believe that the availability of carryover RINs is an important factor for EPA to consider in determining whether or not to use the general waiver authority, just as it is when EPA considers using its cellulosic waiver authority (as upheld in the *Monroe* case). Thus, while we do not take carryover RINs into consideration in determining whether we *can* exercise the general waiver authority, we do take them into consideration in determining whether we *should* exercise either the general waiver authority or the

[151] For example, the marketwide carryover inventory of corn from one crop year to the next is roughly 9–10% of annual harvest. EIA. ''Weekly U.S. Ending Stocks of Fuel Ethanol.'' October 21, 2015 (available at *http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=W_EPOOXE_SAE_NUS_MBBL&f=W*); EIA. ''Weekly U.S. Oxygenate Plant Production of Fuel Ethanol.'' October 21, 2015 (available at *http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=W_EPOOXE_YOP_NUS_MBBLD&f=W*). Similarly, the average amount of ethanol in inventory at any given time is approximately 5–6% of annual production. USDA. ''Grain Stocks.'' September 30, 2015 (available at *http://usda.mannlib.cornell.edu/usda/current/GraiStoc/GraiStoc-09-30-2015.pdf*); USDA. ''Crop Production Annual Summary.'' January 12, 2015 (available at *http://usda.mannlib.cornell.edu/usda/current/CropProdSu/CropProdSu-01-12-2015_revision.pdf*).

cellulosic waiver authority. The exercise of these waiver authorities is discretionary and with an overabundance of carryover RINs, EPA could decide not to waive the statutory volume targets, even where the supply of actual renewable fuel may be inadequate to allow compliance, since the carryover RINs would allow compliance and a drawdown in the carryover RIN bank would not result in a loss of the important ''buffer'' function provided by a sufficient bank of carryover RINs. However, when the size of the bank of carryover RINs is limited, EPA could reasonably decide to exercise its waiver authorities to match the RFS requirements to the volume of the renewable fuel supply in the year in question, with the intention of preserving the limited bank of carryover RINs for the overall benefit of the program.[152] That is the present situation; in light of the projected limited size of the current bank of carryover RINs, we have determined that the volume requirements for total renewable fuel should be set at the level of projected supply of renewable fuels, and not at higher levels that would be expected to require a drawdown in the overall bank of carryover RINs. Similarly, in exercising the cellulosic waiver authority, we are not setting the volume requirements for advanced biofuel with the intention or expectation of requiring a draw-down in the bank of carryover RINs. We believe that preserving the current collective bank of carryover RINs is appropriate to provide a program buffer that facilitates the effective operation of the RFS program, and that a draw-down of this collective bank of carryover RINs should be avoided in setting the volume requirements for 2014–2016.

We do not agree with those commenters who asserted that carryover RINs may never be a consideration in determining whether and by how much to reduce statutory volume requirements. In evaluating EPA's decision not to use the cellulosic waiver authority in 2013 to reduce advanced and total renewable fuel volumes, the D.C. Circuit in *Monroe* ruled that EPA reasonably concluded that the availability of carryover RINs was ''certainly relevant'' to its decision.[153] We also considered the availability of carryover RINs in our decision not to exercise the general waiver authority in responding to petitions seeking a waiver of RFS requirements based on the 2012 drought.[154]

Similarly, were EPA to receive a request to waive already-established standards during the compliance year, we believe that it would be appropriate for EPA to take into consideration the substantially different context involved. Although the situation is not presently before us, we believe that there could be a strong case for avoiding granting a waiver during the course of a compliance year if a waiver can be avoided through the use of carryover RINs. We would need to consider in that context whether it would be appropriate to revise an established standard in the midst of the compliance year if there is a compliance mechanism available to avert that result. Indeed, EPA believes that one benefit of preserving carryover RINs when setting standards in the first instance, is precisely so that they may be available to address unforeseen circumstances such as a downturn in wet gallon supply during the compliance year. EPA will evaluate all such actions on a case-by-case basis.

iii. Extent to Which the Current Bank of Carryover RINs Could Be Drawn Down Without Compromising the Beneficial Buffer They Provide

As discussed above, we believe that an appropriate bank of carryover RINs serves an important program function, but we also believe that in circumstances where there is an overabundance of carryover RINs, that EPA can and should consider their availability as a possible approach to avoid or minimize waivers of the statutory volume targets. In establishing the RFS regulatory program, we considered both the beneficial program impacts of carryover RINs (*e.g.,* compliance flexibility, liquidity in the RIN trading market, etc.) and the potential that a substantial volume of carryover RINs could undermine the legitimate need of biofuel producers for assurance that the products they produce will actually be sold and used during a given compliance year, which could occur if obligated parties preferentially satisfy their obligations with carryover RINs. Balancing these considerations, and taking into account the statutory provision that credits should only be valid to show compliance for 12 months after the date of generation, EPA specified by regulation that obligated parties may only satisfy 20 percent of their RVO in a given year with carryover RINs. This 20 percent value therefore sets a cap on the possible use of carryover RINs that increases in absolute terms over time as the volume of renewable fuel required through the RFS program grows. In the initial years of the RFS program, obligated parties were able to steadily build up an inventory of carryover RINs, as market demand for ethanol exceeded the RFS standards. However the absolute size of the carryover RIN bank has been decreasing in recent years, as compliance requirements have become more challenging, and the ability to over-comply and create carryover RINs has become increasingly difficult.

For example, we estimated that 3.5 billion excess RINs were generated in 2011—almost 500 million more than the 3.02 billion carryover RINs that could be used in 2012 as a result of the 20 percent cap.[155] For 2013, we estimated that 2.67 billion 2012 carryover RINs were available for compliance.[156] This represented 16 percent of that year's 16.55 billion gallon total renewable fuel applicable volume. After compliance with the 2013 standards, we estimate that the carryover RIN bank will include at most 1.74 billion RINs and probably something less than that as discussed above. If we use the availability of carryover RINs as a basis for setting the standards for 2014 and 2015 to the statutory volumes as some commenters suggest, instead of setting them at actual renewable fuel supply, then, assuming we entered the 2014 compliance year with 1.74 billion carryover RINs, the amount of carryover RINs available for 2016 would only be on the order of 0.1 billion RINs, insufficient to maintain the statutory volumes for 2016 and insufficient to provide the benefits of a program buffer as described in this section. If instead we do not require a drawdown in 2014 and 2015, then potentially 1.74 billion carryover RINs would still be available for 2016, representing just 8 percent of the statutory volume of 22.25 billion gallons and 10 percent of the 18.1 billion gallon total renewable volume requirement finalized today.[157] We believe that we

[152] In some years, the situation could fall between these extremes, where EPA may exercise its discretion in a manner that assumes a somewhat enlarged bank of carryover RINs would be drawn down to a limited degree.

[153] *Monroe* at 12. The court also quoted with approval EPA's explanation that ''carryover RINs are a valid compliance mechanism'' and a means for obligated parties to ''protect [] against *any* potential supply shortfalls that could limit the availability of RINs.'' *Id.* (emphasis added by the court).

[154] At the same time, as discussed elsewhere in this section, we do not agree with commenters who view our past actions as requiring that we always rely on the availability of carryover RINs as justification for avoiding waivers.

[155] See 77 FR 70752, 70759 (November 27, 2012).

[156] See 78 FR 49821 (August 15, 2013).

[157] As noted earlier, stocks of ethanol have averaged approximately 5–6 percent of annual production, and corn stocks, which vary by season, have rarely fallen below 9–10 percent of the annual harvest.

should not intentionally set the RFS standards for 2014–2016 so as to intentionally draw down this bank of carryover RINs.[158] This is not inconsistent with prior decisions, as some commenters have argued, since the bank of carryover RINs is substantially less, both in absolute numbers and as a percentage of the applicable standards, than was the case in prior actions when we noted the availability of carryover RINs as a factor in deciding not to waive statutory volume targets. We recognize that the volume of carryover RINs that should be preserved for programmatic purposes is not given to a precise determination, and is largely a matter of judgement. At this time, given the information presently available to us, we believe it best not to set the RFS standards for 2014–2016 so as to intentionally draw down the current carryover RIN bank in whole or in part. We expect to evaluate this issue each year in our annual standards rulemakings, and to learn from experience in implementing the program, particularly once compliance for 2013, 2014, 2015, and 2016 has been established.

iv. Whether Carryover RINs Will Be Used To Avoid Needed Investments

Some commenters felt that the availability of carryover RINs could result in obligated parties complying through retirement of carryover RINs rather than investing in infrastructure or other long-term efforts to increase biofuel supply. As noted above, we recognize the potential that too large a volume of carryover RINs could undermine the legitimate need of biofuel producers for assurance that the products they produce will actually be sold and used during a given compliance year, but we believe the current size of the carryover RIN bank is not sufficiently large to result in such problems. While we recognize that individual obligated parties may choose to comply in part through retiring carryover RINs (up to the 20 percent cap), we believe that, considering the importance of carryover RINs in providing compliance flexibility, obligated parties as a whole are unlikely to deplete the collective bank of carryover RINs simply to delay making investments in new infrastructure to increase the production and distribution of renewable fuel. Our thesis is supported by empirical evidence from 2013.

EPA acknowledged in setting the 2013 standards that 14.5 billion gallons of ethanol would be needed to meet the total statutory renewable fuel volume of 16.55 billion gallons, assuming that no biomass-based diesel was produced above the 1.28 billion gallons required by the biomass-based diesel standard. We also determined that that the total amount of ethanol the market could absorb as E10 in 2013 was 13.1 billion gallons, leaving a potential gap of 1.4 billion gallons. We then described how biomass-based diesel production in excess of the biomass-based diesel standard, increased production of other non-ethanol renewable fuels, and use of E85 could contribute to the needed gallons. We also pointed out that about 2.6 billion carryover RINs would be available in 2013, which was more than enough to cover the potential gap of 1.4 billion gallons if other approaches to compliance were not realized. We decided, therefore, that a waiver of the statutory applicable volume of total renewable fuel was not needed in 2013, since there were multiple approaches to compliance available in the marketplace. Following signature of the final rule, there was a dramatic increase in RIN prices, as parties bid them up in an attempt to acquire sufficient RINs for compliance.[159] We believe in general that high RIN prices provide an incentive to the renewable fuels market to increase renewable fuel production and import, as well as an incentive to invest in the infrastructure necessary to enable higher volumes of renewable fuels to be consumed.[160] This appears to have occurred in 2013, notwithstanding the availability of carryover RINs. For example, E85 sales volumes increased significantly relative to previous years, although due to infrastructure limitations the increase in E85 consumption was still relatively small in absolute terms. Instead, the market turned to biodiesel and renewable diesel; these fuels were used at record levels, far exceeding the biomass-based diesel standard, and even exceeding the volumes required to satisfy the advanced biofuel standard.[161] Excess biodiesel was used to fulfill a substantial portion of the shortfall in conventional biofuel necessary to meet the total renewable fuel standard. Not only did RIN prices spike, but they also all converged to the RIN prices for D4 BBD, indicating that obligated parties were willing to pay advanced biofuel and BBD prices for as many RINs as could be supplied rather than rely on carryover D6 RINs. Had obligated parties collectively acted in 2013 so as to delay the investments necessary to expand the infrastructure to produce and consume additional volumes of biofuel they would have blended ethanol as E10, blended the minimum biodiesel volume required to meet the BBD and advanced biofuel standards, and used carryover RINs to satisfy the balance of their obligations. Although we estimate that 800 million carryover RINs will ultimately be used for 2013 compliance, this is far short of the 1.4 billion RINs that could have been used had obligated parties placed little value on their retention and collectively drawn them down as an alternative to investing in the biofuel supply.[162] We believe the experience in 2013 supports our assessment that obligated parties as a whole are unlikely to draw down the current bank of carryover RINs (which is substantially smaller than it was in 2013) as an alternative to buying RINs representing current-year production.

v. Response to Other Comments

Some parties argued that we should not assume a draw-down in the bank of carryover RINs in setting the total renewable fuel volume requirements because obligated parties vary in their ability to acquire RINs, with the result being that some obligated parties have a substantial number of carryover RINs, while others have few or none. They argued that setting the volume requirements with the expectation that all or a substantial number of carryover RINs would be used would make compliance even more difficult than it would otherwise be for those who must rely largely or totally on RIN purchases rather than on acquiring RINs through blending activities. We acknowledge this argument and believe that our approach will make the RIN market more fluid and facilitate compliance by parties that choose to comply with RFS

[158] Although EPA has set the volume requirements for total renewable fuel in today's rule based on a determination of volumes we believe represent the maximum levels that are reasonably achievable, we acknowledge that this determination is difficult, and that it involves a considerable amount of judgement. If EPA has erred in assuming too much is possible, the collective bank of carryover RINs would be available to obligated parties to facilitate compliance. This can be seen as an additional potential benefit of retaining an adequate bank of carryover RINs.

[159] See Figure III.D.1–1.

[160] See ''A Preliminary Assessment of RIN Market Dynamics, RIN Prices, and Their Effects,'' Dallas Burkholder, Office of Transportation and Air Quality, U.S. EPA. May 14, 2015, EPA Air Docket EPA–HQ–OAR–2015–0111.

[161] See Section III.B of this preamble.

[162] We recognize that carryover RINs are held unevenly and that discussion of the collective behavior of obligated parties in the face of the 2013 RFS mandates greatly oversimplifies the dynamics likely at work. Nevertheless, we believe the experience provides useful information regarding market response as a whole to a situation with both ambitious RFS requirements and significant availability of carryover RINs.

requirements by purchasing separated RINs.

Some parties argued that setting the annual standards so as to intentionally draw down the carryover RIN bank would likely raise RIN prices to a higher degree than the proposed approach and provide increased incentive for expansion of production and delivery infrastructure of renewable fuels. While we acknowledge that higher RIN prices would likely occur from the suggested approach, we do not believe, for the reasons set forth in section II.E of this preamble, that there is an unlimited ability for higher RIN prices to result in increased biofuel supply. We believe we have set the total renewable fuel volume requirements today at the maximum reasonably achievable levels, taking into account the ability of the market to respond to higher standards. Furthermore, even if the commenter were correct, any benefits associated with increased biofuel supply in the short term would need to be balanced against the harmful effects of depletion of the bank of carryover RINs and instability of the RIN market it would cause. Given the importance we place on an adequate RIN bank to provide a needed compliance buffer, as discussed above, we do not choose to exercise our discretion under the general waiver authority to set volumes that require depletion of the bank of carryover RINs.

Some parties argued that our approach to carryover RINs in this rule is inconsistent with past practice, and therefore arbitrary. We disagree. While it is true that a consideration of the availability of carryover RINs factored into our decisions not to exercise statutory waiver authorities in the rule establishing 2013 RFS standards (where the issue arose in the context of deciding whether to use the cellulosic waiver authority), and in our decision to deny waiver requests based on the 2012 drought (where we considered whether to exercise the general waiver authority on the basis of claims of severe harm to the economy), the factual backgrounds for those decisions were vastly different than the situation today. In those cases there was an overabundance of carryover RINs. As noted above, the size of the carryover RIN bank is currently substantially lower, both in absolute terms and as a percentage of the 2016 total renewable fuel volume requirement finalized today. Furthermore, the program is currently facing very considerable challenges that will require new and relatively costly approaches to increasing renewable fuel supplies; we believe, therefore, that the need for a programmatic buffer is even more critical under current circumstances than in the past.

4. Summary

For all of these reasons, we have determined that under current circumstances, carryover RINs should not be counted on to avoid or minimize the need to reduce the 2014, 2015, and 2016 statutory volume targets. However, we note that we may or may not take a similar approach in future years; we will assess the situation on a case-by-case basis going forward, and take into account any lessons learned from implementing the rules applicable to 2014, 2015 and 2016.

I. Impacts of Final Standards on Costs

In this section we provide illustrative cost estimates for the final standards. By ''illustrative costs,'' EPA means that the cost estimates provided are not meant to be precise measures, nor do they attempt to capture the full impacts of the rule. These estimates are provided solely for the purpose of showing how the cost to produce a gallon of a ''representative'' renewable fuel compares to the cost of petroleum fuel. There are a significant number of caveats that must be considered when interpreting these cost estimates. First, as discussed by commenters, there are a number of different feedstocks that could be used to produce advanced fuels, and there is a significant amount of heterogeneity in the costs associated with these different feedstocks and fuels. Some fuels may be cost competitive with the petroleum fuel they replace; however we do not have cost data on every type of feedstock and every type of fuel. Therefore, we do not attempt to capture this range of potential costs in our illustrative estimates.

Second, given time constraints associated with providing estimates for several annual standards in this rule, EPA did not quantitatively assess other direct and indirect costs or benefits of increased biofuel volumes such as infrastructure costs, investment, GHG reduction benefits, air quality impacts, or energy security benefits, which all are to some degree affected by the rule. While some of these impacts were analyzed in the 2010 final rulemaking which established the current RFS program, we have not fully analyzed these impacts for the 2014, 2015, and 2016 volume requirements being established today. We have framed the analyses we have performed for this final rule as ''illustrative'' so as not to give the impression of comprehensive estimates.

Third, a number of different scenarios could be considered the ''baseline'' for the assessment of the costs of this rule. One scenario would be the statutory volumes in which case this final rule would be reducing volumes, and reducing costs. For the purposes of showing illustrative overall costs of this rulemaking, we use the preceding year's standard as the baseline (*e.g.,* the baseline for the 2016 advanced standard is the final 2015 advanced standard, etc.), an approach consistent with past practices.

Fourth, the 2014 standards were not finalized prior to 2014 so it is difficult to estimate what their costs may have been. Market participants may have anticipated a higher final 2014 standard than the market would provide in the absence of the standard, which would contribute to the positive RIN prices witnessed in 2014. In contrast, the final 2014 standards represent reductions in both the advanced and conventional volumes compared to the 2013 standards, suggesting a reduction in costs for this final 2014 rule compared to the 2013 standards. Finally, the final 2014 standards are based on actual production levels in 2014, possibly suggesting that the 2014 standards we are finalizing are what would have happened in the marketplace absent a rulemaking. Viewed in this way, the standards would impose no cost. Given the complexity of this issue, we have not attempted to estimate the costs of the 2014 standards. This issue associated with estimating costs for the 2014 standards also arises with the 2015 standards to a degree. The final standards for 2015 are being set late in the 2015 calendar year, so it is not clear how much extra renewable fuels (and thus costs) the standards are requiring above what the marketplace would have supplied absent them.[163] In any case, we provide illustrative costs for the 2015 advanced biofuel standards and total renewable fuel standards in addition to those for 2016.

EPA is providing cost estimates for three illustrative scenarios—one, if the entire change in the advanced standards is met with soybean oil BBD; two, if the entire change in the advanced standards is met with sugarcane ethanol from Brazil; and three, if the entire change in the total renewable fuel volumes that can be satisfied with conventional biofuels (*i.e.,* non-advanced) is met with corn ethanol. While a variety of biofuels could help fulfill the advanced standard

[163] Because the 2015 proposal was out part way through the year, it is possible that market participants anticipated standards at least as high as those proposed.

beyond soybean oil BBD and sugarcane ethanol from Brazil, these two biofuels have been most widely used in the past. The same is true for corn ethanol vis-a-vis the non-advanced component of the total renewable fuel standard. We believe these scenarios provide illustrative costs of meeting the final standards. For this analysis, we estimate the per gallon costs of producing biodiesel, sugarcane ethanol, and corn ethanol relative to the petroleum fuel they replace at the wholesale level, then multiply these per gallon costs by the applicable volumes established in this rule for the advanced (for biodiesel and sugarcane ethanol) and non-advanced component of the total renewable fuel (for corn ethanol) categories. More background information on this section, including details of the data sources used and assumptions made for each of the scenarios, can be found in a memorandum submitted to the docket.[164]

Because we are focusing on the wholesale level in each of the three scenarios, these comparisons do not consider taxes, retail margins, and any other costs or transfers that occur at or after the point of blending (*i.e.,* transfers are payments within society and are not additional costs). Further, as mentioned above we do not attempt to estimate potential costs related to infrastructure expansion with increased biofuel volumes. In addition, because more ethanol gallons must be consumed to go the same distance as gasoline and more biomass-based diesel must be consumed to go the same distance as petroleum diesel due to each of the biofuels' lesser energy content, we consider the costs of ethanol and biomass-based diesel on an energy equivalent basis to their petroleum replacements (*i.e.,* per energy equivalent gallon (EEG)).

For our first illustrative cost scenario, we consider the costs of soybean-based biodiesel to meet the entire change in the advanced standards. The final 2014 standard is being set at the actual level of advanced biofuels produced in 2014, 2.67 billion gallons. The advanced biofuel volumes are being finalized for 2015 at 2.88 billion gallons and for 2016 at 3.61 billion gallons. Comparing the difference in costs between biomass-based diesel and petroleum-based diesel, we estimate a cost difference that ranges from $1.45 to $1.71/EEG in 2015 and from $1.00 to $2.46/EEG in 2016. Multiplying the per gallon cost estimates by the volume of fuel displaced by the advanced standard, on an energy equivalent basis, results in an overall annual cost of $203 to $240 million in 2015 and $480 to $1,182 million in 2016.

For our second illustrative cost scenario, we provide estimates of what the potential costs might be if all additional volumes used to meet the 2015 and 2016 advanced biofuel standards above the previous year's advanced biofuel standard are met with imported Brazilian sugarcane ethanol. Comparing the difference in costs between sugarcane ethanol and the wholesale gasoline price on a per gallon basis, we estimate cost differences that range from $0.89 to $2.05/EEG in 2015 and from $0.91 to $2.07/EEG in 2016. Taking the difference in per gallon costs for sugarcane ethanol and the wholesale gasoline price and multiplying that by the volume of petroleum displaced on an energy equivalent basis from the advanced standard results in an overall estimated annual cost of $186 to $431 million for 2015 and $656 to $1,493 million for 2016.

For the third illustrative cost scenario, we assess the difference in cost associated with a change in the implied volumes available for conventional (*i.e.,* non-advanced) biofuels for 2015 and 2016. We provide estimates of what the potential costs might be if corn ethanol is used to meet the entire conventional renewable fuel volumes. The implied 2014 volume allowance for conventional renewable fuel is 13.61 billion gallons, 14.05 billion gallons in 2015, and 14.50 billion gallons in 2016. If corn ethanol is used to meet the difference between the implied 2014 to 2015 and 2015 to 2016 conventional renewable fuel volume increases, an increase of 440 million gallons of corn ethanol would be required in 2015 and 450 million gallons in 2016. Comparing the difference in costs between corn ethanol and the wholesale gasoline price, we estimate a cost difference of $0.96 in 2015 and cost differences that range from $1.01 to $1.33/EEG in 2016. Taking the difference in per gallon costs between the corn ethanol and the wholesale gasoline price estimates and multiplying that by the volume of petroleum displaced on an energy equivalent basis by the conventional standard results in an overall estimated annual cost of $424 million for 2015 and $453 to $597 million for 2016.

An alternative way of looking at the illustrative costs in 2016, given the fact that this is a three year rule, is to consider a volume change relative to the 2014 proposed standard. The cost estimate for meeting the 2016 standard would range from $620 to $1,526 million if the entire advanced standard were to be met with soybean-based diesel. The cost estimates would range from $847 to $1,929 million if the entire advanced standard were met with sugarcane ethanol. The cost estimate for meeting the entire conventional standard in 2016 with corn ethanol would range from $895 to $1,181 million.

While it would be instructive to show not only the costs but also the potential benefits of the standards being finalized and understanding both would be an important consideration in any future reassessment of the RFS program, the short timeframe provided for the annual renewable fuel rule process does not allow sufficient time for EPA to conduct a comprehensive analysis of the benefits of the 2015 and 2016 standards and the statute does not require it. Moreover, as discussed in the final rule establishing the 1.28 billion gallon requirement for BBD in 2013, the costs and benefits of the RFS program as a whole are best assessed when the program is fully mature in 2022 and beyond.[165] We continue to believe that this is the case, as the annual standard-setting process encourages consideration of the program on a piecemeal (*i.e.,* year-to-year) basis, which may not reflect the long-term economic effects of the program. Therefore, for the purpose of this annual rulemaking, we have not quantified benefits for the 2015 and 2016 final standards. As noted, this approach pertains to this and other annual rulemakings, not to potential future assessments of the program. We do not have a quantified estimate of the GHG impacts for the single year (*e.g.,* 2015, 2016). When the RFS program is fully phased in, the program will result in considerable volumes of renewable fuels that will reduce GHG emissions in comparison to the fossil fuels which they replace. EPA estimated GHG, energy security, and air quality impacts and benefits for the 2010 RFS2 final rule for 2022.

EPA received numerous comments related to the costs of the proposed 2014, 2015, and 2016 renewable fuel volumes. One commenter believes that EPA overestimated the cost of additional biodiesel volumes. They claimed that ''the program has resulted in providing the public with an alternative fuel source at a lower cost,'' and provided documentation of a testimony in which a diesel fuel provider claims to use biodiesel because it's cheaper than diesel. The commenter further states that the price of the RIN offers discounts to the biofuel producer.

[164] ''Illustrative Costs Impact of the Final Annual RFS2 Standards, 2014–2017,'' Memorandum from Michael Shell and Michael Shelby to EPA Air Docket EPA–HQ–OAR–2015–0111.

[165] 77 FR 59477, September 27, 2012.

Per gallon, wholesale biodiesel prices have been and continue to be more expensive than petroleum diesel. For example, on October 22, 2015, the front month futures price for B100 Soy Methyl Ester (SME) Chicago is $2.32/gallon, while the front month futures price for New York Harbor (NYH) Ultra-Low Sulfur Diesel (ULSD) is $1.47/gallon.[166]

Regarding the RIN discount, EPA acknowledges that biofuel producers may receive discounts due to RIN values. However, the discount a producer may receive due to RIN payment is not a cost, or a benefit; it is a transfer. In our cost methodology, we attempt to calculate the real resource costs associated with using biofuels in comparison to the fossil fuels that they replace. We did not attempt to capture transfers as a result of RIN prices and tax credits, which we acknowledge have distributional impacts. We simply evaluated the cost to consumers by considering per energy equivalent gallon difference in wholesale costs of biofuels against their petroleum alternative given projected market prices.

Multiple commenters expressed concern over the fact that EPA did not perform a full incremental cost-benefit analysis for the annual renewable fuel volumes. API commented that EPA should provide a ''complete assessment of the rule's costs on obligated parties, consumers, and other affected parties, along with a comparison of those costs with the rule's benefits.'' As EPA has previously stated, the annual rulemaking schedule for setting renewable fuel volumes does not allow sufficient time to conduct a comprehensive benefit-cost analysis. For the 2010 RFS2 final rule, EPA performed a full benefit-cost analysis for 2022, when the program fully matures. For this rulemaking, EPA performed the illustrative cost analysis described above in an attempt to capture some of the impacts of the rule qualitatively. Another commenter acknowledged EPA's 2010 benefit-cost analysis and the time constraint facing the agency in propagating annual standards, but called on EPA to complete an incremental analysis of the full impacts of this rule.

We agree that performing an incremental cost-benefit analysis would be helpful to an extent, but we continue to believe that assessing the program as a whole, over its maturity, is most appropriate.

III. Final Biomass-Based Diesel Volumes for 2014–2017

In this section we discuss the final biomass-based diesel (BBD) applicable volumes for 2014 through 2017. It is important to note that the BBD volume requirement is nested within both the advanced biofuel and the total renewable fuel volume requirements; so that any ''excess'' BBD produced beyond the mandated BBD volume can be used to satisfy both these other applicable volume requirements. Therefore, in finalizing the applicable BBD volume for 2014–2017, we considered not only the volume for the BBD standard, which effectively guarantees a minimum amount, but also the advanced biofuel and total renewable fuel volume requirements, which historically have played a significant role in determining demand for BBD as well.

In finalizing an applicable BBD volume requirement for 2017, we are establishing the volume requirement but not the percent standard.

A. Statutory Requirements

The statute establishes applicable volume targets for years through 2022 for cellulosic biofuel, advanced biofuel, and total renewable fuel. For BBD, applicable volume targets are specified in the statute only through 2012. For years after those for which volumes are specified in the statute, EPA is required under CAA section 211(o)(2)(B)(ii) to determine the applicable volume of BBD, in coordination with the Secretary of Energy and the Secretary of Agriculture, based on a review of the implementation of the program during calendar years for which the statute specifies the volumes and an analysis of the following factors:

1. The impact of the production and use of renewable fuels on the environment, including on air quality, climate change, conversion of wetlands, ecosystems, wildlife habitat, water quality, and water supply;
2. The impact of renewable fuels on the energy security of the United States;
3. The expected annual rate of future commercial production of renewable fuels, including advanced biofuels in each category (cellulosic biofuel and BBD);
4. The impact of renewable fuels on the infrastructure of the United States, including deliverability of materials, goods, and products other than renewable fuel, and the sufficiency of infrastructure to deliver and use renewable fuel;
5. The impact of the use of renewable fuels on the cost to consumers of transportation fuel and on the cost to transport goods; and
6. The impact of the use of renewable fuels on other factors, including job creation, the price and supply of agricultural commodities, rural economic development, and food prices.

The statute also specifies that the volume requirement for BBD cannot be less than the applicable volume for calendar year 2012, which is 1.0 billion gallons. The statute does not, however, establish any other numeric criteria, or provide any guidance on how the EPA should weigh the importance of the often competing factors, and the overarching goals of the statute when the EPA sets the applicable volumes of BBD in years after those for which the statute specifies such volumes. In the period 2013–2022, the statute specifies increasing applicable volumes of cellulosic biofuel, advanced biofuel, and total renewable fuel, but provides no guidance, beyond the 1.0 billion gallon minimum, on the level at which BBD volumes should be set.

B. BBD Production and Compliance Through 2013

Due to the delayed issuance of the major regulatory revisions necessary to implement changes to the RFS program enacted through the Energy Independence and Security Act of 2007, EPA established a 2010 BBD standard that reflected volume requirements for both 2009 and 2010, and allowed RINs generated as early as 2008 to be used for compliance with that standard. Given the complexity associated with the 2010 BBD standard, we begin our review of implementation of the program with the 2011 compliance year. This review is required by the CAA, and also provides insight into the capabilities of the industry to produce, import, export, and distribute BBD. It also helps us to understand what factors, beyond the BBD standard, may incentivize the production and import of BBD. The number of BBD RINs generated, along with the number of RINs retired for reasons other than compliance with the annual BBD standards, are shown in Table III.B–1 below.

[166] *PFL Market Daily,* Progressive Fuels Limited. *http://www.progressivefuelslimited.com/Web_Data/pfldaily.pdf.*

TABLE III.B–1—BIOMASS-BASED RIN GENERATION AND STANDARDS IN 2011–2013

[Million gallons] [167]

	BBD RINs generated	Exported BBD (RINs)	BBD RINs retired, non-compliance reasons	Available BBD RINs	BBD standard (gallons)	BBD standard (RINs) [168]
2011	1,692	110	97	1,484	800	1,200
2012	1,737	193	80	1,465	1,000	1,500
2013	2,739	295	94	2,350	1,280	1,920

In reviewing historical BBD RIN generation and use, we see that the number of RINs available for compliance purposes exceeded the volume required to meet the BBD standard in 2011 and 2013. Additional production and use of biodiesel was likely driven by a number of factors, including demand to satisfy the advanced biofuel and total renewable fuels standards, the biodiesel tax credit, and favorable blending economics. In 2012 the available BBD RINs were slightly less than the BBD standard. There are many reasons this may have been the case, including the temporary lapse of the biodiesel tax credit at the end of 2011.[169]

While the total number of BBD RINs generated in 2013 was 2.74 billion (representing 1.79 billion gallons of BBD), it is also instructive to review the data on volumes that were produced domestically, imported, exported, and retired for reasons other than compliance. Total domestic production of BBD was 1.45 billion gallons (2.19 billion RINs), while imports resulted in an additional 0.34 billion gallons (0.55 billion RINs).[170] However, this volume was not entirely available for compliance purposes, since some of the BBD produced domestically was exported and some RINs had to be retired for purposes other than compliance. Based on EIA export data, we estimate that 0.196 billion gallons (0.295 billion RINs) of BBD were exported in 2013.[171] A corresponding number of BBD RINs will eventually be retired by exporters, as required by the RFS regulations, and therefore are not available for use by refiners and importers in satisfying their 2013 obligations.[172] Additionally, 0.094 billion BBD RINs were retired for reasons other than compliance, such as volume error corrections, contaminated or spoiled fuel, or fuel used for purposes other than transportation fuel, heating oil, or jet fuel. Based on this information, the actual amount of BBD available for compliance in 2013 totaled 2.36 billion RINs, representing approximately 1.55 billion gallons of BBD. This is 430 million more BBD RINs than were required for compliance with the BBD standard in 2013.

C. BBD Volumes for 2014

As we did for advanced and total renewable fuel in 2014 and 2015, we believe that it is appropriate to establish the 2014 and 2015 volume requirements of BBD to reflect actual supply (including a projection for the latter part of 2015 that is primarily based on supply in the earlier part of the year for which data is available). Therefore, we are finalizing a BBD applicable volume requirement of 1.63 billion gallons for 2014, which represents our estimate of actual BBD supply in 2014. We define supply for 2014 as the number of BBD RINs generated in 2014 that were available for compliance.[173] Supply would thus include RINs that were generated for renewable fuel produced or imported in 2014 as recorded in the EMTS, minus any RINs that have already been retired or would be expected to be retired to cover exports of renewable fuels or for any purpose other than compliance with the RFS percentage standards. RINs that have already been retired for such circumstances as RINs being invalid, spills, corrected and replaced RINs, etc. are recorded in EMTS on an ongoing basis. However, complete information on RINs that are retired to cover exports of renewable fuel and foreign generated renewable fuel that is exported to another country is not available through EMTS until after the 2014 compliance demonstration deadline. Since compliance cannot occur until the standards are set, we are using biodiesel export information from EIA for 2014 to estimate the number of 2014 BBD RINs that will be retired to satisfy obligations associated with exported BBD.

Actual supply of BBD in 2014 and the projected actual supply for 2015 is shown in Table III.C–1 below. Further details are provided in a memorandum to the docket.[174] Since EIA does not distinguish exports by D code, we assumed that all biodiesel exports represent D4 BBD. We expect that any errors introduced by this assumption will be very small.[175]

[167] Net BBD RINs Generated and BBD RINs Retired for Non-Compliance Reasons information from EMTS. Biodiesel Export information from EIA (*http://www.eia.gov/dnav/pet/pet_move_expc_a_EPOORDB_EEX_mbbl_a.htm*.)

[168] Each gallon of biodiesel generates 1.5 RINs due to its higher energy content per gallon than ethanol. Renewable diesel generates between 1.5 and 1.7 RINs per gallon.

[169] The biodiesel tax credit was reauthorized in January 2013. It applied retroactively for 2012 and for the remainder of 2013. It was once again extended in December 2014 and applied retroactively to all of 2014 as well as to the remaining weeks of 2014.

[170] ''2013 RIN Supply'', EPA Docket EPA–HQ–OAR–2015–0111.

Note that not all of the imported volumes generated BBD (D4) RINs. Some of this volume may have generated Renewable Fuel (D6) RINs or no RINs at all.

[171] U.S. Energy Information Administration (EIA). Annual export data for Biodiesel (2013). See *http://www.eia.gov/dnav/pet/pet_move_expc_a_EPOORDB_EEX_mbbl_a.htm* (last accessed October 27, 2015).

[172] EMTS includes data on RINs retired for export, but the values are incomplete as of this writing since the 2013 compliance deadline has not yet passed.

[173] Our focus on RINs generated in 2014 is consistent with our general approach to carryover RINs for this rulemaking, as described in Section II.H.

[174] ''2014 RIN Supply,'' EPA docket EPA–HQ–OAR–2015–0111.

[175] From 2011 through 2015 only 12 million gallons of conventional (D6) biodiesel and renewable diesel was produced in the United States. We believe it is unlikely that foreign-produced conventional (D6) biodiesel and renewable diesel was imported into the United States and consequently exported, especially as the biodiesel blenders tax credit has not applied to fuel produced outside the U.S. for use as a fuel outside the U.S. since 2008.

TABLE III.C–1—SUPPLY OF BIOMASS-BASED DIESEL IN 2014 AND 2015

2014	Domestic production and imports	Exports	BBD RINs retired, non-compliance reasons	Net supply
Million RINs	2,709	124	82	2,490
Million gallons	1,763	83	48	[176] 1,630
Projected Actual 2015				
Million RINs	2,888	145	92	2,650
Million gallons	1,880	97	54	1,730

Some commenters suggested the EPA was prohibited from increasing the biomass-based diesel standard above 1.28 billion for the 2014 through 2016 time period because obligated parties did not have notice of EPA's intention to increase the biomass-based diesel standard above this amount at the times EPA missed the statutory deadlines for establishing applicable BBD volume requirements for these years. We do not agree with these commenters and believe that obligated parties were on notice that the BBD volume requirements for these years could be higher than 1.28 billion gallons. First, while in the November 2013 NPRM we proposed 2014 and 2015 BBD volume requirements of 1.28 million gallons, we also requested comment on alternative approaches and higher volumes.[177] We noted in the NPRM that total biodiesel production by the end of 2013 could be as high as 1.7 billion gallons and that the facilities contributing to this production collectively had a capacity of well over 2 billion gallons.[178] Thus, stakeholders were certainly on notice by November 2013 that a final BBD volume requirement greater than 1.28 billion gallons was possible and could be used in deriving the final 2014 and 2015 BBD standards. Furthermore, they were provided with notice of the precise (for 2014) or approximate (for 2015) volume requirements being finalized today through the June 10, 2015 NPRM. Thus, we believe that parties had adequate notice that 2014 and 2015 BBD volume requirements as high as those in today's rule could be finalized. And, although our proposal for 2016 was also issued late, obligated parties will have had approximately six months from the date of the June 2015 NPRM before the start of the compliance year, plus 12 months during the compliance year, plus three months after the close of the compliance year to plan for compliance and acquire necessary RINs. Finally, to provide those parties who may need additional time to engage in RIN trading to obtain the right number and balance of RINs for 2014 and 2015 compliance, EPA is providing very extensive extensions of the normal compliance demonstration deadlines. For 2014, the deadline in today's rule is August 1, 2016, two months later than proposed and a full 8 months after signature of this rule. For 2015 the compliance demonstration deadline is December 1, 2016, or 12 months from signature of this rule. Since compliance can be achieved through acquisition of RINs in the marketplace, and does not require capital investments or actual renewable fuel blending, we believe that this amount of lead time for parties to come into compliance is adequate and reasonable.

These same industry commenters suggested that because EPA was late in issuing its final BBD applicable volume rules, some obligated parties might have relied on the proposed 1.28 billion gallon applicable volume requirement for 2014 and 2015, and would now face difficulty in meeting higher volume obligations. Although they did not identify any parties in this situation, there was one obligated party who asserted in separate comments that they had in fact relied on the November 2013 NPRM in planning 2014 compliance for all four of the renewable fuel standards, and requesting that in fairness EPA not now impose a higher obligation for that year. In reply we reiterate that parties were on notice through the November 2013 NPRM that EPA could finalize higher volume requirements than proposed. Indeed, it is the nature of proposed rules that EPA review comments and consider changes, so our doing so should not come as a surprise to anyone. In addition, the tables of applicable volumes in the statute have long provided notice with respect to advanced biofuel, total renewable fuel and cellulosic biofuel that volume requirements could be as high for those fuels as are specified there. We believe that once this commenter complies with the 2014 advanced biofuel and total renewable fuel volume requirements regarding which such extensive notice was available, that compliance with the 2014 BBD volume requirement will likely either be satisfied, or easily satisfied. Even if the party needs to adjust the types of advanced biofuel RINs they own to acquire sufficient BBD RINs to comply with the BBD standard, they will be able to sell the non-BBD advanced RINs for a nearly identical price to the BBD RINs they will need to purchase.[179] And as noted above, EPA is extending the compliance demonstration deadline for 2014 beyond what we proposed, allowing this party and any other similarly situated party sufficient time to engage in the needed RIN transactions.

Even if an obligated party faced compliance challenges for 2014, CAA section 211(o)(2)(5)(A)–(D) provides two additional compliance flexibility options that an obligated party may utilize if they are unable to meet any of the 2014 standards, including their 2014 BBD volume obligation with RINs generated in 2014. First, to the extent that any shortfall of BBD RINs might exist, an obligated party could utilize carryover BBD RINs (D4) to meet their compliance obligation. As we discussed

[176] While the actual physical volume of D4 BBD supplied in 2014 was 1.63 billion gallons, we have used a physical volume of 1.67 billion gallons in calculating the percentage standard for 2014 because the formula for calculating the BBD percentage standard in 40 CFR 80.1405(c) includes a factor of 1.5, presuming that all BBD is biodiesel. In reality, a significant portion of BBD in 2014 was renewable diesel (328 million gallons), which generally has an equivalence value of 1.7 rather than 1.5. The use of a physical volume of 1.67 billion gallons ensures that the applicable percentage standard for BBD accounts for the higher equivalence value of the volume of renewable diesel produced and imported in 2014 and results in a requirement for 2.49 billion RINs, consistent with supply.

[177] 78 FR 71732, 71734.

[178] 78 FR 71732, 71752.

[179] "RIN Prices in 2015 (January–October)" memorandum from Dallas Burkholder to docket EPA–HQ–OAR–2015–0111.

in Section II.H, carryover RINs were intended to provide flexibility for obligated parties in complying with the RFS standards in a variety of circumstances. Certainly, if an obligated party experiences a shortfall in complying with the BBD 2014 volume standard it would be an appropriate use of carryover RINs to meet compliance obligations. Based on available data in the EMTS system [180], we estimate that there are nearly 600 million carryover BBD RINs available for use in 2014. This number of BBD carryover RINs should be available for purchase on the RIN market (since if they are not used in 2014 they will expire), and together with available RINs generated in 2014 make up a substantial RIN pool from which obligated parties may acquire needed RINs. However, if an obligated party was either unable to purchase the necessary carryover RINs or current-year RINs to meet its compliance obligation, they could alternatively use the carry-forward deficit provision of CAA section 211(o)(2)(5)(D) to carry forward the deficit for one year on the condition that it be met the following year (assuming they did not carry a deficit into 2014).

We recognize that the same number of BBD RINs will likely be retired for compliance with the 2014 RFS standards whether we set the BBD volume requirement at 1.28 versus 1.63 billion RINs, because complying with the 2014 advanced and total renewable fuel standards will require retirement of 1.63 billion BBD RINs. However, in light of this fact, the ease with which RINs may be traded, as well as the availability of carryover RINs and the deficit carry-forward option, we are not persuaded that any obligated party will have more difficulty complying with a 1.63 billion gallon BBD volume requirement as compared to a 1.28 billion gallon BBD volume requirement. Therefore, we do not believe that sufficient justification has been presented by commenters for EPA to deviate from the proposed approach of setting the 2014 BBD volume requirement as equal to the actual 2014 BBD supply. In addition, we believe that lowering the proposed 2014 BBD volume requirement would send a potentially chilling message to investors in the BBD industry that would be contrary to the objectives of the CAA to incentivize the growth of renewable fuel volumes.

For all of these reasons, we believe that it is reasonable and appropriate to establish the 2014 BBD applicable volume requirement as equal to 1.63 billion gallons, the volume actually produced and imported in 2014 and which is available for compliance. This is consistent with the approach we are taking to establishing the total renewable fuel, advanced biofuel, and cellulosic biofuel standards in 2014. Since we are establishing the requirement for a time period that has already passed, and setting the requirement equal to the available supply of 2014 BBD RINs, we believe that our action will result in no impacts with respect to the factors listed under CAA section 211(o)(2)(B)(ii)(I)–(VI).

D. Determination of Applicable Volume of Biomass-Based Diesel for 2015–2017

The statute requires that, in determining the applicable volume of BBD, we review the implementation of the program in previous years. Based on the fact that the industry made more BBD available in 2011 and 2013 than volume requirements for those years, we conclude that the BBD standard is not the sole driver for the amount of BBD produced or imported into the United States.[181] We believe that the advanced biofuel and total renewable fuel standards are significant factors in the amount of biodiesel produced and imported into the United States. We also believe that the advanced and/or total renewable fuel standards can continue to drive BBD volume in 2015–2017. As described in more detail in Sections II.E and II.F, we are finalizing volumes of advanced biofuel and total renewable fuel for 2016 that require growth beyond the volumes supplied in 2014 and 2015 and this will continue to provide incentives for BBD volumes that exceed the BBD volume requirement.

However, we recognize that in addition to being a component of advanced biofuel and total renewable fuel, Congress also intended that BBD have its own specific standard. Given that the statute requires annual increases in advanced biofuel through 2022, it may be appropriate for BBD to play a specific and increasing role in supplying advanced biofuels to the market. While we generally believe that the advanced and total volume requirements are sufficient to incentivize continued growth in the production and consumption of BBD in most years, circumstances may arise that result in unfavorable market conditions for the production and consumption of BBD, as was the case in 2012. We believe there is value in providing some degree of certainty to BBD producers that there will be a market for the fuel they produce for circumstances such as this. Therefore, this final rule seeks to balance the goals of supporting the BBD industry and incentivizing the production of non-BBD advanced biofuels by providing a guaranteed, increasing market for BBD, while at the same time providing room under the advanced standard for other types of advanced biofuels, and thus incentivizing their growth as well. We have considered the ability of the advanced biofuel and total renewable fuel standards to incentivize an increasing volume of BBD, the implementation of the RFS program to date, and the statutory factors listed in CAA section 211(o)(2)(B) (discussed in further detail in Section III.E below). We have also consulted with USDA and DOE in establishing the final requirements.

1. Implication of Nested Standards

The BBD standard is nested within the advanced biofuel and total renewable fuel standards. This means that when an obligated party retires a BBD RIN (D4) to satisfy their BBD obligation, this RIN also counts towards meeting their advanced biofuel and total renewable fuel obligations. It also means that obligated parties may use BBD RINs in excess of their BBD obligations to satisfy their advanced biofuel and total renewable fuel obligations. Higher advanced biofuel and total renewable fuel standards, therefore, create demand for BBD, especially if there is an insufficient supply of other advanced or conventional renewable fuels to satisfy the standards, or if BBD RINs can be acquired at or below the price of other advanced or conventional biofuel RINs.

In reviewing the implementation of the RFS program to date, it is apparent that the advanced and/or total renewable fuel requirements were in fact helping grow the market for volumes of biodiesel above the BBD standard. Table III.D.1–1 below shows the number of BBD RINs generated and available for use towards demonstrating compliance [182] in each year from 2011–2013. Similar data for 2014 is shown in Table III.C–1. As can be seen from these tables, in 2011 and 2013 the number of BBD RINs available for use exceeded the volumes required to satisfy the BBD

[180] ''Estimating Carryover RINs Available for Use in 2014,'' memorandum from Dallas Burkholder to docket EPA–HQ–OAR–2015–0111.

[181] The blenders tax credit for biodiesel likely also incentivized additional biodiesel blending in these years.

[182] RINs available for use is number of RINs generated minus the number of RINs retired (or that we anticipate will be retired) for any reason other than a demonstration of annual compliance, such as RINs retired for exported biofuel, volume error corrections, enforcement actions, fuel used in applications other than transportation fuel, heating oil, or jet fuel, etc.

standard. Similarly the quantity of BBD RINs in 2014 far exceeded the 1.28 billion gallons volume requirement (1.92 billion BBD RINs) for BBD that EPA proposed in November 2013. In 2013 the number of advanced RINs generated from fuels other than BBD was not large enough to satisfy the implied standard for ''other advanced'' biofuel (advanced biofuel needed to satisfy the advanced biofuel standard after the BBD and cellulosic biofuel standards are met), and additional volumes of BBD filled the gap. In fact, the amount by which the available BBD RINs exceeded the 1.28 billion gallon BBD volume requirement (421 million RINs) was larger than the amount by which the non-BBD RINs fell short of satisfying the ''other advanced'' biofuel implied standard (285 million RINs), helping to fill a shortfall in meeting the total renewable fuel standard. Thus the advanced biofuel and total renewable fuel standards provided an incentive to support a BBD volume in the United States in excess of that required to satisfy the BBD standard.

In 2012 the available BBD RINs were slightly less than the BBD standard, despite the continued opportunity for BBD to contribute towards satisfying the advanced and total renewable fuel volume requirements. There are a number of reasons this may have been the case. The drought in 2012 resulted in reduced production of soy beans and other oilseed crops that provide feedstocks for the BBD industry. Compounding this effect was the lower corn harvest in 2012, which increased the demand for soy beans and other fats and oils in the animal feed market. The biodiesel tax credit, which had been in place since the end of 2010, expired at the end of 2011. Finally, and perhaps most significantly, the E10 blendwall had not yet been reached in 2012. This meant that meeting the advanced biofuel requirements through the use of advanced ethanol, primarily sugar cane ethanol, in E10 blends, rather than additional volumes of BBD was still a viable option. Indeed, in 2012 over 600 million RINs were generated for advanced ethanol. While we believe these circumstances are unlikely to be repeated in future years, this does demonstrate that the BBD standard can still have an impact despite the ability in some years for the advanced and total renewable fuel volume requirements to incentivize additional biodiesel and renewable diesel volumes beyond the BBD standard.

TABLE III–D.1–1—BIOMASS-BASED DIESEL AND ADVANCED BIOFUEL RIN GENERATION AND STANDARDS

[Million gallons]

	Available BBD (RINs)	BBD standard (RINs)	Available non-biodiesel advanced biofuel	''Other'' advanced biofuel allowed
2011	1,484	1,200	225	150
2012	1,465	1,500	597	500
2013	2,360	1,920	552	830

The prices paid for advanced biofuel and BBD RINs beginning in early 2013 through 2015 also support the conclusion that advanced biofuel and/or total renewable fuel standards provide a sufficient incentive for additional biodiesel volume beyond what is required by the BBD standard. Because the BBD standard is nested within the advanced biofuel and total renewable fuel standards, we would expect the price of BBD RINs to exceed that of advanced and conventional renewable RINs.[183] If, however, BBD RINs are being used by obligated parties to satisfy their advanced biofuel and/or total renewable fuel obligations, above and beyond the BBD standard, we would expect the prices of conventional renewable fuel, advanced biofuel, and BBD RINs to converge. When examining RIN prices data from 2011 through 2014, shown in Figure III.D.1–1 below, we see that until January 2013 there is a consistent price differential between the price of BBD and the relatively cheaper other advanced biofuel and conventional renewable fuel RINs. Beginning in 2013 the price of BBD RINs and other advanced biofuel RINs converge, and remain at a similar price throughout 2015. This is more evidence that suggests that the advanced biofuel standard and/or total renewable fuel standard is capable of incentivizing increased BBD volumes beyond the BBD standard, and that it in fact operated in this manner in 2013.[184]

[183] This is because when an obligated party retires a BBD RIN to help satisfy their BBD obligation, the nested nature of the BBD standard means that this RIN also counts towards satisfying their advanced and total renewable fuel obligations. Advanced RINs count towards both the advanced and total renewable fuel obligations, while conventional RINs (D6) count towards only the total renewable fuel obligation.

[184] Although we did not issue a rule establishing the final 2013 standards until August of 2013, we believe that the market anticipated the final standards, based on EPA's July 2011 proposal and the volume targets for advanced and total renewable fuel established in the statute. (76 FR 38844, 38843).

Figure III.D.1-1
RIN Prices: July 2011 – July 2014

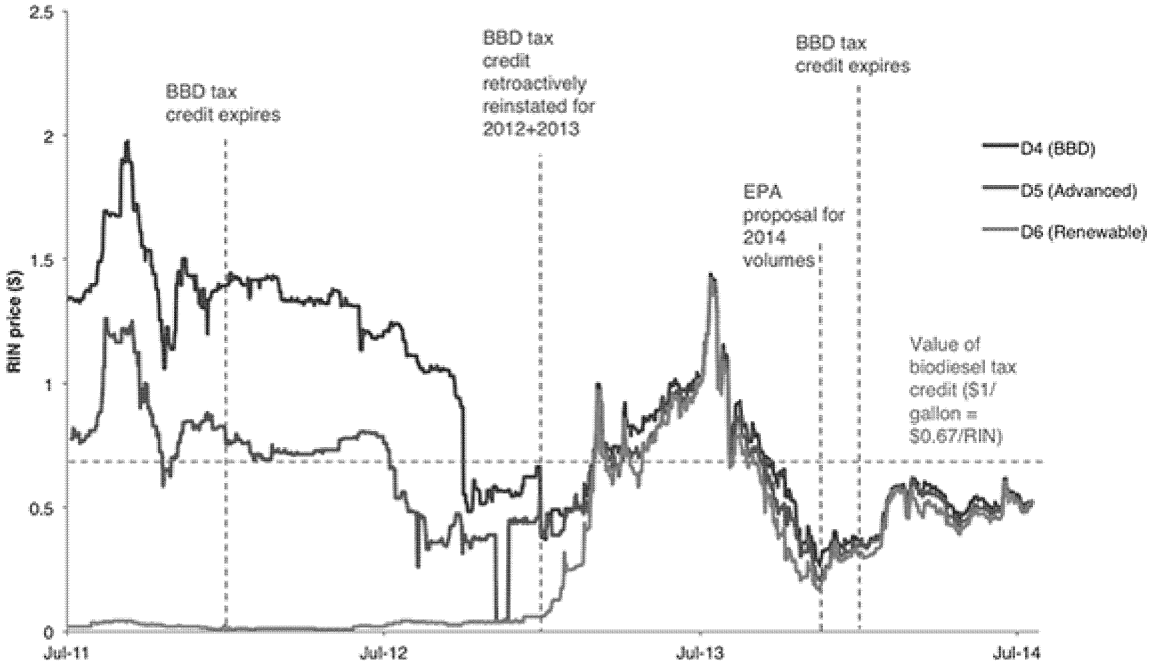


Image from ICCT. Available online: http://www.theicct.org/blogs/staff/does-biodiesel-really-need-tax-credit

2. Biomass-Based Diesel as a Fraction of Advanced Biofuel

In establishing the BBD and cellulosic standards as nested within the advanced biofuel standard, Congress clearly intended to support development of BBD and cellulosic biofuels, while also providing an incentive for the growth of other non-specified types of advanced biofuels. That is, the advanced biofuel standard provides an opportunity for other advanced biofuels (advanced biofuels that do not qualify as cellulosic biofuel or BBD) to be used to satisfy the advanced biofuel standard after the cellulosic biofuel and BBD standards have been met. Indeed, since Congress specifically directed growth in BBD only through 2012, leaving development of volume targets for BBD to EPA for later years while also specifying substantial growth in the cellulosic and general advanced categories, we believe that Congress clearly intended for EPA to evaluate in setting BBD volume requirements after 2012 the appropriate rate of participation of BBD within the advanced biofuel standard.

The unspecified advanced biofuel volume in the statutory tables in CAA section 211(o)(2)B)(i) starts at 0.25 billion gallons in 2013 and grows to 3.5 billion gallons in 2022. The actual size of the unspecified volume of advanced biofuel in any given year is, however, heavily dependent on EPA actions. Increasing the BBD standard above 1 billion gallons, as we did in 2013, reduced the potential market for other advanced biofuels to contribute towards meeting the advanced biofuel standard in that year. Conversely, reducing the cellulosic biofuel standard while simultaneously maintaining the advanced biofuel standard (or reducing it by a lesser amount), as we have done each year since 2010, increases the potential market for all advanced biofuels, including BBD. While each year's volume requirements are established in consideration of the volumes of various types of biofuels expected to be reasonably attainable in that year, we are also cognizant that the annual standards send messages to the market that can influence the direction of research and investment.

When viewed in a long-term perspective, BBD can be seen as competing for research and development dollars with other types of advanced biofuels for participation as advanced biofuels in the RFS program. In addition to the long-term impact of our action in establishing the BBD volume requirements, there is also the potential for short-term impacts during the compliance years in question. Although we are setting the advanced standard at a level that reflects growth in volumes that is reasonably attainable, we are not setting the standard at the maximum theoretical level that reflects the highest potential for domestic production plus import. As described in Section II.F, there is substantial uncertainty, especially regarding import volumes, that cautions against such an approach. Therefore, by setting the BBD volume requirement at a level lower than the advanced biofuel volume requirement (and lower than the expected production of BBD to satisfy the advanced biofuel requirement), we are allowing the potential for some competition between BBD and other advanced biofuels (including imported advanced biofuels) to satisfy the advanced biofuel volume standard. We believe that this competition will also help to encourage, over the long term, the development and production of a variety of advanced biofuels. However, in the short term it could also result in lower cost advanced biofuels.

BBD, like all non-cellulosic advanced biofuels, must, by definition, achieve lifecycle greenhouse gas reductions of at least 50% relative to the petroleum fuels it displaces. Thus, the environmental benefits of BBD are comparable to those of other non-cellulosic advanced biofuels. Increasing the portion of the advanced standard that comprises a guaranteed market for BBD would over time likely reduce competition among advanced biofuels and could dis-incentivize research and development of advanced biofuels that are potentially more economical or environmentally preferable (including for non-GHG

related reasons) than BBD. Having a more limited assortment of biofuels participate in the RFS program would also reduce the potential energy security benefits of the program, since energy security is enhanced through fuel diversity. Thus, we believe that the long term success of the RFS program, as envisioned by Congress, is best served by growth in a variety of advanced biofuels. We intend, therefore that the standards we set today provide a signal to the market to move forward with research, development, and commercialization of a variety of types of advanced biofuels beyond just BBD.

We received comments that the consideration of competition within the advanced biofuel pool between BBD and other advanced biofuels, and the potential for lower compliance costs cited in our proposed rule, are not included in the list of factors in 42 U.S.C. 7545(o)(2)(B)(ii)(V) that EPA is to consider in establishing the volume requirement for BBD. EPA respectfully disagrees. Three of the factors specified in the statute are indeed related to the considerations discussed above. The ''impact of the use of renewable fuels on the cost to consumers of transportation fuel and on the cost to transport goods'' referenced in CAA section 211(o)(2)(B)(ii)(V) is relevant, since we believe a diverse advanced biofuel pool will potentially result in decreased costs associated with the use of advanced biofuels and, consequently, decreased costs to consumers. Similarly, the ''impact of the production and use of renewable fuels on the environment'' referenced in CAA section 211(o)(2)(B)(ii)((I) is relevant, since we believe that incentivizing research and development in a variety of advanced biofuels could lead to the development of biofuels that have more benign effects on the environment than those that are currently available. As noted above, ''the impact of renewable fuels on the energy security of the United States'' referenced in CAA section 211(o)(2)(B)(ii)(II) is relevant, since we believe that incentivizing the development of a diverse array of biofuels will increase energy security Finally, we note that the list of factors specified in the statute is not exclusive; that is EPA is not precluded from considering additional factors that advance the statutory objectives when it sets applicable volumes for years not specified in the statute.

3. Ensuring Growth in Biomass-Based Diesel and Other Advanced Biofuel

While a single-minded focus on the ability of the advanced and total renewable fuel standards to incentivize increasing production of advanced biofuels other than BBD would suggest that a flat or even decreasing BBD volume requirement may be the optimal solution, this is not the only consideration. Despite many of these same issues being present in 2013, EPA decided to increase the BBD standard in 2013 to 1.28 billion gallons. EPA's decision to establish this higher BBD volume for 2013 was made against the backdrop of the BBD industry having increased production from about 400 million gallons in 2010 to about 1 billion gallons in 2011.[185] EPA was not completely confident in the ability of the BBD industry to further increase production without an increased BBD standard. While BBD production had performed well in 2011 and the early part of 2012, the biodiesel industry had gone through a period of instability in 2009 and 2010.[186]

During the development of the 2013 standards rulemaking, we were also concerned that production of cellulosic biofuel, also nested within the advanced biofuel requirement, was lagging significantly behind the statutory volume target. The shortfall in cellulosic biofuel volume meant that either other sources of advanced biofuel would be necessary to fulfill the specified volumes in the statute for advanced biofuel, or that EPA would need to waive a portion of the advanced biofuel volume target. It is in this context that we determined that raising the BBD requirement to 1.28 billion gallons was appropriate. Most importantly, an applicable volume requirement of 1.28 billion gallons was expected to encourage continued investment and innovation in the BBD industry, providing necessary assurances to the industry to increase production for 2013 while also serving the long term goal of the RFS statute to increase volumes of advanced biofuels over time.[187]

Although the BBD industry has performed well in 2013 and in subsequent years, we believe that continued appropriate increases in the BBD volume requirement will help provide stability to the BBD industry and encourage continued growth. This industry is currently the single largest contributor to the advanced biofuel pool, one that to date has been largely responsible for providing the growth in advanced biofuels envisioned by Congress. Nevertheless, there has been variability in the number of biodiesel facilities in production over the last few years, as well as the percent utilization of individual facilities, both of which contribute uncertainty in the rate of production in the near future, and which can be mitigated to some degree with an increase in the BBD applicable volume.[188] Increasing the BBD volume requirement should help to provide market conditions that allow these BBD production facilities to operate with greater certainty. This result is consistent with the goals of the Act to increase the production and use of advanced biofuels.

4. Final BBD Volume for 2015

In the June 10, 2015 NPRM we proposed a 1.7 billion gallon BBD volume requirement for 2015, anticipating that the growth over actual levels observed in the first part of the year was possible despite late issuance of the proposal. The market responded as we anticipated and, indeed, slightly exceeded our expectations. During the first nine months of 2015 for which data are now available, 2.05 billion BBD RINs, representing 1.34 billion gallons of biodiesel and renewable diesel, were generated. When this rate of production is extrapolated to the end of the year, and taking into account the heightened end-of-year production we expect, based on past experience, as well as expected RIN corrections and retirements due to exports, we now estimate an actual BBD volume of 1.73 billion gallons for 2015.[189] We do not anticipate that this final rule can influence the market in any way for the remaining month of 2015. Therefore, we are finalizing a 1.73 billion gallon volume requirement for 2015.[190]

[185] 77 FR 59461 col. 1, September 27, 2012.

[186] Regulations of Fuels and Fuel Additives: 2013 BBD Renewable Fuel Volume; Final Rule. 77 FR 59458, 59460–59461. *http://www2.epa.gov/renewable-fuel-standard-program/regulations-and-volume-standards-under-renewable-fuel-standard* (last accessed October 22, 2015).

[187] 77 FR 59458, 59462 and 59483.

[188] EIA's Monthly Biodiesel Production Reports since 2009 indicate that there were significant biodiesel facility closures during the 2009 and 2010 calendar years. Throughout 2013 the number of biodiesel plants operating fluctuated between 110–116 and at the end of 2013, EIA's monthly production report, noted there were 115 plants operational. During 2014 the number of operating biodiesel plants in the U.S. was lower than in 2013, fluctuating between 89–100 facilities, finishing up the year at 99 operating biodiesel plants. Overall industry-wide utilization rates increased during the 2009–2013 period from 25% in 2009 to approximate 46% in 2011 and 2012 and to more than 60% in 2013 and 2014. These data suggest a stabilizing trend in the industry, but with some continued fluctuations. See *http://www.eia.gov/biofuels/biodiesel/production/* for copies of monthly reports (last accessed October 22, 2015).

[189] ''Projection of annual renewable fuel supply in 2015,'' memorandum from David Korotney to docket EPA–HQ–OAR–2015–0111.

[190] Some commenters suggested that EPA should set the 2015 final BBD volume requirement at 1.28 billion gallons, for the same reasons they asserted that the 2014 volume requirement should be set at

Continued

5. Final Volumes for 2016–2017

With the considerations discussed in sections III.D.1–3 in mind, as well as our analysis of the factors specified in the statute and described below, and in coordination with the Departments of Agriculture and Energy, we are finalizing the applicable volume of BBD at 1.9 billion gallons for 2016 and 2.0 billion gallons for 2017. These volumes are higher than the 1.8 and 1.9 billion gallons proposed for 2016 and 2017, and reflect the fact that we are finalizing an increase in the advanced biofuel requirement for 2016, from the 3.4 billion gallons we proposed, to 3.61 billion gallons in the final rule. We have decided to dedicate a portion of this increase to BBD, and leave the remainder as unspecified advanced biofuel, and thus available for any advanced biofuel to fill, for the same reasons reflected in the proposal and this final rule for establishing the BBD volume requirements: To provide additional support for the BBD industry while allowing room within the advanced biofuel volume requirement for the participation of non-BBD advanced fuels.

We believe this final rule strikes the appropriate balance between providing a market environment where the development of other advanced biofuels is incentivized, while also realizing the benefits associated with increasing the required volume of BBD. Given our final volumes for advanced biofuel in these years, setting the BBD standard in this manner continues to allow a considerable portion of the advanced biofuel volume to be satisfied by either additional gallons of BBD or by other unspecified types of qualifying advanced biofuels (see Table III.D.4–1 below). While we have not yet determined the applicable volume of total advanced biofuel for 2017, we anticipate the continued growth in the advanced biofuel standard such that the advanced standard will provide an incentive for both increasing volumes of BBD and other advanced biofuels. We believe maintaining this unspecified or other advanced biofuel volume will provide the incentive for development and growth in other types of advanced biofuels. At the same time, allowing the portion of the advanced biofuel volume requirement that is dedicated to BBD to increase concurrently with the increase in the overall advanced biofuel volume requirement will contribute to market certainty for both the BBD industry and the renewable fuels program in general.

TABLE III–D.5–1—FINAL BIOMASS-BASED DIESEL, CELLULOSIC BIOFUEL, AND ADVANCED BIOFUEL STANDARDS: 2015–2017

	BBD (billion gallons)	BBD (billion RINs)	Cellulosic biofuel (billion RINs)	Advanced biofuel (billion RINs)	Unspecified advanced (billion RINs)
2015	1.73	2.65	0.123	2.88	0.107
2016	1.90	2.85	0.230	3.61	0.530
2017	2.00	3.00	TBD	TBD	TBD

EPA received comments on our proposed rule providing data suggesting that sufficient BBD feedstocks, production facilities, and fuel distribution infrastructure existed to produce, import, and consume volumes of BBD in 2016–2017 that exceed the volume requirements established in this rule.[191] Some commenters specifically cited the potential for large volumes of imported BBD to displace domestically produced BBD if the BBD volume requirements were not increased. These commenters argued that EPA should increase the BBD standard in 2016–2017 in light of the fact that the potential volume of BBD exceeds the proposed BBD volume requirements for each of these years. EPA agrees with the commenters that the potential available volume of BBD in 2016 and 2017 exceeds the BBD volume requirements we are finalizing in this rule, and have considered multiple scenarios where additional volumes of BBD are used to comply with the advanced and total renewable fuel standards.[192] As discussed above, however, we do not believe it is in the best interest of the RFS program to set the BBD volume requirement at the maximum available volume of BBD. Doing so would reduce the opportunity for other advanced biofuels to compete for market share within the context of the advanced biofuel standard, and would send market signals that would hinder the long term development of these fuels. Our review of the history of the RFS program strongly suggests that the advanced and total renewable fuel standards can provide sufficient incentives for the production and use of increased volumes of BBD beyond levels required to satisfy the BBD standard.

EPA also received comments stating that increasing the BBD volume requirement to reflect actual BBD available volumes would have the advantage of helping to ensure that BBD, rather than imported sugar cane ethanol, would be used to satisfy the advanced standard. The commenters claimed that this was preferable because BBD does not contribute to the renewable fuel consumption challenges associated with the E10 blendwall, and because BBD is generally produced in the United States, while sugar cane ethanol is almost exclusively an imported product. They claimed that requiring additional volumes of a domestic product rather than an imported one would have positive impacts on the economy of the United States and aid rural economic development, and that these benefits justified a higher BBD standard.

EPA acknowledges that if we were to increase the BBD volume standard we would increase the guaranteed market for BBD, and reduce the likelihood that significant volumes of sugar cane ethanol would be imported to satisfy the advanced and total renewable fuels standards. We do not agree, however, that this is a necessary step to promote the viability and growth of the BBD industry. In reviewing the history of the program, as shown above, EPA notes that BBD production, import, and consumption has been strong and increasing each year since 2011. In particular, we note that in 2013 BBD volumes rose sharply, and ethanol imports simultaneously fell and have stayed low.[193]

that level. We disagree, for the same reasons noted earlier with respect to the 2014 BBD requirement.

[191] For a further discussion of EPA's assessment of BBD feedstock availability, production capacity, and fuel distribution limitations see ''Memorandum to docket: Final Statutory Factors Assessment for 2016–2017 BBD Applicable Volumes'' EPA–HQ–OAR–2015–0111.

[192] See Section II.G for a list of potential compliance scenarios.

[193] The reduction in ethanol imports was likely due to a combination of factors including poor

The data EPA has presented in the preceding sections strongly suggests that despite the ongoing potential for competition from sugar cane ethanol and biodiesel imports, the BBD industry, supported by the advanced and total renewable fuel standards, has achieved and can continue to achieve production volumes beyond levels needed to satisfy the BBD volume requirement. Given the constraints on ethanol use associated with the E10 blendwall even if sugar cane ethanol imports were to increase, it is still likely that there would be a strong market for BBD to help satisfy the total renewable fuel requirements. Finally, in light of the broad programmatic objective of the RFS program to increase the content of biofuels in U.S. transportation fuel, we believe that it would be counterproductive to design the standards in such a way as to intentionally discourage or disincentivize the import of foreign biofuels.

In finalizing these standards for BBD for 2014–2017 EPA has taken into account the statutory requirements found in CAA section 211(o)(2)(B)(ii), including coordination with the Departments of Energy and Agriculture, review of the implementation of the renewable fuels program to date, and analysis of the statutory factors specified in CAA section 211(o)(2)(B)(ii)(I)–(VI). Of particular relevance in our review of the implementation of the renewable fuels program to date were the circumstances and context that led us to increase the BBD standard from 1.0 billion gallons in 2012 to 1.28 billion gallons for 2013, and the biofuel industry's successful performance in 2013. We have also reviewed the statutory factors in the context that the BBD volume requirement is nested within the advanced biofuels and total renewable fuels volume requirements. This discussion of the statutory factors is found in Section III.E., below.

In deciding to finalize the applicable volume of 1.9 billion gallons of BBD for 2016, with an additional 100 million gallon increase for 2017 to 2.0 billion gallons, we considered not only the short-term impacts, but also the potential long-term impacts of our action on the RFS program. We took into account the competitive impacts such an increase in the BBD volume requirement would likely have on other advanced biofuel producers already in the marketplace as well as on potential new market entrants. This increase in the BBD volumes through 2017 should result in ongoing investment and growth for BBD, while also providing for continued investment and growth in other advanced biofuels.

Raising the guaranteed BBD volume beyond the volumes in this rule so that it approaches the maximum possible volume of BBD could result in a less competitive advanced biofuels market, increasing RIN prices, and a less efficient market-driven renewable fuels program. Our decision today to finalize the BBD volumes for 2016–2017 at 1.90 and 2.0 billion gallons per year respectively, would not be expected to lead to such an adverse result. We believe that the final BBD volume increases for 2016–2017 will both contribute to market stability for the renewable fuels program and continue to promote a growing and competitive advanced biofuels marketplace, one which encourages the growth and development of diverse biofuels along with additional volumes of BBD beyond the volumes required by the BBD standard.

E. Consideration of Statutory Factors for 2014–2017

In this section we discuss our considerations of the statutory factors set forth in CAA section 211(o)(2)(B)(ii)(I)–(VI). As discussed earlier in Section III.D.1, the BBD volume requirement is nested within the advanced biofuel requirement and the advanced biofuel requirement is, in turn, nested within the total renewable fuel volume requirement. This means that any BBD produced beyond the mandated BBD volume can be used to satisfy both these other applicable volume requirements. The result is that in considering the statutory factors we must consider the potential impacts of increasing BBD in comparison to other advanced biofuels.[194] For a given advanced biofuel standard, greater or lesser applicable volumes of BBD do not change the amount of advanced biofuel used to displace petroleum fuels; rather, increasing the BBD applicable volume may result in the displacement of other types of advanced biofuels that could have been used to meet the advanced biofuels volume requirement.

1. Assessment for 2014 and 2015 Biomass-Based Diesel Applicable Volume

Given the fact that the 2014 compliance year has passed, we believe that our action in setting the 2014 BBD volume requirement will result in no real-world impacts, including no impacts with respect to the factors listed under CAA section 211(o)(2)(B)(ii)(I)–(VI). For example, there is no longer any ability for other advanced biofuels to compete with BBD for a greater share of the advanced biofuel pool in 2014, so there would be no marginal benefit in terms of incentivizing production of such fuels in setting a lower volume requirement than the volume of BBD that was actually produced and imported and available for compliance in 2014. Setting the applicable volume at a higher level than was actually produced and available for compliance would require a draw-down in the bank of carryover RINs, which EPA does not consider prudent for the reasons discussed in Section II.H of this preamble. In light of these considerations, we are finalizing the 2014 applicable volume for BBD as equal to the volume actually produced and imported, which is available for compliance. We believe this approach is also appropriate for the 2015 BBD standard. While there is still one month remaining in 2015, we believe it is similarly appropriate to set the biomass-based diesel standard for 2015 at the level of BBD that we project will actually be produced and imported and available for compliance in 2015 given that the primary benefits of allowing for opportunity for non-BBD fuels in the context of the advanced biofuel standard is not applicable for the 11 months of 2015 that have passed, and this rule is being issued too late to significantly influence production and use of BBD and advanced biofuel in the remainder of 2015.

2. Primary and Supplementary Statutory Factors Assessment for 2016 and 2017 Biomass-Based Diesel Applicable Volumes

EPA's primary assessment of the statutory factors for 2016 is that because the final advanced biofuel volume requirement for 2016 reflects the advanced biofuel volumes (including BBD) that can be reasonably attained, and because the BBD requirement is

sugar cane harvests, increased demand for sugar cane ethanol in the countries where it was produced, increased competition for sugar cane ethanol imports from other countries, and challenges relating to increasing the consumption of ethanol beyond E10 in the U.S. See ethanol import volumes, as reported by EIA, at: *http://www.eia.gov/dnav/pet/pet_move_impcus_a2_nus_epooxe_im0_mbbl_a.htm*.

[194] While excess BBD production could also displace conventional biofuel under the total renewable standard, as long as the BBD applicable volume is lower than the advanced biofuel applicable volume our action in setting the BBD applicable volume is not expected to displace conventional biofuels under the total renewable standard, but rather other advanced biofuels. See Table II.G–2, ''Volume Scenarios Illustrating Possible Compliance with 3.61 Bill Gal Advanced Biofuel and 18.11 Bill Gal Bill Gal Total Renewable Fuel''.

nested within the advanced biofuel volume requirement, we expect that the 2016 advanced volume requirement will largely determine the level of BBD production and imports; the same volume of BBD will likely be produced and imported regardless of the BBD volume that we require for 2016.

This assessment is based, in part, on our review of the RFS program implementation to date, as discussed in Sections III.B and III.D. Since our decision on the BBD volume requirement for 2016 is not expected to impact the volume of BBD which is produced and imported during this time period, we do not expect our decision to result in a difference in the factors we are required to consider pursuant to CAA section 211(o)(2)(B)(ii)(I)–(VI). However, we note that our principal approach of setting BBD volume requirements at a higher level in 2016, while still at a volume level lower than anticipated overall production and consumption of BBD, is consistent with our evaluation of statutory factors in sections 211(o)(2)(B)(ii) (I), (II) and (III), since we believe that our decision on the BBD volume requirement can have a positive impact on the future development and marketing of other advanced biofuels and can also result in potential environmental and energy security benefits, while still sending a supportive signal to potential BBD investors, consistent with the objectives of the Act to support the continued growth in production and use of renewable fuels.

Similarly for 2017, even though we are finalizing only the 2017 BBD volume requirement at this time and not the 2017 advanced biofuel requirement, we believe this same primary assessment is appropriate since we anticipate that the 2017 advanced biofuel requirement will be set to reflect ambitious but reasonably attainable volumes in the use of all advanced biofuels and that the advanced biofuel volume standard will be expected to drive BBD production and use.

As an additional supplementary assessment, we have considered the potential impacts of modifying the applicable volume of BBD from the final levels of 1.90 billion gallons in 2016, and 2.0 billion gallons in 2017, based on the assumption that in guaranteeing BBD volumes at any given level there could be greater use of BBD and a corresponding decrease in the use of other types of advanced biofuels. However, setting a higher or lower BBD volume requirement than the final levels would only be expected to impact BBD volumes on the margin, protecting to varying degrees this advanced biofuel from being outcompeted by other advanced biofuels. In this supplementary assessment we have considered the statutory factors found in CAA section 211(2)(B)(ii), and as described in a memorandum to the docket,[195] our final assessment does not appear, based on available information, to provide a good reason for setting a higher or lower volume standard for BBD than 1.90 billion gallons in 2016, and 2.0 billion gallons in 2017.

The EPA received numerous comments pertaining to the consideration of the statutory factors for the 2016–2017 BBD volume requirement. Following are responses to a number of key issues raised by NBB. Additional comments and EPA responses can be found in the Response to Comment document that accompanies this final rule.

NBB stated that we improperly based our consideration of the statutory factors on a comparison of BBD to other advanced biofuels, rather than to diesel fuel. They asserted that BBD would not compete with other advanced biofuels because EPA proposed to set the advanced biofuel volume at maximally achievable levels, and that no competition would be present if all available advanced biofuels had to be used. They suggested that setting the BBD standard at a higher level than proposed would actually result in BBD competing against diesel fuel, and therefore, EPA should analyze the impacts of displacing diesel fuel with BBD. We disagree. In setting the advanced biofuel volume requirement, we have assumed reasonably attainable volumes in BBD and other advanced biofuels. After determining that it is in the interest of the program, as described in Sections III.D.1–D.3, to set the BBD volume requirement at a level below anticipated BBD production and imports, so as to provide continued incentives for research and development of alternative advanced biofuels, it is apparent that excess BBD above the BBD volume requirement will compete with other advanced biofuels, rather than diesel. The only way for EPA's action on the BBD volume requirement to result in a direct displacement of petroleum-based fuels, rather than other advanced biofuels, would be if the BBD volume requirement were set larger than the total renewable fuel requirement. However, since BBD is a type of advanced biofuel, and advanced biofuel is a type of renewable fuel, the BBD volume requirement could never be larger than the advanced requirement and the advanced biofuel requirement could never be larger than the total renewable fuel requirement. Thus, EPA continues to believe that it is appropriate to evaluate the impact of its action in setting the BBD volume requirements by evaluating the impact of using BBD as compared to other advanced biofuels to determine what increment of the advanced biofuel standard that is not guaranteed to BBD.

NBB also asserted that our analysis of the desirability of setting the BBD volume requirement in a manner that would promote the development and use of a diverse array of advanced biofuels is prohibited by statute. We disagree with these comments and continue to believe that the statutory volumes of renewable fuel established by Congress in CAA section 211(o)(2)(B) provide an opportunity for other advanced biofuels (advanced biofuels that do not qualify as cellulosic biofuel or BBD) to be used to satisfy the advanced biofuel standard after the cellulosic biofuel and BBD standards have been met. Ensuring that a diversity of renewable biofuels are produced is consistent with CAA section 211(o)(2)(A)(i),which requires that the EPA ''ensure that transportation fuel sold, or introduced into commerce in the United States . . . contains at least the applicable volume of renewable fuel, advanced biofuels, cellulosic biofuel, and biomass-based diesel . . .''. Because the BBD standard is nested within the advanced biofuel and total renewable fuel standards, when an obligated party retires a BBD RIN (D4) to satisfy their obligation, this RIN also counts towards meeting their advanced biofuel and total renewable fuel obligations. It also means that obligated parties may use BBD RINs in excess of their BBD obligations to satisfy their advanced biofuel and total renewable fuel obligations. To the extent that obligated parties are required to achieve compliance with the overall advanced biofuel standard using higher volumes of BBD D4 RINs, they forgo the use of other biofuels considered advanced biofuels to meet the advanced biofuel requirement. Therefore, the higher the BBD volume standard is, the lower the opportunity for other non-BBD advanced biofuels to compete for market share within the context of the advanced biofuel standard. When viewed in a long-term perspective, BBD can be seen as competing for research and development dollars with other types of advanced biofuels for participation as advanced biofuels in the RFS program.

[195] ''Memorandum to docket: Final Statutory Factors Assessment for 2016–2017 BBD Applicable Volumes''.

Finally, NBB stated that the EPA previously found statutory factors supported greater annual increases in BBD volume requirement for 2013 and the statutory factors analysis developed to justify the 2016 and 2017 BBD volume requirements contradicts the analysis EPA put forward in 2013. We disagree. As in 2013, we have determined that incremental increases in the 2016 and 2017 BBD volume requirement are appropriate to provide continued support to the BBD industry. We did this in 2013, acknowledging the important role the industry thus far had played in providing advanced biofuels to the marketplace, and in furthering the GHG reduction objectives of the statute. We did not in 2013, and are not today, setting the BBD volume requirement at the maximum potential production volume of BBD.

IV. Final Cellulosic Biofuel Volume for 2014–2016

In the past several years the cellulosic biofuel industry has made significant progress towards commercial scale production. Quad County Corn Processors produced the first cellulosic biofuel RINs from corn kernel fiber at a corn ethanol plant in 2014. In addition, in 2014 two large scale cellulosic ethanol facilities owned and operated by Abengoa and Poet completed construction. EPA also determined that compressed natural gas (CNG) and liquefied natural gas (LNG) produced from biogas from landfills, municipal waste-water treatment facility digesters, agricultural digesters, and separated municipal solid waste (MSW) digesters are eligible to generate cellulosic RINs. This determination led to a significant increase in cellulosic RIN generation beginning in late 2014, as fuel that previously had been qualified to generate advanced biofuel RINs could now generate cellulosic RINs. Efforts continue to be made at facilities across the country to reduce both capital costs and production costs associated with cellulosic biofuel production through technology advances and the development of best practices gained through operating experience. EPA also continues to support the ongoing development of cellulosic biofuels through actions such as the evaluation of new pathways with the potential to generate cellulosic biofuel RINs. This section describes the available supply of cellulosic biofuel RINs in 2014, the volumes that we project will be produced or imported in 2015 and 2016, and some of the uncertainties associated with these volumes projections.

In this rule we are finalizing the proposed approach of using a slightly different methodology to determine the projected available volume of cellulosic biofuel for each of the three years. Our approach to each of these years can broadly be described as one that seeks to use actual production volumes where they are available (such as for all of 2014 and the first nine months of 2015) and to project production volumes from likely production facilities for future months in which actual production volumes are not available. In order to project the volume of cellulosic biofuel production in 2015 and 2016 we considered the Energy Information Administration's projections of cellulosic biofuel production,[196] data reported to EPA through the EPA Moderated Transaction System (EMTS) and information we collected regarding individual facilities that have produced or have the potential to produce qualifying volumes for consumption as transportation fuel, heating oil, or jet fuel in the U.S. in 2015 or 2016. New cellulosic biofuel production facilities projected to be brought online in the United States over the next few years are expected to continue to increase the production capacity of the cellulosic industry. Operational experience gained at the first few commercial scale cellulosic biofuel production facilities should also lead to increasing production of cellulosic biofuel from existing production facilities as they ramp up to production rates at or near their nameplate capacity over the next few years. The following section discusses the companies EPA reviewed in the process of projecting qualifying cellulosic biofuel production in the United States in 2015 and 2016. Information on these companies forms the basis for our production projections of cellulosic biofuel that will be produced for use as transportation fuel, heating oil, or jet fuel in the United States in these years (see Table IV–1 below).

TABLE IV–1—FINAL CELLULOSIC BIOFUEL STANDARDS

Year	Volume (million gallons)
2014	[a] 33
2015	123
2016	230

[a] Based on the number of cellulosic biofuel RINs generated in 2014 minus RINs retired for reasons other than compliance with the RFS standard. We assumed no exports of cellulosic biofuel (data from EMTS).

[196] "EIA projections of transportation fuel for 2015 and 2016", letter from Adam Sieminski, EIA Administrator to Gina McCarthy, EPA Administrator September 16, 2015.

A. Statutory Requirements

The volumes of renewable fuel to be used under the RFS program each year (absent an adjustment or waiver by EPA) are specified in CAA section 211(o)(2). The volumes of cellulosic biofuel specified in the statute for 2014, 2015, and 2016 are shown in Table IV.A–1 below. The statute provides that if EPA determines, based on EIA's estimate, that the projected volume of cellulosic biofuel production in a given year is less than the statutory volume, then EPA is to reduce the applicable volume of cellulosic biofuel to the projected volume available during that calendar year.[197]

TABLE IV.A–1—STATUTORY VOLUMES OF CELLULOSIC BIOFUEL

Year	Volume (million gallons)
2014	1,750
2015	3,000
2016	4,250

In addition, if EPA reduces the required volume of cellulosic biofuel below the level specified in the statute, the Act also indicates that we may reduce the applicable volumes of advanced biofuels and total renewable fuel by the same or a lesser volume, and we are required to make cellulosic waiver credits available. Our consideration of the 2014, 2015, and 2016 volume requirements for advanced biofuels and total renewable fuel is presented in Section II.

B. Cellulosic Biofuel Industry Assessment

In order to project cellulosic biofuel production for 2015 and 2016 we have tracked the progress of several dozen potential cellulosic biofuel production facilities. As we did in establishing the 2013 annual volumes, we have focused on facilities with the potential to produce commercial scale volumes of cellulosic biofuel rather than small R&D or pilot-scale facilities. We did so because the larger commercial-scale facilities are much more likely to generate RINs for the fuel they produce and the volumes they produce will have a far greater impact on the cellulosic biofuel standards for 2015–2016. The volume of cellulosic biofuel produced

[197] On January 25, 2013, the United States Court of Appeals for the District of Columbia Circuit issued its decision concerning a challenge to the 2012 cellulosic biofuel standard. In this decision the Court stated that in projecting potentially available volumes of cellulosic biofuel EPA must apply a "neutral methodology" aimed at providing a prediction of "what will actually happen." *API* v. *EPA,* 706 F 3d 474 (D.C. Cir. January 25, 2013).

from R&D and pilot scale facilities is quite small in relation to that expected from the commercial scale facilities. R&D and demonstration scale facilities have also generally not generated RINs for any fuel they have produced in the past as their focus is on developing and demonstrating the technology, not producing commercial volumes.

From this list of commercial scale facilities we used information from EMTS and publically available information, and information provided by representatives of potential cellulosic biofuel producers, to make a determination of which facilities are most likely to produce cellulosic biofuel and generate cellulosic biofuel RINs in 2015 and 2016. Each of these companies was investigated further in order to determine the current status of its facilities and its likely cellulosic biofuel production and RIN generation volumes for 2015 and 2016. Both in our discussions with representatives of each company [198] and as part of our internal evaluation process we gathered and analyzed information including, but not limited to, the funding status of these facilities, current status of the production technologies, anticipated construction and production ramp-up periods, facility registration status, and annual fuel production and RIN generation targets.

Our approach for each of the three years is discussed in more detail in Sections IV.D–IV.F below. The remainder of this Section discusses the current status of the companies and facilities EPA expects may be in a position to produce commercial scale volumes of cellulosic biofuel by the end of 2016. This information forms the basis for our final standards for cellulosic biofuel for the final three months of 2015, and all of 2016.

1. Potential Domestic Producers

There are a number of companies and facilities [199] located in the United States that have either already begun producing cellulosic biofuel for use as transportation fuel, heating oil, or jet fuel at a commercial scale, or are anticipated to be in a position to do so by the end of 2016. The financial incentive provided by cellulosic biofuel RINs, combined with the fact that all these facilities intend to produce fuel on a commercial scale for domestic consumption using approved pathways, gives us a high degree of confidence that cellulosic biofuel RINs will be generated for any fuel produced. In order to generate RINs, each of these facilities must be registered under the RFS program and comply with all the regulatory requirements. This includes using an approved RIN-generating pathway and verifying that their feedstocks meet the definition of renewable biomass. Many of the companies and facilities have already successfully completed facility registration, and some have successfully generated RINs. A brief description of each of the companies that EPA believes may produce commercial scale volumes of RIN generating cellulosic biofuel by the end of 2016 can be found in a memorandum to the docket for this final rule.[200] These descriptions are based on a review of the publicly available information and information provided to EPA in conversations with company representatives. The key data for each of these companies used in our projection of the potentially available volume of cellulosic biofuel in 2015 and 2016 is summarized in Table IV.B.3–1 below.

2. Potential Foreign Sources of Cellulosic Biofuel

In addition to the potential sources of cellulosic biofuel located in the United States, there are several foreign cellulosic biofuel companies that may produce cellulosic biofuel in the remainder of 2015 or 2016. These include facilities owned and operated by Beta Renewables, Enerkem, Ensyn, GranBio, and Raizen. All of these facilities use fuel production pathways that have been approved by EPA for cellulosic RIN generation provided eligible sources of renewable feedstock are used. These companies would therefore be eligible to register these facilities under the RFS program and generate RINs for any qualifying fuel imported into the United States. While these facilities may be able to generate RINs for any volumes of cellulosic biofuel they import into the United States, demand for the cellulosic biofuels they produce is expected to be high in local markets.

EPA is charged with projecting the volume of cellulosic biofuel that will be produced or imported into the United States. For the purposes of this final rule we have considered all of the companies who have registered foreign facilities under the RFS program to be potential sources of cellulosic biofuel in the remainder of 2015 and 2016. We believe that due to the strong demand for cellulosic biofuel in local markets, the significant technical challenges associated with the operation of cellulosic biofuel facilities, and the time necessary for potential foreign cellulosic biofuel producers to register under the RFS program and arrange for the importation of cellulosic biofuel to the United States, cellulosic biofuel imports from facilities not currently registered to generate cellulosic biofuel RINs are highly unlikely in 2015 and 2016. We have therefore only considered foreign cellulosic biofuel production from facilities that are currently registered in our projection of available volume of cellulosic biofuel in 2015 and 2016. Two foreign facilities that have registered as cellulosic biofuel producers have already generated cellulosic biofuel RINs for fuel exported to the United States; projected volumes from each of these facilities are included in our projection of available volumes for 2015 and 2016. One facility has registered as a cellulosic biofuel producer, but has not yet generated any cellulosic RINs. EPA contacted representatives of this facility and received confirmation that they intended to export cellulosic biofuel to the United States in 2016. EPA has therefore included potential volumes from this facility in our 2016 volume production projections.

3. Summary of Volume Projections for Individual Companies

The information we have gathered on cellulosic biofuel producers, described above, along with the production estimates from EIA and data collected through EMTS, forms the basis for our projected volumes of cellulosic biofuel production for each facility in 2015 and 2016. As discussed above, we have focused on commercial scale cellulosic biofuel production facilities.

By 2016 there are a number of cellulosic biofuel production facilities that have the potential to produce fuel at commercial scale. Each of these facilities is discussed in a memorandum to the docket,[201] and the relevant information used to project a likely production range for each company is summarized in Table IV.B.3–1 below.[202]

[198] In determining appropriate volumes for CNG/LNG producers we did not contact individual producers but rather relied primarily on discussions with industry associations, and information on likely production facilities that are already registered under the RFS program. In some cases where further information was needed we did speak with individual companies.

[199] The volume projection from CNG/LNG producers does not represent production from a single company or facility, but rather a group of facilities utilizing the same production technology.

[200] ''Cellulosic Biofuel Producer Company Descriptions (November 2015)'', memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2015–0111.

[201] ''Cellulosic Biofuel Producer Company Descriptions (November 2015)'', memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2015–0111.

[202] For the purpose of the preamble discussion we have grouped together all facilities expected to

TABLE IV.B.3—PROJECTED PRODUCERS OF CELLULOSIC BIOFUEL BY 2016

Company name	Location	Feedstock	Fuel	Facility capacity (MGY) [203]	Construction start date	First production [204]
Abengoa	Hugoton, KS	Corn Stover	Ethanol	25	September 2011	4Q 2015.
Cool Planet	Alexandria, LA	Wood Waste	Gasoline	1	2Q 2015	Late 2016.
CNG/LNG Producers [205]	Various	Biogas	CNG/LNG	Various	N/A	August 2014.
DuPont	Nevada, IA	Corn Stover	Ethanol	30	November 2012	4Q 2015.
Edeniq	Various	Corn Kernel Fiber	Ethanol	Various	Various	Various.
Ensyn	Renfrew, ON	Wood Waste	Heating Oil	3	N/A	2014.
GranBio	São Miguel dos Campos, Brazil.	Sugarcane bagasse	Ethanol	21	Mid 2012	September 2014.
INEOS Bio	Vero Beach, FL	Vegetative Waste	Ethanol	8	February 2011	1Q 2016.
Poet	Emmetsburg, IA	Corn Stover	Ethanol	24	March 2012	4Q 2015.
QCCP	Galva, IA	Corn Kernel Fiber	Ethanol	2	Late 2013	October 2014.

C. Projection From the Energy Information Administration

Section 211(o)(3)(A) of the Clean Air Act requires EIA to ''. . . provide to the Administrator of the Environmental Protection Agency an estimate, with respect to the following calendar year, of the volumes of transportation fuel, biomass-based diesel, and cellulosic biofuel projected to be sold or introduced into commerce in the United States.'' EIA provided these estimates to us on September 16, 2015.[206] With regard to cellulosic biofuel, the EIA estimated that the available volume in 2015 would be 3 million gallons and in 2016 would be 10 million gallons. A summary of the commercial scale plants they considered is shown below in Table IV.C–1.

TABLE IV.C–1—LIST OF CELLULOSIC BIOFUEL PLANTS CONSIDERED IN EIA'S PROJECTIONS

Year online	Company	Location	Product
2013	INEOS Bio	Vero Beach, FL	Ethanol.
2014	Quad County	Galva, IA	Ethanol.
2015	Abengoa	Hugoton, KS	Ethanol.
2015	POET	Emmetsburg, IA	Ethanol.
2016	DuPont	Nevada, IA	Ethanol.

EIA indicated in their letter that they did not include estimates for cellulosic biofuel produced from biogas from landfills, municipal wastewater treatment facilities, separated MSW digesters, or agricultural digesters or those producing renewable heating oil, which represent approximately 90% of our projected cellulosic biofuel volume for 2016. When limiting the scope of our projection to the companies assessed by EIA, we note that while our volume projections are not identical, they are very similar. EPA projects approximately 4 million gallons of liquid cellulosic biofuel will be produced in 2015 (approximately 2 million gallons has been produced through September 2015, and we project an additional 2 million gallons will be produced through the end of 2015). This projection includes renewable heating oil (up to 1 million gallons) which was not considered in EIA's projection. For 2016 EPA projects 23 million gallons of liquid cellulosic biofuel will be produced. Of this 23 million gallons, up to 3 million gallons is expected to come from renewable heating oil, and up to 2 million gallons is expected to come from imported cellulosic biofuel. Neither of these sources are included in EIA's projection. EIA did not provide detail on the basis of their projections other than the list of expected producers shown above, so we cannot say precisely why EPA and EIA's projections differ. We further note that if we used EIA's projections for liquid cellulosic biofuel production without modification to reflect other data and our judgement the impact on the cellulosic biofuel standard overall for 2016 would be less than 5%.

D. Cellulosic Biofuel Volume for 2014

EPA is charged with projecting the available volume of cellulosic biofuel for each year, and to reduce the applicable volume of cellulosic biofuel to the level projected to be available for years in which the projected available volume falls below the cellulosic biofuel applicable volume target specified in the CAA section 211(o)(2). EPA believes that for any historical time period, the required projection is best calculated as the sum of the cellulosic biofuel RINs (D3) and the cellulosic diesel RINs (D7) generated, adjusted for RINs that are retired for purposes other than compliance with the annual standards. EPA publishes the number of cellulosic

produce cellulosic CNG/LNG. The individual facilities included in our assessment are listed in ''November 2015 Assessment of Cellulosic Biofuel Production from Biogas (2015–2016)'', memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2015–0111.

[203] The Facility Capacity is generally equal to the nameplate capacity provided to EPA by company representatives or found in publicly available information. If the facility has completed registration and the total permitted capacity is lower than the nameplate capacity then this lower volume is used as the facility capacity. For companies generating RINs for CNG/LNG derived from biogas the Facility Capacity is equal to the lower of the annualized rate of production of CNG/LNG from the facility or the sum of the volume of contracts in place for the sale of CNG/LNG for use as transportation fuel (reported as the actual peak capacity for these producers).

[204] Where a quarter is listed for the first production date EPA has assumed production begins in the middle month of the quarter (*i.e.,* August for the 3rd quarter) for the purposes of projecting volumes.

[205] For more information on these facilities see ''November 2015 Assessment of Cellulosic Biofuel Production from Biogas (2015–2016)'', memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2015–0111.

[206] Letter from Adam Sieminski, EIA Administrator to Gina McCarthy, EPA Administrator September 16, 2015.

biofuel and cellulosic diesel RINs generated on a month-by-month basis on our Web site.[207] The number of cellulosic biofuel and cellulosic diesel RINs generated for each month of 2014 can be found in Table IV.D–1 below. From this total, we subtract the number of cellulosic biofuel and cellulosic diesel RINs retired for reasons other than compliance with the annual standards, as these RINs are not available to obligated parties.[208] In calculating the number of cellulosic biofuel RINs available for compliance with the annual standards for 2014 we have assumed that there were no exports of cellulosic biofuel.[209] In this final rule, we are establishing the cellulosic biofuel requirement for 2014 at 33 million gallons. We believe this number, calculated by subtracting the total number of cellulosic biofuel RINs (D3 and D7) retired for reasons other than compliance with the annual standards from the total number of cellulosic biofuel RINs generated in 2014 (D3 and D7), represents the total available supply of cellulosic biofuel RINs for 2014.

TABLE IV.D–1—CELLULOSIC BIOFUEL RIN GENERATION IN 2014 [210]

	Cellulosic biofuel (D3)	Cellulosic diesel (D7)
January 2014	58,415	0
February 2014	7,072	0
March 2014	6,624	472
April 2014	643	10,950
May 2014	0	0
June 2014	0	0
July 2014	4,156	1,248
August 2014	3,492,106	5,532
September 2014	7,555,432	17,073
October 2014	7,047,762	24,030
November 2014	6,325,080	0
December 2014	8,863,270	0
Total	33,360,560	59,305
RINs retired for reasons other than compliance with the annual standards	348,973	4,997
RINs Available	33,011,587	54,308
Available Cellulosic RINs (D3 and D7)	33,065,895	

E. Cellulosic Biofuel Volume for 2015

To project the volume of cellulosic biofuel in 2015, EPA has relied on a combination of production information reported to EPA through EMTS for months in which we have data available and facility or company specific estimates of likely production for months for which EMTS data is not available. For months in which information on the production of cellulosic biofuel is available we have used the methodology discussed in Section IV.D, subtracting the number of RINs retired for reasons other than compliance in 2015 from the total number of RINs produced in 2015 that are eligible to be used towards satisfying the cellulosic biofuel standard (D3 and D7 RINs). Since the time of the NPRM, data have become available for cellulosic RIN generations in April–September of 2015. This data has been used in our projection of available cellulosic biofuel volume for this final rule. We have again assumed that no cellulosic biofuel was exported in the first nine months of 2015. Data on the number of cellulosic biofuel RINs generated and retired for purposes other than compliance with the 2015 RVO from January 2015 through September 2015 are shown in Table IV.E–1 below.

TABLE IV.E–1—CELLULOSIC BIOFUEL RIN GENERATION AND RETIREMENTS

[January 2015–September 2015]

	Cellulosic biofuel (D3)	Cellulosic diesel (D7)
January 2015	4,108,477	0
February 2015	7,950,318	0
March 2015	7,803,420	0
April 2015	7,831,248	0
May 2015	9,341,048	173,731
June 2015	12,506,549	0
July 2015	12,999,815	0
August 2015	13,805,608	53,303
September 2015	12,316,744	0

[207] *http://www2.epa.gov/fuels-registration-reporting-and-compliance-help/2014-renewable-fuel-standard-data.*

[208] In 2014 Cellulosic Biofuel and Cellulosic Diesel RINs were retired for Remedial Actions and Invalid RINs.

[209] The vast majority of cellulosic biofuel RINs generated in 2014 (approximately 32 or the 33 million RINs) were for CNG or LNG. These fuels require verification that the CNG/LNG was used as transportation fuel in the United States in order for RINs to be generated.

[210] All numbers from EPA Web site: *http://www.epa.gov/otaq/fuels/rfsdata/index.htm.* Accessed February 9, 2015.

TABLE IV.E–1—CELLULOSIC BIOFUEL RIN GENERATION AND RETIREMENTS—Continued

[January 2015–September 2015]

	Cellulosic biofuel (D3)	Cellulosic diesel (D7)
Total	88,663,227	227,034
RINs retired for reasons other than compliance	716,177	22,702
RINs Available	87,947,050	204,332
Total Available Cellulosic RINs (D3 and D7)	88,151,382	

For months in which information is unavailable EPA has generally used the projection methodology described in the proposed rule, with one change based on comments received on the NPRM. Consistent with our proposed rule, our projection methodology starts with estimating a range of potential production volumes for each company for the portion of 2015 where production data is not available.[211] EPA has established a range of potential production volumes for each company such that it is possible, but unlikely, that the actual production will be above or below the range. We believe that it is more appropriate to project a range of potential production volumes rather than a single point estimate due to the highly uncertain and variable nature of biofuel production at cellulosic biofuel facilities, especially those in the early stages of production. The projected production ranges for each facility are used to generate a single point estimate for the total production of cellulosic biofuel from all companies in 2015 for the months in which actual production volumes through EMTS are not available (October–December 2015).

In establishing a range for each company, we began by determining an appropriate low end of the range. The low end of the range for each company is designed to represent the volume of fuel EPA believes each company would produce if they are unable to begin fuel production on their expected start-up date and/or if they experience challenges that result in reduced production volumes or a longer than expected ramp-up period. In this final rule EPA has set the low end of the production range for each company based on the volume of RIN-generating cellulosic biofuel the company has produced in the most recent 12 months for which data is available. Because we are not attempting to determine a low end of a likely production range for a full year, but rather only the months in 2015 for which data are not available, this number is then multiplied by a scaling factor[212] to appropriately scale this annual production volume for use as the low end of the range over the last three of months of 2015 for which actual production data is unavailable.

This approach provides us with an objective methodology for calculating the low end of the potential production range for each company that we believe is appropriate in light of the history of start-up delays and missed production targets in the cellulosic biofuel industry. If a company has not yet begun producing RIN-generating volumes of cellulosic biofuel, our experience suggests that they may experience challenges in progressing toward commercial-scale production that would result in the delay of the production of cellulosic biofuel. We acknowledge that in the majority of cases cellulosic companies that have begun producing fuel and are currently in the start-up and ramp-up phases of production will increase their production of cellulosic biofuel from one year to the next as they work towards production rates at or near the facility capacity. Fuel production by these companies may, however, be interrupted, either intentionally or unexpectedly, and these interruptions may hinder the ability of these companies to increase biofuel production year over year. Several commenters also noted low market prices for cellulosic biofuel as an additional reason that fuel production may be reduced or suspended until such a time as the market for the fuel produced improves. We will account for the likelihood of increasing production in developing the high end of each company's production range. Finally, there may be cases in which information is available that suggests a company is unlikely to meet the production volumes achieved in the previous 12 months for which data is available, due to technical, financial, or legal difficulties. We do not believe this is the case with any of the companies projected to produce cellulosic biofuel in 2015.

It is important to note that the low end of the range does not necessarily represent a worst-case scenario. The worst-case scenario for any of these facilities for the months in which we are projecting production is no production, as it is always possible that extreme circumstances or natural disasters may result in extended delays, facility damages, or facility closures. While not denying such a possibility, we nevertheless believe it is generally appropriate to use the production over the previous 12 months as the low end of the range, with exceptions made where available information indicates that such production may be unlikely. In situations where a company has not produced any cellulosic biofuel in the previous 12 months, we believe it is appropriate to use zero as the low end of the projected production range given the many uncertainties and challenges associated with the commissioning and start-up of a new cellulosic biofuel production facility we have observed to date.

To determine the high end of the range of expected production volumes for each company we considered a variety of factors, including the expected start-up date and ramp-up period, facility capacity, and fuel off-take agreements. As a starting point, EPA calculated a production volume using the expected start-up date, facility capacity, and a benchmark of a six-month straight-line ramp-up period representing an optimistic ramp-up scenario.[213] We then compared the

[211] For the purposes of projecting RIN generation from CNG/LNG projections were made for parent companies, generally representing multiple facilities. For more detail see ''November 2015 Assessment of Cellulosic Biofuel Production from Biogas (2015–2016)'', memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2015–0111.

[212] The scaling factor is 0.25; equal to the 3 months for which production data is being projected divided by 12.

[213] We did not assume a six-month straight-line ramp-up period in determining the high end of the projected production range for CNG/LNG producers. This is because these facilities generally have a history of CNG/LNG production prior to producing RINs, and therefore do not face many of the start-up and scale-up challenges that impact new facilities. For further information on the methodology used to project cellulosic RIN

Continued

volume calculated using this methodology to the company's own expectations for the period in which we are projecting production where they were available. In cases where the company projection for any given year exceeds our benchmark volume we used the benchmark volume, rather than the company estimate, as the high end of the range for that company. If the production estimate EPA received from a company was lower than the volume calculated using the projected start-up date, facility capacity, and six month straight-line ramp-up period, EPA used the company production targets instead.

EPA received comments from biofuels producers stating that production projections we receive from companies should be used as the basis for the mean value of any projected production range. They argue that EPA should defer to the technical expertise of the cellulosic biofuel manufacturers who provide these projections, and that it is inappropriate to base the low end of the range on previous production data. EPA understands that the volume projections provided by companies included in our projection are intended to represent the companies' expectations for production, rather than the high end of a potential production range. We also acknowledge the technical expertise of these companies and the significant amount of investment that has gone into the development of these biofuel production processes as they have progressed from R&D through demonstration and pilot scale in preparation for the first commercial scale facilities. While acknowledging these facts, we do not believe it would be appropriate to ignore the history of the cellulosic biofuel industry. Each year since 2010, EPA has gathered information, including volume production projections, from companies with the potential to produce cellulosic biofuel. Each of these companies supported these projections with successful pilot and demonstration scale facilities as well as other supporting documentation. In each of these cases the companies were unable to meet their own volume projections, and in many cases were unable to produce any RIN-generating cellulosic biofuel.

The inability of cellulosic biofuel producers in previous years to achieve their projection production targets does not provide a sufficient basis for completely discounting production of cellulosic biofuel in future years, either for these same facilities that were previously unable to achieve their target projections or from new facilities expected to start-up in 2015 or 2016. Each of these companies is an individual case, with their own production technologies, construction and operations staffs, and financial situations, and we do not believe it is appropriate to dismiss all future potential cellulosic biofuel production because of the failure of several facilities to successfully operate at commercial scale. We do believe it strongly suggests that we should view the individual company projections as something other than the most likely outcomes. In order to take a ''neutral aim at accuracy'' in projecting cellulosic biofuel production volumes, as directed by the United States Court of Appeals for the D.C. Circuit, we have decided to treat these company projections as the high end of a potential production range unless this volume exceeds the volume calculated using our six-month straight-line ramp-up period methodology, suggesting that these company projections are unreasonably high. We will continue to monitor the progress and experience of the cellulosic biofuel industry and may adjust our approach as appropriate in light of additional experience.

EPA also received comments claiming that the proposed cellulosic biofuel volumes were unreasonably high. These commenters generally claimed that in light of the inability of cellulosic biofuel companies to achieve their projected production volumes, start-up dates, and ramp-up schedules in previous years the only reasonable basis for projecting future production volumes was historical production data. They suggested that EPA should project future production volumes based solely on available cellulosic RIN generation data from previous months. EPA believes this would be inconsistent with our charge to project available cellulosic biofuel volume by taking a neutral aim at accuracy. Adopting such an approach would effectively mean ignoring the potential for facilities that have not generated RINs during the historical time period used for the basis of our future projection to contribute significant volumes in the future. This would not only be inconsistent with our expectations for an industry that has shown substantial growth over the last several years, but also with congressional intent to provide incentives for the rapid expansion of the cellulosic biofuel industry. Most importantly, a comparison of the results of the method suggested by these commenters for the cellulosic biofuel standard in 2015 (90 million ethanol-equivalent gallons) and those proposed by EPA (106 million ethanol-equivalent gallons) to the volume that would be expected to be produced in 2015 using a conservative extrapolation of the monthly average cellulosic biofuel RIN generation observed in the first nine months of 2015 over the remaining three months (118 million gallons) shows this suggested method to be inappropriately conservative.

We believe our range of projected production volumes for each company represents the range of what is likely to actually happen for each company. A brief overview of each of the companies we believe will produce cellulosic biofuel and make it commercially available in 2015 or 2016 can be found in a memorandum to the docket.[214] In the case of cellulosic biofuel produced from CNG/LNG we have discussed the production potential from these facilities as a group rather than individually. EPA believes it is appropriate to discuss these facilities as a group since they are utilizing a proven production technology and face many of the same challenges related to demonstrating that the fuel they produce is used as transportation fuel and therefore eligible to generate RINs under the RFS program.[215]

After establishing a projected production range for each facility (or group of facilities for CNG/LNG producers), we must then determine a method for using these projected production ranges to project the volume of cellulosic biofuel most likely to be produced by the cellulosic biofuel industry as a whole in 2015. As discussed above, the high and the low end of the range for each company represents values such that it is possible but unlikely that actual volumes would fall outside of those ranges. At present, data do not exist to allow EPA to develop a unique production probability distribution for each company based on the available information, as some commenters suggested. Even if EPA were able to undertake such a task there is no evidence that the distributions we developed would necessarily be more accurate than a standardized distribution curve as the cellulosic biofuel industry is still in its infancy and there is a high degree of uncertainty

generation from CNG/LNG producers see ''November 2015 Assessment of Cellulosic Biofuel Production from Biogas (2015–2016)'', memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2015–0111.

[214] ''Cellulosic Biofuel Producer Company Descriptions (November 2015)'', memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2015–0111.

[215] For individual company information see ''November 2015 Cellulosic Biofuel Individual Company Projections for 2014–2016 (CBI)'', memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2015–0111.

associated with many of the factors that will impact production at each individual facility. This is supported by the poor accuracy of the individual company estimates in previous years, which were made by individuals with significant technical expertise and knowledge of each individual company and technology.

Rather than attempting to develop a unique probability distribution curve that represents likely cellulosic biofuel production for each company, EPA has instead separated the list of potential cellulosic biofuel producers into several groups with similar characteristics and projected the likely production from each of these groups. In our proposed rule we separated all of the potential cellulosic biofuel producers into two groups; those who have already achieved consistent commercial-scale production and those who have not. EPA received comments on our proposed rule that biogas producers should be treated differently than liquid biofuel producers since there was very little technology risk associated with the production and collection of biogas. We believe these comments are valid, and that the available data support using a percentile value to projected production from biogas facilities that differs from the value used for liquid biofuel producers. For this final rule we have used the 50th and 75th percentile values within the projected ranges to project likely cellulosic biofuel production from new and consistently producing facilities producing CNG/LNG from biogas.[216]

We continue to believe that grouping the potential cellulosic biofuel producers using the criteria of whether or not they have achieved consistent commercial-scale production is appropriate for the purposes of projecting a likely production volume. While each of these groupings contains a diverse set of companies with their own production technologies and challenges, we believe there is sufficient commonality in the challenges related to the funding, construction, commissioning, and start-up of commercial-scale cellulosic biofuel facilities to justify aggregating these company projections into a single group for the purposes of projecting the most likely production volume of cellulosic biofuel. The challenges new production facilities face are also significantly different than those of facilities ramping up production volumes to the facility capacity and maintaining consistent production.

After separating the companies into these four groups (liquid cellulosic biofuel producers with and without consistent production and biogas producers with and without consistent production) we then summed the low and high ends of each of the ranges for each individual company (or group of companies for CNG/LNG producers) within the group to calculate an aggregate projected production range for each group of companies. The ranges for each group of companies are shown in Tables IV.E–2 through IV.E–4 below.

TABLE IV.E–2—2015 PRODUCTION RANGES FOR LIQUID CELLULOSIC BIOFUEL PRODUCERS WITHOUT CONSISTENT COMMERCIAL SCALE PRODUCTION

[Million gallons]

	Low end of the range	High end of the range
Abengoa	0	1
CoolPlanet	0	0
DuPont	0	1
Poet	0	1
Total	[a] 0	[a] 3

[a] Rounded to the nearest million gallons.

TABLE IV.E–3—2015 PRODUCTION RANGES FOR LIQUID CELLULOSIC BIOFUEL PRODUCERS WITH CONSISTENT COMMERCIAL SCALE PRODUCTION

[Million gallons]

	Low end of the range	High end of the range
Ensyn	[b] X	0.5
Quad County Corn Processors	[b] X	0.5
Total	[a] 0	[a] 1

[a] Rounded to the nearest million gallons.
[b] The low end of the range for each individual company is based on actual production volumes and is therefore withheld to protect information claimed to be confidential business information.

TABLE IV.E–4—2015 PRODUCTION RANGES FOR CNG/LNG PRODUCED FROM BIOGAS

[Million gallons]

	Low end of the range [a]	High end of the range [a]
CNG/LNG Producers (New Facilities)	0	0
CNG/LNG Producers (Currently generating RINs)	27	35

[a] Rounded to the nearest million gallons.

[216] For more information see ''November 2015 Assessment of Cellulosic Biofuel Production from Biogas (2015–2016)'', memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2015–0111. Using these percentile values and the ranges from the NPRM results in a production projection much closer to the actual production of cellulosic biofuel in 2015.

Because the cellulosic biofuel industry is still in its infancy and it is therefore not possible to predict with any degree of certainty the precise production volume each individual company will achieve, we believe that it would not be appropriate to choose a specific value within the projected range for each individual company/source. We believe it is more appropriate to identify a specific value within the aggregated ranges from Tables IV.E–2 and IV.E–4 that best reflects the likely production volume for each group of companies. For liquid cellulosic biofuel producers that have not yet achieved consistent commercial-scale production (Table IV.E–2) we are finalizing the use of the 25th percentile of the projected production range. This does not mean, as some commenters suggested, that we expect these facilities to operate at 25% of their nameplate, but rather that we expect that this group of facilities will produce a volume of cellulosic biofuel at the 25th percentile of the projected range. We note again that the high end of the range for each company, which were used to calculate the high end of the range for the group of companies, is significantly lower than the nameplate capacity of each facility, in some cases dramatically so, based on the expected start-up date of the facility. We believe this volume is appropriate as, in addition to the uncertainties listed above, there is also significant technology risk as these facilities attempt to operate their technologies at commercial scale. In the early years of the cellulosic biofuel industry several companies, including Cello Energy, Range Fuels, and KiOR experienced significant technical difficulties in scaling up their technologies and were able to produce little, if any, volumes of cellulosic biofuels. More recently, facilities owned and operated by Abengoa and Poet-DSM have also experienced unexpected challenges that resulted in commercial scale production being delayed. It is necessary to consider this history when projecting production volumes from companies who have not yet achieved consistent production at commercial scale.[217]

For the group of liquid cellulosic biofuel producers that have achieved consistent commercial-scale production (Table IV.E–3) we are projecting the available volume produced by these facilities at the mid-point (50th percentile) of the projected range. We believe that this point accounts for the uncertainty related to the scale-up of production from the volume produced in the previous 12 months (through September 2015) as well as other uncertainties related to the generation of RINs such as documenting that the fuel is used as transportation fuel, heating oil, or jet fuel. As stated above, this does not mean that we anticipate that each of these facilities within each group will produce at the 50th percentile of the projected range over the final 3 months of 2015, but rather that as a group the 50th percentile is a realistic projections for this group of companies. We believe this methodology accounts for the fact that some individual company may be able to deliver the volume of cellulosic biofuel they expect and produce at or near the high end of the range, while others may experience challenges and produce closer to the low end of the range.

Finally, EPA has projected production for companies generating cellulosic biofuel RINs from biogas at the 50th percentile for those facilities that have not yet generated cellulosic biofuel RINs and at the 75th percentile for those facilities that have achieved consistent commercial scale production. In our proposed rule we projected volumes from these facilities at the 25th and 50th percentile of the projected production ranges respectively, consistent with the way we projected likely production from liquid cellulosic biofuel producers. We received comments that our methodology under-estimated the potential for the generation of cellulosic RINs from biogas, with some commenters claiming that the mature state of the technology required to produce and/or collect biogas and clean it to pipeline quality justified a using a higher percentile to projected production from these facilities. In our proposed rule EPA noted the differences in the status of the technologies used to produce liquid cellulosic biofuels and cellulosic biofuel from biogas. We nevertheless proposed to use the same percentiles for both liquid cellulosic biofuels and cellulosic biofuel from biogas due to uncertainties related to the ability of the biogas production facilities to demonstrate the use of the biogas as transportation fuel and a lack of RIN generation data to compare to previous projections on the part of many of the biogas facilities. After reviewing the fuel production and RIN generation history of these facilities, and with these comments in mind, EPA has decided to use higher percentile values to project likely production from cellulosic biogas producers as compared to liquid cellulosic biofuel producers.[218] The projected volume of cellulosic RINS generated for CNG/LNG from biogas are shown in Table IV.E–5 below.

TABLE IV.E–5—PROJECTED VOLUME OF CELLULOSIC BIOFUEL IN 2015 FOR MONTHS WITHOUT PRODUCTION DATA

[Million gallons] [a]

	Low end of the range	High end of the range	Percentile	Projected volume [b]
Liquid Cellulosic Biofuel Producers Without Consistent Commercial Scale Production	0	3	25th	1
Liquid Cellulosic Biofuel Producers With Consistent Commercial Scale Production	0.5	1	50th	1
CNG/LNG Produced From Biogas Without Consistent Commercial Scale Production	0	0	50th	0
CNG/LNG Produced From Biogas With Consistent Commercial Scale Production	27	35	75th	33

[217] While ''new'' CNG/LNG facilities may not face the same challenges related to start-up and scale-up there is uncertainty related to RIN generation from facilities that have not yet begun generating RINs. RIN generation from these facilities may be delayed or reduced if they are unable to verify that all or a portion of the CNG/LNG they produce is used as transportation fuel, or if they decide to sell the CNG/LNG they produce into non-transportation markets. These uncertainties can significantly impact the number of RINs generated by a CNG/LNG producer, and we therefore believe that projecting production from these ''new'' facilities at the 50th percentile of the range is appropriate.

[218] ''November 2015 Assessment of Cellulosic Biofuel Production from Biogas (2015–2016)'', memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2015–0111.

TABLE IV.E–5—PROJECTED VOLUME OF CELLULOSIC BIOFUEL IN 2015 FOR MONTHS WITHOUT PRODUCTION DATA—Continued

[Million gallons] [a]

	Low end of the range	High end of the range	Percentile	Projected volume [b]
Total	N/A	N/A	N/A	35

[a] The projections in this table are for October 2015–December 2015. The low end of the range is equal to the number of RINs produced by the companies over the most recent 12 months for which data is available multiplied by a factor of 0.25 (since it is only a projection for 3 months of the year). The high end of the range is based on projected production for the final 3 months of 2015.
[b] Rounded to the nearest million gallons.

As noted in our proposed rule, EPA anticipates that if the same methodology is used in future years that as cellulosic biofuel companies successfully achieve commercial scale production, application of this methodology will appropriately generate increasing volume projections, both for the individual companies and for the industry as a whole. This will happen in two ways. First, as companies successfully produce cellulosic biofuel the low end of the range (which is based on the most recent 12 months of production for which data are available) will increase. Second, we would use the higher percentile values for all companies who have achieved consistent commercial-scale production. If merited by the available data, we will also consider using a higher (or lower) percentile for both new facilities and facilities that have already achieved consistent commercial-scale production. As new pathways for the production of cellulosic biofuel are approved, we will also consider volumes produced using these pathways in our projections.[219]

The final step in projecting the potentially available volume of cellulosic biofuel in 2015 is to combine the volumes of cellulosic biofuel actually produced in months for which data is available with the projected production volumes for the remaining months of 2015. This is shown in Table IV.E–6 below. For 2015 we are finalizing a cellulosic biofuel standard of 123 million gallons.

TABLE IV.E–6—PROJECTED AVAILABLE CELLULOSIC BIOFUEL IN 2015

Cellulosic Biofuel Production (January 2015–September 2015)	88 Million Gallons.
Projected Cellulosic Biofuel Production (October 2015–December 2015)	35 Million Gallons.
Projected Available Volume of Cellulosic Biofuel in 2015	123 Million Gallons.

F. Cellulosic Biofuel Volume for 2016

To project the volume of potentially available cellulosic biofuel in 2016 we are using a methodology very similar to the methodology used for projecting cellulosic biofuel production in 2015 for months in which actual production data are not available. The only difference is that in 2016 a scaling factor is not used in calculating the low end of the projected ranges, as we are projecting production over the entire year rather than for only 3 months. For 2016 we separated the list of potential producers of cellulosic biofuel into four groups according to whether they are producing liquid cellulosic biofuel or CNG/LNG from biogas and the production history of the facilities (See Table IV.F–1 through Table IV.F–3). We next defined a range of likely production volumes for each group of potential cellulosic biofuel producers. The low end of the range for each group of producers reflects actual production data over the last 12 months for which data is available. This is the same approach used to establish the low end of the range for each of the potential cellulosic biofuel producers in 2015.

To calculate the high end of the projected production range for each group of companies we considered each company individually (with the exception of the CNG/LNG producers) and used the same methodology in 2016 as for the months in 2015 for which actual past production data was not available (this methodology is covered in further detail in Section IV.E above). The high end of the range for each company within each group was added together to calculate the high end of the projected production range for that group.

After defining likely production ranges for each group of companies we projected a likely production volume from each group of companies for 2016. We used the same percentile values to projected a production volume within the established ranges 2016 as we did in 2015; the 50th and 25th percentiles respectively for liquid cellulosic biofuel producers with and without a history of consistent cellulosic biofuel production, and the 75th and 50th percentiles respectively for producers of CNG/LNG from biogas with and without a history of consistent commercial scale production. These percentile values are discussed in more detail in Section IV.E above.

[219] We disagree with commenters who stated that EPA should anticipate the approval of new pathways and include production from these pathways in our projections. Assuming the approval of new pathways, and the subsequent registration and production from new facilities using these pathways, is highly uncertain and inconsistent with our attempt at neutral projections, particularly for pathways that have not yet been proposed.

TABLE IV.F–1—2016 PRODUCTION RANGES FOR LIQUID CELLULOSIC BIOFUEL PRODUCERS WITHOUT CONSISTENT COMMERCIAL SCALE PRODUCTION

[Million gallons]

	Low end of the range [a]	High end of the range [a]
Abengoa	0	22
CoolPlanet	0	0
DuPont	0	26
Edeniq	0	5
GranBio	0	2
Ineos Bio	0	6
Poet	0	15
Aggregate Range	0	76
Projected Production (25th Percentile of Range)	19	

[a] Rounded to the nearest million gallons.

TABLE IV.F–2—2016 PRODUCTION RANGES FOR LIQUID CELLULOSIC BIOFUEL PRODUCERS WITH CONSISTENT COMMERCIAL SCALE PRODUCTION

[Million gallons]

	Low end of the Range [a]	High end of the Range [a]
Ensyn	[b] X	3
Quad County Corn Processors	[b] X	2
Aggregate Range	2	5
Projected Production (50th Percentile of Range)	4	

[a] Rounded to the nearest million gallons.
[b] The low end of the range for each individual company is based on actual production volumes and is therefore withheld to protect information claimed to be confidential business information.

TABLE IV.F–3—2016 PRODUCTION RANGES FOR CNG/LNG PRODUCED FROM BIOGAS

[Million gallons]

	Low end of the range [a]	High end of the range [a]
CNG/LNG Producers (New Facilities)	0	63
CNG/LNG Producers (Currently generating RINs)	107	197

[a] Rounded to the nearest million gallons.

The final step in projecting the potentially available volume of cellulosic biofuel in 2016 is to combine the volumes of cellulosic biofuel projected to be produced from each of the four groups discussed above (shown in Table IV.F–4 below). For 2016 we are finalizing a cellulosic biofuel volume requirement of 230 million gallons.

TABLE IV.F–4—PROJECTED VOLUME OF CELLULOSIC BIOFUEL IN 2016

[Million gallons]

	Low end of the range [a]	High end of the range [a]	Percentile	Projected volume [a]
Liquid Cellulosic Biofuel Producers; New Facilities	0	76	25th	19
Liquid Cellulosic Biofuel Producer; Consistent Production	2	5	50th	4
CNG/LNG Producers; New Facilities	0	63	50th	32
CNG/LNG Producers; Consistent Production	107	197	75th	175
Total	N/A	N/A	N/A	230

[a] Volumes rounded to the nearest million gallons.

G. Rescission of the 2011 Cellulosic Biofuel Standards

On January 25, 2013, the United States Court of Appeals for the District of Columbia Circuit issued its decision concerning a challenge to the 2012 cellulosic biofuel standard.[220] The Court found that in establishing the applicable

[220] *API* v. *EPA*, 706 F 3d 474 (D.C. Cir. January 25, 2013).

volume of cellulosic biofuel for 2012, EPA had used a methodology in which ''the risk of overestimation [was] set deliberately to outweigh the risk of underestimation.'' The Court held EPA's action to be inconsistent with the statute because EPA had failed to apply a ''neutral methodology'' aimed at providing a prediction of ''what will actually happen,'' as required by the statute. As a result of this ruling, the Court vacated the 2012 cellulosic biofuel standard, and we removed the 2012 requirement from the regulations in a previous action. Industry had also challenged the 2011 cellulosic biofuel standard by, first, filing a petition for reconsideration of that standard, and then seeking judicial review of our denial of the petition for reconsideration. This matter was still pending at the time of the D.C. Circuit's ruling on the 2012 cellulosic biofuel standard. Since we used essentially the same methodology to develop the 2011 cellulosic biofuel standard as we did to develop the 2012 standard, we requested, and the Court granted, a partial voluntary remand to enable us to reconsider our denial of the petition for reconsideration of the 2011 cellulosic biofuel standard. Given the Court's ruling that the methodology EPA used in developing the 2012 cellulosic biofuel standard was flawed, we are rescinding the 2011 cellulosic biofuel applicable standard and will refund the money paid by obligated parties to purchase cellulosic waiver credits to comply with the standard. The only comments received on this issue were supportive of this action.

V. Percentage Standards

A. Background

The renewable fuel standards are expressed as volume percentages and are used by each obligated party to determine their Renewable Volume Obligations (RVO). Since there are four separate standards under the RFS program, there are likewise four separate RVOs applicable to each obligated party. Each standard applies to the sum of all gasoline and diesel produced or imported. The percentage standards are set so that if every obligated party meets the percentages, then the amount of renewable fuel, cellulosic biofuel, biomass-based diesel (BBD), and advanced biofuel used will meet the applicable volumes established in this rule on a nationwide basis.

Sections II, III, and IV provide our rationale and basis for the final volumes for advanced biofuel and total renewable fuel, BBD, and cellulosic biofuel, respectively. The volumes to be used to determine the four final percentage standards are shown in Table V.A–1.

TABLE V.A–1—FINAL VOLUMES FOR USE IN SETTING THE APPLICABLE PERCENTAGE STANDARDS

	2014	2015	2016
Cellulosic biofuel (million gallons)	33	123	230
Biomass-based diesel (billion gallons) [a]	1.63	1.73	1.90
Advanced biofuel (billion gallons)	2.67	2.88	3.61
Renewable fuel (billion gallons)	16.28	16.93	18.11

[a] Represents physical volume.

B. Calculation of Standards

1. How Are the Standards Calculated?

The following formulas are used to calculate the four percentage standards applicable to producers and importers of gasoline and diesel (see 40 CFR 80.1405):

$$\mathrm{Std}_{\mathrm{CB,i}} = 100\% \times \frac{\mathrm{RFV}_{\mathrm{CB,i}}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$\mathrm{Std}_{\mathrm{BBD,i}} = 100\% \times \frac{\mathrm{RFV}_{\mathrm{BBD,i}} \times 1.5}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$\mathrm{Std}_{\mathrm{AB,i}} = 100\% \times \frac{\mathrm{RFV}_{\mathrm{AB,i}}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$\mathrm{Std}_{\mathrm{RF,i}} = 100\% \times \frac{\mathrm{RFV}_{\mathrm{RF,i}}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

Where

$\mathrm{Std}_{\mathrm{CB,i}}$ = The cellulosic biofuel standard for year i, in percent.

$\mathrm{Std}_{\mathrm{BBD,i}}$ = The biomass-based diesel standard (ethanol-equivalent basis) for year i, in percent.

$\mathrm{Std}_{\mathrm{AB,i}}$ = The advanced biofuel standard for year i, in percent.

$\mathrm{Std}_{\mathrm{RF,i}}$ = The renewable fuel standard for year i, in percent.

$\mathrm{RFV}_{\mathrm{CB,i}}$ = Annual volume of cellulosic biofuel required by section 211(o) of the Clean Air Act for year i, in gallons.

$\mathrm{RFV}_{\mathrm{BBD,i}}$ = Annual volume of biomass-based diesel required by section 211(o) of the Clean Air Act for year i, in gallons.

$\mathrm{RFV}_{\mathrm{AB,i}}$ = Annual volume of advanced biofuel required by section 211(o) of the Clean Air Act for year i, in gallons.

$\mathrm{RFV}_{\mathrm{RF,i}}$ = Annual volume of renewable fuel required by section 211(o) of the Clean Air Act for year i, in gallons.

G_i = Amount of gasoline projected to be used in the 48 contiguous states and Hawaii, in year i, in gallons.

D_i = Amount of diesel projected to be used in the 48 contiguous states and Hawaii, in year i, in gallons. This value excludes diesel used in ocean-going vessels.

RG_i = Amount of renewable fuel blended into gasoline that is projected to be consumed in the 48 contiguous states and Hawaii, in year i, in gallons.

RD_i = Amount of renewable fuel blended into diesel that is projected to be consumed in the 48 contiguous states and Hawaii, in year i, in gallons.

GS_i = Amount of gasoline projected to be used in Alaska or a U.S. territory in year i if the state or territory opts-in, in gallons.

RGS_i = Amount of renewable fuel blended into gasoline that is projected to be consumed in Alaska or a U.S. territory in year i if the state or territory opts-in, in gallons.

DS_i = Amount of diesel projected to be used in Alaska or a U.S. territory in year i if the state or territory opts-in, in gallons.

RDS_i = Amount of renewable fuel blended into diesel that is projected to be consumed in Alaska or a U.S. territory in year i if the state or territory opts-in, in gallons.

GE_i = Amount of gasoline projected to be produced by exempt small refineries and small refiners in year i, in gallons, in any year they are exempt per §§ 80.1441 and 80.1442, respectively.

DE_i = Amount of diesel projected to be produced by exempt small refineries and small refiners in year i, in gallons, in any year they are exempt per §§ 80.1441 and 80.1442, respectively.

The formulas used in deriving the annual percentage standards rely on estimates of the volumes of gasoline and diesel fuel, for both highway and nonroad uses, which are projected to be used in the year in which the standards will apply. The projected gasoline and diesel volumes provided by EIA include ethanol and biodiesel used in transportation fuel, which are subtracted out as indicated in the equations above. Production of other transportation fuels, such as natural gas, propane, and electricity from fossil fuels, is not currently subject to the standards, and volumes of such fuels are not used in calculating the annual standards. Since under the regulations the standards apply only to producers and importers of gasoline and diesel, these are the transportation fuels used to set the standards, as well as to determine the annual volume obligations of an individual gasoline or diesel producer or importer.

2. Small Refineries and Small Refiners

In CAA section 211(o)(9), enacted as part of the Energy Policy Act of 2005, and amended by the Energy Independence and Security Act of 2007, Congress provided a temporary exemption to small refineries [221] through December 31, 2010. Congress provided that small refineries could receive a temporary extension of the exemption based on an EPA determination of ''disproportionate economic hardship'' on a case-by-case basis in response to small refinery petitions.[222]

EPA, in consultation with the Department of Energy, evaluates the structural impacts petitioning refineries would likely face in achieving

[221] A small refinery, as defined by the statute, is a *refinery* with an average daily crude throughput of 75,000 barrels or less (see 40 CFR 80.1441). As this is a facility-based definition, not company-based as SBA's small *refiner* definition is, it follows that not all small refiners' facilities meet the definition of a small refinery. A small refiner that meets the parameters of 40 CFR 80.1442 may also be eligible for an exemption.

[222] For 2011 and 2012 13 small refineries were granted an extension to the statutory exemption based on the findings of a Department of Energy investigation into the disproportionate economic hardship experienced by small refineries.

compliance with the RFS requirements and how compliance would affect their ability to remain competitive and profitable. A disproportionate economic hardship exists where a refinery faces a high cost of compliance relative to the industry average and where compliance would significantly impair its operations. The U.S. Courts of Appeal for the Eighth and D.C. Circuits [223] have upheld this approach, finding it reasonable for DOE and EPA to conclude that the relative costs of compliance alone cannot demonstrate disproportionate economic hardship because all refineries face a direct cost associated with participation in the RFS program.[224]

EPA has granted some exemptions pursuant to this process in the past, and has granted exemptions for three small refineries for 2014. The final applicable percentage standards for 2014 reflect the fact that the gasoline and diesel volumes associated with these three small refineries have been exempted, as provided in the formulas described in the preceding section. However, at this time, no exemptions have been approved for 2015 or 2016, and therefore we have calculated the percentage standards for these years without an adjustment for exempted volumes. As stated in the final rule establishing the 2011 standards, ''EPA believes the Act is best interpreted to require issuance of a single annual standard in November that is applicable in the following calendar year, thereby providing advance notice and certainty to obligated parties regarding their regulatory requirements. Periodic revisions to the standards to reflect waivers issued to small refineries or refiners would be inconsistent with the statutory text, and would introduce an undesirable level of uncertainty for obligated parties.'' [225] Thus, any additional exemptions for small refineries that are issued after today will not affect the 2014, 2015, or 2016 standards.

3. Final Standards

As specified in the RFS2 final rule,[226] the percentage standards are based on energy-equivalent gallons of renewable fuel, with the cellulosic biofuel, advanced biofuel, and total renewable fuel standards based on ethanol equivalence and the BBD standard based on biodiesel equivalence. However, all RIN generation is based on ethanol-equivalence. For example, the RFS regulations provide that production or import of a gallon of qualifying biodiesel will lead to the generation of 1.5 RINs. In order to ensure that demand for the required physical volume of BBD will be created in each year, the calculation of the BBD standard provides that the applicable physical volume be multiplied by 1.5. The net result is a BBD gallon being worth 1.0 gallon toward the BBD standard, but worth 1.5 gallons toward the other standards.

The levels of the percentage standards would be reduced if Alaska or a U.S. territory chooses to participate in the RFS program, as gasoline and diesel produced in or imported into that state or territory would then be subject to the standard. Neither Alaska nor any U.S. territory has chosen to participate in the RFS program at this time, and thus the value of the related terms in the calculation of the standards is zero.

The values of the variables described above are shown in Table V.B.3–1.[227]

TABLE V.B.3–1—VALUES FOR TERMS IN CALCULATION OF THE FINAL STANDARDS [228]

[Billion gallons]

Term	2014	2015	2016
RFV_{CB}	0.033	0.123	0.230
RFV_{BBD}	[a] 1.66	[b] 1.77	1.90
RFV_{AB}	2.67	2.88	3.61
RFV_{RF}	16.28	16.93	18.11
G	136.48	139.38	139.96
D	55.67	54.05	55.26
RG	13.42	13.81	13.85
RD	1.55	1.76	2.05
GS	0.00	0.00	0.00
RGS	0.00	0.00	0.00
DS	0.00	0.00	0.00
RDS	0.00	0.00	0.00
GE	0.01	0.00	0.00
DE	0.03	0.00	0.00

[a] Represents the biodiesel-equivalent volume of actual 2014 supply, which was 2.49 bill D4 RINs. Actual physical volume was 1.63 billion physical gallons, composed of 1.35 bill gal of biodiesel and 0.28 bill gal renewable diesel.

[b] Represents the biodiesel-equivalent volume of actual 2015 supply, which was 2.65 bill D4 RINs. Actual physical volume was 1.73 billion physical gallons, composed of 1.45 bill gal of biodiesel and 0.28 bill gal renewable diesel.

Using the volumes shown in Table V.B.3–1, we have calculated the final percentage standards for 2014, 2015, and 2016 as shown in Table V.B.3–2.

[223] *Lion Oil Company* v. *EPA,* 792 F.3d 978; 2015 U.S. App. LEXIS 11725 (8th Cir. 2015); *Monroe Energy, LLC* v. *EPA,* 750 F.3d 909; 409 U.S. App. DC 413 (D.C. Cir. 2014).

[224] EPA has also found in its recent analyses of the RIN market that in a competitive market typical of the gasoline and diesel marketplace, the cost of RFS compliance (RINs) is passed along to consumers and recovered by refiners through the prices of the gasoline blendstocks they sell. Consequentially, not only are the costs of the RFS program automatically normalized across the industry based on production volume, but these costs are passed on to consumers.

[225] See 75 FR 76804 (December 9, 2010).

[226] 75 FR 14716, March 26, 2010.

[227] To determine the 49-state values for gasoline and diesel, the amounts of these fuels used in Alaska is subtracted from the totals provided by DOE. The Alaska fractions are determined from the June 24, 2015 EIA State Energy Data System (SEDS), Energy Consumption Estimates.

[228] Details of volumes and calculations are available in the docket.

TABLE V.B.3–2—FINAL PERCENTAGE STANDARDS

	2014 (%)	2015 (%)	2016 (%)
Cellulosic biofuel	0.019	0.069	0.128
Biomass-based diesel	1.41	1.49	1.59
Advanced biofuel	1.51	1.62	2.01
Renewable fuel	9.19	9.52	10.10

VI. Amendments to Regulations

We are finalizing several revisions to the RFS regulations, which are described below. The first revision relates to the definition of terms in Table 1 to 40 CFR 80.1426, which describes approved biofuel production pathways. The second set of revisions addresses annual compliance reporting and associated attest reporting deadlines.

A. Changes to the Algal Biofuel Pathways

In the March 2010 RFS rule (75 FR 14670), EPA established two pathways for biofuels derived from algal oil to generate D-Code 4 (Biomass-Based Diesel) or 5 (Advanced) RINs. The analyses supporting the pathways approved in the March 2010 RFS rule assumed that algae would be grown photosynthetically (*i.e.,* using predominantly sunlight and CO_2 as inputs) and harvested for their oil.[229] Biofuel produced with algae grown through other means is likely to have different lifecycle GHG emissions impacts. EPA proposed and is now finalizing changes to our regulations that clarify that the existing algal oil pathways adopted as part of the March 2010 RFS rule apply only to oil from algae grown photosynthetically. Specifically, we are finalizing the proposed replacement of ''algal oil'' as a feedstock in Table 1 to 40 CFR 80.1426 with ''oil from algae grown photosynthetically.'' We are also finalizing the proposed definition for ''algae grown photosynthetically'' to 40 CFR 80.1401. EPA did not propose or seek comment on adding a regulatory definition of ''algae.''

EPA received several comments in support of these clarifications. EPA also received several comments that suggested these clarifications were not necessary and urged the agency to clarify a number of issues related to the production of algal biofuel using different pathway configurations. Comments also requested the agency expand the interpretation of algae to include all autotrophic microorganisms. These issues are beyond the scope of this rulemaking, which is limited to the proposed regulatory amendments discussed above that clarify the existing algal oil pathways. Companies wishing to produce biofuels from algae grown with a non-photosynthetic stage of growth must apply to EPA for approval of their pathway pursuant to 40 CFR 80.1416.

B. Annual Compliance Reporting and Attest Engagement Deadlines Under the RFS Program

Based on the comments received and the discussion below, the EPA is finalizing the annual compliance reporting and attest engagement deadlines described in Table VI.B–1. In summary, the EPA is modifying for purposes of the final rule the proposed changes to the 2013 compliance reporting deadline for obligated parties and exporters, and the 2014 and 2015 compliance reporting deadlines for obligated parties. The EPA is also modifying for purposes of the final rule the proposed changes to the 2013 attest engagement reporting deadline for RIN generators, the 2014 attest engagement reporting deadline for RIN generators and third-party auditors, and the 2015 attest engagement reporting deadline for obligated parties. The EPA is finalizing all other compliance and attest engagement reporting deadlines.

Commenters on the proposed due dates for the 2013, 2014, and 2015 RFS annual compliance and attest engagement reports generally supported the EPA's approach to staggering the deadlines between compliance years. However, as one commenter noted, the time between the deadline for 2015 RFS attest engagement reports for obligated parties conflicts with 2016 RFS annual compliance and attest reporting deadlines for obligated parties. The commenter argued that obligated parties rely upon the results of the prior compliance year's attest engagement reports to correct vital information that is needed to accurately determine an obligated party's RVO and RIN balance. Since the proposed deadlines for 2015 attest engagement reporting occurred after the 2016 annual compliance reporting deadline, obligated parties would have been unable to utilize the 2015 attest engagement report to ensure timely, accurate 2016 annual compliance reports. The result of this conflict would have been the unnecessary resubmission of 2016 annual compliance reports by obligated parties to address issues identified in the 2015 attest engagement reports. Additionally, certified public accountants (CPAs) and certified internal auditors (CIAs) would not have been able to rely upon the 2015 attest engagement report for the 2016 attest engagement procedures since the proposed deadlines for 2015 and 2016 attest engagements reports were the same. The commenter noted that six months was too much time between the 2014 and 2015 annual compliance reporting deadlines for obligated parties. (It should be noted that the proposed 2014 and 2015 RFS annual compliance deadlines for obligated parties was only five months apart, not six months.)

While we recognize the concerns raised, due to constraints on the EPA's reporting systems and staff, we are unable to accommodate a faster annual compliance reporting schedule. Additionally, we have concerns that obligated parties may have difficulty complying with a more compressed RFS reporting schedule. Obligated parties have several other EPA fuel program registration and reporting requirements that become effective in 2016 and 2017. These requirements were primarily finalized in the Tier 3 rulemaking and include the registration of all oxygenate blenders (*e.g.,* terminals), the submission of applications for test methods under the Performance Based Analytical Test Method Approach program, and compliance with the new Tier 3 gasoline sulfur standards.

Concerning obligated parties' attest engagement reporting deadlines, we believe we can move forward the 2015 RFS attest engagement reporting deadline for obligated parties to more appropriately sequence 2015 and 2016 annual compliance and attest engagement reporting deadlines. However, we recognize that there is a limited number of CPAs and CIAs that conduct most of the attest engagement reporting across all of EPA's fuels programs for obligated parties. We are

[229] See 75 FR 14696 (March 26, 2010).

concerned that these CPAs and CIAs would become overburdened if we compressed the attest engagement reporting deadlines too much. Although we value the timely submission of information, we believe compressing the 2013 and 2014 attest engagement reporting deadlines would unnecessarily increase compliance costs for many obligated parties.

The EPA is also finalizing an adjustment to the proposed 2013 compliance and attest reporting deadlines to accommodate the 60-day effective date provision of the Congressional Review Act (CRA). As discussed further in Section IX.K in the final rule, this action is deemed a ''major rule'' as defined by 5 U.S.C 804(2) and therefore subject to the 60-day effective date provision of the CRA. This CRA provision impacts our proposed dates for the 2013 compliance deadline and attest engagement reporting deadline. Therefore, for the 2013 compliance year, we are finalizing the compliance deadline and attest engagement reporting deadline for obligated parties and exporters to be March 1, 2016 or 60 days from publication in the **Federal Register** of a final rule establishing standards for 2014, whichever date is later.

Although these changes are necessary due to the CRA provision, we believe this extension will provide obligated parties additional time to consider the impact of the final 2014 standards on the manner in which they should comply with 2013 requirements, and to engage in RIN trading transactions for purposes of their 2013 compliance demonstration that will best position them for compliance with 2014 requirements. Additional detail can located in Table VI.B–1 below and Section 9.2 in the Response to Comment document.

We have also decided to provide an additional two-month extension, beyond that which was proposed, for the 2014 obligated party compliance demonstration deadline, The final deadline is August 1, 2016. We received comment suggesting that some parties may have placed undue reliance in their planning for 2014 compliance on proposed levels from November, 2013. Although we believe such parties had adequate notice that the final standards could be higher than proposed, as noted elsewhere in this preamble, we believe that extending the 2014 compliance demonstration deadline will make it easier for them to come into compliance. For example, extending the 2014 obligated party compliance deadline by an additional two months will allow additional time for such parties to engage in necessary RIN transactions. Together with the additional time provided for the 2013 compliance demonstration (which could help certain parties better position themselves for 2014 compliance), and the fact that compliance can be achieved through acquisition of RINs, without the need for capital investments or actual renewable fuel blending, we believe that the final 2014 compliance demonstration deadline is reasonable.

For obligated parties, we are also finalizing the 2013 and 2014 attest engagement reporting deadlines as proposed. However, we are changing the 2015 attest engagement reporting deadline for obligated parties from June 1, 2017 to March 1, 2017. We believe this helps address comments concerned with having the 2015 and 2016 RFS attest engagement reporting deadlines fall on the same day and should allow obligated parties some time to adjust 2016 annual compliance reports based on issues identified in the 2015 attest engagement report.

For RIN generators we are changing the 2013 and 2014 attest engagement reporting deadlines from January 31, 2016 to March 1, 2016. We are also changing the 2014 attest engagement reporting deadline for independent third-party auditors from January 31, 2016 to March 1, 2016. These changes are a result of the 60-day effective date provision of the CRA discussed above.

We are finalizing all other annual compliance and attest engagement reporting deadlines for 2013, 2014, and 2015 for other responsible parties as proposed. The revised annual compliance and attest reporting deadlines for all regulated party categories for the 2013, 2014, and 2015 compliance years are shown below in Table VI.B–1. For the 2016 and subsequent compliance years, the deadlines will be back on track with annual compliance demonstration reports due March 31 and attest engagement reports due June 1 of the year following the compliance year.

TABLE VI.B–1—ANNUAL COMPLIANCE AND ATTEST ENGAGEMENT REPORTING DEADLINES BY REGULATED PARTY CATEGORY FOR THE 2013, 2014, AND 2015 COMPLIANCE YEARS [230]

Regulated party category	Revised annual compliance deadline	Revised attest engagement reporting deadline
2013 Compliance Year		
RIN-generating renewable fuel producers and importers; other parties owning RINs.	N/A.	March 1, 2016.
Independent third-party auditors	N/A	N/A
Renewable fuel exporters	March 1, 2016	June 1, 2016.
Obligated parties	March 1, 2016	June 1, 2016.
2014 Compliance Year		
RIN-generating renewable fuel producers and importers; other parties owning RINs.	N/A	March 1, 2016.
Independent third-party auditors	N/A	March 1, 2016.
Renewable fuel exporters	Partial report: March 31, 2015	Partial report: June 1, 2015.
January–September 16, 2014	Full report: March 1, 2016	Full report: June 1, 2016.
September 17–December 31, 2014	March 31, 2015	June 1, 2015.
Obligated parties	August 1, 2016	December 1, 2016.
2015 Compliance Year		
RIN-generating renewable fuel producers and importers; other parties owning RINs.	N/A	June 1, 2016.
Independent third-party auditors	N/A	June 1, 2016.
Renewable fuel exporters	March 31, 2016	June 1, 2016.

TABLE VI.B–1—ANNUAL COMPLIANCE AND ATTEST ENGAGEMENT REPORTING DEADLINES BY REGULATED PARTY CATEGORY FOR THE 2013, 2014, AND 2015 COMPLIANCE YEARS [230]—Continued

Regulated party category	Revised annual compliance deadline	Revised attest engagement reporting deadline
Obligated parties	December 1, 2016	March 1, 2017.

VII. Assessment of Aggregate Compliance

A. Assessment of the Domestic Aggregate Compliance Approach

The RFS2 regulations contain a provision for renewable fuel producers who use planted crops and crop residue from U.S. agricultural land that relieves them of the individual recordkeeping and reporting requirements concerning the specific land from which their feedstocks were harvested. To enable this approach, EPA established a baseline number of acres for U.S. agricultural land in 2007 (the year of EISA enactment) and determined that as long as this baseline number of acres was not exceeded, it was unlikely that new land outside of the 2007 baseline would be devoted to crop production based on historical trends and economic considerations. We therefore provided that renewable fuel producers using planted crops or crop residue from the U.S. as feedstock in renewable fuel production need not comply with the individual recordkeeping and reporting requirements related to documenting that their feedstocks are renewable biomass, unless EPA determines through one of its annual evaluations that the 2007 baseline acreage of 402 million acres agricultural land has been exceeded.

In the final RFS2 regulations, EPA committed to make an annual finding concerning whether the 2007 baseline amount of U.S. agricultural land has been exceeded in a given year. If the baseline is found to have been exceeded, then producers using U.S. planted crops and crop residue as feedstocks for renewable fuel production would be required to comply with individual recordkeeping and reporting requirements to verify that their feedstocks are renewable biomass.

The Aggregate Compliance methodology provided for the exclusion of acreage enrolled in the Grassland Reserve Program (GRP) and the Wetlands Reserve Program (WRP) from the estimated total U.S. agricultural land. However, the 2014 Farm Bill has terminated the GRP and WRP as of 2013 and USDA established the Agriculture Conservation Easement Program (ACEP) with wetlands and land easement components. The ACEP provides financial and technical assistance to help conserve agricultural lands and wetlands and their related benefits. Under the Agricultural Land Easements component, USDA helps Indian tribes, state and local governments and non-governmental organizations protect working agricultural lands and limit non-agricultural uses of the land. Under the Wetlands Reserve Easements component, USDA helps to restore, protect and enhance enrolled wetlands. The WRP was a voluntary program that offered landowners the opportunity to protect, restore, and enhance wetlands on their property. The GRP was a voluntary conservation program the emphasized support for working grazing operations, enhancement of plant and animal biodiversity, and protection of grassland under threat of conversion to other uses.

USDA and EPA concur that the ACEP–WRE and ACEP–ALE represent a continuation in basic objectives and goals of the original WRP and GRP, although the ACEP–ALE is a bit more expansive that the GRP with respect to eligible land. Therefore it was assumed in this rulemaking that acreage enrolled in the easement programs would represent a reasonable proxy of WRP and GRP acreage. Both Agencies have committed to conduct a more detailed analysis of the new programs for the 2017 RFS Annual Volume Regulation.

Based on data provided by the USDA Farm Service Agency (FSA) and Natural Resources Conservation Service (NRCS), we have estimated that U.S. agricultural land reached approximately 380 million acres in 2013, and thus did not exceed the 2007 baseline acreage. This acreage estimate is based on the same methodology used to set the 2007 baseline acreage for U.S. agricultural land in the RFS2 final rulemaking. Specifically, we started with FSA crop history data for 2013, from which we derived a total estimated acreage of 379,717,296 acres. We then subtracted the amount of land estimated to be participating in the Grasslands Reserve Program (GRP) and Wetlands Reserve Program (WRP) by the end of Fiscal Year 2013, 144,619 acres, to yield an estimate of approximately 380 million acres of U.S. agricultural land in 2013. Note that these programs were still in place in 2013. The USDA data used to make this derivation can be found in the docket to this rule.

Similarly, we have estimated that U.S. agricultural land reached approximately 378 million acres in 2014, and thus did not exceed the 2007 baseline acreage. This acreage estimate is based on the same methodology used to set the 2007 baseline acreage for U.S. agricultural land in the RFS2 final rulemaking, with GRP and WRP data substitution as noted above. Specifically, we started with FSA crop history data for 2014, from which we derived a total estimated acreage of 377,829,781 acres. We then subtracted the amount of land estimated to be participating in the Agriculture Land Easement (ACEP–ALE) and Wetlands Reserve (ACEP–WRE) by the end of Fiscal Year 2014, 143,834 acres, to yield an estimate of approximately 378 million acres of U.S. agricultural land in 2014. The USDA data used to make this derivation can be found in the docket to this rule.

Finally, we have estimated that U.S. agricultural land reached approximately 379 million acres in 2015, and thus did not exceed the 2007 baseline acreage. This acreage estimate is based on the same methodology used to set the 2007 baseline acreage for U.S. agricultural land in the RFS2 final rulemaking, with GRP and WRP data substitution as noted above. Specifically, we started with FSA crop history data for 2015, from which we derived a total estimated acreage of 379,236,620 acres. We then subtracted the Agriculture Land Easement (ACEP–ALE) and Wetlands Reserve (ACEP–WRE) enrolled acres by the end of Fiscal Year 2015, 84,133 acres, to yield an estimate of approximately 379 million acres of U.S. agricultural land in 2015. The USDA data used to make this estimation can be found in the docket to this rule.

B. Assessment of the Canadian Aggregate Compliance Approach

On March 15, 2011, EPA issued a notice of receipt of and solicited public comment on a petition for EPA to authorize the use of an aggregate approach for compliance with the

[230] For all March 1, 2016 dates listed in this table, the actual regulatory deadline is either March 1, 2016 or 60 days from publication in the **Federal Register** of this final rule, whichever date is later.

Renewable Fuel Standard renewable biomass requirements, submitted by the Government of Canada. The petition requested that EPA determine that an aggregate compliance approach will provide reasonable assurance that planted crops and crop residue from Canada meet the definition of renewable biomass. After thorough consideration of the petition, all supporting documentation provided and the public comments received, EPA determined that the criteria for approval of the petition were satisfied and approved the use of an aggregate compliance approach to renewable biomass verification for planted crops and crop residue grown in Canada.

The Government of Canada utilized several types of land use data to demonstrate that the land included in their 124 million acre baseline is cropland, pastureland or land equivalent to U.S. Conservation Reserve Program land that was cleared or cultivated prior to December 19, 2007, and was actively managed or fallow and non-forested on that date (and is therefore RFS2 qualifying land). The total agricultural land in Canada in 2013 is estimated at 119.8 million acres. This total agricultural land area includes 96.3 million acres of cropland and summer fallow, 13.7 million acres of pastureland and 9.8 million acres of agricultural land under conservation practices. This acreage estimate is based on the same methodology used to set the 2007 baseline acreage for Canadian agricultural land in the RFS2 response to petition. The trigger point for further evaluation of the data for subsequent years, provided by Canada, is 121 million acres. The data used to make this calculation can be found in the docket to this rule.

The total agricultural land in Canada in 2014 is estimated at 119.5 million acres. This total agricultural land area includes 96 million acres of cropland and summer fallow, 13.7 million acres of pastureland and 9.8 million acres of agricultural land under conservation practices. This acreage estimate is based on the same methodology used to set the 2007 baseline acreage for Canadian agricultural land in the RFS2 response to petition. The data used to make this calculation can be found in the docket to this rule.

The total agricultural land in Canada in 2015 is estimated at 118.6 million acres. This total agricultural land area includes 94.9 million acres of cropland and summer fallow, 13.9 million acres of pastureland and 9.8 million acres of agricultural land under conservation practices. This acreage estimate is based on the same methodology used to set the 2007 baseline acreage for Canadian agricultural land in the RFS2 response to petition. The data used to make this calculation can be found in the docket to this rule.

VIII. Public Participation

Many interested parties participated in the rulemaking process that culminates with this final rule. This process provided opportunity for submitting written public comments following the proposal that we published on June 10, 2015 (80 FR 33100), and we also held a public hearing on June 25, 2015, at which many parties provided both verbal and written testimony. All comments received, both verbal and written, are available in EPA docket EPA–HQ–OAR–2015–0111 and we considered these comments in developing the final rule. Public comments and EPA responses are discussed throughout this preamble and in the accompanying RTC document, which is available in the docket for this action.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is an economically significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an analysis of the potential costs associated with this action. This analysis is presented in Section II.I of this preamble.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2060–0637 and 2060–0640. The final standards would not impose new or different reporting requirements on regulated parties than already exist for the RFS program.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule.

The small entities directly regulated by the RFS program are small refiners, which are defined at 13 CFR 121.201 as refiners with 1,500 employees or less company-wide. The impacts of the RFS program as a whole on small entities were addressed in the March 26, 2010, RFS2 rulemaking (75 FR 14670), which was a rule that implemented the entire program required by the Energy Independence and Security Act of 2007 (EISA 2007). As such, the Small Business Regulatory Enforcement Fairness Act (SBREFA) panel process that took place prior to the 2010 rule was also for the entire RFS program and looked at impacts on small refiners through 2022.

For the SBREFA process for the March 26, 2010, RFS2 rulemaking, EPA conducted outreach, fact-finding, and analysis of the potential impacts of the program on small refiners which are all described in the Final Regulatory Flexibility Analysis, located in the rulemaking docket (EPA–HQ–OAR–2005–0161). This analysis looked at impacts to all refiners, including small refiners, through the year 2022 and found that the program would not have a significant economic impact on a substantial number of small entities, and that this impact was expected to decrease over time, even as the standards increased. The analysis included a cost-to-sales ratio test, a ratio of the estimated annualized compliance costs to the value of sales per company, for gasoline and/or diesel small refiners subject to the standards. From this test, it was estimated that all directly regulated small entities would have compliance costs that are less than one percent of their sales over the life of the program (75 FR 14862).

We have determined that this final rule will not impose any additional requirements on small entities beyond those already analyzed, since the impacts of this final rule are not greater or fundamentally different than those already considered in the analysis for the March 26, 2010, rule assuming full implementation of the RFS program. As shown above in Tables I–1 and I.A–1 (and discussed further in Sections II and IV), this rule finalizes the 2014, 2015, and 2016 volume requirements for cellulosic biofuel, advanced biofuel, and total renewable fuel at levels significantly below the statutory volume targets. This exercise of EPA's waiver authorities reduces burdens on small entities, as compared to the burdens that

would be imposed under the volumes specified in the Clean Air Act in the absence of waivers—which are the volumes that we assessed in the screening analysis that we prepared for implementation of the full program. Regarding the biomass-based diesel standard, we are finalizing an increase in the volume requirements for 2014–2016 over the statutory minimum value of 1 billion gallons. However, this is a nested standard within the advanced biofuel category, for which we are finalizing significant reductions from the statutory volume targets. As discussed in Section III, we are setting the biomass-based diesel volume requirement at a level below what is anticipated will be produced and used to satisfy the reduced advanced biofuel requirement. The net result of the standards being finalized in this action is a reduction in burden as compared to implementation of the statutory volume targets, as was assumed in the March 26, 2010, analysis.

For this final rule, EPA has conducted a screening analysis to assess whether it should make a finding that this action would not have a significant economic impact on a substantial number of small entities. Currently-available information shows that the impact on small entities from implementation of this rule will not be significant. EPA has reviewed and assessed the available information, which suggests that obligated parties, including small entities, are generally able to recover the purchase cost of the RINs necessary for compliance through higher sales prices of the petroleum products they sell than would be expected in the absence of the RFS program.[231] [232] Even if we were to assume that the cost of RINs were not recovered by obligated parties, and we used the maximum values of the illustrative costs discussed in Section II.I, the gasoline and diesel fuel volume projections from the October 2015 version of EIA's Short-Term Energy Outlook, and current wholesale fuel prices, a cost-to-sales ratio test shows that the costs to small entities of the RFS standards are less than 1% of the value of their sales.

While the rule will not have a significant economic impact on a substantial number of small entities, there are compliance flexibilities in the program that can help to reduce impacts on small entities. These flexibilities include being able to comply through RIN trading rather than renewable fuel blending, 20% RIN rollover allowance (up to 20% of an obligated party's RVO can be met using previous-year RINs), and deficit carry forward (the ability to carry over a deficit from a given year into the following year, providing that the deficit is satisfied together with the next year's RVO). In the March 26, 2010, final rule, we discussed other potential small entity flexibilities that had been suggested by the SBREFA panel or through comments, but we did not adopt them, in part because we had serious concerns regarding our authority to do so.

Additionally, as we realize that there may be cases in which a small entity experiences hardship beyond the level of assistance afforded by the program flexibilities, the program provides hardship relief provisions for small entities (small refiners), as well as for small refineries.[233] As required by the statute, the RFS regulations include a hardship relief provision (at 40 CFR 80.1441(e)(2)) which allows for a small refinery [234] to petition for an extension of its small refinery exemption at any time based on a showing that compliance with the requirements of the RFS program would result in the refinery experiencing a ''disproportionate economic hardship.'' EPA regulations provide similar relief to small refiners that are not eligible for small refinery relief. A small refiner may petition for a small refiner exemption based on a similar showing that compliance with the requirements of the RFS program would result in the refiner experiencing a ''disproportionate economic hardship'' (see 40 CFR 80.1442(h)). EPA evaluates these petitions on a case-by-case basis and may approve such petitions if it finds that a disproportionate economic hardship exists. In evaluating such petitions, EPA consults with the U.S. Department of Energy, and takes the findings of DOE's 2011 Small Refinery Study and other economic factors into consideration. For the 2013 RFS standards, the EPA successfully implemented these provisions by evaluating 16 petitions for exemptions from small refineries (one was later withdrawn).

Given that this final rule would not impose additional requirements on small entities, would decrease burden via a reduction in required volumes as compared to statutory volume targets, would not change the compliance flexibilities currently offered to small entities under the RFS program (including the small refinery hardship provisions we continue to successfully implement), and available information shows that the impact on small entities from implementation of this rule will not be significant, we have therefore concluded that this action would have no net regulatory burden for directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action contains a federal mandate under UMRA, 2 U.S.C. 1531–1538, that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any one year. Accordingly, the EPA has prepared a written statement required under section 202 of UMRA. The statement is included in the docket for this action, and discussed above in Section II.I. This action implements mandates specifically and explicitly set forth in CAA section 211(o) and, as described in Section II.I, we believe that this action represents the least costly, most cost-effective approach to achieve the statutory requirements of the rule.

This action is not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This final rule will be implemented at the Federal level and affects transportation fuel refiners, blenders, marketers, distributors, importers, exporters, and renewable fuel producers and importers. Tribal

[231] For a further discussion of the ability of obligated parties to recover the cost of RINs see ''A Preliminary Assessment of RIN Market Dynamics, RIN Prices, and Their Effects,'' Dallas Burkholder, Office of Transportation and Air Quality, US EPA. May 14, 2015, EPA Air Docket EPA–HQ–OAR–2015–0111.

[232] Knittel, Christopher R., Ben S. Meiselman, and James H. Stock. ''The Passthrough of RIN Prices to Wholesale and Retail Fuels Under the Renewable Fuel Standard.'' Working Paper 21343. NBER Working Paper Series. Available online *http://www.nber.org/papers/w21343.pdf.*

[233] See CAA section 211(o)(9)(B).

[234] A small refinery, as defined by the statute, is a *refinery* with an average daily crude throughput of 75,000 barrels or less. As this is a facility-based definition, not company-based as SBA's small *refiner* definition is, it follows that not all small refiners' facilities meet the definition of a small refinery.

governments would be affected only to the extent they produce, purchase, and use regulated fuels. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it implements specific standards established by Congress in statutes (CAA section 211(o)) and does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action establishes the required renewable fuel content of the transportation fuel supply for 2014, 2015, and 2016, consistent with the CAA and waiver authorities provided therein. The RFS program and this rule are designed to achieve positive effects on the nation's transportation fuel supply, by increasing energy independence and lowering lifecycle greenhouse gas emissions of transportation fuel.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations, and Low-Income Populations

The EPA believes that this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations. This final rule does not affect the level of protection provided to human health or the environment by applicable air quality standards. This action does not relax the control measures on sources regulated by the RFS regulations and therefore will not cause emissions increases from these sources.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is a ''major rule'' as defined by 5 U.S.C. 804(2).

X. Statutory Authority

Statutory authority for this action comes from section 211 of the Clean Air Act, 42 U.S.C. 7545. Additional support for the procedural and compliance related aspects of this final rule come from sections 114, 208, and 301(a) of the Clean Air Act, 42 U.S.C. 7414, 7542, and 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Diesel fuel, Fuel additives, Gasoline, Imports, Oil imports, Petroleum, Renewable fuel.

Dated: November 30, 2015.

Gina McCarthy,

Administrator.

For the reasons set forth in the preamble, EPA amends 40 CFR part 80 as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

Subpart M—[Amended]

■ 2. Section 80.1401 is amended by adding in alphabetical order the definition for ''Algae grown photosynthetically'' to read as follows:

§ 80.1401 Definitions.

* * * * *

Algae grown photosynthetically are algae that are grown such that their energy and carbon are predominantly derived from photosynthesis.

* * * * *

■ 3. Section 80.1405 is amended by:

■ a. Removing and reserving paragraph (a)(2)(i); and

■ b. Adding paragraphs (a)(5) through (7).

The additions read as follows:

§ 80.1405 What are the Renewable Fuel Standards?

(a) * * *

(5) *Renewable Fuel Standards for 2014.*

(i) The value of the cellulosic biofuel standard for 2014 shall be 0.019 percent.

(ii) The value of the biomass-based diesel standard for 2014 shall be 1.41 percent.

(iii) The value of the advanced biofuel standard for 2014 shall be 1.51 percent.

(iv) The value of the renewable fuel standard for 2014 shall be 9.19 percent.

(6) *Renewable Fuel Standards for 2015.*

(i) The value of the cellulosic biofuel standard for 2015 shall be 0.069 percent.

(ii) The value of the biomass-based diesel standard for 2015 shall be 1.49 percent.

(iii) The value of the advanced biofuel standard for 2015 shall be 1.62 percent.

(iv) The value of the renewable fuel standard for 2015 shall be 9.52 percent.

(7) *Renewable Fuel Standards for 2016.*

(i) The value of the cellulosic biofuel standard for 2016 shall be 0.128 percent.

(ii) The value of the biomass-based diesel standard for 2016 shall be 1.59 percent.

(iii) The value of the advanced biofuel standard for 2016 shall be 2.01 percent.

(iv) The value of the renewable fuel standard for 2016 shall be 10.10 percent.

* * * * *

■ 4. Section 80.1426, paragraph (f)(1) is amended by revising entries F and H in Table 1 to § 80.1426 to read as follows:

§ 80.1426 How are RINs generated and assigned to batches of renewable fuel by renewable fuel producers or importers?

* * * * *

(f) * * *

(1) * * *

TABLE 1 TO § 80.1426—APPLICABLE D CODES FOR EACH FUEL PATHWAY FOR USE IN GENERATING RINS

	Fuel type	Feedstock	Production process requirements	D-Code
*	*	*	*	*
F	Biodiesel, renewable diesel, jet fuel and heating oil.	Soy bean oil; Oil from annual covercrops; Oil from algae grown photosynthetically; Biogenic waste oils/fats/greases; Non-food grade corn oil; Camelina sativa oil.	One of the following: Trans-Esterification Hydrotreating Excluding processes that co-process renewable biomass and petroleum.	4
*	*	*	*	*
H	Biodiesel, renewable diesel, jet fuel and heating oil.	Soy bean oil; Oil from annual covercrops; Oil from algae grown photosynthetically; Biogenic waste oils/fats/greases; Non-food grade corn oil; Camelina sativa oil.	One of the following: Trans-Esterification Hydrotreating Includes only processes that co-process renewable biomass and petroleum.	5
*	*	*	*	*

* * * * *

■ 5. Section 80.1451 is amended by revising paragraph (a)(1)(xiv) to read as follows:

§ 80.1451 What are the reporting requirements under the RFS program?

(a) * * *

(1) * * *

(xiv)(A) For the 2013 compliance year, annual compliance reports shall be submitted no later than March 1, 2016 or 60 days from publication in the **Federal Register** of a final rule establishing 2014 RFS standards, whichever date is later.

(B) For obligated parties, for the 2014 compliance year, annual compliance reports shall be submitted no later August 1, 2016.

(C) For exporters of renewable fuel, for the 2014 compliance period from January 1, 2014, through September 16, 2014, full annual compliance reports (containing the information specified in paragraphs (a)(1)(i), (ii), (vi), (viii), and (x) of this section) for that period shall be submitted no later than March 1, 2016 or 60 days from publication in the **Federal Register** of a final rule establishing 2014 RFS standards, whichever date is later.

(D) For obligated parties, for the 2015 compliance year, annual compliance reports shall be submitted no later than December 1, 2016.

* * * * *

■ 6. Section 80.1464 is amended by:

■ a. Revising paragraph (g); and

■ b. Adding paragraph (i)(3).

The addition and revision read as follows:

§ 80.1464 What are the attest engagement requirements under the RFS program?

* * * * *

(g)(1) For obligated parties and exporters of renewable fuel, for the 2013 compliance year, reports required under this section shall be submitted to the EPA no later than June 1, 2016.

(2) For RIN-generating renewable fuel producers, RIN-generating importers of renewable fuel, and other parties owning RINs, for the 2013 compliance year, reports required under this section shall be submitted to the EPA no later than March 1, 2016 or 60 days from publication in the **Federal Register** of a final rule establishing 2014 RFS standards, whichever date is later.

(3) For obligated parties, for the 2014 compliance year, reports required under this section shall be submitted to the EPA no later than December 1, 2016.

(4) For exporters of renewable fuel, for the 2014 compliance period from January 1, 2014, through September 16, 2014, full reports for that period required under this section shall be submitted no later than June 1, 2016.

(5) For RIN-generating renewable fuel producers, RIN-generating importers of renewable fuel, and other parties owning RINs, for the 2014 compliance year, reports required under this section shall be submitted to the EPA no later than March 1, 2016 or 60 days from publication in the **Federal Register** of a final rule establishing 2014 RFS standards, whichever date is later.

(6) For obligated parties, for the 2015 compliance year, reports required under this section shall be submitted to the EPA no later than March 1, 2017.

* * * * *

(i) * * *

(3) *Reporting requirements.* For the 2014 compliance year, reports required under this paragraph (i) shall be submitted to the EPA no later than March 1, 2016 or 60 days from publication in the **Federal Register** of a final rule establishing 2014 RFS standards, whichever date is later. For the 2015 compliance year and each subsequent year, reports required under this paragraph (i) shall be submitted pursuant to paragraph (d) of this section.

[FR Doc. 2015–30893 Filed 12–11–15; 8:45 am]

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Part III

Federal Trade Commission

16 CFR Part 310

Telemarketing Sales Rule; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 310

RIN 3084–AB19

Telemarketing Sales Rule

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts amendments to the Telemarketing Sales Rule (''TSR'' or ''Rule''). These amendments define and prohibit the use of certain payment methods in all telemarketing transactions; expand the scope of the advance fee ban for recovery services; and clarify certain provisions of the Rule. The amendments are necessary to protect consumers from deceptive or abusive practices in telemarketing.

DATES: Effective on February 12, 2016, except for amendatory instructions 4.b., 4.c., 4.d., and 6, which are effective on June 13, 2016.

ADDRESSES: This document is available on the Internet at the Commission's Web site at *www.ftc.gov*. The complete record of this proceeding, including the final amendments to the TSR and the Statement of Basis and Purpose (''SBP''), is available at *www.ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Karen S. Hobbs or Craig Tregillus, Attorneys, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Room CC–8528, Washington, DC 20580, (202) 326–3587 or 2970.

SUPPLEMENTARY INFORMATION: This document states the basis and purpose for the Commission's decision to adopt amendments to the TSR that were proposed and published for public comment in the **Federal Register** on July 9, 2013.[1] After careful review and consideration of the entire record on the issues presented in this rulemaking proceeding, including 43 public comments submitted by a variety of interested parties,[2] the Commission has decided to adopt, with several modifications, the proposed amendments to the TSR intended to curb deceptive or abusive practices in telemarketing and improve the effectiveness of the Rule.

Beginning on February 12, 2016, sellers and telemarketers will be required to comply with the amended TSR requirements, except for § 310.4(a)(9) and (10), the prohibitions against accepting remotely created payment orders, cash-to-cash money transfers, and cash reload mechanisms, which will be effective on June 13, 2016.

I. Background

A. Overview of the TSR

Enacted in 1994, the Telemarketing and Consumer Fraud and Abuse Prevention Act (''Telemarketing Act'' or ''Act'')[3] targets deceptive or abusive telemarketing practices.[4] The Act specifically directed the Commission to issue a rule defining and prohibiting deceptive and abusive telemarketing practices.[5] In addition, the Act mandated that the rule address some specified practices, which the Act designated as ''abusive.''[6] The Act also authorized state attorneys general or other appropriate state officials, as well as private persons who meet stringent jurisdictional requirements, to bring civil enforcement actions in federal district court.[7]

Pursuant to the Act's directive, the Commission promulgated the original TSR in 1995 and subsequently amended it in 2003 and again in 2008 and 2010 to add, among other things, provisions establishing the National Do Not Call Registry and addressing the use of pre-recorded messages and debt relief offers.[8] The TSR applies to virtually all ''telemarketing,'' defined to mean ''a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call.''[9] The Telemarketing Act, however, explicitly states that the jurisdiction of the Commission in enforcing the Rule is coextensive with its jurisdiction under Section 5 of the Federal Trade Commission Act (''FTC Act'').[10] As a result, some entities and products fall outside the jurisdiction of the TSR.[11] Further, the Rule wholly or partially exempts from its coverage several types of calls.[12]

The TSR is fundamentally an anti-fraud rule that protects consumers from deceptive and abusive telemarketing practices. First, the Rule requires telemarketers to make certain disclosures to consumers, and it prohibits material misrepresentations.[13] Second, the TSR requires telemarketers

[1] *Telemarketing Sales Rule Notice of Proposed Rulemaking,* 78 FR 41200 (July 9, 2013) (hereinafter *NPRM*). The text of the TSR is set forth at 16 CFR part 310. Unless stated otherwise, references to specific provisions of the TSR refer to the current version of the Rule published in the Code of Federal Regulations, revised as of January 1, 2015.

[2] All of the public comments are available at *http://ftc.gov/os/comments/tsrantifraudnprm/index.shtm.* In addition, a list of commenters cited in this SBP, along with their short citation names or acronyms used throughout the SBP, is attached as Appendix A. Where a commenter submitted more than one comment, the comment is identified separately.

[3] 15 U.S.C. 6101–6108. Subsequently, the USA PATRIOT Act, Public Law 107–56, 115 Stat. 272 (Oct. 26, 2001), expanded the Telemarketing Act's definition of ''telemarketing'' to encompass calls soliciting charitable contributions, donations, or gifts of money or any other thing of value.

[4] Other statutes enacted by Congress to address telemarketing fraud during the early 1990's include the Telephone Consumer Protection Act of 1991, 47 U.S.C. 227 *et seq.,* which restricts the use of automated dialers, bans the sending of unsolicited commercial facsimile transmissions, and directs the Federal Communications Commission (''FCC'') to explore ways to protect residential telephone subscribers' privacy rights; and the Senior Citizens Against Marketing Scams Act of 1994, 18 U.S.C. 2325 *et seq.,* which provides for enhanced prison sentences for certain telemarketing-related crimes.

[5] 15 U.S.C. 6102(a).

[6] 15 U.S.C. 6102(a)(3).

[7] 15 U.S.C. 6103, 6104.

[8] *Telemarketing Sales Rule Statement of Basis and Purpose and Final Rule,* 60 FR 43842 (Aug. 23, 1995) (hereinafter *TSR Final Rule 1995*); *Amended Telemarketing Sales Rule Statement of Basis and Purpose,* 68 FR 4580 (Jan. 29, 2003) (hereinafter *TSR Amended Rule 2003*); *Amended Telemarketing Sales Rule Statement of Basis and Purpose,* 73 FR 51164 (Aug. 29, 2008) (hereinafter *TSR Amended Rule 2008*); *Amended Telemarketing Sales Rule Statement of Basis and Purpose,* 75 FR 48458 (Aug. 10, 2010) (hereinafter *TSR Amended Rule 2010*).

[9] 16 CFR 310.2(cc) (using the same definition as the Telemarketing Act, 15 U.S.C. 6106).

[10] 15 U.S.C. 6105(b).

[11] 15 U.S.C. 45(a)(2) (setting forth certain limitations to the Commission's jurisdiction with regard to its authority to prohibit unfair or deceptive acts or practices). These entities include banks, savings and loan institutions, and certain federal credit unions. It should be noted, however, that although the Commission's jurisdiction is limited with respect to the entities exempted by the FTC Act, the Commission has made clear that the Rule does apply to any third-party telemarketers those entities might use to conduct telemarketing activities on their behalf. *See TSR Proposed Rule,* 67 FR 4492, 4497 (Jan. 30, 2002) (citing *TSR Final Rule 1995,* 60 FR 43843) (''As the Commission stated when it promulgated the Rule, '[t]he Final Rule does not include special provisions regarding exemptions of parties acting on behalf of exempt organizations; where such a company would be subject to the FTC Act, it would be subject to the Final Rule as well.'''').

[12] For example, § 310.6(a) exempts telemarketing calls to induce charitable contributions from the Do Not Call Registry provisions of the Rule, but not from the Rule's other requirements. In addition, there are exceptions to some exemptions that limit their reach. *See, e.g.,* 16 CFR 310.6(b)(5)–(6).

[13] The TSR requires that telemarketers soliciting sales of goods or services promptly disclose several key pieces of information: (1) The identity of the seller; (2) the fact that the purpose of the call is to sell goods or services; (3) the nature of the goods or services being offered; and (4) in the case of prize promotions, that no purchase or payment is necessary to win. 16 CFR 310.4(d). Telemarketers also must disclose, in any telephone sales call, the cost of the goods or services and certain other material information. 16 CFR 310.3(a)(1).

In addition, the TSR prohibits misrepresentations about, among other things, the cost and quantity of the offered goods or services. 16 CFR 310.3(a)(2). It also prohibits making false or misleading statements to induce any person to pay for goods or services or to induce charitable contributions. 16 CFR 310.3(a)(4).

to obtain consumers' ''express informed consent'' to be charged on a particular account before billing or collecting payment and, through a specified process, to obtain consumers' ''express verifiable authorization'' to be billed through any payment system other than a credit or debit card.[14] Third, the Rule prohibits telemarketers and sellers from requesting or receiving payment in advance of obtaining: credit repair services;[15] recovery services;[16] offers of a loan or other extension of credit, the granting of which is represented as ''guaranteed'' or having a high likelihood of success;[17] and debt relief services.[18] Fourth, the Rule prohibits credit card laundering[19] and other forms of assisting and facilitating sellers or telemarketers engaged in violations of the TSR.[20]

The TSR also protects consumers from unwanted telephone calls. With narrow exceptions, it prohibits telemarketers from calling consumers whose numbers are on the National Do Not Call Registry or who have specifically requested not to receive calls from a particular entity.[21] Finally, the TSR requires that telemarketers transmit to consumers' telephones accurate Caller ID information[22] and places restrictions on calls made by predictive dialers[23] and those delivering pre-recorded messages.[24]

B. Overview of the Proposal To Amend the TSR

On July 9, 2013, the Commission proposed to amend the TSR to enhance its anti-fraud protections, as well as to clarify amendments that apply primarily, though not exclusively, to the provisions restricting unwanted calls. The Commission's Notice of Proposed Rulemaking (''NPRM'') detailed the proposed amendments to the TSR (''proposed Rule''). The subsections I.B.1 and I.B.2 below describe the Commission's proposal with respect to its anti-fraud amendments, which would:

1. Define and prohibit the use of four types of payment methods by telemarketers and sellers: ''remotely created check,'' ''remotely created payment order,'' ''cash-to-cash money transfer,'' and ''cash reload mechanism.''

2. Expand the prohibition against advanced fees for recovery services (now limited to recovery of losses sustained in prior telemarketing transactions) to include recovery of losses in any previous transaction.

Section II sets forth the Commission's analysis of the comments received on the proposal, any modifications to the proposed language, and reasons for adopting the provisions of the Final Rule.

The clarifying amendments, discussed in Section III, serve three main functions. First, they specify that a description of the goods or services purchased must be included in the verification recording of a consumer's agreement to purchase them. Second, they clarify that the business-to-business exemption extends only to calls to induce a sale to or contribution from a business entity, and not to calls to induce sales to or contributions from individuals employed by the business. Finally, these amendments address the TSR's Do Not Call requirements to:

- State expressly that a seller or telemarketer bears the burden of demonstrating that the seller has an existing business relationship with, or has obtained an express written agreement from, a person whose number is listed on the Do Not Call Registry;
- Illustrate the types of impermissible burdens that deny or interfere with a consumer's right to be placed on a seller's or telemarketer's entity-specific do-not-call list;
- Specify that a seller's or telemarketer's failure to obtain the information necessary to honor a consumer's request to be placed on a seller's entity-specific do-not-call list pursuant to § 310.4(b)(1)(ii) disqualifies it from relying on the safe harbor for isolated or inadvertent violations in § 310.4(b)(3); and
- Emphasize that the prohibition against sellers sharing the cost of Do Not Call Registry fees, which are non-transferrable, is absolute.

1. Proposed Prohibition on Novel Payment Methods in Telemarketing

The NPRM proposed to prohibit the use of four types of ''novel payment methods'' in telemarketing, namely: Remotely created checks, remotely created payment orders, cash-to-cash money transfers, and cash reload mechanisms.[25] The Commission distinguishes these four payment methods from ''conventional payment methods,'' such as credit cards, and electronic fund transfers, such as debit cards. The conventional payment methods are processed or cleared electronically through networks that can be monitored systematically for fraud. Further enhancing the security of conventional payment methods is the fact that they are subject to federal laws that provide statutory limitations on a consumer's liability for unauthorized transactions and standard procedures for resolving errors. The NPRM contrasted and compared the features and vulnerabilities of the four types of novel payment methods, especially when used in telemarketing.[26]

a. Remotely Created Checks and Remotely Created Payment Orders

Traditional checks require the signature of the account holder and instruct a financial institution to pay money from the account of the check writer (''payor'') to the check recipient (''payee''). As originally defined in the NPRM, a remotely created check (''RCC'') is a type of check which is created by the payee (typically a merchant, seller, or telemarketer) using the consumer's personal and financial account information and which is not actually signed by the payor.[27] In place of the payor's actual signature, the remotely created check usually bears a statement indicating that the account holder authorized the check, such as ''Authorized by Account Holder'' or ''Signature Not Required.'' A remotely created check is deposited into the check clearing system like any other check. As defined in the NPRM, a remotely created payment order (''RCPO'') is an electronic version of a remotely created check. The electronic image looks and functions like a remotely created check, but it never exists in paper form. Using remote deposit capture—a system that allows a depositor to scan checks remotely and transmit the check images to a bank for deposit—a merchant, seller, or telemarketer can deposit a remotely created payment order into the check clearing system in the same way as

[14] 16 CFR 310.4(a)(7); 16 CFR 310.3(a)(3).
[15] 16 CFR 310.4(a)(2).
[16] 16 CFR 310.4(a)(3).
[17] 16 CFR 310.4(a)(4).
[18] 16 CFR 310.4(a)(5).
[19] 16 CFR 310.3(c).
[20] 16 CFR 310.3(b).
[21] 16 CFR 310.4(b).
[22] 16 CFR 310.4(a)(8).
[23] 16 CFR 310.4(b)(1)(iv).
[24] 16 CFR 310.4(b)(1)(v).
[25] *NPRM, supra* note 1, at 41200.
[26] *Id.* at 41202–07.
[27] For the reasons raised by certain commenters, and discussed in detail in Section II.A.4 below, the Final Rule adopts a revised definition of ''remotely created payment order'' that deletes the reference to the absence of the payor's signature and eliminates the need for a separate definition of ''remotely created check.'' The revised definition of ''remotely created payment order'' includes any payment instruction or order drawn on a person's account that is created by the payee and deposited into or cleared through the check clearing system. The definition is broad enough to include a ''remotely created check,'' as defined in Regulation CC.

traditional paper checks and remotely created checks.

Electronic payment alternatives to remotely created checks and remotely created payment orders include conventional payment methods, such as Automated Clearinghouse (''ACH'') [28] debits and traditional debit card transactions—both of which involve consumer bank accounts—as well as credit card transactions.[29] These alternatives are processed through different payment networks. Payment methods cleared through the ACH network are subject to regular oversight and scrutiny by NACHA—The Electronic Payments Association (''NACHA''), a private self-regulatory trade association that enforces a system of rules, monitoring, and penalties for noncompliance. Among other things, NACHA monitors the levels at which all ACH debits are returned (or rejected) by consumers or consumers' banks because high rates of returned transactions (''return rates'') can be indicative of unlawful practices, such as unauthorized debiting of consumer accounts. NACHA also monitors and categorizes specific types of returned transactions, based on the reason for the return, such as ''unauthorized,'' ''non-sufficient funds,'' or ''invalid account numbers.'' For many years, NACHA's rules have required banks to report and investigate any merchant with a monthly return rate of 1 percent or more for returns categorized as unauthorized,[30] a threshold that NACHA recently reduced to 0.5 percent.[31]

Likewise, the payment card networks, such as American Express, Discover, MasterCard, and Visa, impose on participants (*e.g.,* merchants, banks, and third party payment processors) a system of rules, monitoring, and penalties for noncompliance. Transactions processed through the payment card networks, including certain types of debit and general-purpose reloadable debit card (''GPR card'') transactions, are subject to systemic monitoring to identify unusual activity associated with fraud.[32] Among other things, payment card networks monitor whether a merchant's monthly number of chargebacks [33] and chargeback rate (*i.e.,* the percentage of transactions that are ''charged back'' out of the total number of sales transactions submitted by a specific merchant) exceed certain parameters—for example, 100 chargebacks and a 1 percent chargeback rate in a given month.[34]

In contrast to the transactions processed by the ACH and payment card networks, remotely created checks and remotely created payment orders are not subject to such centralized and systemic monitoring. This is due to the decentralized nature of the check clearing system and the inability of banks to distinguish these items from other checks deposited for clearing.[35]

In addition to these operational differences between conventional and novel payment mechanisms, different laws govern each type of payment. As described in detail in section II.A.3.a(3) below, electronic fund transfers such as ACH debits and traditional debit card transactions are governed by Regulation E and the EFTA, which provide consumers with specific rights, including liability limits for unauthorized transactions, the right to a prompt re-credit of funds, specified deadlines for completing investigations of unauthorized transactions, and the right to notification of the results of such investigations.[36] Under Regulation E and the EFTA, the financial institution has the burden of proof for showing the transaction was ''authorized'' or ''unauthorized.'' [37] For ACH transactions, consumers also benefit from NACHA's systemic oversight and enforcement of operating rules governing participants in the ACH Network.[38]

Credit card transactions also are governed by federal law—Regulation Z and the Truth in Lending Act (''TILA'').[39] This regulation provides protections for consumers using credit cards that are similar to, but more robust than, those for ACH debits under EFTA

[28] ACH transactions are electronic payment instructions to either credit or debit a bank account. ACH credit transactions push funds into an account, while ACH debit transactions pull funds from an account. NACHA, *What is ACH?: Quick Facts About the Automated Clearing House (ACH) Network* (Jul. 1, 2013), *available at https://www.nacha.org/news/what-ach-quick-facts-about-automated-clearing-house-ach-network.* ACH credits include payroll direct deposits, Social Security benefits, and interest payments. Examples of ACH debit transactions include mortgage, loan, and insurance premium payments. FFIEC, *Bank Secrecy Act/Anti-Money Laundering Examination Manual, Automated Clearing House Transactions—Overview* 217 (Feb. 27, 2015), *available at http://www.ffiec.gov/bsa_aml_infobase/pages_manual/olm_059.htm.*

[29] Unlike most general-purpose reloadable cards and other prepaid cards, traditional debit cards (also referred to as ''check cards'') are linked to consumer checking accounts at a financial institution. *See infra* notes 176–178; Electronic Funds Transfer Act (''EFTA''), 15 U.S.C. 1693; Regulation E, 12 CFR part 1005.

[30] NACHA, 2013 Operating Rules, Art. 2, Subsection 2.17.2.1, Additional ODFI Action and Reporting When the Return Threshold is Exceeded (Mar. 15, 2013) (describing the actions that originating financial institutions (''ODFIs'') must take when an originator's unauthorized return rate exceeds 1 percent).

[31] In September 2015, amendments to NACHA's Operating Rules will take effect. Among other things, these amendments reduce the threshold for unauthorized returns from one percent to 0.5 percent. Press Release, NACHA, *NACHA Membership Approves New Rules to Further Improve ACH Network Quality* (Aug. 26, 2014), *available at https://www.nacha.org/rules/updates.* NACHA also adopted new monthly return rate thresholds for other types of ACH debit returns, including a three percent threshold for returns based on ''account data issues'' (*i.e.,* debits returned for invalid account numbers or an inability to locate the account) and a total return rate of 15 percent.

[32] Network-branded debit cards and GPR cards can be used like credit cards to make purchases at a variety of stores, online, or over the telephone. These so-called ''signature'' debit card purchases (*i.e.,* without the use of a PIN) are processed through and, thus, subject to the operating rules and anti-fraud monitoring of the payment card networks.

[33] ''Chargeback'' is a payments industry term used to describe the process through which a disputed charge to a consumer's credit card is refunded to the consumer and charged back to the entity, often a merchant, that placed the charge on the consumer's account. *See NPRM, supra* note 1, at 41203 & nn.47–48.

[34] For example, Visa's operating rules state:

Visa monitors the total volume of US Domestic Interchange, International Interchange, and Chargebacks for a single Merchant Outlet and identifies US Merchants that experience all of the following activity levels during any month:

- 100 or more interchange transactions
- 100 or more Chargebacks
- A 1% or higher ratio of overall Chargeback-to-Interchange volume

Visa, U.S.A, *Visa Core Rules and Visa Product Service Rules,* 500 (Apr. 15, 2015), *available at https://usa.visa.com/dam/VCOM/download/about-visa/15-April-2015-Visa-Rules-Public.pdf.* MasterCard maintains similar, but not identical, thresholds for its excessive chargeback monitoring programs (at least 100 chargebacks and a chargeback ratio of 1.5 percent). MasterCard, *Security Rules and Procedures—Merchant Edition,* 54 (Feb. 5, 2015), *available at http://www.mastercard.com/us/merchant/pdf/SPME-Entire_Manual_public.pdf.*

[35] *NPRM, supra* note 1, at 41206–07.

[36] *See infra* notes 176–178; EFTA, 15 U.S.C. 1693; Regulation E, 12 CFR part 1005. With certain exceptions, most GPR cards are not subject to the EFTA or Regulation E. However, payment card networks voluntarily extend their same zero liability protection to GPR purchases as they apply to credit and traditional debit cards processed through their networks. Federal Reserve Bank of Atlanta, Retail Payments Risk Forum, *Dispelling prepaid card myths: Not all cards are created equal* (July 5, 2011), *available at http://portalsandrails.frbatlanta.org/2011/07/dispelling-prepaid-card-myths-not-all-cards-created-equal.html; see also infra* note 178. The CFPB recently published a proposed rule that would extend to ''prepaid accounts,'' including GPR cards, the protections of Regulation E and the EFTA, with certain important modifications. *Notice of Proposed Rulemaking Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z)* (hereinafter ''Prepaid Account Rule''), 79 FR 77102 (Dec. 23, 2014). At this time, the CFPB has not taken further action on the proposal.

[37] 15 U.S.C. 1693g.

[38] *See supra* notes 30–31.

[39] *See infra* notes 172–173 and accompanying text; TILA, 15 U.S.C. 1601 *et seq.;* Regulation Z, 12 CFR part 1026.

and Regulation E. These rights include error and dispute resolution rights, as well as limited liability for unauthorized transactions. In addition, consumers are protected by the operators of the payment card networks that enforce compliance with operating rules designed to detect and deter fraud.[40]

In contrast, remotely created checks are governed principally by Articles 3 and 4 of the Uniform Commercial Code (''UCC''), a series of state laws applicable to negotiable instruments and commercial contracts.[41] As described in section II.A.3.a(3) below, the UCC provides that consumers are not liable for a check unless it is ''properly payable.''[42] Unlike the defined rights of consumers under Regulation E and the EFTA, however, provisions of the UCC applicable to unauthorized checks (including remotely created checks) do not set forth specific timeframes for investigations and provide no right to the re-credit of funds during a bank's investigation. Moreover, the permissible timeframe for consumers to report unauthorized checks, and many other provisions of the UCC, can be varied by agreement or contract. These variations often appear in the fine print of take-it-or-leave-it bank deposit agreements.[43] Technically, the UCC does not cover remotely created payment orders. As a practical matter, however, banks process remotely created payment orders the same as remotely created checks because they cannot distinguish between the two during the check clearing process.

Unscrupulous telemarketers use remotely created checks and remotely created payment orders to exploit vulnerabilities in the check clearing system, enabling them to siphon ''hundreds of millions of dollars'' in telemarketing transactions from consumers' bank accounts.[44] In past TSR rulemaking proceedings, the Commission was concerned with providing protection in telemarketing transactions ''when consumers are unaware that they may be billed via a particular method, when that method lacks legal protection against unlimited unauthorized charges, and when the method fails to provide dispute resolution rights,'' as with novel payment methods like remotely created checks and payment orders.[45] In response to the original TSR rulemaking proceedings in which the Commission proposed to prohibit remotely created checks by requiring written authorization, the Commission received numerous, detailed comments from representatives of the automated payments industry and businesses demonstrating the widespread use of remotely created checks by legitimate telemarketers and sellers, as well as the lack of effective payment alternatives.[46] Based on the 1995 rulemaking record, the Commission revised its proposal and adopted the basic ''express verifiable authorization'' requirement for transactions involving such payment methods in § 310.3(a)(3).[47] In the most recent NPRM, however, the Commission amassed evidence from its own enforcement actions, and those of other federal and state agencies, demonstrating that the express verifiable authorization requirement is manifestly ineffective at preventing massive consumer losses in fraudulent telemarketing transactions involving remotely created checks and remotely created payment orders. The NPRM accordingly proposed to prohibit the use of these payment methods in telemarketing transactions.

b. Cash-to-Cash Money Transfers and Cash Reload Mechanisms

Money transfer providers enable individuals to send (or ''remit'') money quickly and conveniently to distant friends and family, using a network of agents in various locations in the U.S. and abroad. As used in the NPRM and this Statement of Basis and Purpose (''SBP''), the term ''cash-to-cash money transfer'' describes a specific type of money transfer in which a consumer brings cash or currency to a money transfer provider that transfers the value to another person who can pick up cash in person.

As the NPRM described, the perpetrators of telemarketing scams frequently instruct consumers to use cash-to-cash money transfers because this method of payment is a fast way to anonymously and irrevocably extract money from the victims of fraud. Once a cash-to-cash money transfer is picked up, there is no recourse for the consumer to obtain a refund after the fraud is discovered. Cash-to-cash transfers to locations outside of the U.S. are governed by the Remittance Transfer Rule (''Remittance Rule''), part of the EFTA and Regulation E. Among other things, the Remittance Rule mandates disclosures to customers of money transfer providers, error resolution for mistakes, limited cancellation rights, and other protections.[48] However, the Remittance Rule provides no similar rights for consumers using other types of cash-to-cash transfers.

Cash reload mechanisms are similarly problematic. Cash reload mechanisms act as a virtual deposit slip for consumers to load funds onto a GPR card without a bank intermediary. A consumer simply pays cash, plus a small fee, to a retailer that sells cash reload mechanisms, such as MoneyPaks, Vanilla Reloads, or Reloadit packs. In exchange, the consumer receives a unique access or personal identification number (''PIN'') authorization code. The consumer can use the PIN code over the telephone or Internet to transfer the funds onto any existing GPR card within the same prepaid network, apply the funds to a ''digital wallet'' with a payment intermediary (*e.g.,* PayPal), or pay a utility or other bill owed to an approved partner of the cash reload mechanism provider.[49] Perpetrators of telemarketing scams increasingly are instructing consumers to pay with a cash reload mechanism that the perpetrator can quickly use to offload the funds onto their own prepaid cards and thereby anonymously and irrevocably extract money from victims. As with a cash-to-cash money transfer,

[40] *See supra* notes 32–34 and accompanying text.

[41] Currently, the UCC (in whole or in part) has been enacted, with some local variation, in all 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands.

[42] UCC 4–401 cmt. 1 (''An item is properly payable from a customer's account if the customer has authorized the payment and the payment does not violate any agreement that may exist between the bank and its customer.'').

[43] *See infra* note 189 (citing bank deposit agreements shortening timeframe to 14 days).

[44] *NPRM, supra* note 1, at 41202 (citing injury estimates from law enforcement cases).

[45] *TSR Final Rule 2003, supra* note 8, at 4606.

[46] *TSR Final Rule 1995, supra* note 8, at 43850 & n.80 (noting examples of businesses, such as ''two of the baby Bells, GEICO, Citicorp, Telecheck, Equifax, Bank of America, Discovery Card, Dunn and Bradstreet, and First of America Bank.''); *see also TSR Revised Notice of Proposed Rulemaking,* 60 FR 30406, 30413 (June 8, 1995) (hereinafter *TSR RNPRM*).

[47] *TSR Final Rule 1995, supra* note 8, at 43850–51. Under § 310.3(a)(3), a consumer's authorization is considered verifiable if it is obtained in one of three ways: Advance written authorization signed by the consumer; an audio recording of the consumer giving express oral authorization; or written confirmation of the transaction mailed to the consumer before submitting the charge for payment.

[48] 15 U.S.C. 1693*o*–1; 12 CFR part 1005, subpart B (effective October 28, 2013); *NPRM, supra* note 1, at 41211 & n.129.

[49] For reasons discussed in section II.B.3.c below, legitimate merchants and billers typically do not accept cash reload mechanisms directly from consumers. Instead, merchants and most billers accept as payment the GPR card itself. In the past, Green Dot Corporation permitted certain approved billing partners to accept its MoneyPak cash reload mechanisms directly from customers. Unlike perpetrators of telemarketing fraud, however, these approved billers did not use the PIN-based cash reload mechanisms to add the funds onto existing GPR cards. *See infra* note 414 and accompanying text (describing the operation of MoneyPak and other cash reload mechanisms).

once a cash reload mechanism is transmitted to an anonymous con artist, the money is gone and cannot be recovered. In response to concerns about the misuse of its cash reload mechanism by perpetrators of fraud, Green Dot Corporation (''Green Dot'') announced it would discontinue its MoneyPak cash reload mechanism in favor of a swipe-reload process—where a consumer presents her existing GPR card at the register and loads funds directly to the card.[50] The providers of two other cash reload mechanisms, Vanilla Reload Network and Reloadit, have made similar announcements.[51]

Like remotely created checks and payment orders, cash-to-cash money transfers and cash reload mechanisms are categorized herein as ''novel'' telemarketing payment methods because they lack the same error resolution rights and liability limits provided by the TILA and Regulation Z (for credit card payments) or the EFTA and Regulation E (for electronic fund transfers, ACH debits, and traditional debit card transactions). Thus, the use of cash-to-cash money transfers and cash reload mechanisms expose consumers to the risk of unrecoverable losses from telemarketing fraud. Because it appeared from the Commission's law enforcement experience that all these novel payment methods are used almost exclusively by perpetrators of telemarketing fraud, who typically ignore the TSR's ''express verifiable authorization'' requirement, the NPRM proposed to prohibit their use in all telemarketing transactions.

2. Proposed Expansion of Prohibition on Telemarketing Recovery Services

Telemarketers pitching ''recovery services'' contact victims of prior scams promising to recover the money they lost or the prize or merchandise they never received, in exchange for a fee paid in advance. Once the fee is paid, consumers rarely receive any benefit from the promised recovery services. To protect consumers from this abusive practice, § 310.4(a)(3) of the TSR prohibits any telemarketer or seller from requesting or receiving payment for recovery services for losses in a previous telemarketing transaction ''until seven (7) business days after such money or other item is delivered to that person.'' The Commission is eliminating the requirement that the prior loss was the result of a telemarketing transaction. This will ensure that consumers who have incurred fraud losses in non-telemarketing transactions receive the same protection against recovery services fraud.

3. Other Proposed Clarifying Amendments

The NPRM also proposed a number of technical amendments to the TSR that are designed to clarify existing provisions, as noted in the introduction. They are discussed fully in section III.

C. Overview of Comments Received in Response to the NPRM

In response to the NPRM, the Commission received more than 40 comments representing the views of state and federal agencies,[52] consumer groups,[53] consumers,[54] industry trade associations,[55] businesses,[56] a U.S. Senator;[57] and an academic.[58] The commenters generally supported the Commission's efforts to combat telemarketing fraud and enforce the existing provisions of the TSR. The vast majority of commenters discussed the amendments to prohibit the use of novel payment methods in telemarketing transactions. Most financial services industry and business commenters opposed all or part of the amendments curtailing novel payment methods. Law enforcement and regulators, consumer advocates, and individual consumers expressed support for the amendments, with some commenters urging the Commission to expand the prohibitions to other industries and marketing methods. Several commenters expressed their views on the amendments to the recovery services, express verifiable consent, or Do Not Call related provisions of the Rule. The comments and the basis for the Commission's adoption or rejection of the commenters' suggested modifications to the proposed amendments are analyzed in detail in sections II and III below.

II. Final Amended Rule Pertaining to the Anti-Fraud Amendments

The Commission has carefully reviewed and analyzed the entire record developed in this proceeding.[59] The record, as well as the Commission's own law enforcement experience and that of its state and federal counterparts, supports the Commission's view that the anti-fraud amendments to the TSR are necessary and appropriate to protect consumers from significant financial harm.[60] In some instances, the Commission has made modifications to its original proposal. The Final Rule

[50] Written Statement of Green Dot Corporation For U.S. Senate Special Committee on Aging Hearing ''Hanging Up on Phone Scams: Progress and Potential Solutions to this Scourge,'' 2 (July 16, 2014) (hereinafter ''Written Statement of Green Dot''), *available at http://www.aging.senate.gov/imo/media/doc/Green_Dot_7_16_14.pdf. See infra* section II.B for a detailed discussion.

[51] Press Release, InComm, *InComm Expands Vanilla Reload Network, Plans to Add Swipe Reload at Over 15,000 More Retail Locations: InComm removes reload packs from stores to help prevent victim assisted fraud* (Oct. 24, 2014) (hereinafter ''InComm Press Release''), *available at http://www.incomm.com/news-events/Pages/Press%20Releases/InComm-Expands-Vanilla-Reload-Network-Plans-to-Add-Swipe-Reload-to-Over-15000-More-Retail-Locations.aspx*; Testimony of William Tauscher Chairman and Chief Executive Officer Blackhawk Network Holdings, Inc. Before United States Senate Special Committee on Aging Hearing ''Private Industry's Role in Stemming the Tide of Phone Scams,'' at 3 (Nov. 19, 2014) (hereinafter ''Testimony of Blackhawk Network''), *available at http://www.aging.senate.gov/imo/media/doc/Tauscher_11_19_14.pdf* (describing Blackhawk's ''elimination of quick load with the scratch-off PIN'' for its Reloadit Pack product).

[52] N.J. Acting Att'y Gen. and Vt. Att'y Gen.'s Office (on behalf of 24 states and the District of Columbia) (collectively, ''AGO''); Consumer Fin. Prot. Bureau (''CFPB''); Consumer Prot. Branch, U.S. Dep't of Justice (''DOJ–CPB''); Criminal Div., U.S. Dep't of Justice (''DOJ-Criminal''); and Fed. Reserve Bank of Atlanta (''FRBA'').

[53] AARP; Ams. for Fin. Reform (''AFR'') (on behalf of itself and Arkansans against Abusive Payday Lending; Chicago Consumer Coal.; Consumer Action; Consumer Fed'n of Am.; Consumers Union, the Advocacy and Policy Arm of Consumer Reports; Maryland Consumer Rights Coal.; Nat'l Consumer Law Ctr.; National Ass'n of Consumer Advocates; Pub. Citizen; Pub. Justice Ctr.; Florida Consumer Action Network; U.S. PIRG; and Utah Coal. of Religious Cmtys.); and the Nat'l Consumer Law Ctr. (''NCLC'') (on behalf of its low-income clients and the Ctr. For Responsible Lending; Consumer Action; Consumer Fed'n of Am.; Consumers Union, the Advocacy and Policy Arm of Consumer Reports; Nat'l Ass'n of Consumer Advocates; the Nat'l Consumers League; and U.S. PIRG).

[54] Three supported all or part of the proposed amendments: Michalik, Cordero, and Frankfield. Five did not specifically address the proposed amendments: Burden, Bailey-Waddell, Manness, Seaman, and Farrington.

[55] Amer. Bankers Ass'n (''ABA''); The Clearing House and Fin. Servs. Roundtable (''The Associations''); Credit Union Nat'l Ass'n. (''CUNA''); Elec. Check Clearing House Org. (''ECCHO''); Elec. Transactions Ass'n. (''ETA''); NACHA—The Elec. Payments Ass'n. (''NACHA''); The Money Servs. Roundtable (''TMSRT''); and Nat'l Ass'n. of Fed. Credit Unions (''NAFCU'').

[56] Blue Diamond Remodeling, Inc. (''Blue Diamond''); DCS Holdings Group, LLC (''DCS Holdings''); G3 Assocs.; Green Dot Corp. (''Green Dot''); InfoCision Mgmt. Corp. (''InfoCision''); Interactive Commc'ns Int'l, Inc. (''InComm''); Michael; NetSpend; PPA—Biondi; PPA—Frank; Samuel (''First Data''); Thayer Gate Advisors (''Thayer''); and Transp. FCU.

[57] The Hon. Bill Nelson.

[58] Prof. Sarah Jane Hughes (''Hughes'').

[59] The record includes the NPRM, and the law enforcement cases and experience referenced therein, which are hereby incorporated by reference.

[60] The Commission's decision to amend the Rule is made pursuant to the rulemaking authority granted by the Telemarketing Act to protect consumers from deceptive and abusive practices. 15 U.S.C. 6102(a)(1) and (a)(3).

addresses deceptive and abusive practices in telemarketing by:

- Prohibiting the use of remotely created payment orders in outbound and inbound telemarketing transactions;
  - Adopting a modified definition of the term ''remotely created payment order'' that broadly includes checks (including ''remotely created checks'') and payments that are: (1) Created by the payee; and (2) sent through the check clearing system;
  - Eliminating the proposed definition of the term ''remotely created check;''
- Prohibiting the use of cash-to-cash money transfers and cash reload mechanisms in outbound and inbound telemarketing transactions;
  - Adopting the proposed definition of ''cash-to-cash money transfer;''
  - Adopting a revised definition of the term ''cash reload mechanism'' to clarify the exclusion of swipe reload methods of loading funds to GPR cards; and
- Expanding the advance fee ban on recovery services to include recovery of losses incurred in previous telemarketing and non-telemarketing transactions.

A. Final Rule and Comments Received on Remotely Created Checks and Remotely Created Payment Orders

Based on its review of the entire record, the Commission concludes that the use of remotely created checks and remotely created payment orders in telemarketing is an abusive practice. In reaching this conclusion, the Commission has applied the unfairness analysis set forth in Section 5(n) of the FTC Act,[61] finding that this practice causes or is likely to cause substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable.[62] In the following sections, the Commission separately: (1) Reviews comments supporting the prohibition against each of the two novel payment methods, (2) reviews comments opposing the prohibition against each of them, (3) sets forth its legal analysis, and (4) describes the operation of the amended provisions, and related definitions, in the Final Rule.

1. Comments Supporting the Prohibition on Remotely Created Checks and Remotely Created Payment Orders

Numerous commenters, including members of the financial services industry, a federal credit union, small businesses, an academic, consumer advocacy groups, individual consumers, staff from federal agencies, and Offices of Attorneys General in 24 states and the District of Columbia supported the prohibition on the use of remotely created checks and remotely created payment orders in telemarketing transactions.[63] Commenters expressed support for every aspect of the Commission's proposal, specifically described reasons why it is necessary and appropriate, and some suggested that the Commission's proposal should be applied to non-telemarketing transactions.

In general, commenters in support of the prohibition argued that these payment methods are highly susceptible to fraud in telemarketing and cause significant harm to consumers in the form of unauthorized and fraudulent withdrawals from their financial accounts.[64] Commenters agreed that perpetrators of fraud frequently use remotely created checks and remotely created payment orders to extract money from consumer victims and inflict significant harm.[65] One small business owner suggested that businesses should never receive direct access to a consumer's account, describing it as ''a perfect scenario for fraud and other deceitful actions to occur.'' [66] The DOJ–CPB stated that a prohibition on remotely created checks and remotely created payment orders and other novel payment methods ''would prevent hundreds of millions of dollars in consumer loss each year while, at the same time, leaving open safer mechanisms for legitimate marketers to accept consumer payments.'' [67] In addition, the DOJ–CPB noted, ''[t]he serious risks posed by RCCs are well documented in and outside of the FTC's [NPRM],'' including in guidance documents published by bank regulators and public comments filed in other rulemaking proceedings.[68]

Several commenters emphasized that consumers who provide their account numbers to a telemarketer have no effective control over how that payment is processed, little understanding of the different levels of protection afforded different types of payments, and no realization that the information they provide can be used to initiate additional unauthorized debits.[69] Many commenters pointed out how the consumer protections for remotely created checks and remotely created payment orders are less robust and more burdensome for consumers than those provided for credit cards and ACH debits.[70] Commenters also explained how protections for consumers whose accounts are debited via remotely created checks and remotely created payment orders are further diminished due to the lack of a systemic, centralized monitoring and identification of these payment types in the check clearing system.[71] Many commenters described

[61] The Telemarketing Act authorizes the Commission to promulgate Rules ''prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or practices.'' 15 U.S.C. 6102(a)(1). In determining whether a practice is ''abusive,'' the Commission has used the Section 5(n) unfairness standard where appropriate. *See TSR Amended Rule 2003, supra* note 8, at 4614.

[62] *See* 15 U.S.C. 45(n) (codifying the Commission's unfairness analysis, set forth in a letter from the FTC to Hon. Wendell Ford and Hon. John Danforth, Committee on Commerce, Science and Transportation, United States Senate, Commission Statement of Policy on the Scope of Consumer Unfairness Jurisdiction, *reprinted in In re Int'l Harvester Co.,* 104 F.T.C. 949, 95–101 (1984)) (hereinafter ''Unfairness Policy Statement'').

[63] The states are: Arizona, Arkansas, Delaware, Hawaii, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Nevada, New Hampshire, New Jersey (joined via separate comment letter), New Mexico, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Vermont, and Washington. AGO at 1.

[64] DOJ–CPB at 2; AFR at 1; AARP at 3; AGO at 11; CFPB at 1; NCLC at 2–3; DOJ-Criminal at 3; Transp. FCU.

[65] AARP at 3; AGO at 11 (reaffirming the views expressed by the Attorneys General of 34 states, the District of Columbia, and American Samoa in 2005 comment letter filed by National Association of Attorneys General, Proposed Amendment to Regulation CC Remotely Created Checks, FRB Docket No. R–1226 (May 9, 2005), *available at http://www.federalreserve.gov/SECRS/2005/May/20050512/R-1226/R-1226_264_1.pdf*); NACHA at 1; NCLC at 1, 5; Michael; DOJ–CPB at 1–2; DOJ-Criminal at 1& 3.

[66] Michael.

[67] DOJ–CPB at 1.

[68] *Id.* at 2 (citing Financial Crimes Enforcement Network, Advisory FIN–2012–A010, Risk Associated with Third-Party Payment Processors (Oct. 22, 2012); NACHA, Remotely Created Checks and ACH Transactions: Analyzing the Differentiators (March 2010); FFIEC, Bank Secrecy Act Anti-Money Laundering Examination Manual: Third-Party Payment Processors B Overview (2010); Federal Reserve Bank of Atlanta, 2008 Risk & Fraud in Retail Payments: Detection & Mitigation Conference Summary (Oct. 6–7, 2008); Public Comment filed with the Federal Reserve by the National Association of Attorneys General, the National Consumer Law Center, Consumer Federation of America, Consumers Union, the National Association of Consumer Advocates, and U.S. Public Interest Research Group in Docket No. R–1226 (May 9, 2005)).

[69] AGO at 11 (citing a ''lack of consumer awareness of how strangers can debit their bank accounts without authorization''); Trans. FCU (noting that consumers do not realize their account information ''can easily be used to generate additional unauthorized payments''); NCLC at 6 (''Consumers cannot protect themselves from the dangers of RCCs and RCPOs''); Michael.

[70] AGO at 11 (noting ''the hurdles that consumers often encounter in trying to obtain a recredit to their bank account when—if at all—they discover an unauthorized debit''); NCLC at 4–5 (noting that ''the use of RCCs and RCPOs is popular for scammers because the consumer protections are weak and poorly enforced . . .'' and explaining how RCCs and RCPOs can make it difficult for consumers to initiate stop payment orders).

[71] AGO at 11 (highlighting ''the difficulty, if not impossibility, of tracking remotely created checks'');

Continued

how a telemarketer's choice to use a consumer's bank account information to create a remotely created check, instead of originating an ACH debit or accepting a payment card, determines the level of scrutiny and monitoring applied to the transaction and the telemarketer or seller.[72] These commenters pointed out that telemarketers and sellers using remotely created checks and remotely created payment orders are often deliberately exploiting these regulatory and operational weaknesses to escape the heightened scrutiny and monitoring of the ACH and payment card networks.

Virtually all of the commenters in support of the prohibition focused on the harm inflicted on consumers when unauthorized and fraudulent debits are withdrawn using remotely created checks and remotely created payment orders.[73] Commenters opined that the legitimate use of remotely created checks and payment orders in telemarketing transactions, if any, is significantly outweighed by the considerable evidence of harm inflicted on consumers.[74] Citing the existence of safer modern alternatives to remotely created checks and remotely created payment orders in telemarketing transactions, such as debit cards and ACH debits, commenters argued that the reasons to prohibit their use are even more compelling today than in the past.[75] As a result, they maintained, the proposed Rule would not adversely affect legitimate telemarketers, who already accept more conventional payment methods.

Two commenters responded to the Commission's specific request for comment regarding the proposed definitions of remotely created check and remotely created payment order by proposing discrete changes that would eliminate the requirement that the check or payment order be ''unsigned.'' [76] These commenters explained that the definition proposed in the NPRM was too narrow and technical to be fully effective, because a telemarketer engaged in fraud could instead insert ''a graphical image of a signature into the signature block of each check or remotely created payment order'' to circumvent the prohibition.[77] Instead, the commenters suggested that the Commission revise the definitions of remotely created check and remotely created payment order to make clear that both are a payment order or instruction: (1) Created or initiated by the payee and (2) deposited into or cleared through the check clearing system.

Several commenters supporting the proposed Rule urged the Commission to expand the prohibition on remotely created checks and remotely created payment orders to non-telemarketing transactions.[78] These commenters argued for a complete prohibition on these payment methods in all consumer transactions, noting the existence of abuse of remotely created checks and payment orders in connection with scams perpetrated via email and other media.[79] Two of these commenters urged the Commission to work closely with the CFPB, Federal Reserve Bank, and other regulators to implement such a prohibition.[80]

Some commenters also emphasized the essential assistance provided by payment processors and merchant banks to telemarketers and sellers that use remotely created checks and remotely created payment orders to debit consumer accounts without authorization.[81] NCLC expressed the view that the Rule's existing knowledge standard for assisting and facilitating is too burdensome, and would insulate payment processors from liability for processing prohibited payments for telemarketers.[82] NCLC and AFR urged the Commission to adopt a strict liability standard that would incentivize payment processors to develop robust mechanisms to ensure they are not processing these prohibited payments.[83]

2. Comments Opposing the Prohibition on Remotely Created Checks and Remotely Created Payment Orders

In stark contrast to the 1995 rulemaking proceedings in which a

NACHA at 3 (''RCCs are difficult, if not impossible, for individual financial institutions to monitor as a class''); NCLC at 9 (''a systemic monitoring system is lacking for the check system.'').

[72] AFR at 1 (''RCCs and RCPOs are heavily used by scammers and others who wish to avoid the consumer protections and fraud prevention mechanisms associated with modern electronic payment devices''); DOJ–CPB at 2 (''we have seen third party payment processors that promote their use of RCCs as a means to process transactions for merchants that have been blacklisted from credit card and ACH transactions''); Trans. FCU (''[w]e have seen these types of payment mechanisms used by scammers, often targeting elderly or financially distressed members''); NACHA at 3 (''Because RCCs are not monitored systemically . . . fraudsters are able to use RCCs to evade the authorization requirements and strong protections that NACHA has implemented through the ACH system''); NCLC at 6 (''RCCs and RCPOs are also used by entities who wish to escape scrutiny by the systems used to detect fraud in other payment systems.'').

[73] One commenter from the financial services industry, NetSpend, described the significant adverse impact that remotely created checks have on its prepaid Visa and MasterCard debit card business and the banks that issue its cards. Netspend at 1. NetSpend explained that its debit cards do not have checking account functionality, so any remotely created checks drawn on the card account number are automatically returned unpaid by the issuing bank. NetSpend states that ''some financial institutions and their third-party vendors choose to ignore the 100% return-rate'' and continue to submit remotely created checks each month against its prepaid debit cards that lack checking privileges. As a result, NetSpend reports, it pays about $75,000 per year in bank fees to just one of its card issuing banks for processing thousands of remotely created check images before the bank can automatically reject them. *Id.* NetSpend also stated that it suffered significant losses from remotely created checks originated by First Bank of Delaware—a bank that the Department of Justice sued for processing remotely created payments for ''fraudulent merchants and telemarketers wishing to skirt the rules of the electronic funds transfers networks.'' *Id.; see also U.S.* v. *First Bank of Delaware,* Civ. No. 12–6500 (E.D. Pa. Nov. 19, 2012).

[74] AARP at 3 (concluding that ''the benefit to consumers of the proposed rule outweighs the burden to businesses in complying with this rule''); Hughes at 1 (''I find the cost-benefit analysis articulated in the [NPRM] to be persuasive''); NACHA at 3 (explaining that ''[i]n 2010, NACHA adopted rules (that became effective in 2011) allowing for recurring payments to be authorized over the telephone'' thereby eliminating the few advantages for legitimate businesses of remotely created checks over ACH).

[75] AARP at 3 (concluding that ''legitimate businesses have access to a variety of other payment methods''); AFR at 1 (noting that remotely created checks and remotely created payment orders ''have few legitimate uses for which other payment systems could not substitute''); DOJ–CPB at 3 (''The FTC's proposed rule change will not adversely affect legitimate telemarketers'' that can ''use a variety of other payment means''); NCLC at 7 (''With the availability of modern electronic payment methods, there are no longer any legitimate reasons to use either payment mechanism that can justify their risks.'').

[76] CFPB at 2 (''The Bureau believes that the RCC and RCPO definitions ultimately adopted by the Commission should not hinge on the presence or absence of the consumer's signature''); FRBA–2 at 2 (stating that ''this broader prohibition will better serve the Commission's purposes'').

[77] FRBA–2 at 2.

[78] AFR at 1; NCLC at 2; *see also* NACHA at 4 (noting that ''it seems likely that bad actors would attempt to move activity online, as e-commerce is not covered by the telemarketing sales rule.''). In addition, two individuals went so far as to suggest either banning all telemarketing or requiring ''everything in writing.'' Seaman (adding, ''[i]f consumers want something, they will call the company themselves''); G3 Assocs. (''It's real simple . . . make them put it in writing (either snail mail or email) . . . if they are legit they will if they won't, hang up!'').

[79] AFR at 1 (urging the Commission to apply the proposed ban to ''sales initiated by email or other methods that do not use a telephone''); NCLC at 4 (noting the use of these payments by internet payday lenders that provide loans to consumer in states where payday lending is illegal or where they are not licensed).

[80] AFR at 1; NCLC at 7.

[81] DOJ–CPB at 2 (noting that payment processors market the use of remotely created checks to process transactions for merchants that have been kicked out of payment card networks and ACH network); NCLC at 8 (''Payment processors and ODFIs play critical roles in the misuse of RCCs and RCPOs.'').

[82] NCLC at 8.

[83] AFR at 1 (''Payment processors and the banks that originate RCCs and RCPOs should be strictly liable for processing unlawful payments''); NCLC at 7–8 (''The best way to stop RCCs and RCPOs from entering into the system and reaching consumers' accounts is to . . . hold payment processors and ODFIs strictly liable for accepting RCCs or RCPOs that violate the TSR.'').

number of specific entities described in detail their legitimate use of and dependence on remotely created checks, in response to the current NPRM, the Commission received only one comment from a telemarketing firm covered by the amended Rule—InfoCision. InfoCision asserted generally that the amended Rule would increase the burdens on legitimate businesses and charities that rely on novel payment methods.[84] The remaining comments were submitted primarily by financial services industry members and associations.[85] Comments from the financial services industry contended that prohibiting telemarketers and sellers from using remotely created checks and remotely created payment orders would be a direct and impermissible regulation of banks, an action that exceeds the Commission's jurisdiction.[86] Overall, commenters opposed to the prohibition raised similar concerns. As described in detail below, commenters challenged the FTC's unfairness analysis, including the significance of the injury to consumers and the relative burdens on consumers and businesses; argued that the reach of the proposal was too broad; and suggested alternative courses of action.

While many commenters challenged the FTC's assertion that the use of these payment methods in telemarketing causes or is likely to cause substantial harm to consumers,[87] no commenter specified how or to what extent remotely created checks and remotely created payment orders are used in lawful telemarketing of legitimate products and services. For example, InfoCision claimed that novel payment methods are ''extremely important'' to legitimate businesses and charities that ''need to offer customers multiple means of accepting payments or charitable donations'' and that the amended Rule would increase the cost of collecting payments and donations but did not provide support for these claims.[88] Commenters from the financial services industry also did not provide specific support or evidence.[89]

The commenters in opposition took issue with other aspects of the unfairness analysis the Commission articulated in the NPRM.[90] According to some commenters, the Commission failed to demonstrate that the regulatory framework applicable to remotely created checks and remotely created payment orders is a source of significant harm to consumers or a sufficient justification for the amendment.[91] To buttress that argument, commenters favorably compared the consumer protections that the UCC affords consumers who use remotely created checks and remotely created payment orders with those afforded by the EFTA (for ACH debits and traditional debit cards) and the TILA (for credit cards).[92] Further, many argued that the Commission overstated the operational weaknesses of the check clearing system in detecting and deterring fraudulent telemarketers and unauthorized transactions.[93]

At least one commenter argued that the Commission failed to demonstrate that remotely created payment orders, themselves, caused unavoidable harm to consumers.[94] Indeed, some commenters asserted that the prohibition would do little to protect consumers when unscrupulous telemarketers thwart the Rule's existing express verifiable authorization requirements, regardless of the payment method used.[95]

Most commenters, however, aimed their critique at the final cost-benefit prong of the Commission's unfairness analysis. These commenters expressed the view that the harm, if any, inflicted on consumers is outweighed by the benefits of using remotely created checks and remotely created payment orders in telemarketing transactions.[96] Because of the inability of banks to distinguish remotely created checks and remotely created payment orders from traditional checks, some argued that the prohibition would have a ''*per se* application beyond telemarketing'' that would cause banks to refuse to accept any remotely created checks and remotely created payment orders.[97] As a result, commenters emphasized, the amended Rule would cause substantial harm to all consumers and businesses that rely on these payment methods in non-telemarketing transactions (*e.g.,* last minute payments of credit card bills, insurance premiums, and mortgages).[98] As evidence of the responsible use of remotely created checks and remotely created payment orders by legitimate businesses, ECCHO provided estimates that they asserted showed relatively low overall rates of unauthorized remotely

[84] InfoCision at 2.

[85] *See generally,* ABA; The Associations; CUNA; ECCHO; ETA; First Data; FRBA; NAFCU; PPA—Biondi; PPA—Frank.

[86] ABA at 7 (stating the prohibition exceeds ''the FTC's mission, jurisdiction, and authority''); *see also* ECCHO at 3; The Associations at 2. Other comments acknowledged the amended Rule would not apply to financial institutions, but raised concerns about potential negative effects on the broader payment system. ABA at 7; CUNA at 1; FRBA–1 at 2; The Associations at 10. To minimize these effects, commenters encouraged the Commission to coordinate closely with the Federal Reserve Board, CFPB, bank regulators, and other stakeholders. CUNA at 1; FRBA–1 at 4; NAFCU at 1.

[87] ABA at 2; ETA at 2; The Associations at 2; ECCHO at 13.

[88] InfoCision at 2.

[89] ABA at 1 (''we do not speak extensively in this comment letter of all of the potential legitimate uses of RCCs by telemarketing and other merchants''); DCS Holdings (''we do not have quantifiable data concerning how many businesses depend on one or more of these [payment] methods''); ECCHO at 12–13 (estimating the total number of remotely created checks cleared and returned as unauthorized in 2010 without identifying the number related to telemarketing); First Data at 7 (estimating that ''thousands'' of small businesses in its system accept RCCs and RCPOs, ''some'' of which ''may be used via telemarketing transactions''); Thayer (''[the prohibition] will make business far more difficult for legitimate telemarketing firms''). Furthermore, First Data, itself a credit card payment processor, described its use of remotely created checks to withdraw money from the bank accounts of start-up merchants that have yet to obtain corporate credit or debit cards. First Data at 7. First Data did not provide estimates of the number of such transactions. *Id.*

[90] ABA at 1, 3; ECCHO at 4; The Associations at 5.

[91] ECCHO suggested that the Commission ''should undertake additional primary research to validate the statements in the Proposal regarding the relative burdens associated with a consumer obtaining a credit of funds to his/her account when making a claim of an unauthorized payment of any type (card, ACH or check).'' ECCHO at 7.

[92] ABA at 8–9 (noting that, despite differences in ''details and the technical legal process,'' the protections for consumers ''are, as a practical matter, comparable''); ECCHO at 6 (''the UCC and other check law protections against unauthorized RCCs are arguably better for consumers than Regulation E and Regulation Z.''); The Associations at 4–5 (expressing disagreement that consumer protections for unauthorized remotely created checks and remotely created payment orders are inadequate); PPA—Biondi (same); PPA—Frank (same).

[93] PPA—Biondi; PPA—Frank.

[94] ABA at 6 (opining that the unavoidability must be connected to the cause of the harm, which is the telemarketer's initial deception, not the choice of payment system routing); *see also* ECCHO at 5 (suggesting the Commission should focus ''on the actions of the telemarketer that give rise to unfair or abusive practices and not on the use of a particular payment instrument.''); ETA at 1 (''it is not the payment methods themselves that are fraudulent, but rather the actors that are attempting to sell goods and services in a fraudulent manner that constitute the problem''); PPA—Frank (''The change here is just like blaming the gun and not the person who pulls the trigger . . .'').

[95] ABA at 5 (stating that fraudulent telemarketers will shift to other payment mechanisms); CUNA at 2 (same); PPA—Biondi (same); *see also* ECCHO at 4 (opining that the proposed Rule will have no deterrent effect on a ''telemarketer who is already violating the TSR by not obtaining customer authorization for a debit transaction of any type—ACH, card, or RCC.'').

[96] ABA at 7 (noting that not all consumers have or are eligible for the conventional payment methods described in the NPRM); First Data at 3 (stating that the prohibition will result in delayed receipt of goods or services purchased over the telephone); PPA—Biondi (stating that RCCs and RCPOs benefit consumers because ''there is more space available for providing information about the transaction to the consumer''); PPA—Frank (same).

[97] ABA at 6; *see also* DCS Holdings; ECCHO at 3; FRBA–1 at 2; PPA—Frank; The Associations at 2.

[98] ABA at 2; ECCHO at 4; ETA at 2; PPA—Biondi The Associations at 9.

created check adjustment claims, compared with the overall volume of such transactions.[99] In addition to their concern over curtailing currently accepted payment mechanisms, several commenters opined that any action to restrict remotely created checks and, more importantly, remotely created payment orders would stifle future innovation in payments.[100]

Some commenters opposing the prohibition offered alternatives to the Commission's proposal. These suggestions included voluntary or mandatory reporting of remotely created check and remotely created payment order return rates to the Commission by telemarketers or their non-depository payment processors;[101] requiring financial institutions to disclose to bank regulators each instance of ''abnormal'' or ''significant'' remotely created check and remotely created payment order transaction or returns activity by their customers;[102] mandating that all banks and payment processors only do business with telemarketers on a registry of telemarketers;''[103] and implementing a magnetic ink character recognition (''MICR'') line[104] identifier for remotely created checks and remotely created payment orders.[105]

3. The Commission Concludes That the Use of Remotely Created Checks and Remotely Created Payment Orders in Telemarketing Meets the Test for Unfairness

In the context of TSR rulemaking proceedings, the Commission has determined to apply the unfairness test to evaluate whether certain acts and practices qualify as ''other abusive telemarketing acts or practices''[106] under the Telemarketing Act.[107] As set forth in Section 5(n) of the FTC Act, an act or practice is unfair if: (a) It causes or is likely to cause[108] substantial injury to consumers, (b) the injury is not reasonably avoidable by consumers, and (c) the injury is not outweighed by countervailing benefits to consumers or competition. Based on the entire record in this proceeding, the Commission concludes that the use of remotely created checks and remotely created payment orders in telemarketing transactions meets the unfairness test and, thus, is an abusive practice.

a. The Use of Remotely Created Checks and Remotely Created Payment Orders in Telemarketing Causes Substantial Harm to Consumers

(1) Law Enforcement Record

The rulemaking record demonstrates the persistent, ongoing, and substantial harm caused by the use of remotely created checks and remotely created payment orders in telemarketing transactions. For nearly two decades, the Commission and its state and federal law enforcement partners have used every available tool at their disposal to combat the abuse of remotely created checks in unlawful telemarketing transactions. In many of these cases, the Commission has sought and courts have granted extraordinary equitable and monetary relief, including *ex parte* temporary restraining orders and asset freezes aimed at immediately halting the perpetrators of widespread telemarketing fraud.[109] These fraudulent schemes have victimized consumers nationwide with pitches for a variety of products, such as phony medical discount products, advance fee loans, credit card interest rate reduction services, and magazine subscriptions. Despite aggressive and active law enforcement actions, telemarketers and sellers continue to abuse remotely created checks and, increasingly, remotely created payment orders, to defraud consumers, as exemplified by recent cases filed by the Commission.

In the past two years alone, the Commission halted three separate telemarketing operations that were charged with using remotely created checks or remotely created payment orders to defraud thousands of consumers out of tens of millions of dollars.[110] In September 2014, the Commission sued Sun Bright Ventures, LLC, its principals, and related entities for operating a telemarketing scheme that allegedly deceived consumers into divulging their bank account information by pretending to be part of Medicare. Using consumer bank account information, the defendants allegedly used remotely created checks (and remotely created payment orders) to extract money from thousands of seniors and used tape-recorded ''authorizations'' to defeat consumers' disputes with their banks.[111] The Commission alleged these tape recordings were faulty, as they failed to show that the defendants obtained

[99] ECCHO estimated that banks processed approximately 2.04 million remotely created checks per day in 2009. ECCHO at 13–14. Based on a survey of three large financial institutions, ECCHO estimated the percentages and numbers of the unauthorized RCC adjustment claims to be .01264% or approximately ''258 unauthorized RCCs per day industry wide.'' *Id.*

[100] CUNA at 1; ECCHO at 3–4; FRBA–1 at 2; NAFCU at 1.

[101] The Associations at 2, 10–11 (''Rather than prohibiting the use of RCCs and RCPOs by telemarketers altogether, we believe the FTC should impose return reporting requirements on telemarketers and their [non-depository] processors that use RCCs and RCPOs''); *compare* DCS Holdings (proposing that the Commission ''require monitoring and quantifying all payment types processed for returns, volumes, velocity patterns etc.'').

[102] FRBA–1 at 4.

[103] PPA—Frank (''How about requiring alk (sic) telemarketers to register providing all product and fulfillment details for what they are selling''); DCS Holdings (''Require all banks and third party processors only do business with 'Registered' telemarketers . . .'').

[104] The MICR information appears at the bottom of each check, and contains numbers that identify the bank branch, bank routing number, check number, and account number at the payor bank.

[105] ECCHO at 10; First Data at 8.

[106] 15 U.S.C. 6102(a)(1) (''The Commission shall prescribe rules prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or practices.'').

[107] *TSR Amended Rule 2003, supra* note 8, at 4614.

[108] Thus, the Commission need not demonstrate *actual* consumer injury, but only the *likelihood* of substantial injury. In this proceeding, however, there is sufficient evidence that the use of remotely created checks and remotely created payment orders in telemarketing causes actual injury.

[109] Since 1995, the Commission has filed more than 300 cases involving violations of the TSR, many of which have included fraudulent or unauthorized remotely created checks. *See, e.g., FTC* v. *Sun Bright Ventures, LLC,* Civ. No. 14–02153–JDW–EAJ (M.D. Fla. July 20, 2015) (Stip. Perm. Inj.); *FTC* v. *First Consumers, LLC,* Civ. No. 14–1608 (E.D. Pa. Feb. 19, 2015) (Summ. J.); *FTC* v. *AFD Advisors,* Civ. No. 13–6420 (N.D. Ill. Aug. 26, 2014) (Stip. Perm. Inj.); *FTC* v. *Ideal Financial Solutions, Inc.,* Civ. No. 13–00143–MMD–GFW (D. Nev. June 30, 2015) (Partial Summ. J.); *FTC* v. *Group One Networks, Inc.,* Civ. No. 09–0352 (M.D. Fla. Mar. 19, 2010) (Stip. Perm. Inj.); *FTC* v. *FTN Promotions, Inc.,* Civ. No. 07–1279–T–30TGW (M.D. Fla. Dec. 30, 2008) (Stip. Perm. Inj.); *FTC* v. *3d Union,* Civ. No. 04–0712–RCJ–RJJ (D. Nev. July 19, 2005) (default judgment); *FTC* v. *4086465 Canada, Inc. d/b/a International Protection Center,* Civ. No. 04–1351 (N.D. Ohio Nov. 14, 2005) (Stip. Perm. Inj.); *FTC* v. *Win USA Services, Ltd.,* Civ No. 98–1614Z (W.D. Wash. Apr. 13, 2000) (Summ. J.); *FTC* v. *Consumer Money Markets, Inc.,* Civ. No. 00–1071–PMP–RJJ (Sept. 6, 2000) (Stip. Perm. Inj.); *FTC* v. *National Credit Management Group,* Civ. No. 98–936(ALJ) (D.N.J. May 4, 1999) (Stip. Perm. Inj.); *FTC* v. *SureCheK Systems, Inc.,* No. 1–97–CV–2015 (JTC) (N.D. Ga. June 11, 1998) (Stip. Perm. Inj.); *FTC* v. *National Credit Foundation, Inc.,* Civ. No. 96–2374–PHX–ROS (Apr. 10, 1997) (Stip. Perm. Inj.); *FTC* v. *Universal Credit Corporation,* Civ. No. 96–0114–LHM(EEx) (C.D. Cal. Dec. 6, 1996) (Stip. Perm. Inj.); *FTC* v. *Diversified Marketing Service Corp.,* Civ. No. 96–0388M (Oct. 18, 1996) (Stip. Perm. Inj.); *FTC* v. *Windward Marketing, Ltd,* Civ. No. 96–0615–FMH (N.D. Ga. Oct. 10, 1996).

States have brought additional cases against telemarketers and sellers that used remotely created checks to withdraw money from consumer bank accounts without authorization. *See e.g., State of Ohio ex rel.* v. *Simplistic Advertising, Inc.,* Civ. No. 08–7232 (Franklin County, OH Ct. Com. Pl. filed May 16, 2008); *State of Ohio ex rel.* v. *6450903 Canada, Inc.,* Civ. No. 05CVH7233 (Franklin County, OH Ct. Com. Pl. May 8, 2009) (default judgment).

[110] *See FTC* v. *Sun Bright Ventures, supra* note 109 (entry of stipulated monetary judgment order for $1,418,981); *FTC* v. *First Consumers, supra* note 109 (entry of $10,734,255.81 monetary judgment); *FTC* v. *AFD Advisors, supra* note 109 (entry of stipulated monetary judgment of $1,091,450.68).

[111] Pl.'s Mot. and Memo. In Supp. of TRO at 8–9, *Sun Bright Ventures,* Civ. No. 14–02153.

consumers' authorization to be debited.[112] The rates at which consumers and banks returned these transactions were grossly outside comparable industry norms for debits from consumer bank accounts.[113] For example, the defendants allegedly generated overall return rates of approximately 68 percent and an unauthorized return rate of 28 percent.[114] By comparison, in 2013 NACHA reported that overall return rates for ACH debit transactions averaged just 1.42 percent, while unauthorized return rates averaged .03 percent.[115]

In March 2014, the Commission sued the perpetrators of a similar scheme targeting senior citizens: First Consumers, LLC, its principals, and related entities. The Commission charged the defendants with cold-calling tens of thousands of seniors claiming to sell fraud protection, legal protection, and pharmaceutical benefit services. In some instances, the telemarketers who carried out the fraud impersonated government and bank officials, and enticed consumers to disclose their confidential bank account information. From 2010 through 2013, the defendants used consumers' bank account information to create and deposit $18,856,360.56 in remotely created checks at various banks—$8,122,104.75 of which were returned by consumers or their banks.[116] The defendants' rate of unauthorized returns ranged from at least 1.61 percent to 9.18 percent,[117] alarmingly high in light of the 0.03 percent average industry unauthorized return rate for ACH debits and NACHA's maximum threshold of 1 percent (currently 0.5 percent) for unauthorized returns.[118] The defendants' overall return rates were similarly excessive, ranging from at least 7.79 percent to 32.13 percent.[119] On February 19, 2015, the Court granted the Commission's motion for summary judgment, and entered a final order against the individual defendant, including a permanent injunction and monetary relief in the amount of $10,734,255.81—the total amount consumers lost.[120]

In September 2013, the Commission sued AFD Advisors and its principal, Fawaz Sebai, for operating a telemarketing enterprise that allegedly pitched a prescription drug discount card that, victims were told, would provide substantially discounted or even free prescription drugs.[121] According to the complaint, in less than a year, the Montreal-based defendants deposited nearly $2 million in remotely created checks from consumer victims, and caused additional harm in the form of non-sufficient funds (''NSF'') fees resulting from defendants' unexpected withdrawals. As part of the scheme, the defendants allegedly coached their elderly victims through purported recorded authorizations that the defendants used to defeat consumers' attempts to reverse the withdrawals as unauthorized.[122] In July 2014, a federal grand jury indicted Fawaz Sebai and two other Canadian citizens on eight counts of mail and wire fraud in connection with the alleged scheme.[123] Arrest warrants have been issued, and the United States Attorney for the Southern District of Illinois will seek extradition of the defendants from Canada.[124]

The Commission's record of law enforcement cases amply demonstrates that the harm resulting from the use of remotely created checks and remotely created payment orders in telemarketing is significant.[125] Several opponents of the proposed Rule amendment questioned the significance and prevalence of injury, noting that consumers who complain to their banks obtain reversals of unauthorized remotely created checks and remotely created payment orders.[126] Declarations from consumer victims in cases brought by the Commission, however, illustrate how banks can frustrate consumers' efforts to obtain reversals of such remotely created checks. For example, when one 74-year old victim in *FTC* v. *Sun Bright Ventures* attempted to reverse the defendants' unauthorized remotely created check, a bank teller told her the bank could not refund the money because the victim had not reported the issue within 24 hours.[127] Only after the victim reported the matter to a police officer, who instructed her to return to the bank to demand a reversal, did the bank agree to refund the $448 that the defendants withdrew from her account.[128]

Other *Sun Bright Ventures* victims unsuccessfully attempted to reverse unauthorized remotely created checks drawn on their bank accounts.[129] For

[112] Compl. ¶ 23, *Sun Bright Ventures, supra* note 109. On June 5, 2015, an FBI Special Agent filed a criminal complaint and arrest warrant charging Glenn Erikson with wire fraud in connection with his part in the *SunBright Ventures* telemarketing scheme. *U.S.* v. *Glenn Erikson,* Cr. No. 15–0520–MPK (W.D. Pa. June 5, 2015).

[113] Due to the decentralized nature of the check clearing system and the inability to track remotely created checks and remotely created payment orders, neither the banking industry nor the Federal Reserve maintain data on average industry return rates. Therefore, the Commission's cases have referenced NACHA return rate statistics for ACH debits as a benchmark for return rates of remotely created check and remotely created payment order transactions. *See* Pl.'s Summ. J. Ex. 50, Dec. Professor Amelia Helen Boss, ¶ 16 (Oct. 21, 2014) (hereinafter ''Dec. Prof. Amelia Helen Boss''), filed in *First Consumers, supra* note 109 (''The strong similarities between RCCs and ACH transactions make comparisons of system data particularly appropriate, and, as will be discussed below, such comparisons are extremely important in the analysis of returns.'').

[114] Compl. ¶ 37, *Sun Bright Ventures, supra* note 109.

[115] *Id.* at ¶ 36; *see also* NACHA, 2013 ACH Network Return Rate Statistics (on file with the Commission); *NACHA RFC, supra* note 31, at 3–5 (citing 2012 statistics evidencing an overall ACH debit return rate of 1.5 percent and an unauthorized return rate of 0.03 percent).

[116] Pl.'s Summ. J. Ex. 75, Summary of Deposits and Returns (hereinafter ''Summary of Deposits and Returns''), filed in *First Consumers, supra* note 109. These return rates vastly exceed NACHA's recently established overall return rate threshold of 15 percent for ACH debit transactions.

[117] *Id.* To calculate return rates under NACHA's rules, NACHA divides the number of ACH debit transactions by the number of returned debit transactions. Due to incomplete information on the number of remotely created checks cleared and returned from the five banks used most heavily by the defendants, it was not possible for the FTC's expert witness, Professor Amelia Helen Boss, to calculate return rates by the number of items deposited and returned. Dec. Prof. Amelia Helen Boss, *supra* note 113, at ¶ 32 & n.1, filed in *First Consumers, supra* note 109. Instead, Professor Boss calculated the defendants' return rates using the value of the deposits and returns, yielding even higher overall return rates. When calculated by value, defendants' overall return rates ranged from 8.57 percent to 46.23 percent, with unauthorized return rates between 6 percent and 16.9 percent. Summary of Deposits and Returns, *supra* note 116.

[118] *See supra* notes 30–31 and accompanying text describing NACHA's return rate thresholds and network statistics.

[119] Summary of Deposits and Returns, *supra* note 116.

[120] The permanent injunction bans the defendants from all telemarketing and from accepting or depositing remotely created checks or remotely created payment orders. On the same date, the court entered default judgments (and a similar permanent injunction) against the corporate defendants in the case.

[121] Compl. ¶ 18, *AFD Advisors, supra* note 109.

[122] The Commission described to the Court how the defendants would stop the recording process if the consumer did not answer ''correctly,'' and start a new recording. Pl.'s Mot. and Memo. In Supp. of TRO at 7, *AFD Advisors, supra* note 109. The defendants would repeat this process until they obtained a ''clean'' recording that purported to demonstrate the consumer's authorization.

[123] Press Release, U.S. Attorney for the Southern District of Illinois, *U.S. Seniors Deceived By Foreign Scammers In Medicare Hoax* (July 24, 2014), *available at http://www.justice.gov/usao/ils/News/2014/Jul/07242014_Sebai%20Press%20Release.html.*

[124] *Id.*

[125] *See supra* note 109 (citing FTC and state cases).

[126] ABA at 8–9; ECCHO at 8–9; The Associations at 6.

[127] Pl.'s TRO Ex. 15 ¶ 5, filed in *Sun Bright Ventures, supra* note 111.

[128] *Id.* at ¶ 7.

[129] Pl.'s TRO Ex. 8 ¶ 3, filed in *Sun Bright Ventures, supra* note 109 (bank refused to reverse the $448 remotely created check). Other victims in the *Sun Bright Ventures* case complained that banks

Continued

example, an 86-year-old widow's bank refused to reverse the $448 remotely created check drawn on her account because she failed to dispute it within 30 days, ignoring the fact that she had been hospitalized during the 30 days before she noticed the unauthorized withdrawal.[130] An 82-year old victim filed an affidavit with his bank, contesting two remotely created checks made out to the defendants for $448.52 each.[131] Initially, the bank reversed the charges and returned the money to his account. However, a few months later, the bank revoked the credit to his account because it received a voice recording of the consumer answering the defendants' ''yes'' or ''no'' questions purportedly authorizing the debits.[132] The bank revoked the refund despite the consumer's allegations that the tape was fraudulent, noting several discrepancies including the fact that he never verified his age as between 18–75, when he was in fact 82 years old, and that the representative's voice on the recording was a woman's, instead of the man with whom he had spoken.[133]

In another case, *FTC* v. *Handicapped & Disabled Workshops,* a declarant described how the defendants bilked his elderly mother-in-law out of thousands of dollars, including a remotely created check for $654.95.[134] Despite his existing legal power of attorney over his mother-in-law's financial affairs due to the fact she suffers from Alzheimer's disease, her bank refused to initiate a return, supposedly because she had ''authorized'' the withdrawal.[135]

Even when consumers can obtain reversals of the original transactions, significant consumer injury also results from collateral consequences stemming from the unauthorized bank debit, such as overdraft or NSF fees. For example, one consumer victimized by the fake IRS refund pitch used by the defendants in *FTC* v. *NHS Systems* grew suspicious shortly after he revealed his bank account number over the telephone.[136] Despite putting a hold on his bank account and warning his bank that a fraud-induced withdrawal was going to be posted to his account, the consumer's bank charged him NSF fees resulting from the unauthorized remotely created checks initiated by the defendants. After another *NHS Systems* victim reported the unauthorized remotely created checks to his bank, the bank threatened to report his overdrawn account to a credit reporting agency. The bank ultimately agreed to waive some, but not all, of the NSF fees caused by the numerous unauthorized remotely created checks posted against his account, but still required him to bring the account to a zero balance before he could close it.[137]

Still other consumers simply never dispute such transactions with their bank in the first place.[138] As the FTC's expert witness observed in *FTC* v. *First Consumers,* ''the victim may encounter roadblocks in attempting to achieve redress from the merchant, or simply may be embarrassed at his or her vulnerability.'' [139] Evidence of such underreporting can be inferred from the overall return rates generated by perpetrators of fraud. For example, the fact that a thoroughly fraudulent telemarketing scheme generates a 68 percent overall return rate implies that 32 percent of the transactions were never challenged by consumer victims.[140] Some of these consumers overlook the unauthorized or fraudulent charge altogether, fail to notice it in time to make a claim under the terms of the account agreements with their banks, or may be unaware of their option to pursue the matter with their own bank. Other consumers frequently try in vain to pursue a refund directly from businesses on their own.[141] For example, after the defendants in *FTC* v. *Sun Bright Ventures* initiated a $448 unauthorized remotely created check charge to his account, one elderly victim tried for six months to resolve the matter with the defendants directly—he never received a refund.[142] In *FTC* v. *First Consumers,* a consumer thought she was talking to a representative of her bank, Wells Fargo, when she provided her bank account information to authorize a one-time payment of $38 for a theft protection plan from her account.[143] When she called the real Wells Fargo to inquire about the product, the representative told her that the defendants' company had no affiliation with the bank. Wells Fargo also apparently failed to advise her that, as the victim of an imposter scam, she could dispute the transaction. Instead of a $38 charge, the defendants initiated a remotely created check in the unauthorized amount of $387 against her account. The consumer tried for months to obtain a refund directly from the defendants, and never received her money back from the defendants or her bank.

Even the most aggressive and highly coordinated law enforcement cases have not been able to make consumer victims whole.[144] Consider the series of actions taken by the Commission, federal prosecutors, and bank regulators against Wachovia Bank, N.A., two of its payment processing customers, and one

made it difficult to reverse the transactions. *See, e.g.,* Pl.'s TRO Ex. 7 ¶ 6–8 (only after a consumer visited her credit union a second time, and spoke to a different representative, did the credit union reverse the $399 unauthorized remotely created check); Pl.'s TRO Ex. 13 ¶ 3 (bank was ''not convinced'' the remotely created check was unauthorized by declarant's mother, who was diagnosed with dementia, and refused to reverse $448 withdrawal).

[130] Pl.'s TRO Ex. 1 ¶¶ 4–6, filed in *Sun Bright Ventures, supra* note 109.

[131] Pl.'s TRO Ex. 18 ¶¶ 4–5, filed in *Sun Bright Ventures, supra* note 109.

[132] *Id.* at ¶¶ 5–6.

[133] *Id.*

[134] Pl.'s TRO Ex. 24 ¶ 21, filed in *FTC* v. *Handicapped & Disabled Workshops, Inc.,* Civ. No. 08–0908–PHX–DGC (D. Ariz. Dec. 9, 2008) (Stip. Perm. Inj.). Another victim similarly failed to obtain reversals for approximately $1,800 of $5,500 worth of unauthorized remotely created checks initiated by the *Handicapped & Disabled Workshops* defendants from May through November 2007. Pl.'s TRO Exs. 21 & 22.

[135] Pl.'s TRO Ex. 24 ¶ 21, filed in *Handicapped & Disabled Workshops, supra* note 134.

[136] Pl.'s TRO Ex. 13 ¶¶ 3–5, 9, 13, filed in *FTC* v. *NHS Systems,* Civ. No. 08–2215–JS (E.D. Pa. Mar. 28, 2013) (Stip. Perm. Inj.).

[137] Pl.'s TRO Ex. 5 ¶¶ 8, 18, filed in *NHS Systems, supra* note 136.

[138] *See* Dec. Prof. Amelia Helen Boss, *supra* note 113, at ¶ 36, filed in *First Consumers, supra* note 109 (''many fraudulent debits go undetected by the consumer victim and, even if discovered, the victim may not assert its claim against the bank in time, or the bank may refuse to re-credit the account and return the check.'').

[139] *Id.*

[140] Compl. ¶ 37, *Sun Bright Ventures, supra* note 109.

[141] *See, e.g.,* Pl.'s TRO Ex. 8 ¶¶ 8–12, filed in *FTC* v. *Instant Response Systems,* Civ. No. 13–0976–ILG–VMS (E.D.N.Y. Apr. 14, 2015) (Summ. J.) (describing how she spent many months trying in vain to obtain a refund from defendants after being pressured and harassed into providing her bank account information to the defendant for a home medical alert device, which cost her $840).

[142] Pl.'s TRO Ex. 6 ¶¶ 7–9, filed in *Sun Bright Ventures, supra* note 109.

[143] Pl.'s TRO Ex. 2 ¶ 5, filed in *First Consumers, supra* note 109.

[144] The most recent example includes the simultaneous criminal and civil actions initiated by DOJ-Criminal and DOJ–CPB against CommerceWest Bank, of Irvine, California, for allegedly ''allow[ing] one of its clients to facilitate the theft of tens of millions of dollars from the bank accounts of unsuspecting, innocent consumers.'' Compl. ¶ 2, *U.S.* v. *CommerceWest Bank,* Civ. No. 15–0379 (C.D. Cal. filed Mar. 10, 2015). Under the terms of the settlement, the bank agreed to pay $4.9 million to resolve civil and criminal complaints alleging the bank facilitated consumer telemarketing fraud schemes and violated the Bank Secrecy Act (''BSA'') while processing remotely created check transactions for V Internet Corp LLC., a third-party payment processor based in Las Vegas. Press Release, DOJ, *CommerceWest Bank Admits Bank Secrecy Act Violation and Reaches $4.9 Million Settlement with Justice Department* (Mar. 20, 2015), *available at http://www.justice.gov/opa/pr/commercewest-bank-admits-bank-secrecy-act-violation-and-reaches-49-million-settlement-justice. See also, U.S.* v. *CommerceWest Bank,* Civ. No. 15–0379 (C.D. Cal. Mar. 10, 2015) (No. 3–1) (consent decree for permanent injunction and civil penalty); *U.S.* v. *CommerceWest Bank,* Cr. No. 15–0025 (C.D. Cal. Mar. 10, 2015) (deferred prosecution agreement and information).

massive telemarketing enterprise.[145] In separate actions, the Office of the Comptroller of the Currency (''OCC'') and the U.S. Department of Justice alleged that Wachovia Bank maintained account relationships with certain payment processors [146] responsible for depositing more than $418 million in remotely created checks on behalf of fraudulent telemarketers,[147] including the defendants in *FTC* v. *FTN Promotions, Inc.* (''Suntasia'').[148] In 2007, the Commission charged the *Suntasia* defendants with deceptively telemarketing a variety of memberships in buyers' and travel clubs, resulting in $172 million in injury to nearly one million consumers. In settlement, the Commission and the OCC received approximately $50 million to be used for restitution; however, due to the extensive amount of injury caused by the defendants, the consumer victims were not made whole.[149]

(2) Operational Weaknesses Make It Difficult To Detect and Stop Consumer Injury

Operational weaknesses in the check clearing system incentivize unscrupulous telemarketers to use remotely created checks and remotely created payment orders to initiate unauthorized and fraudulent debits to consumer accounts.[150] The check clearing system lacks the ability to distinguish remotely created checks and remotely created payment orders from other checks in the collection process. In addition, the check clearing system lacks the centralized, systemic monitoring necessary to analyze transaction trends and root out fraudulent actors. As a result, perpetrators of telemarketing fraud and unscrupulous payment processors continue to exploit these payment methods to siphon money from victims of fraud.

Comments from both supporters and opponents of the amendment agreed that the banking system lacks the ability to detect and distinguish remotely created checks and remotely created payment orders from other checks flowing through the check clearing system. To address this problem, some commenters opposed to the proposal advocated the use of a unique MICR identifier for remotely created checks. First Data suggested that ''[b]anks can simply change the file formats used to send remotely created check transactions to the paying bank by adding an indicator field.'' [151] ECCHO stated that in June 2013 the committee responsible for developing and maintaining technical standards for MICR line information started discussions on the potential for a MICR line identifier for remotely created checks.[152]

Such proposals for ways to separately identify remotely created checks have been debated for at least the past decade, however, and there is nothing in the record to indicate that there will be a solution to the problem in the reasonably foreseeable future. Prior efforts to modify the MICR line have failed. In 2005, the Board of Governors of the Federal Reserve (''Federal Reserve'') found that ''without broad support for such a rule, and in light of the impracticalities of enforcement, the Board has determined not to pursue a MICR identifier for remotely created checks.'' [153] And, according to ECCHO, even if financial institutions supported and implemented the MICR identifier for remotely created checks, it would not necessarily provide a means for banks to monitor the transaction or returns activity of individual merchants. This is because ''[a] check that is passing through multiple banks in the collection process does not carry with it information that identifies the merchant depositor [but only identifies the merchant's bank or ODFI].'' [154] Therefore, while the implementation of an identifier for remotely created checks would assist in monitoring remotely created checks, the future of such proposals is speculative at best, and the barriers to centralized monitoring of RCCs and the individual merchants that issue them will remain for the foreseeable future.

The decentralized nature of the check clearing system further compounds the problem of monitoring remotely created checks and remotely created payment orders.[155] Several commenters agreed

[145] *U.S.* v. *Wachovia, N.A.,* Cr. No. 10–20165 (S.D. Fla. Mar. 16, 2010); *In the Matter of Wachovia Bank, N.A.,* AA–EC–10–16 (Mar. 10, 2010). In 2010, Wachovia agreed to pay more than $150 million in restitution to resolve the matters, and entered into a deferred prosecution agreement with the U.S. Attorney for the Southern District of Florida. *See* Press Release, United States Department of Justice, *Wachovia Enters Into Deferred Prosecution Agreement: Bank Agrees to Pay $160 Million* (Mar. 17, 2010), *available at http://www.justice.gov/dea/divisions/hq/2010/pr031710p.html*; Press Release, OCC, *OCC, Wachovia Enter Revised Agreement to Reimburse Consumers Directly* (Dec. 11, 2008), *available at http://www.occ.gov/ftp/release/2008-143.htm.*

[146] *U.S.* v. *Payment Processing Ctr., LLC,* Civ. No. 06–0725 (E.D. Pa. Aug. 12, 2010) (Stip. Perm. Inj.); *FTC* v. *Your Money Access (''YMA''),* Civ. No. 07–5147–ECR (E.D. Pa. Oct. 22, 2010) (Stip. Perm. Inj.). The FTC also brought cases against many of the telemarketers that worked with the processors.

[147] *See, e.g., Universal Premium Servs.,* Civ. No. 06–0849 (C.D. Cal. Apr. 17, 2008) (Summ. J.); *FTC* v. *Sun Spectrum Commc'ns. Org., Inc.,* Civ. No. 03–81105 (S.D. Fla. Oct. 3, 2004) (Stip. Perm. Inj.); *FTC* v. *Xtel Marketing, Inc.,* Civ. No. 04–7238 (N.D. Ill. July 22, 2005) (Stip. Perm. Inj.); *FTC* v. *120194 Canada, Ltd.,* Civ. No. 1:04–07204 (N.D. Ill. Mar. 8, 2007) (Summ. J.); *FTC* v. *Oks,* Civ. No. 05–5389 (N.D. Ill. Mar. 18, 2008) (permanent injunction); *FTC* v. *Frankly Speaking, Inc.,* Civ. No. 1:05–60 (M.D. Ga. May 14, 2005) (Stip. Perm. Inj.).

[148] *FTC* v. *FTN Promotions, Inc. (''Suntasia''),* Civ. No. 07–1279–T30TGW (M.D. Fla. Dec. 30, 2008) (Stip. Perm. Inj.).

[149] In 2008, the *Suntasia* defendants agreed to pay more than $16 million to settle Federal Trade Commission charges, and as part of its settlement with the OCC, Wachovia paid an additional $33 million to *Suntasia* victims. *Id.;* Press Release, FTC, *Suntasia Marketing Defendants Pay More Than $16 Million to Settle FTC Charges* (Jan. 13, 2009), *available at https://www.ftc.gov/news-events/press-releases/2009/01/suntasia-marketing-defendants-pay-more-16-million-settle-ftc.* Subsequently, the court found the individual defendants in the original *Suntasia* case (Byron Wolf and Roy Eliasson) in contempt of the permanent injunction, and imposed a judgment of $14.75 million against the defendants. The judgment represented the amount they illegally took from consumers in a second scheme in which they debited consumers' accounts without their consent for membership in a continuity program. *See* Press Release, FTC, *Court Finds Telemarketers in Contempt; Imposes $14.75 Million Judgment* (Jan. 31, 2014), *available at http://www.ftc.gov/news-events/press-releases/2014/01/court-finds-telemarketers-contempt-imposes-1475-million-judgment.*

[150] Dec. Prof. Amelia Helen Boss, *supra* note 113, at ¶ 24, filed in *First Consumers, supra* note 109 (''[a] fraudster may find that use of RCCs is both easier and subjects it to lower risks of detection than the use of ACH debits. . . . A payor bank will often have a pre-approval and underwriting process before it will begin to accept ACH transactions from a merchant, and that relationship is carefully monitored. Moreover, the monitoring of ACH activity by the system processor (NACHA) is much more elaborate. Thus, a fraudulent processor [or merchant] may choose to use the lower technology RCC to escape detection.'').

[151] First Data at 8. *See also* Atlanta Federal Reserve Retail Payment Office, *When It Comes to RCCs, Can We Make the Invisible Visible?* (Jan. 6, 2014), *available at http://portalsandvrails.frbatlanta.org/2014/01/when-it-comes-to-rccs-can-we-make-invisible-visible.html.*

[152] For a detailed explanation of the MICR standards committee, visit *http://x9.org/.* See also ECCHO at 10. ECCHO recently published a white paper proposing to ''[d]etermine if there is industry support'' for piloting a unique MICR identifier for RCCs, ''with future intent for a permanent code.'' ECCHO, RCC Identifier White Paper at 3 (Apr. 23, 2014), *available at http://www.eccho.org/uploads/Sec%209-1%20RCC%20Identifier%20Paper.pdf.* The paper does not outline next steps or a proposed timeline.

[153] Final Rule, Regulation CC, 70 FR 71218, 71223 (Nov. 28, 2005).

[154] ECCHO at 11 (''decentralized nature of forward check presentment and check return presents operational challenges for any one network or collecting bank to see the totality of volume associated with a particular merchant.'').

[155] Some commenters argued that monitoring exists in the check clearing system, and suggested that the Federal Reserve Bank could calculate check return rates to monitor and deter unauthorized transactions. PPA—Biondi; PPA—Frank; First Data at 9. Comments filed by the FRBA and financial services industry did not confirm the existence of centralized monitoring by any intermediary parties. FRBA–1 at 4; *see generally* ABA; ECCHO; The Associations.

there exists no centralized, system-wide monitoring of remotely created check or remotely created payment order volume or returns activity among various financial institutions.[156] As the Federal Financial Institutions Examination Council (''FFIEC'') has summarized, ''the check-clearing networks do not provide the level of technological and organizational controls of those in the ACH network. This lack of systemized monitoring of the electronically created payment orders increases the susceptibility to fraud by Web-based vendors and telemarketers.'' [157]

To counteract these deficiencies, some commenters suggested certain voluntary or mandatory reporting measures and regimes.[158] For a variety of reasons, the alternatives proposed by these commenters are equally, if not more, problematic. Creating a searchable national database or registry of all telemarketers would be costly to implement and unnecessarily burdensome for the many legitimate telemarketers and sellers that have never used remotely created checks and remotely created payment orders.[159] The same defects apply to the proposed mandate for telemarketers and payment processors to report to the Commission all return rates for their remotely created checks and payment orders.[160] And, because the Commission lacks jurisdiction over banks, it cannot ''require every bank to collect and report to its primary federal regulator'' when a merchant has ''abnormal'' or ''significant'' return rates, nor can it require banks to conduct business only with telemarketers listed in a database or registry.[161] Because none of these proposed solutions provide a near-term, effective means for centralized monitoring, and each would create unnecessary and expansive regulatory burdens, the Commission is not persuaded that they are an adequate substitute for a prohibition on the use of remotely created checks and remotely created payment orders.

The record amply demonstrates that perpetrators of telemarketing fraud exploit the weaknesses of the check clearing system to avoid detection. The Commission has sued telemarketers that relied extensively on remotely created checks and remotely created payment orders to debit the accounts of consumers. In recent cases, the defendants allegedly debited the accounts of consumers with whom they have never spoken; consumers who suffer from dementia; and consumers who felt pressured or tricked into providing their bank account information by telemarketer claims about important health care benefits, Medicare, or other products and services.[162]

The record also lays bare the effect of the potential financial incentives that may encourage unscrupulous payment processors to offer perpetrators of telemarketing fraud these two payment methods that afford the least amount of oversight and transaction monitoring.[163] In many law enforcement cases, the Commission has charged that payment processors have known about or deliberately ignored underlying law violations committed by their merchant clients. Payment processors have sometimes actively helped merchant clients avoid detection and scrutiny, apparently for no reason other than to keep the transaction fees flowing. For example, the Commission alleged that certain payment processors urged fraudulent merchants to switch from ACH debits to remotely created checks and remotely created payment orders to avoid NACHA's one percent threshold for unauthorized returns [164] or used tactics to evade compliance monitoring systems designed to flag fraud.[165] In email communications and promotional materials, defendants in payment processing cases have explicitly described the systemic weaknesses of the check clearing system to detect patterns of fraud.[166]

The rulemaking record confirms the existence and harmful effect of the significant operational weaknesses within the check clearing system that incentivize perpetrators of telemarketing fraud to exploit remotely created checks and remotely created payment orders to siphon money from the bank accounts of their victims. Once deposited into the check clearing system, banks cannot distinguish remotely created checks and remotely created payment orders from traditional checks, making it impossible to monitor and halt fraudulent transaction activity. The likelihood of any future implementation of a unique MICR identifier or other method for tracking remotely created checks and remotely created payment orders is far from certain.[167] Even a unique identifier would not necessarily permit the monitoring of individual merchants, nor would it provide a centralized, system for monitoring remotely created check volumes and returns activity necessary to manage the risks posed by these payments in telemarketing transactions. These significant consumer protection

[156] FRBA–1 at 4; ECCHO at 10; NACHA at 3; NCLC at 9.

[157] FFIEC, *Retail Payment Systems Booklet—February 2010* 16 (Feb. 2010), *available at http://ithandbook.ffiec.gov/ITBooklets/FFIEC_ITBooklet_RetailPaymentSystems.pdf; see also* NACHA at 3 (''Because RCCs are not monitored systemically (indeed, RCCs are difficult, if not impossible, for individual financial institutions to monitor as a class), fraudsters are able to use RCCs to evade the authorization requirements and strong protections that NACHA has implemented through the ACH system.''); FFIEC, *Bank Secrecy Act/Anti-Money Laundering Manual, supra* note 28, at 235 (''The increased use of RCCs by processor customers also raises the risk of fraudulent payments being processed through the processor's bank account.'').

[158] *See supra* notes 101–103 and accompanying text.

[159] *See* PPA-Frank; DCS Holdings.

[160] *See* The Associations at 2, 10–11; DCS Holdings.

[161] *See* FRBA–1 at 6; DCS Holdings; PPA—Frank.

[162] *See supra* note 109 (listing FTC cases).

[163] NCLC at 11 (''Payment processors and ODFIs rake in transaction fees from the scammers and the scammed alike''); Compl. ¶ 41, *FTC* v. *Automated Electronic Checking, Inc. (''AEC''),* Civ. No. 3:13–00056–RCJ–WGC (D. Nev. filed Feb. 5, 2013) (''AEC's pricing structure has been such that the income earned by AEC from returned transactions was significantly higher than the income earned from merely processing a transaction that ultimately cleared. The more returned transactions generated by AEC's client merchants, the higher the return fees earned by AEC and its banks''); Pl.'s Mot. and Memo. In Support of Summ. J. Ex. 2, Dec. Dennis M. Kiefer ¶ 33 (Oct. 2, 2008), filed in *YMA, supra* note 146 (expert describing how ''YMA charged fees resulting from bad ACH and [remotely created check] transactions that were many multiples of the fees they otherwise would have charged.'').

[164] *AEC, supra* note 163, at ¶ 29 (defendants allegedly urged merchant clients to avoid NACHA's threshold by switching from ACH debits to RCPOs); *FTC* v. *Landmark Clearing Inc.,* Civ. No. 4:11–00826 (E.D. Tex. filed Dec. 15, 2011), Compl. ¶ 38 (alleging that defendants expressly advertised their RCPO processing product as a less regulated alternative to ACH transactions); Pl.'s Mot. and Memo. In Support of Summ. J. Ex. 1, Dec. Elliott C. McEntee ¶ 50 (Oct. 1, 2008), filed in *YMA, supra* note 146 (expressing his expert opinion that ''YMA was moving its highest risk merchants from the ACH to demand drafts to avoid being detected by the Federal Reserve and NACHA. This enabled YMA to continue to assist merchants in defrauding consumers for a much longer period of time.'').

[165] *AEC, supra* note 163, at ¶ 58 (alleging defendants advised merchants to use different billing descriptors, customer service email accounts and telephone numbers, as well as corporate names or DBAs, to ''fly under the bank radar'').

[166] *Id.* at ¶ 29 (''For example, in January 2008, AEC's principal Mark Turville notified one client merchant that 'NACHA is going to a 1% threshold for unauthorized transactions starting 12–21–2007 and being enforced 3–21–2008.' Turville urged the merchant to consider switching to RCPOs: 'As you know our new [RCPO] product is now being used by most of our clients and does not have a 1% restriction . . .''). *See also infra* note 198 and accompanying text (describing marketing claims of some payment processors offering remotely created check and remotely created payment order processing services).

[167] ECCHO at 10 (''While ECCHO cannot unilaterally determine that an RCC identifier will be established within the check standard, ECCHO can assure the FTC that the issue of an RCC identifier will be considered at appropriate industry standards meetings.''). The Commission notes that the amended Rule will not preclude the financial services industry from adopting a unique MICR identifier or implementing other measures to increase oversight and visibility of remotely created checks and remotely created payment orders. The Commission will consider the effect of such monitoring if and when it is implemented.

deficiencies in the check clearing system stand in stark contrast to the centralized transaction monitoring of individual merchants conducted by the payment card networks and the ACH network.[168] For these reasons, the Commission has determined that these weaknesses in the check clearing system have allowed, and are likely to continue to allow, remotely created checks and remotely created payment orders to cause significant consumer injury in telemarketing transactions.

(3) Consumer Protections Available for Unauthorized and Disputed Remotely Created Check and Remotely Created Payment Order Transactions

The significant harm to consumers resulting from the operational weaknesses of the check clearing system (when used in telemarketing transactions) is exacerbated by differences in the laws and regulations governing conventional payment methods and novel payment methods.[169] Basic protections are available to consumers in credit card transactions and ACH transactions, which are subject to federal regulations. These same protections are not necessarily available in remotely created check transactions, which are subject to the UCC.[170] In particular, significant disparities exist in consumer liability for unauthorized transactions when banks disclaim liability for certain transactions or vary by agreement the timeframes in which consumers can dispute unauthorized transactions.[171]

Under Regulation Z, a consumer has no liability for unauthorized credit card transactions conducted over the telephone—so-called ''card not present'' transactions.[172] Consumers also have the right to dispute a credit card transaction for goods or services if there are problems with the delivery or calculation errors, among other issues, and to hold back payment while the dispute is pending.[173] Likewise, Regulation E and the EFTA provide similar, though less robust, protections against liability for unauthorized electronic fund transfers, including for traditional debit card transactions and ACH debits.[174] For instance, Regulation E imposes limited liability on a consumer for an unauthorized transfer, depending on how quickly she reports the loss.[175] Regulation E also establishes explicit timeframes and rights for consumers addressing disputes about unauthorized or incorrect electronic fund transfers from their bank accounts, including specific notice and investigation timeframes,[176] as well as the right to receive a provisional re-credit of disputed funds.[177] In addition, payment card network rules provide consumers with zero liability protection for debit and GPR card purchases in certain circumstances.[178]

By contrast, remotely created checks and remotely created payment orders are governed by UCC protections.[179] Commenters opposed to the prohibition argued that the UCC provides similar, if not better, protections for consumers than Regulation E and the EFTA or Regulation Z and the TILA.[180] These commenters emphasized that section 4–401(a) of the UCC provides that a bank may pay a check only when it is ''properly payable.'' [181] Indeed, absent consumer negligence that substantially contributes to the fraud, the UCC imposes zero liability for consumers where a wrongdoer forges the consumer's signature on a check, uses a counterfeit check, forges an endorsement, or alters the amount of the check.[182] To take advantage of the UCC's limited liability for unauthorized checks, a consumer must examine her bank statement with ''reasonable promptness'' and provide the bank with notification ''promptly'' after the discovery of the fraud.[183]

[168] *See supra* notes 30–34 and accompanying text.

[169] NACHA at 3 (''Most importantly, however, lack of Regulation E or *NACHA Operating Rule*-type protections for RCC transactions exposes RCCs to the types of heightened risks of fraud and abuse identified in the Release.'').

[170] The Commission recognizes the unsettled legal landscape applicable to remotely created payment orders, including the fact that the UCC does not apply to these payments. *See NPRM, supra* note 1, at 41204. As a practical matter, however, banks fail to distinguish between remotely created checks and remotely created payment orders, and simply apply the UCC to remotely created payment orders. Industry commenters confirm this fact. ABA at 3; ECCHO at 14; FRBA–1 at 2; The Associations at 4.

[171] In 1995, the Federal Reserve Bank of San Francisco described the protections consumers might have under the UCC as illusory and noted the pronounced financial disincentive to accept claims by a consumer that he or she did not authorize a particular draft because the banks must bear the loss of the amount of any draft that was unauthorized. *TSR Final Rule 1995,* 60 FR at 43850.

[172] 12 CFR 1026.12(b); Regulation Z Official Staff Commentary, Supplement I, 12 CFR 1026.12(b)(2)(iii)–3 (''The cardholder may not be held liable under 1026.12(b) when the card itself (or some other sufficient means of identification of the cardholder) is not presented.''). In instances involving unauthorized charges resulting from the theft or loss of the card, a consumer's liability is limited to $50. 15 U.S.C. 1643(a)(1)(B); 12 CFR 1026.12(b).

[173] 12 CFR 1026.13(a) and (d)(1). If a billing error appears on a consumer's monthly statement, a consumer may dispute the error within 60 days from the date the statement is mailed to the consumer. 12 CFR 1026.13(b)(1). In addition to these federal law protections, private payment card network rules have certain voluntary initiatives that may provide consumers with zero liability protection in many instances, with certain exceptions. *See infra* note 178 (describing voluntary zero liability protections).

[174] See 12 CFR 1005.6.

[175] If a consumer loses an ''access device,'' such as a debit card or ATM card, she faces tiered liability, depending upon when she notifies her bank of the theft or loss. 12 CFR 1005.6(b)(3). If the consumer reports the loss or theft of an access device within two business days from discovery of the loss or theft, the consumer's maximum liability is $50. 12 CFR 1005.6(b)(1). If the consumer notifies the bank more than two days after discovery of the theft or loss, her liability is limited to $500. 12 CFR 1005.6(b)(2). If the consumer fails to notify the bank within sixty days after her statement was mailed to her that first showed the unauthorized charges, she may be held liable for all unauthorized charges occurring after the 60-day period. 12 CFR 1005.6(b)(3). If the unauthorized transfers are made without an access device, the consumer must report them to avoid liability, within 60 calendar days of the bank's transmittal of the periodic statement that shows the unauthorized transfers. Otherwise, the consumer faces liability for any unauthorized transfers that occur after the 60-day period and potentially unlimited liability. *See* 12 CFR 1005.6(b)(3)–2, Supp. 1, CFPB Regulation E Official Staff Commentary.

[176] 15 U.S.C. 1693(b). When a consumer provides her bank notice of an error such as an unauthorized transfer or an incorrect transfer, the bank must complete an investigation of the claim within ten business days. 12 CFR 1005.11; 15 U.S.C. 1693f(a).

[177] If the bank requires a longer time to process or investigate the claim, it must provisionally credit the consumer's account for the amount disputed and can take no more than 45 days to complete its investigation, in most instances. At the conclusion of the investigation, the bank must credit the consumer's account if it determines that an error occurred. If it believes that no error occurred, the bank must send the consumer a notice explaining the findings of its investigation. 12 CFR 1005.11; 15 U.S.C. 1693f(c)–(d).

[178] For so-called signature debit card purchases (*i.e.,* without the use of a PIN) that are processed through their networks, Visa and MasterCard provide consumers with the same zero liability protections extended to credit card purchases, with certain conditions. For example, Visa states that ''Visa's Zero Liability Policy . . . protects you from unauthorized charges. Any funds taken from your account due to fraudulent use will be returned to your card.'' Visa USA, Protections for Visa Debit cards, *available at https://usa.visa.com/support/consumer/debit-cards.html#2. See also,* MasterCard, Zero Liability Protection, retrieved from *https://www.mastercard.us/en-us/about-mastercard/what-we-do/terms-of-use/zero-liability-terms-conditions.html* (last visited July 21, 2015) (providing zero liability for consumer purchases if the consumer exercised reasonable care in protecting their card from loss or theft and promptly reported to their financial institution when they knew the card was lost or stolen).

[179] *See supra* note 170 (recognizing that banks treat remotely created payment orders the same way they treat remotely created checks).

[180] ABA at 8; ECCHO at 6; The Associations at 3. Commenters also emphasized that Regulation CC, Federal Reserve Operating Circular Number 3 (''Operating Circular 3''), and private clearinghouse agreements encourage paying banks to promptly re-credit their customers' accounts. *Id.*

[181] ABA at 8–9; ECCHO at 6; The Associations at 4–5.

[182] *Interbank of N.Y.* v. *Fleet Bank,* 730 N.Y.S. 2d 208 (N.Y. Civ. Ct. 2001) (holding that the notation ''verbally authorized by your depositor'' is legally equivalent to a customer's signature and can be deemed a forged signature under the UCC).

[183] UCC 4–406 (stating a general obligation of bank customers to examine their bank statements

Continued

Unlike Regulation E, however, according to commenters who support the amendment, these provisions of the UCC provide no legally mandated error resolution procedure or specific timeframes for enforcing the limits on liability under the UCC.[184] Instead, UCC Articles 3 and 4 generally permit banks to vary the UCC requirements by agreement or contract. For example, in its deposit account agreement, a bank can disclaim its liability for fraudulent checks,[185] so long as the bank does not disclaim ''ordinary care'' and complies with the mandate of UCC section 1–304 to act in ''good faith.'' [186] Indeed, some bank-customer agreements disclaim liability for paying remotely created checks and remotely created payment orders by deeming such items as authorized, without regard to the express verifiable authorization requirements of the TSR.[187]

Unlike the dedicated timeframes under Regulation E, the UCC also permits banks to define (and significantly shorten) the standard by which ''reasonable promptness'' will be measured.[188] Some bank-customer agreements define ''prompt'' reporting to be as few as fourteen days, and similarly shorten the one-year ''statute of repose'' codified in section 4–406(f) of the UCC.[189] The statute of repose provides that a consumer has one year within which to assert fraud, regardless of the consumer's or the bank's care or lack thereof.[190] Courts have repeatedly upheld such variations of the reporting requirements of the UCC.[191] When banks significantly shorten the reporting period, it can have the same effect as a disclaimer.[192]

The ABA posits that, when combined with Regulation CC and Operating Circular 3, such ''differences in the details and the technical legal process between the consumer protections for [unauthorized] check transactions and those for credit and debit cards and ACH transactions'' do not result in different outcomes for consumers.[193] According to the ABA, this is because consumers indirectly benefit from the shift in warranties for remotely created checks under Regulation CC and Circular 3, which in theory incentivize paying banks to re-credit consumers' accounts for unauthorized transactions.[194] In practice, however, Regulation CC explicitly permits a bank of first deposit (the warranting bank) to defend a warranty claim in cases of unauthorized signature or alteration by showing that the consumer failed to discover and report the problem to her bank (the paying bank) with reasonable

and report unauthorized alterations and signatures on checks with ''reasonable promptness'').

[184] As one commenter noted, to enforce compliance, the consumer may have to resort to legal action against her bank. NCLC at 4–5. *See also e.g.,* Mark E. Budnitz, *Consumer Payment Products and Systems: The Need for Uniformity and the Risk of Political Defeat,* 24 Ann. Rev. Banking & Fin. L. 247, 253 (2005) (''The UCC contains no error resolution procedure, much less a recredit right. The UCC only gives the consumer the option of suing the financial institution for violating the UCC.'').

[185] *See, e.g., Cincinnati Insurance Co.* v. *Wachovia Bank,* 72 U.C.C. Rep. Serv. 2d (West) 744 (D. Minn. 2010) (holding that a deposit account agreement can shift liability for an unauthorized check from the bank to its customer); *but cf., Kaiser Aluminum & Chem. Corp.* v. *Mellon Bank,* 43 U.C.C. Rep. Serv. 2d (West) 928, 933 n.4 (W.D. Pa. 1997), *aff'd,* 162 F.2d 1151 (3d Cir. 1998) (holding a fraudulent alteration discharges the liability of a bank customer unless the customer's negligence substantially contributed to the altering of the check, despite deposit account agreement shifting liability from bank to customer).

[186] The UCC states this general rule for contracting out of liability for checks in Article 4 section 4–103(a), including the fact that the provisions of the UCC ''may be varied by agreement'' and that ''the parties may determine by agreement the standards by which the bank's responsibility is to be measured if those standards are not manifestly unreasonable.''

[187] *See, e.g.,* Wells Fargo, Consumer Account Agreement, at 23 (Oct. 29, 2014) (''If you voluntarily disclose your account number to another person orally, electronically, or in writing, or by some other means, and the Bank determines that the context of such disclosure implies your authorization to debit your account, the Bank may treat such disclosure as your authorization to that person to issue *items* drawn against your account'') (emphasis in original); Bank of America, Deposit Agreement & Disclosures, at 23 (Feb. 6, 2015), *available at https://www.bankofamerica.com/deposits/resources/deposit-agreements.go* (''If you voluntarily disclose your account number to another person orally, electronically, in writing or by other means, you are deemed to authorize each item, including electronic debits, which result from your disclosure''); Gorham Savings Bank, Deposit Account Agreement, at 8 (2015) (''If you give out your account number to a third person by telephone, you also agree that such act authorizes the recipient of the information to initiate debits to the account. You agree that the Bank may not be held liable for complying with such authorizations''); Associated Bank, Deposit Account Agreement, 5.13.4 (2015), *available at https://www.associatedbank.com/forms-and-disclosures/deposit-account-agreement* (''If you voluntarily give information about your Account (such as our routing number and your Account number) to a party who is seeking to sell you goods or services, and you don't physically deliver a check to the party, any debit to your Account initiated by the party to whom you gave the information is deemed authorized''); Regions, Deposit Agreement, at 9 (Mar. 2014), *available at http://www.regions.com/virtualdocuments/Deposit_Agreement_3_6_14.pdf* (''If we pay an item that you have not signed, but you have provided information identifying your account to a seller of property or services who created an item purportedly authorized by you, payment of the item is deemed to be authorized.'').

[188] Section 4–406(c) requires consumers to exercise ''reasonable promptness'' in examining the statement and notifying the bank after the discovery of the first fraudulent check in a series. ''With respect to any subsequent fraudulent check perpetrated by the same wrongdoer before the bank is notified of the fraud,'' section 4–406(d) requires the consumer to report the activity to the bank within a ''reasonable period of time'' not to exceed thirty days. Paul S. Turner, *Contracting Out of the UCC: Variation by Agreement Under Articles 3, 4, and 4A,* 40 Loy. L.A. L. Rev. 443, 454–455 (Fall 2006).

[189] Stephan C. Veltri and Greg Cavanagh, *Survey—Uniform Commercial Code: Payments,* 68 Bus. Law. 1203, 1213 (2013) (''The [UCC] gives contracting parties wide latitude to vary the effect of the statute's terms. In the hands of some courts, the latitude seems limitless.'') (citations omitted). For example, Gorham Savings Bank requires customers to notify the bank of any errors, forgeries, or alterations within 14 days. Gorham Savings Bank, Deposit Account Agreement, *supra* note 187, at 3 (14 days). *See, e.g.,* Associated Bank, *supra* note 187, at 32 (14 days); Wilshire State Bank, Deposit Account Agreement, at 10 (July 21, 2011), *available at https://www.wilshirebank.com/public/pdf/depagreeprivacy.pdf* (14 days); *see also Freese* v. *Regions Bank, N.A.,* 644 SE.2d 549 (Ga. Ct. App. 2007) (upholding the reduction of time period in 4–406(f) to 30 days); *Peters* v. *Riggs Nat. Bank, N.A.,* 942 A.2d 1163 (DC 2008) (60 days).

[190] Courts have found that, unlike a statute of limitations, the UCC's statute of repose is not subject to equitable tolling. *See, e.g., Peters* v. *Riggs Nat. Bank, N.A.,* 942 A.2d 1168 (''equitable tolling cannot apply to statutes of repose''); *Estate of Decker* v. *Farm Credit Servs. of Mid-America, ACA,* 684 N.E.2d 1137, 1139 (Ind. 1997) (''While equitable principles may extend the time for commencing an action under statutes of limitation, nonclaim statutes impose a condition precedent to the enforcement of a right of action and are not subject to equitable exceptions''); *Brighton, Inc.* v. *Colonial First Nat'l Bank,* 422 A.2d 433, 437 (App.Div.1980) (''The one-year period limitation . . . is not merely a statute of limitations, but a rule of substantive law barring absolutely a customer's untimely asserted right to make such a claim against the bank.'').

[191] *See, e.g., Stowell* v. *Cloquet Co-op Credit Union,* 557 N.W.2d 567 (Minn. 1997) (enforcing agreement requiring account holder to examine his monthly statements and notify credit union of errors within 20 days of mailing statement); *Clemente Bros. Contracting Corp.* v. *Hafner-Milazzo,* 2014 WL 1806924 (N.Y. 2014) (14 days); *Napleton* v. *Great Lakes Bank, N.A.,* 945 N.E.2d 111 (Ill. App. Ct. 2011) (30 days); *Graves* v. *Wachovia Bank, Nat'l Ass'n,* 607 F.Supp.2d 1277 (M.D. Ala. 2009) (40 days); *Am. Airlines Employees Fed. Credit Union* v. *Martin,* 29 S.W.3d 86 (Tex. 2000) (60 days). *But see, In re Clear Advantage Title, Inc.,* 438 B.R. 58 (Bkrtcy. D.N.J. 2010) (finding 60-day timeframe ''manifestly unreasonable''); *Mueller* v. *Miller,* 834 N.E.2d 862 (Ohio Ct. App. 2005) (holding an agreement for a 30-day notice unenforceable).

[192] Turner, *Contracting Out of the UCC, supra* note 188, at 453 (''A reporting requirement imposes an obligation on the customer to report the payment of a forged or fraudulent check within a specified period of time. The reporting requirement is not a disclaimer or waiver and does not directly vary the UCC rules on check fraud. When the time allowed for reporting is a very brief period, however, the reporting requirement can have the same effect as a disclaimer'') (citations omitted).

[193] ABA at 8.

[194] *Id.* at 9 (''Amendments to Regulation CC in 2006 in 12 CFR 229.34(d) require the bank of first deposit to warrant that the customer whose account is being debited . . . authorized the RCC payment. The effect is to permit bank customers to dispute such transactions and to have the item returned to the bank of first deposit''); ECCHO at 9; First Data at 7; The Associations at 5.

promptness.[195] As noted above, in some cases this may be as few as 14 days.[196]

For the reasons discussed above, the Commission finds that the regulatory framework applicable to remotely created checks, including provisions under the UCC pertaining to unauthorized and fraudulent checks, which may be varied by agreement, are more limited than those provided under Regulation E and the EFTA or Regulation Z and the TILA. This finding applies equally to remotely created payment orders, which commenters agreed are indistinguishable from remotely created checks and, therefore, are handled by banks in the same manner.[197]

Finally, the greater burdens on consumers in recovering unauthorized and fraudulent withdrawals made by remotely created checks and remotely created payment orders are known to fraudulent merchants and create a strong incentive for them to use these payment methods. The record includes examples of payment processors actively marketing remotely created check and remotely created payment order processing services for the purpose of evading the stricter consumer protection requirements of ACH debits and credit card transactions.[198] For instance, while promoting its remotely created check product, one payment processor claims on its Web site that ''[a] consumer must visit the bank and sign an affidavit'' to dispute a ''Check21'' transaction, in contrast to an ACH debit, which ''[a] consumer can dispute . . . by phone.'' [199] The goal, in one processor's own words, is to avoid payment systems that ''go too far with consumer protection.'' [200]

Thus, the Commission is persuaded that the protections available to consumers who have been defrauded by telemarketers through the use of remotely created checks are substantially less robust than the protections afforded by conventional payment systems, and that con-artists exploit these weaknesses. The UCC provides no legally mandated error resolution procedure, no recredit right, and no specific timeframes for enforcing its zero liability rule, thereby abandoning a consumer to choose between accepting an unauthorized debit or suing her bank. These deficiencies, in combination with those of the check clearing system to detect and halt fraud, create powerful incentives that attract fraudulent sellers, telemarketers and their payment processors seeking to profit from unauthorized and fraudulent debits from consumers' bank accounts that go unnoticed or unrecovered.

b. The Injury Is Not Reasonably Avoidable by Consumers

Having determined that the use of remotely created checks and remotely created payment orders in telemarketing causes substantial injury, the next inquiry is whether consumers can avoid the injury. The extent to which a consumer can reasonably avoid injury is examined, in part, by analyzing whether the consumer can make an informed choice. In this context, the Unfairness Statement articulates how certain types of sales techniques may prevent consumers from effectively making their own decisions, thus necessitating corrective action.[201] The Commission seeks, through these amendments, ''to halt some form of seller behavior that unreasonably creates or takes advantage of an obstacle to the free exercise of consumer decisionmaking.'' [202]

As described in the **Federal Register** Notice for the debt relief amendments to the TSR, consumers cannot reasonably avoid harm if they do not understand the risk of injury from an act or practice.[203] In the context of remotely created checks and remotely created payment orders in telemarketing transactions, consumers can avoid the injury only if they understand the intricacies of how the operational and regulatory frameworks of these payment methods differ from conventional alternatives. Consumers are unlikely to know that remotely created checks are not subject to the same systematic and centralized monitoring as are other payment mechanisms, or to understand the implications of such monitoring on detecting and deterring fraud. Further, consumers are not likely to know that weaker consumer protections apply when remotely created checks are used. Indeed, the various legal requirements and protections that apply to electronic transactions are not transparent to most consumers.[204] The differences between

[195] 12 CFR 229.34(d)(2) (which provides that if a paying bank asserts a claim for breach of warranty under paragraph (d)(1), the warranting bank may defend by proving that the customer of the paying bank is precluded under U.C.C. 4–406, as applicable, from asserting against the paying bank the unauthorized issuance of the check.). The applicable provisions of Circular 3 do not alter this framework. Federal Reserve Operating Circular 3, Adjustments for Certain Warranty Claims; Errors, 20.10(f) (Dec. 2012) (''The sending bank agrees to deal directly with the requesting bank or another non-Reserve Bank party to resolve any claims or defenses related to the adjustment or the warranty set forth in Section 229.34(d) of Regulation CC with respect to the check.'').

[196] *See supra* notes 189–192.

[197] ABA at 3; ECCHO at 14; FRBA–1 at 2; The Associations at 4.

[198] NCLC at 5–6 (citing examples of promotional materials for payment processors). One payment processor's Web site states that its remotely created payment order transactions ''are governed by check laws and the Uniform Commercial Code, bypassing restrictive ACH rules and regulations.'' National ACH, *Check 21 Payment Processing helps You Increase Sales* (Oct. 1, 2013), *available at http://www.nationalach.com/check-21-payment-processing-helps-businesses-increase-sales/.* The Commission's cases against payment processors confirm the use of remotely created checks and remotely created payment orders as a method of skirting additional scrutiny, regulation, and consumer protections. *See* Compl. ¶ 23, *Landmark Clearing, supra* note 164 (alleging that defendants expressly advertised their RCPO processing product as a less regulated alternative to ACH transactions); Compl. ¶ 29, *AEC, supra* note 163 (defendants allegedly urged merchant clients to avoid NACHA's threshold by switching from ACH debits to RCPOs); Dec. Dennis M. Kiefer ¶ 31, *YMA, supra* note 163 (describing YMA's efforts to migrate telemarketing clients with high ACH return rates to remotely created checks); *see also* George F. Thomas, *It's Time to Dump Demand Drafts,* Digital Transactions 39 (July 2008), *available at http://www.radixconsulting.com/TimetoDumpDemandDrafts.pdf* (noting that certain ''organizations believe the check-collection system provides [them] better protections than the ACH . . . in the area of consumer chargeback. This is not sufficient justification for using this instrument.'').

[199] Check21.com, *ACH vs. Check21,* retrieved from *http://www.check21.com/Check-21-vs-ACH.html* (last visited on June 24, 2015); *see also,* National Processing, *ACH vs. Check 21—Which Is Right for You,* (Sept. 17, 2013), *available at http://nationalprocessing.com/blog/ach-vs-check-21-which-is-right-for-you/* (''If there is a dispute a customer will have only 40 days to visit the local branch of his bank and fill out the proper forms. A stark contrast to this is the way the disputes are handled with ACH. These customers can dispute a transaction over the telephone rather than person and have an additional 20 days to file a dispute.'').

[200] NCLC at 6 (citing a blog posting by Ed Starrs, CEO, MyECheck, dated June 20, 2012, retrieved from *http://www.myecheck.com/merchants-are-at-a-disadvantage-in-most-e-commerce-transactions-due-to-deficiencies-in-payment-systems/#prettyPhoto*).

[201] 15 U.S.C. 45(n); *see also* Unfairness Policy Statement, *supra* note 62, at 1074.

[202] Unfairness Policy Statement, *supra* note 62, at 1074.; *see also FTC* v. *Neovi, Inc.,* 598 F. Supp. 2d 1104 (S.D. Cal. Sept. 16, 2008), *aff'd,* 604 F.3d 1150, 1158 (9th Cir. 2010) (''In determining whether consumers' injuries were reasonably avoidable, courts look to whether the consumers had a free and informed choice.''); *Am. Fin. Servs. Ass'n,* 767 F.2d 957, 976 (D.C. Cir. 1985), *cert. denied,* 475 U.S. 1011, 106 S.Ct. 1185, 89 L.Ed.2d 301 (1986) (''The requirement that the injury cannot be reasonably avoided by the consumers stems from the Commission's general reliance on free and informed consumer choice as the best regulator of the market.''); *see also FTC* v. *J.K. Publs., Inc.,* 99 F.Supp.2d 1176, 1201 (C.D. Cal 2002); *FTC* v. *Windward Marketing, Ltd.,* 1997 U.S. Dist. LEXIS 17114, * 29–30 (N.D.Ga. Sept. 30, 1997).

[203] *TSR Amended Rule 2010, supra* note 8, at 48487 (citing Unfairness Policy Statement, *supra* note 62, at 1074); *In re Orkin Exterminating Co.,* 108 F.T.C. 263, 366–67 (1986), *aff'd,* 849 F.2d 1354 (11th Cir. 1988); *In re Int'l Harvester,* 104 F.T.C. 949, 1066 (1984)).

[204] *See* Budnitz, *Consumer Payment Products and Systems, supra* note 184, at 248 (''the development of new payment systems and recent proliferation of new payment products have created a complex and

Continued

the laws that apply to bank debits processed through the ACH system as opposed to the check clearing system do not lend themselves to easy categorization, description in consumer education pieces, or oral disclosures during telemarketing calls. Helping consumers understand their rights is even more challenging when consumers have to consult individual (and non-negotiable) contracts with their bank to learn how quickly they must act to protect themselves from unauthorized remotely created check transactions. Moreover, the comparative benefits and risks of remotely created checks and remotely created payment orders or the existence of NACHA rules prohibiting outbound telemarketers from initiating ACH debits from their bank accounts are not transparent to consumers.[205]

Some opponents argued that consumers are in control of whether they give out their bank account information over the telephone to fraudsters.[206] As was the case in the debt relief industry, the ability of consumers to understand and avoid the risk of injury here too is compromised by the fact that they do not know that the goods or services offered by the telemarketer are a sham. The record leaves no dispute that the widespread unlawful practices employed by fraudulent telemarketers and sellers using remotely created checks cause substantial and unavoidable harm to consumers.

When fraudulent telemarketers deceive consumers into turning over their bank routing and account information, consumers have no knowledge, let alone choice, as to how the telemarketer will decide to initiate the withdrawal from their bank account.[207] The choice of whether to route a consumer's bank account information through the ACH Network or the check clearing system is exclusively in the hands of the telemarketer or seller, as is the threshold decision as to what payment information the telemarketer demands from the consumer.[208] Once the telemarketer has elected to create unsigned checks routed through the check clearing system, the telemarketer causes further economic harm that consumers cannot reasonably avoid. Namely, selecting that payment system creates more obstacles both to detection of any misconduct by industry or law enforcement and to recovery of consumer losses. The paucity of consumer protections available (as discussed in section II.A.3.a(3)) makes it difficult for consumers to obtain a reversal of the transaction from their bank. Further, given the difficulty of locating the telemarketing scammer, consumers typically cannot mitigate this harm by seeking a refund. In sum, the resulting harm in the form of fraudulent withdrawals from consumer bank accounts, as well as the investment of time, trouble, aggravation, and expense of attempting to obtain a reversal of such withdrawals, cannot be avoided.[209]

In opposing the amendment and the Commission's unfairness analysis, the ABA submits that the unavoidability of harm must be connected to the cause of that harm. Here, the ABA posits, the unavoidable harm is the telemarketer's initial deception, and not the telemarketer's choice of payment system routing.[210] The Commission agrees with the ABA's comment to the extent it observes that a seller's or telemarketer's misconduct through misrepresentation or omission undermines the consumer's decisionmaking process and is not reasonably avoidable. However, the initial deception is only one aspect of the seller's behavior that causes substantial injury and is not reasonably avoidable. The telemarketer's use of remotely created checks causes equally unavoidable harm to consumers by taking advantage of another obstacle to the free exercise of consumer decisionmaking—the fact that reasonable consumers are unlikely to know or understand the implications of the telemarketer's choice of payment routing.

The ABA further argues that, unless unavoidability is connected to the telemarketer's deception, the Commission will cast as unavoidable any injury resulting from a merchant's decisions about its operations—a business's choice between two competing debit card networks, for example.[211] The Commission finds this argument unpersuasive. A merchant's choice between two competing debit card networks has no effect on consumer protections against fraud because both transactions are covered by Regulation E and subject to the same centralized monitoring regime. This result is in stark contrast to the practices documented in the rulemaking record where a telemarketer deliberately chooses to route a consumer's payment through a specific payment system that affords the consumer less protection from fraud and provides the telemarketer with more ability to evade scrutiny than other payment systems and regulatory frameworks.[212]

Here, telemarketers' misrepresentations and use of remotely created checks and remotely created payment orders routed through the check clearing system undermine consumers' decisionmaking, thereby causing unavoidable substantial injury. This conclusion is amply buttressed by

confusing marketplace in which consumers cannot adequately understand their rights and responsibilities.'').

[205] *Id.* (''For consumers of payment products, the current legal landscape is incomprehensible. Different payment products are subject to very different laws, or no law at all besides contract law. Consequently, consumers' rights and responsibilities vary greatly.''); NCLC at 6 (''Consumers also do not understand the different levels of protection for different types of payments.'').

[206] ABA at 6.

[207] NCLC at 6 (''the consumer has no way of knowing how the payment will be processed and no effective control over how the payee processes the payments.''); ABA at 5 (''Congress believes that choice of payment routing is for the merchant to decide, not the consumer.''); Dec. Prof. Amelia Helen Boss, *supra* note 113, at ¶ 16 filed *FTC* v. *First Consumers, supra* note 109 (''From the perspective of a consumer dealing with a merchant and providing banking account information, it is virtually impossible to know whether an RCC or ACH item will be created; once the necessary banking information is given to the payee, the choice between the two is within the control and discretion of the payee.'').

[208] Obviously, a fraudulent telemarketer can perpetrate its misdeeds through the ACH Network, depending on its tolerance for scrutiny and detection. However, unscrupulous merchants attempting to originate ACH debits must account for the scrutiny they will receive both in underwriting and risk analysis. In addition, they must account for the systemic monitoring of their transaction activity to detect violations of operating rules and regulations.

Moreover, NACHA's ''TEL Rule'' (abbreviation for telephone-initiated debits) specifically prohibits the use of the ACH Network by *outbound* telemarketers that initiate calls to consumers with whom they have no existing relationship. NACHA Operating Rules, Art. II, 2.5.15 (Specific Provisions for TEL Entries) (2013). The TEL Rule recognizes the inherent risk of fraud associated with the anonymous and ''unique characteristics of TEL Entries, particularly given that a TEL transaction takes place in a non face-to-face environment.'' NACHA, TEL Brief *Risk Management for TEL ODFIs and RDFIs* Issue No. 3 (Dec. 2009), *available at http://www.neach.org/uploads/resources/doc/tel_brief_no_3_risk_for_odfirdfi.pdf.* Under the TEL Rule, only *inbound* telemarketers and sellers that have existing business relationships with consumers may obtain a consumer's authorization to initiate an ACH debit over the telephone. As evidence of a consumer's authorization of a TEL transaction, the telemarketer or seller must either: (1) Record the oral authorization of the consumer, or (2) provide the consumer with written notice confirming the oral authorization prior to the settlement date of the entry. *Id.*

[209] As the Ninth Circuit noted in *FTC* v. *Neovi, supra* note 202, at 1158, ''[r]egardless of whether a bank eventually restored consumers' money, the consumer suffered unavoidable injuries that could not be fully mitigated.''

[210] ABA at 6.

[211] *Id.* at 5.

[212] For the same reasons, the Commission is equally unpersuaded by the ABA's other examples of business decisions in which consumers have no choice (*i.e.,* the credit reporting agency that a business may consult and the choice of telecommunications company that a business uses to call consumers).

the absence of reliable information in the rulemaking record to identify any legitimate uses of remotely created checks and remotely created payment orders in telemarketing transactions covered by the Rule.

c. The Benefits of Remotely Created Checks and Remotely Created Payment Orders in Telemarketing Do Not Outweigh the Harm to Consumers

The final prong of the Commission's unfairness analysis recognizes that costs and benefits attach to most business practices and requires the Commission to determine whether the harm to consumers from remotely created checks and remotely created payment orders in telemarketing is outweighed by countervailing benefits to consumers or competition.[213] Commenters opposed to the amendment have advanced numerous arguments regarding the benefits of remotely created checks and remotely created payment orders, including that there are legitimate uses of these payments in non-telemarketing transactions. The commenters also argue that fraud will continue despite the prohibition. In addition to the public comments, the Commission has considered its own rulemaking history in which the Commission proposed and ultimately declined to adopt a similar provision in 1995 because it deemed sufficient benefits to accrue to consumers from the use of remotely created checks. As a result of the development of numerous payment mechanisms available to consumers with checking accounts, the use of alternative payments by legitimate telemarketers, and the rulemaking record as a whole, the Commission is now persuaded that any historical benefits of remotely created checks in telemarketing are no longer cognizable. Today, the vast majority of consumers with checking accounts have debit cards linked to their accounts.[214] Moreover, the current rulemaking record contains no specific examples of legitimate telemarketers' and sellers' use of remotely created checks and remotely created payment orders.[215] Further, the Commission concludes that consumers and competition benefit from the bright line rule that a prohibition provides.

According to some commenters, the benefits of remotely created checks and remotely created payment orders in telemarketing transactions for consumers with checking accounts include the convenience of paying for impulse purchases of goods and services sold over the telephone when the consumer does not have (or wish to use) another form of payment.[216] Other commenters argued that consumers also benefit from the ability to receive more detailed transaction information than ACH debits provide and better protection against identity theft than paper checks sent through the mail.[217] The asserted benefits for telemarketers and sellers include faster settlement times than ACH debits,[218] the ability to accept payments quickly and easily over the telephone from any consumer with a checking account,[219] and the potential savings in transaction costs over comparable payment alternatives.[220]

The Commission first considered these benefits of using remotely created checks (referred to as ''demand drafts'') in telemarketing transactions during the original 1995 TSR rulemaking proceeding when it proposed to require written authorization for remotely created checks. At that time, few electronic payment methods were available for consumers and businesses. For example, less than 15 percent of all consumer transactions were conducted with credit and debit cards, while checks and cash accounted for the remaining 85 percent of consumer transactions.[221] NACHA had not yet introduced electronic check applications that would enable consumers and businesses to utilize the ACH Network for non-recurring payments and credits.[222] Opponents to the 1995 proposal to require written authorization for remotely created checks included numerous telemarketers, sellers, and payment processors. These commenters characterized this payment method as an innovative and important part of the future development of electronic payments and provided specific examples of their legitimate use in telemarketing and non-telemarketing transactions.[223] Against that rulemaking

[213] *TSR Amended Rule 2010,* 75 FR at 48485 (employing cost benefit analysis in determining debt settlement amendments to the TSR).

[214] Federal Reserve Bank of Boston, *The 2011 and 2012 Surveys of Consumer Payment Choice,* at Table 2 (Sept. 2014) (hereinafter ''2011 and 2012 Surveys of Consumer Payment Choice''), *available at http://www.bostonfed.org/economic/rdr/2014/rdr1401.pdf* (finding 85 percent of consumers have had a traditional debit card). For the small percentage of checking account holders without traditional debit cards, there exist few, if any, barriers to obtaining debit card access. It is not known whether consumers without such traditional debit cards also lack other payment cards, such as credit cards or GPR cards.

[215] *TSR Final Rule 1995, supra* note 8, at 43850. The Commission received only one comment from a telemarketing firm, InfoCision, but it did not provide support for its conclusory statement that novel payment methods are important to legitimate businesses and charities. InfoCision at 2. InfoCision's Web site states that it ''work[s] with a roster over 200 clients across industries, including Fortune 500 companies and the nation's leading nonprofit organizations.'' InfoCision, Our Clients, *available at http://www.infocision.com/Company Info/Clients/Pages/default.aspx* (last visited June 10, 2015). InfoCision's Web site identifies numerous clients, including Easter Seals, March of Dimes, American Diabetes Association, and Unicef. A review of the individual donation Web sites for each listed client indicates they accept card payments directly from consumers, suggesting that the inability to employ novel payment mechanisms should not be a major problem at least when dealing with the vast majority of consumers who have payment cards.

[216] ABA at 7 (''[remotely created checks] allow a customer that does not have a debit, credit, or prepaid card to purchase goods that the customer would otherwise be denied''); First Data at 3 (noting that consumers could be delayed in receiving goods or services); InfoCision at 2 (stating that legitimate businesses and charities ''need to offer customers multiple means of accepting payments or charitable donations'').

[217] First Data at 3 (citing increased risks of identity theft for checks sent through the mail); PPA-Biondi (''many of the alternative methods don't provide enough transaction information for the consumer''); PPA-Frank (same).

[218] ABA at 6 (emphasizing the speed of settlement compared to ACH transactions in certain circumstances), *but see infra* note 225 (describing improvements to the ACH Network providing for same-day settlement).

[219] ABA at 6 (highlighting the ability of businesses to accept payments from consumers that do not have other types of payment methods); First Data at 4 (describing the lost sales opportunities for sellers that ''would be left without a timely and reliable payment mechanism when transacting business with a consumer that solely relies upon checks''); FRBA–1 at 3 (noting reasons why businesses may choose remotely created checks and remotely created payment orders over ACH debits); PPA-Frank (noting that merchants that do not meet credit standards necessary for ACH origination services need remotely created checks).

[220] InfoCision at 2 (''Traditional methods [of payment] are more costly and time consuming''). The NPRM requested, but the Commission did not receive, specific comments detailing what additional costs, if any, would result from using payment alternatives to remotely created checks and remotely created payment orders in telemarketing transactions. *NPRM, supra* note 1, at 41223. To the extent that remotely created checks and remotely created payment orders may cost telemarketers and sellers less than comparable payments, such as ACH, any modest cost benefits do not outweigh the significant harm to consumers. As one provider explains on its Web site, remotely created checks and remotely created payment orders are ''an alternative to ACH payment processing and specifically designed for businesses and industries classified as high risk merchants.'' National ACH Web site, *supra* note 199. Notably, these providers do not explicitly mention cost savings when comparing remotely created checks and remotely created payment orders with ACH payments. Check21 Web site, *supra* note 199.

[221] *TSR Final Rule 1995, supra* note 8, at 43850 & n.79.

[222] Consumers and businesses used the ACH Network primarily for facilitating recurring credits (*i.e.,* payroll and retirement benefits) and recurring debits (*e.g.,* insurance premiums and mortgage payments). *See* Terri R. Bradford, *The Evolution of the ACH* (Dec. 2007), *available at http://www.kansascityfed.org/Publicat/PSR/Briefings/PSR-BriefingDec07.pdf.*

[223] *TSR Final Rule 1995, supra* note 8, at 43850–51; *see also TSR RNPRM, supra* note 46, at 30413–14 & n.63.

record, which identified the lack of available electronic payment methods for consumers, widespread use by legitimate telemarketers and non-telemarketers, and potential alternative methods of verifying consumer authorization, the Commission instead adopted the express verifiable authorization requirements of the current Rule.

Since then, and despite the express verifiable requirements of the TSR, telemarketers and sellers have continued to perpetrate fraud via remotely created checks and remotely created payment orders, resulting in the persistent, ongoing, and substantial harm to consumers.[224] During the same time period, remarkable developments in technology and the law have paved the way for new electronic payment alternatives and the widespread adoption by consumers of various card-based payments, electronic fund transfer methods, and online payments. As NACHA highlighted, the ACH system has evolved to enable consumers to initiate debits conveniently and securely in many situations where remotely created checks used to be needed by consumers (*i.e.* for last minute bill-pay scenarios) or preferred by merchants (*i.e.* for recurring debits and to receive same day settlement of funds).[225] Commenters in support of the prohibition agreed that today consumers who wish to purchase goods or services from telemarketers and sellers can use payment options such as credit or debit cards or ACH debits (for certain telemarketing transactions) that provide robust and consistent protection against fraud, are subject to systemic monitoring, and offer the same convenience as remotely created checks and remotely created payment orders.[226]

Studies of consumer payment preferences document the decline in check usage and the rise in the adoption of credit, debit, and prepaid cards, as well as online bill payment options and ACH debits.[227] According to the Federal Reserve Bank of Boston, 97.1 percent of American consumers have adopted one or more types of payment card.[228] Similarly, the Federal Reserve's 2010 Survey of Consumer Finances demonstrates that the ''usage of electronic forms of payment, including ATMs, debit cards, automatic bill paying, and smart cards [closed-loop GPR cards], has risen from about 78 percent of households in 1995 to almost 94 percent of households in 2010.'' [229] In 2013, the Federal Reserve summarized these adoption and usage patterns by consumers and noted the precipitous decline in checks, finding that ''[b]y 2012, about two-thirds of consumer and business payments were made with payment cards [*i.e.,* credit, debit, and prepaid cards].'' [230] The same study concluded that card-based payments ''increased their share from 43 percent of all noncash payments in 2003 to 67 percent in 2012, while the use of ACH grew more modestly, increasing from a share of 11 percent in 2003 to 18 percent in 2012.'' [231] In turn, ''[c]hecks represented nearly half (46 percent) of all noncash payments in 2003, but only 15 percent in 2012.'' [232]

In the United States, debit cards have become the most widely used noncash payment instrument, substituting for a significant number of cash, check, and credit card payments at the point of sale and initiated over the telephone or Internet.[233] The decline in check usage and the rise in the adoption of payment cards, as well as online bill payment options and ACH debits, contradict the assertions of some commenters that consumers with checking accounts need remotely created checks and remotely created payment orders to make telemarketing purchases.[234] Other comments made conclusory allegations that legitimate telemarketers use remotely created checks and remotely created payment orders, but no comment provided specific evidence of such purported legitimate use in telemarketing transactions covered by the Rule.[235] Consumer preferences and their adoption of payment methods necessarily influence merchants' willingness to accept particular payment instruments, even if, as one commenter generally asserts, it may cost more to do so.[236] Accordingly, as some commenters in support noted, legitimate telemarketers and sellers already accept conventional payment methods.[237] Indeed, when 97.1 percent of U.S.

[224] See section II.A.3.a(1).

[225] NACHA at 3; NCLC at 7. On May 19, 2015, NACHA announced that its voting membership approved amendments to the NACHA Operating Rules enabling same-day ACH settlement services, which means ACH debits will clear as quickly as remotely created checks and remotely created payment orders. Press Release, NACHA, *NACHA Leads Industry Toward Ubiquitous, Same-Day ACH Settlement* (Mar. 18, 2014), *available at https://www.nacha.org/news/nacha-leads-industry-toward-ubiquitous-same-day-ach-settlement.*

[226] AARP at 3; AFR at 1; NCLC at 7; DOJ–CPB at 3; Transp. FCU.

[227] The Commission notes that consumers increasingly are using prepaid debit cards, mobile payments, and online payment accounts (*e.g.,* PayPal) to purchase goods and services. Unlike remotely created checks, remotely created payment orders, and ACH debits, however, these payment alternatives do not require a bank account.

[228] 2011 and 2012 Surveys of Consumer Payment Choice, *supra* note 214, at Table 6.

[229] Loretta J. Mester, *Changes in the Use of Electronic Means of Payment: 1995–2010: An Update Using the Recently Released 2010 Survey of Consumer Finances,* 95 Business Review 25 (Third Quarter 2012), *available at http://www.philadelphiafed.org/research-and-data/publications/business-review/2012/q3/brq312_changes-in-use-of-electronic-means-of-payment-1995-2010.pdf.*

[230] The Federal Reserve System, *The 2013 Federal Reserve Payments Study: Recent and Long-Term Payment Trends in the United States: 2003–2012,* 12 (Dec. 2013) (citations omitted) (hereinafter ''Recent and Long-Term Payment Trends in the United States: 2003–2012''), *available at https://www.frbservices.org/files/communications/pdf/research/2013_payments_study_summary.pdf.* The survey also found that ''[c]ompared with credit, debit, ACH, and check, prepaid card payments (including both general-purpose and private-label) increased at the fastest rate from 2009 to 2012 (15.8 percent annually), reaching a total of 9.2 billion transactions in 2012. The number of prepaid card payments increased 3.3 billion from 2009 to 2012, which is higher growth than reported in previous studies.'' *Id.* at 8. *See also,* Banking on Prepaid 2 (The Pew Charitable Trusts June 30, 2015) (reporting that between 2012 and 2014 use of GPR cards grew by 50 percent, and estimating that approximately 23 million Americans, more than one-quarter of whom do not have a checking account, are now regularly using such cards), *available at http://www.pewtrusts.org/en/research-and-analysis/reports/2015/06/banking-on-prepaid.*

[231] *Recent and Long-Term Payment Trends in the United States: 2003–2012, supra* note 230, at 12.

[232] *Id.*

[233] *Id.* (debit and prepaid cards accounted for 45 percent of all noncash payments in 2012); *see also* Bank for International Settlements, Committee on Payment and Settlement Systems, *Innovations in Retail Payments,* 23 (May 2012), *available at http://www.bis.org/publ/cpss102.pdf.* Because remotely created checks (and remotely created payment orders) require a checking account at a financial institution, comparisons with usage rates for electronic fund transfers (*i.e.,* ACH debits and traditional debit cards linked to consumer checking accounts) are more relevant for purposes of this rulemaking than comparisons with usage rates for credit cards.

[234] Certain opponents of the prohibition claim that the additional transaction information available for remotely created checks and remotely created payment orders is a benefit to consumers, enabling them to better understand the nature of the withdrawals to their accounts. PPA-Biondi; PPA-Frank. Whether such additional transaction information exists (assuming it is truthful), however, does nothing to prevent the harm of unauthorized withdrawals in the first place or to mitigate the damage after unauthorized withdrawals have occurred.

[235] *See supra* note 89 and accompanying text. The Commission received only one comment from a telemarketing firm (InfoCision). While InfoCision states that the prohibition on using novel payment methods in telemarketing will harm legitimate companies, it does not provide specific evidence of transactions or merchants that use these methods. InfoCision at 2. Other commenters provided examples of legitimate transactions conducted over the telephone—to make last-minute credit card payments, pay mortgage or other bills, or receive payments in business-to-business transactions—that are not telemarketing transactions covered by the Rule or the proposed prohibition. ABA at 3; ECCHO at 2; First Data at 7; The Associations at 9. None of these commenters provided any specific information on the number of legitimate telemarketers that rely on remotely created checks and remotely created payment orders.

[236] *See supra* note 220.

[237] AARP at 3; NCLC at 7; DOJ–CPB at 3; Transp. FCU.

households have adopted one or more types of payment card, is not surprising that legitimate telemarketers and sellers no longer rely on remotely created checks as a method of payment. The rulemaking record contains numerous cases demonstrating that deceptive sales techniques and fraud accompany the use of remotely created checks and remotely created payment orders in telemarketing.[238]

Specifically, comments representing the views of financial institutions—including those serving as banks of first deposit (''BOFDs'') for bank customers that purportedly deposit remotely created checks and remotely created payment orders in legitimate telemarketing transactions—failed to provide data or even anecdotal evidence about the number of bank customers that do so.[239] The Commission notes that the BSA and associated anti-money laundering (''AML'') laws and regulations require financial institutions to engage in initial and ongoing customer due diligence (a process referred to as Know Your Customer (''KYC'')).[240] As ECCHO recognized, a ''BOFD is required under federal law to apply its [KYC] policy to its merchant and merchant processor customers to understand their business and ensure that their business is and continues to be legitimate.'' [241] Despite these obligations, including the monitoring of accounts to identify suspicious activities, comments from the financial services industry lacked information on the number and types of customers that would be affected by the prohibition.

Similarly, comments from one payment processor speculated that ''thousands'' of its merchants rely on these payment methods, but failed to report the number of its own merchant clients engaged in telemarketing that use remotely created checks and remotely created payment orders.[242] The only telemarketing firm to submit comments also provided no data on the number of its telemarketing clients that would be affected by the prohibition.[243]

As evidence of the widespread legitimate use of remotely created checks, ECCHO provided an estimate that it asserted showed an overall average of 258 unauthorized remotely created check adjustment claims per day, compared to 2.04 million remotely created checks deposited each day.[244] The Commission finds this estimate unpersuasive and largely irrelevant, as ECCHO's figures materially underestimate the incidence of problematic remotely created checks and remotely created payment orders. First, as ECCHO recognized, its estimate included only unauthorized remotely created check *adjustment* claims, not check *returns.*[245] A check *adjustment* claim is an interbank process, distinct from banks' check-collection and check-return processes, which banks use to make financial adjustments related to checks pursuant to agreements between themselves.[246] A check *return* is an automated means by which a paying bank returns a check unpaid to a depository bank. Because the return process is automated, paying banks use this process to return remotely created checks that were unauthorized by consumers. The choice of whether to initiate an adjustment or a return is up to the paying bank.[247]

Second, ECCHO's estimate relied on adjustment claims data for only those items coded as ''unauthorized,'' which fails to account for the variety of return reason codes used by banks when returning fraudulent remotely created checks and payment orders. Indeed, because there are no universal definitions for return reason codes,[248] a paying bank may classify the grounds for return as a breach of warranty, an irregular signature, or simply use the catchall ''refer to maker.'' [249] Moreover, when a consumer's account has been debited repeatedly without authorization, it may become overdrawn and trigger an NSF return, or the consumer may close the account, resulting in a ''closed account'' return reason code.[250] Accordingly, the OCC advises that banks ''should not accept high levels of returns *regardless of the return reason.*'' [251]

Finally, unauthorized return rates, and even overall return rates, necessarily fail to account for those victims who do not detect the fraudulent withdrawals or who have been thwarted in obtaining a return by the reporting timeframes of the UCC and their bank deposit agreements.[252] Thus,

[238] *See supra* note 109 and accompanying text.

[239] ABA at 1 & n.1 (describing the organization as representing banks of all sizes and charters); ECCHO at 1 (''ECCHO is a non-profit clearinghouse owned by 3,000 financial institutions''); The Associations at Appendix A (noting the membership of The Clearing House and The Financial Services Roundtable).

[240] The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 18 U.S.C. 1956–1957 & 1960, 31 U.S.C. 5311–5314 and 5316–5332, with implementing regulations at 31 CFR ch. X.

[241] ECCHO at 11, citing 31 CFR 1020.210 (Customer Identification Programs for Banks); *see also* The Associations at 7–8 (citing bank regulatory guidance documents emphasizing the responsibility of financial institutions to ''take steps to know and monitor their customers in order to prevent unauthorized RCCs from entering the payment stream.'').

[242] First Data, itself a credit card payment processor, also stated that it uses remotely created checks and remotely created payment orders in limited scenarios when it telemarkets its payment processing services to small, start-up businesses which do not yet have access to a corporate credit card. First Data at 7. Although First Data did not estimate the number of such transactions, the Commission notes that business-to-business telemarketing transactions (with a few exceptions not relevant here) are exempt from the TSR.

[243] InfoCision at 1 (''InfoCision provides a full spectrum of direct marketing services, including inbound and outbound call center solutions, direct mail and fulfillment, and interactive (web), and data solutions.'').

[244] ECCHO at 13–14.

[245] *Id.* at 13 & n.19 (''We would note that the sampling that was conducted for this purpose was limited to RCCs handled by banks in the adjustment process. It is possible that during this sampling period there were also a material number of additional unauthorized RCC claims/items that were handled by paying banks as returns rather than adjustments.'').

[246] For example, after the paying bank's midnight deadline to return a check has passed, it might use a check adjustment claim to recover the amount of the check from the depositary bank, provided that the appropriate agreements between the banks are in place. *See, e.g.,* 12 CFR 229.2(xx), comment 1, example (b) (stating that an adjustment request is not a paper or electronic representation of a substitute check, because it is not being handled for collection or return as a check).

[247] *See* Check Image Central, *Resolving Duplicates As Adjustments Versus Returns,* at 2–4 (Dec. 2006), *available at http://checkimagecentral.org/pdf/ResolvingDuplicatesAsAdjustmentsVersusReturns.pdf* (describing the advantages and disadvantages to each method of dishonor, and explaining that the choice is up to the paying bank).

[248] *See* Check Image Central, *Proper Use of Return Codes in Image Exchange,* at 1 (Dec. 20, 2014), *available at http://checkimagecentral.org/pdf/ProperUseOfReturnCodesInImageExchange.pdf* (''The Uniform Commercial Code (UCC) and Regulation CC (Reg. CC), do not include a list of specific reasons that an item may be dishonored and returned. However with image exchange, the . . . [standard] exchange format provides a list of return reasons and associated codes that must be used for image exchange.'').

[249] Dec. Prof. Amelia Helen Boss, *supra* note 113, at ¶ 36, filed in *First Consumers, supra* note 109 (describing several reasons why ''unauthorized return rates [alone] may greatly underestimate the true number of unauthorized transactions.'').

[250] *Id.*

[251] OCC, OCC Bulletin 2008–12: Risk Management Guidance n.7 (Apr. 24, 2008) (emphasis added), *available at http://www.occ.gov/news-issuances/bulletins/2008/bulletin-2008-12.html; see also* FFIEC, *BSA/AML Examination Manual, Third-Party Payment Processors—Overview* 237 (Nov. 17, 2014), *available at http://www.ffiec.gov/bsa_aml_infobase/pages_manual/olm_063.htm* (''[A] bank should thoroughly investigate high levels of returns and should not accept high levels of returns on the basis that the processor has provided collateral or other security to the bank.''). This also holds true for ACH return rates. *See supra* notes 30–31 (describing NACHA's return rate thresholds, including a new 15 percent overall return rate threshold).

[252] *Id.* (''The most important reasons why the return rates understate the number of unauthorized returns, however, stem from the fact that the rate is completely dependent upon the victim discovering the unauthorized activity and following a prescribed method of seeking reimbursement. . . . [M]any fraudulent debits go undetected by the consumer victim and, even if discovered, the victim may not assert its claim against the bank in time,

Continued

the Commission does not find ECCHO's estimates persuasive.

A different objection was raised by commenters asserting that the prohibition would prevent, directly or indirectly, a variety of legitimate transactions conducted over the telephone for which remotely created checks and remotely created payment orders are preferable for businesses, citing insurance premium payments, last-minute credit card bill payments and the collection of debts.[253] Thus, opponents argued, the Commission must weigh the costs of a total prohibition on remotely created checks and remotely created payment orders and consider the widespread benefits of such payments to all consumers and businesses. However, the amended Rule covers only telemarketing transactions involving a plan, program, or campaign to induce the purchase of goods or services subject to the TSR. As such, the use of remotely created checks in other transactions conducted over the telephone, including the examples of non-telemarketing transactions cited by commenters, would not be prohibited.

Nevertheless, some commenters anticipate that processors and banks will cease processing all remotely created checks and payment orders because they will fear liability under the TSR's prohibition against assisting and facilitating a Rule violation.[254] The risk of unwittingly processing remotely created checks or remotely created payment orders on behalf of a telemarketer appears exaggerated.[255] The TSR prohibition against assisting and facilitating violations of the TSR is not a strict liability standard. Instead, liability depends upon a showing that the alleged facilitator knew or consciously avoided knowing that the telemarketer was violating the TSR prohibitions against remotely created checks and remotely created payment orders.[256] Non-bank providers of remotely created check processing services subject to the Commission's jurisdiction will continue to implement and enforce appropriate KYC policies and procedures, as already required by their financial institutions,[257] to determine which of their merchant-customers are engaged in covered telemarketing activities.[258] Indeed, currently payment processors routinely conduct risk assessments and ongoing monitoring that should include a basic understanding of each merchant-customer's marketing methods and a review of unusual changes in transaction activity. To investigate suspicious spikes in reversals of transactions by merchant-consumers (or other signs of fraudulent activity), payment processors already have in place policies and procedures designed to ensure they know which of their merchant-customers engage in telemarketing and, therefore, must comply with certain authorization requirements.[259] For example, § 310.3(a)(3) of the TSR requires telemarketers and sellers to obtain (and retain)[260] evidence of a consumer's express verifiable consent to be charged when using payment methods that are not credit or debit cards. The same is true for payment processors that initiate ACH debits for merchant-customers, as NACHA Operating Rules require payment processors (also referred to as ''Third-Party Senders'') and their merchant-customers to meet the authorization requirements for TEL Entries.[261] The Commission, therefore, is persuaded that remotely created check payment processors (and banks) can and will continue to identify the marketing methods used by their merchant-customers and keep processing remotely created checks for those merchant-customers not engaged in telemarketing. For the same reasons, the Commission also is persuaded that payment processors will not face increased compliance costs.[262]

Finally, comments in opposition to the Rule argue that the prohibition will not benefit consumers because perpetrators of fraud will continue to submit remotely created checks and remotely created payment orders without consumers' authorization or simply switch to other payment methods.[263] The Commission disagrees that the prohibition will have little or no impact in reducing consumer harm.[264] First, these comments overstate the ease

or the bank may refuse to re-credit the account and return the check.'').

[253] *See supra* note 98 and accompanying text. The Commission notes that these examples are not telemarketing transactions covered by the TSR.

[254] *See, e.g.,* DCS Holdings; ETA at 1; FRBA–1 at 2.

[255] Notably, First Data, the only payment processor to file a comment, never suggested that it would cease processing remotely created checks and remotely created payment orders altogether. First Data at 4.

[256] 16 CFR 310.3(b).

[257] As discussed above, banks also have in place Know Your Customer requirements, policies, and procedures to understand their customers' (and their payment processor's customers') businesses. *See supra* notes 240–241 and accompanying text; *see also* Ana R. Cavazos-Wright, Federal Reserve Bank of Atlanta, An Examination of Remotely Created Checks at 14–15 (May 2010) (''Banks' risk management programs must address their customers' use of remotely created checks to ensure the integrity of the check clearing network is preserved. Strong risk management practices such as customer due diligence at account origination and during the customer relationship are the first line of defense against fraudulent transactions.'').

[258] Financial institutions themselves will continue to enforce KYC requirements as well. For example, First Data asserted that ''[m]any of the egregious business types cited in the proposal such as phony telephone offers, bogus charity solicitations, purported medical discount plans, illegal online gambling, etc. are high-risk areas that should have been properly screened by the depository bank. In these cases, the depository bank could have prevented this activity through properly applying Know Your Customer policies and complying with the FDIC and/or OCC Third-Party Processor Guidelines.''). First Data at 8. *See also* Transp. FCU. (''the proposed rule changes should not unduly restrict legitimate commerce, particularly involving already regulated financial institutions . . . '').

[259] States requiring express written authorization or signed confirmation before submitting payment against a consumer's account include: Arkansas (Ark. Code Ann. 4–99–203(b)(1)); Hawaii (Haw. Rev. Stat. 481P–1); Kansas (Kan. Stat. Ann. 50–672(c)); Kentucky (Ky. Rev. Stat. 367.46955(5)); Montana (Mont. Code Ann. 30–14–1411(1)(e)); and Vermont (9 Vt. Stat. Ann. 2464(b)(2)).

[260] *See* 16 CFR 310.5(a)(5) (requiring telemarketers and sellers to keep, for a period of 24 months from the date the record is produced, certain records, including all verifiable authorizations received under the Rule).

[261] *See supra* note 208 (describing the authorization requirements for TEL Entries (either obtaining a tape recording of the consumer's oral authorization or providing, in advance of the settlement date of the entry, written notice to the consumer that confirms the oral authorization)).

[262] First Data asserted that it would take considerable time and expense to implement automated processes to block remotely created checks for telemarketing transactions. First Data at 4. Similarly, CUNA stated that ''financial institutions and other entities will have to make appropriate risk management changes.'' CUNA at 2. Neither CUNA nor First Data identified any expenses they would incur, over and above those currently incurred for compliance with KYC and BSA, and other existing requirements. The fact that existing compliance obligations should necessitate determining whether customers are engaged in covered telemarketing undermines industry's claims about possible increased compliance costs.

[263] ABA at 5 (arguing the FTC has failed to demonstrate that a ban will ''measurably address the problem'' because unscrupulous telemarketers will simply shift to other payment instruments); First Data at 3 (''prohibiting the use and acceptance of remotely created checks in telemarketing transactions does not provide any meaningful benefit to consumers . . . .''); *see also* ECCHO at 4; FRBA–1 at 2; The Associations at 8–9.

[264] The Commission is not alone in this conclusion. As the NCLC comment noted, several years after the Commission adopted the express verifiable authorization requirements of the TSR, the Canadian Payments Association (''CPA'') banned the use of remotely created checks (referred to as ''tele-cheques''). In doing so, the CPA ''considered whether procedures could be put in place to sufficiently mitigate the risks associated with this payment instrument'' and found ''there was a generally held view that tele-cheques represent an unacceptable level of risk, since the key to mitigating the risk of unauthorized transactions is the ability to verify authorization.'' Canadian Payments Association. *Prohibition of Tele-cheques in the Clearing and Settlement System—Policy Statement* (June 1, 2003), *available at http://www.cdnpay.ca/imis15/eng/Act_Rules/Automated_Clearing_Settlement_System_ACSS_Rules/eng/rul/policy_statement_telecheques.aspx.*

with which perpetrators can gain and maintain access to traditional payments channels like the ACH Network. For example, originating depository financial institutions (''ODFIs'') are familiar with and already must take steps to ensure compliance with NACHA's TEL Rule prohibiting ACH debits in outbound telemarketing transactions.[265] Second, based on the injury estimates in the law enforcement cases in the rulemaking record, hundreds of millions of dollars in consumer injury could be minimized or prevented by restricting the use of remotely created checks and remotely created payment orders in telemarketing.[266] Neither the existing TSR nor the amended Rule can eliminate all telemarketing fraud. No statute or rule can. However, the provisions of the TSR provide vital guidance to industry and create a level playing field for legitimate marketers. Such rules also guide consumers and form the basis for effective consumer education campaigns and law enforcement actions that protect consumers from deception and abuse.

In sum, the evidence in the rulemaking record demonstrates that the harm to consumers, in the form of unauthorized and fraudulent charges from remotely created checks and remotely created payment orders in telemarketing transactions vastly outweighs the benefits to consumers or competition. With the advent of payment alternatives offering the same convenience and more consumer protection against unauthorized charges, the past benefits of remotely created checks and remotely created payment orders no longer remain cognizable. Studies on consumer payment preferences confirm consumers' migration to electronic payment alternatives including online bill pay, ACH debits, traditional and prepaid debit cards, and credit cards. In turn, the rulemaking record contains only conclusory assertions that legitimate telemarketers and sellers use or rely on remotely created checks and remotely created payment orders. Moreover, the Commission concludes that a prohibition against the use of remotely created checks and remotely created payment orders in telemarketing will serve to push telemarketers engaged in illegal conduct to use payment methods that are subject to greater monitoring and afford greater protections to consumers. A prohibition also will provide the telemarketing industry with bright lines for compliance with the Rule. These changes will benefit both consumers and competition.

d. Additional Policy Arguments Do Not Alter the Commission's Conclusion

Some commenters argued that a prohibition on remotely created checks and remotely created payment orders will result in the fragmentation of the payment system and amounts to a direct and impermissible regulation of banks, an action exceeding the FTC's jurisdiction. The direct regulation of telemarketing under the TSR, however, is a proper exercise of the Commission's authority to protect consumers from deceptive and abusive telemarketing practices. Indeed, the Telemarketing Act specifically directed the Commission to promulgate and enforce the TSR to address deceptive and abusive telemarketing practices.[267] The final Rule is consistent with the Commission's authority under the Act.

Rather than further fragmenting the payment system, the Commission believes that the prohibition will result in clearer compliance obligations for telemarketers and sellers. Under the existing TSR and state law, telemarketers and sellers already are subject to a variety of overlapping restrictions and requirements regarding the acceptance of certain payment methods. For example, telemarketers and sellers must abide by state laws that mandate prior written authorization for remotely created checks or other debits from consumer bank accounts.[268] Like the express verifiable authorization requirement for remotely created checks in § 310.3(a)(3) of the existing TSR, the prohibition against remotely created checks is a direct regulation of telemarketers and sellers covered by the TSR, not a regulation of the payment system or financial institutions. Such compliance obligations for telemarketers and sellers already affect the criteria used by payment processors to conduct initial due diligence and ongoing monitoring of their clients engaged in telemarketing.

Finally, some commenters argued that the Commission's analysis demonstrated a pure policy preference for ACH transactions over checks. They expressed the opinion that, because ACH debits and remotely created checks are both payee-initiated withdrawals from consumer bank accounts, they share the same risk profile in telemarketing. In support of this position, commenters cited FTC cases against telemarketing frauds and payment processors that used ACH debits. As described in section II.A.3 above, the regulatory framework, due diligence, and centralized monitoring of the ACH Network generally provide consumers with more robust consumer protections against fraud. Even with the added safeguards of the ACH Network, NACHA has never permitted the use of ACH debits in outbound telemarketing, due to the substantial risk of fraud in telephone-initiated transactions.[269] It is appropriate, therefore, to prohibit the use of remotely created checks and remotely created payment orders, which provide fewer safeguards than ACH debits in telemarketing transactions.

4. Final Rule Language

The NPRM proposed adding to the TSR new definitions for ''remotely created check'' and ''remotely created payment order.'' As proposed, the definition of remotely created check mirrored the definition used in Regulation CC. The definition of remotely created payment order closely tracked the definition of remotely created check, but was broad enough to encompass electronic payment orders that most closely resemble remotely created checks.

The Commission solicited public comment as to whether the proposed definitions adequately, precisely, and correctly described each payment alternative. In response, the Commission received relevant comments from the Federal Reserve Bank of Atlanta and the CFPB. Both commenters expressed concern that the definitions were too narrow to be effective. Specifically, they emphasized the limitations of including a requirement that the check or payment order be ''unsigned,'' because a telemarketer or seller could easily apply a ''graphical image of a signature'' to the signature block of a check or payment order to circumvent the prohibition.[270] The Commission agrees that the definitions should be modified to reduce the likelihood of circumvention.

Based on the record evidence, the Commission concludes that there are two defining characteristics of remotely created checks and remotely created payment orders. First, these payments are created or initiated by the payee-merchant, not the payor-consumer. Second, these payments are deposited

[265] *See supra* note 208.

[266] *See NPRM,* 78 FR at 41207 & n.84 (describing injury estimates from cases).

[267] 15 U.S.C. 6101–6108.

[268] *See supra* note 259.

[269] NACHA, TEL Brief *Risk Management for TEL ODFIs and RDFIs* Issue No. 3, *supra* note 208 (the TEL Rule recognizes the inherent risk of fraud associated with the anonymous and ''unique characteristics of TEL Entries, particularly given that a TEL transaction takes place in a non face-to-face environment.'').

[270] FRBA–2 at 2.

into or cleared through the check clearing system, not the ACH Network. The new definition incorporates these two elements. In addition, based on the convergence of paper and electronic payments in the check clearing system, the Commission thinks it appropriate to combine the definition of remotely created check with the definition of remotely created payment order. Therefore, the amended Rule eliminates the separate definition of remotely created check, and includes a single definition of remotely created payment order, which includes any payment instruction or order drawn on a person's account that is (a) created by or on behalf of the payee and (b) deposited into or cleared through the check clearing system. To be clear, the term includes, without limitation, a ''remotely created check,'' as defined in Regulation CC, Availability of Funds and Collection of Checks, 12 CFR 229.2(fff), but does not include a payment order cleared through an Automated Clearinghouse or subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.,* and Regulation Z, 12 CFR part 1026.

In practice, the amended Rule prohibits telemarketers and sellers from accepting any payment order, instruction, or check, whether electronic, imaged, or paper, that is remotely created by the payee *and* deposited into the check clearing system. As the rulemaking record demonstrates, when combined with the weaknesses of the check clearing system, these types of payee-initiated withdrawals pose a significant risk in telemarketing transactions.

The payments landscape is constantly evolving to meet the needs of consumers and businesses, as evidenced by recent payment innovations, including mobile payments, digital wallets, and virtual currencies. The Rule amendments do not and cannot address the benefits and risks of all existing or future electronic payment alternatives.[271] The Commission is confident, however, that the amended Rule's definition of remotely created payment order is sufficiently tailored and flexible to protect consumers from telemarketing fraud while enabling the use of current and future payment alternatives. For example, a payment order or instruction sent through the ACH Network would not qualify as a remotely created payment order under the definition. The definition also excludes so-called ''digital checks'' that a consumer creates and sends via a smartphone application, for example, as long as the payment was not created by the payee-merchant. The Commission recognizes that, unlike remotely created payment orders and remotely created checks, such digital checks or ''electronic payment orders'' could provide consumers with robust authentication features to ensure that the transaction has been initiated and authorized by the account holder.

To implement the prohibition against the use of remotely created payment orders in outbound telemarketing transactions, the Commission amends § 310.4(a) to add a new paragraph (a)(9). Section 310.4(a)(9) of the amended Rule states that it is an abusive practice for a seller or telemarketer to create or cause to be created, directly or indirectly, a remotely created payment order as payment for goods or services offered or sold through telemarketing or as a charitable contribution solicited or sought through telemarketing.

Section 310.6(b) exempts certain types of inbound telemarketing calls from TSR coverage. For example, inbound calls from consumers in response to general media advertisements are exempt from coverage, with the exception of a few types of products and services.[272] Similarly, inbound calls from consumers in response to a direct mail solicitation that provides material disclosures and makes no misrepresentations are exempt from coverage.[273] The NPRM proposed changes to the general media and direct mail exemptions that would prohibit the use of remotely created checks and remotely created payment orders in inbound telemarketing transactions by sellers that wish to take advantage of the exemption.

Only one commenter, First Data, offered specific comments on this aspect of the proposal. First Data suggested that the Commission should adopt an amendment akin to NACHA's TEL Rule that would permit the use of remotely created checks and remotely created payment orders in inbound telemarketing transactions.[274] First Data argued that, like ACH debits, the use of remotely created payment orders should be permitted in inbound transactions.[275] However, the same operational and regulatory weaknesses associated with the use of remotely created payment orders exist equally in inbound and outbound telemarketing calls. Specifically, unlike ACH debits subject to NACHA's TEL Rule, remotely created checks and remotely created payment orders are not subject to centralized monitoring or identification and expose consumers to the lesser remedies of the UCC.

For these reasons, the Commission has determined that the prohibitions in § 310.4(a)(9) should apply to both outbound and inbound telemarketing. However, to minimize the burden on sellers and telemarketers that have qualified for the general media and direct mail exemptions from the TSR for inbound telemarketing, the Commission has modified the proposed amendments to § 310.6(b)(5) and (6). The purpose of the modification is to clarify that sellers and telemarketers that comply with the prohibition on the use of remotely created payment orders (including remotely created checks) in inbound telemarketing remain exempt from the TSR's requirements if they otherwise qualify for the general media or direct mail exemptions. Thus, they only are covered by the TSR if they violate the prohibition. Moreover, while non-compliance with one of these prohibitions subjects the violator to a TSR enforcement action for the violation, it does not deprive the violator of its exemption from the other requirements of the TSR.

B. Final Rule and Comments Received on Cash-to-Cash Money Transfers and Cash Reload Mechanisms

Money transfer providers enable individuals to send (or ''remit'') money quickly and conveniently to distant

[271] The Commission continues to monitor developments in the marketplace, including developments and improvements in payments utilized by telemarketers and sellers, to ensure that consumers are adequately protected against telemarketing fraud while balancing the needs of businesses. For example, the Commission published a 2013 report entitled ''Paper, Plastic . . . or Mobile? An FTC Workshop on Mobile Payments'' which summarized consumer protection concerns surrounding the increase in use of mobile payments, including dispute resolution, data security, and privacy.

[272] The Rule excludes from the general media exemption the following products and services: Investment opportunities, business opportunities other than business arrangements covered by the Franchise or Business Opportunity Rules, credit card loss protection plans, debt relief services, credit repair services, recovery services, and advance fee loans. 16 CFR 310.6(b)(5). The exceptions to the general media exemption reflect the Commission's law enforcement experience with deceptive telemarketers' use of mass media to advertise ''certain goods or services that have routinely been touted by fraudulent sellers using general media advertising to generate inbound calls.'' *2003 TSR Amendments, supra* note 8, at 4658.

[273] Inbound calls in response to direct mail advertising, like general media advertising, are exempt from coverage under the Rule. 16 CFR 310.6(b)(6). The Rule also excludes from the direct mail exemption investment opportunities, business opportunities other than business arrangements covered by the Franchise or Business Opportunity Rules, credit card loss protection plans, debt relief services, credit repair services, recovery services, and advance fee loans. *Id.*

[274] First Data at 6.

[275] *Id.*

friends and family using a network of agents in different locations in the U.S. and abroad. As used in the current rulemaking proceeding, the term ''cash-to-cash money transfer'' describes a specific type of money transfer in which a consumer brings currency to a money transfer provider that transfers the value to another person who picks up currency at the money transfer provider's location or agent in a different location. The definition does not include money transfers that meet the definition of ''electronic fund transfer'' in section 903 of EFTA.

As the NPRM described, the perpetrators of telemarketing scams frequently instruct consumers to use cash-to-cash money transfers because this method of payment is a fast way to extract money anonymously and irrevocably from the victims of fraud. As discussed in section I.B.1.a above, cash-to-cash money transfers are: (1) Not subject to the same limits on liability and error resolution procedures as ACH debits and traditional debit cards; (2) not subject to voluntary zero liability protection as provided for certain GPR card transactions; and (3) not subject to the same robust dispute resolution procedures as for credit card payments.[276] Indeed, after a cash-to-cash money transfer is picked up, there is no recourse for the consumer to obtain a refund. This is true even for those cash-to-cash transfers made to locations outside of the U.S., which are governed by the Remittance Rule under Regulation E. Moreover, cash-to-cash money transfers are not subject to the same systemic monitoring and rules framework applied to ACH debits or card payments.[277]

Increasingly, perpetrators of fraud are migrating from using cash-to-cash money transfers to cash reload mechanisms. Cash reload mechanisms are codes or devices that act as a virtual deposit slip for consumers to load funds onto a GPR card without a bank intermediary. A consumer simply pays cash, plus a small fee, to a retailer that sells a cash reload mechanism, such as MoneyPak, Vanilla Reload Network, or Reloadit.[278] In exchange, the consumer receives a unique access or authorization code to use over the telephone or Internet to load the funds onto an existing GPR card within the same prepaid network, to add cash to a ''digital wallet'' with a payment intermediary (*e.g.,* PayPal), or to pay a utility or other bill owed to an approved partner of the cash reload mechanism provider. Perpetrators of telemarketing fraud persuade consumers to buy a cash reload mechanism and provide the PIN code directly to the perpetrator over the telephone. The perpetrator can then offload a victim's money onto its own prepaid card and thereby anonymously and irrevocably extract money from its victims. As with cash-to-cash money transfers, once a cash reload mechanism is transmitted to an anonymous con artist who has loaded the funds onto his GPR card, the money is gone and cannot be recovered.

Like remotely created checks, remotely created payment orders, and cash-to-cash money transfers, cash reload mechanisms lack the same dispute resolution rights provided for card-based payments and ACH debits under the TILA and Regulation Z or the EFTA and Regulation E, respectively.[279] As such, these novel payment methods expose consumers to a substantial risk of unrecoverable losses from telemarketing fraud. Because the Commission's law enforcement experience showed that such payment methods are used extensively by perpetrators of telemarketing fraud, who typically ignore the TSR's ''express verifiable authorization'' requirement, the NPRM proposed to prohibit their use in all telemarketing transactions.

Since the publication of the NPRM, all three major cash reload providers have developed alternatives to PIN-code cash reload mechanisms for adding funds to GPR cards. In July 2014, Green Dot acknowledged the risk that cash reload mechanisms pose to consumers and announced the complete discontinuance of its MoneyPak cash reload product by mid-2015.[280] Users of Green Dot's prepaid products can now reload their cards by swiping them at a cash register. The swipe-reload is a ''card-present'' transaction, which prevents scammers from using a cash reload mechanism to load their own GPR cards remotely. In October 2014, InComm also announced the phase-in of a swipe reload process and the discontinuance of its cash reload mechanism, Vanilla Reload packs, at all retail stores in 2015.[281] In November 2014, Blackhawk Network testified that it has created new alternatives to its ''quick reload'' Reloadit cash reload mechanism, including a swipe reload process.[282]

1. Comments Supporting the Prohibition on Cash-to-Cash Money Transfers and Cash Reload Mechanisms

Ten commenters, including consumer advocacy groups, staff from state and federal agencies, and a United States senator, supported a prohibition on the use of cash-to-cash money transfers and cash reload mechanisms in telemarketing transactions.[283] These comments advanced several common arguments, summarized below.

a. Cash-to-Cash Money Transfers

Many commenters agreed that the basic characteristics of cash-to-cash money transfers make them susceptible to abuse in telemarketing transactions. Commenters noted that such transfers provide a quick and convenient means for perpetrators of telemarketing and other frauds to receive money from their victims at locations around the world.[284] The speed of the transfers, commenters argued, enables perpetrators to disappear with the funds within minutes of transmission.[285] In addition, commenters noted that such transfers can be picked up in cash from remote locations with little or no identification, which allows scammers ''to remain practically anonymous when

[276] *See also supra* notes 175–177 (discussing ACH debits and traditional debit cards); notes 36 & 178 (discussing GPR cards); and notes 172–173 (discussing credit cards).

[277] *See supra* section I.B.1.a (discussing systemic monitoring of ACH Network and payment card system).

[278] There are three major providers of cash reload mechanisms in the United States: Green Dot Corporation (MoneyPak); InComm (Vanilla Reload Network); and Blackhawk Network California, Inc. (Reloadit).

[279] As noted above, the Rule's definition of ''cash-to-cash money transfers'' excludes transfers that are electronic funds transfers as defined in section 903 of EFTA, which provides for dispute resolution procedures. Cash reload mechanisms are not currently governed by Regulation E. The CFPB's proposed Prepaid Account Rule seeks to extend to ''prepaid accounts'' the protections of Regulation E and the EFTA, with certain important modifications. Prepaid Account Rule, *supra* note 36, at 77102. Although the proposed Prepaid Account Rule arguably might be read to cover cash reload mechanisms, the error resolution and liability limits of Regulation E would not be available unless the cash reload mechanism is ''registered'' (*i.e.,* the consumer provides ''identifying information such as name, address, date of birth, and Social Security Number or other government-issued identification number so that the financial institution can identify the cardholder and verify the cardholder's identity.''). *Id.* at 77166. Thus, unregistered cash reload mechanisms would not be covered by the error resolution and liability limits of Regulation E under the proposed Prepaid Account Rule. The Commission may revisit the definition of cash reload mechanism if warranted by a final Prepaid Account Rule.

[280] Written Statement of Green Dot, *supra* note 50, at 2.

[281] InComm Press Release, *supra* note 51.

[282] Testimony of Blackhawk Network, *supra* note 51, at 3 (highlighting the company's ''elimination of quick load with the scratch-off PIN and enhanced fraud mitigation efforts'').

[283] AARP; AFR; AGO; DOJ–CPB; DOJ-Criminal; Michalik; NCLC; NetSpend; Hon. Bill Nelson; Transp. FCU.

[284] AGO at 4 & nn.9–10 (noting that Western Union has more than 489,000 agent locations and MoneyGram has approximately 244,000 agents).

[285] AGO at 3; DOJ-Criminal at 2; NCLC at 11.

retrieving their victim's money.'' [286] Supporters of a prohibition emphasized that the lack of chargeback protections exacerbates the injury sustained by victims of telemarketing fraud.[287] As a result, some commenters noted, perpetrators exploit cash-to-cash money transfers in connection with nearly every type of mass-marketing fraud, including so-called 419 scams from West Africa,[288] lottery, loan, investment, and work-at-home schemes, and ''the grandparent scam.'' [289]

Comments supporting the amendment acknowledged that the amount of actual consumer loss is unknown, but agreed that losses to consumers are significant.[290] Because legitimate telemarketers and sellers do not rely on cash-to-cash money transfers, the commenters argued that a prohibition would have ''little to no impact on legitimate businesses.'' [291] Commenters emphasized that the effectiveness of the prohibition will depend on the efforts of cash-to-cash money transfer providers to detect and deter the use of their money transfer systems by telemarketers.[292] Some commenters argued that money transfer companies provide substantial assistance or support to those who engage in violations of the TSR.[293] NCLC opined that money transfer providers lack sufficient financial incentives to detect misuse systematically because every money transfer earns a fee.[294] According to DOJ–CPB, ''[e]ven when fraud may be clear to money transfer businesses themselves, they do not always stop the fraudulent proceeds from passing through their hands.'' [295] To counter this problem, several commenters urged the Commission to ''make clear the legal responsibility, and liability, of the entities that *control the method of payment.*'' [296] At a minimum, commenters argued, money transfer companies should ask their customers about the purpose of the transfer, stop any transfers prohibited by the amended TSR, and take additional steps to identify and terminate money transfer agents that are complicit in violating the TSR and other laws.[297]

Some commenters suggested that the prohibition on cash-to-cash money transfers should go further to protect consumers. For example, NCLC argued that the Commission should alter the existing knowledge standard for assisting and facilitating violations of the Rule to impose strict liability on money transfer providers.[298] According to NCLC, ''[m]oney transmitters are in a position to police their system, and they will do so if they have strict liability for violations.'' [299] In addition, several commenters encouraged the Commission to extend the prohibition beyond telemarketing transactions to protect consumers from fraud-induced transfers initiated via email or the internet.[300] According to these commenters, the use of cash-to-cash transfers in such transactions causes as much harm to consumers as transactions over the telephone.'' [301]

b. Cash Reload Mechanisms

Several commenters expressed general support for the prohibition against the use of cash reload mechanisms in telemarketing transactions for the same reasons they supported the prohibition on cash-to-cash money transfers.[302] Some provided more detailed responses, noting that cash reload mechanisms provide perpetrators of telemarketing fraud with the same speed, irrevocability, and convenience as cash-to-cash money transfers.[303] These commenters noted that the use of cash reload mechanisms in telemarketing fraud is increasing. DOJ-Criminal agreed that perpetrators are now using cash reload mechanisms in work-at-home, advance-fee loan, and sweepstakes scams.[304] According to NCLC, cash reload mechanisms were the second most common method of payment in telemarketing fraud reported to the National Consumers League Fraud Center in 2012, accounting for eight percent of all telemarketing payments,[305] compared to one percent in 2009.[306] In one criminal case, DOJ-Criminal noted that ''a single defendant obtained tens of thousands of dollars from the [Green Dot] MoneyPak cards of 50 different victims in at least 14 states.'' [307]

Like cash-to-cash money transfers, commenters argued, cash reload mechanisms are not used by legitimate businesses as a payment method for telemarketing transactions. Commenters stated that legitimate businesses instead

[286] NCLC at 11; *see also* AGO at 2 (noting that cash-to-cash money transfers can be ''picked up by a person with a forged ID in many different locations''); DOJ-Criminal at 2 (stating that fraudsters ''can rapidly receive and transfer victim proceeds with less regulatory or industry oversight than traditional payment methods such as checks and payment cards'').

[287] AGO at 4 (''Compounding the difficulty for consumers is the fact that unlike with fraudulent credit card payments or unauthorized bank debits, senders of money transfers have no established right to a refund once their transfer has been picked up, regardless of how fraudulent the conduct of the receiver was in inducing the transaction.'').

[288] The term ''419 scam'' encompasses a variety of common confidence scams. The number ''419'' refers to the article of the Nigerian Criminal Code dealing with fraud.

[289] AGO at 4–5.

[290] *See* AARP at 3 (AARP agrees with the FTC that these payment methods ''pose a significant threat to potential victims of telemarketing fraud.''); AGO at 5 (noting that the overall extent of the problem ''cannot be known with precision, but it is clearly very substantial''); DOJ–CPB at 1 (stating that losses resulting from ''global mass-marketing fraud is in the tens of billions of dollars per year''); NCLC at 12 (reporting that in 2012 cash-to-cash money transfers were the top method of payment in telemarketing fraud reported to the National Consumer League's Fraud Center, ''accounting for nearly 63 percent of all telemarketing payments (up from 49 percent in 2009).'').

[291] NCLC at 12 (suggesting that, when used in the telemarketing context, such transfers are ''merely vehicles for evading consumer protections and liability for fraud''); *see also,* AARP at 3 (''[C]onsumers are not well protected when novel payment methods are used, and legitimate businesses have access to a variety of other payment methods that do provide consumers with more robust protections, the benefit to consumers of the proposed rule outweighs the burden to businesses in complying with this rule.''); DOJ–CPB at 1 (noting that the proposal would ''[leave] open safer mechanisms for legitimate marketers to accept consumer payments.'').

[292] AGO at 10 (''It is now appropriate, indeed critical, for the FTC to clarify those companies' responsibility for making reasonable inquiry into whether consumers who propose to wire money are doing so in response to a prohibited communication.''); NCLC at 14 (''Money transmitters are in a position to police their system'').

[293] AGO at 10; NCLC at 14–15; DOJ–CBP at 3; DOJ-Criminal at 3.

[294] NCLC at 14 (''Whether or not money transmitters are knowing parties to fraudulent transactions, every fraudulent transfer coming through their services earns them more profit at the expense of the scammers' victims.''); DOJ-Criminal at 3 & n.10 (describing the proliferation of corrupt money transfer agents and citing criminal prosecutions); *see also infra* note 350 and accompanying text.

[295] DOJ–CPB at 3 (citing the *U.S.* v. *MoneyGram Int'l, Inc.,* Cr. No. 12–291 (M.D. Pa. Nov. 9, 2012).

[296] AGO at 10 (emphasis in original).

[297] *Id.; see also* AFR at 1 (''The FTC should strengthen the rules against assisting or facilitating the use of the banned payment methods''); DOJ-Criminal at 3 (''Over the past decade, criminals' techniques have shifted from bribery or physical intimidation or assault of money transfer agents to fraudulent applications by mass-marketing fraud ring members to become agents of legitimate money transfer companies'') (citations omitted).

[298] NCLC at 13.

[299] *Id.*

[300] AFR at 1 (''The payment system ban should apply to sales initiated by email or other methods that do not use a telephone.''); AGO at 9 (''The prohibition on telemarketing using money transfers should extend to commercial communications using money transfers.''); NCLC at 13 (''The proposed ban on the four payment systems should apply not only to transactions that involve a telephone but also to sales initiated by email, over the internet or through other methods that are not covered by the TSR.'').

[301] AGO at 1; NCLC at 2.

[302] *See generally* AARP; AGO; AFR; DOJ-Criminal; DOJ–CPB; Michalik; NCLC; Hon. Bill Nelson.

[303] AGO at 11; DOJ–CPB at 3; DOJ-Criminal at 4; NCLC at 11–12.

[304] DOJ-Criminal at 4; *see also* AGO at 11.

[305] NCLC at 12.

[306] *Id.*

[307] DOJ-Criminal at 4.

use electronic payments or debit or credit cards and have no need to use a cash reload system.[308] These commenters noted that cash reload mechanisms enable perpetrators of fraud to evade consumer protections and liability for fraud.[309] Supporters of the prohibition acknowledged that the sale of cash reload mechanisms off the rack at retail stores differentiates this payment method from cash-to-cash money transfers that are facilitated by money transfer agents. This ''self-service'' nature of cash reload mechanisms makes it difficult for the reload provider to intercept and warn potential victims.[310] Nevertheless, commenters argued, a reload provider may still be able to ''detect patterns or scrutinize suspicious transactions, such as withdrawals in foreign countries, cash reloads followed by immediate cash withdrawals, or high volume withdrawals by different customers at an unusual ATM.''. . .[311]

2. Comments Opposing the Prohibition Against Cash-to-Cash Money Transfers and Cash Reload Mechanisms

a. Cash-to-Cash Money Transfers

The Commission received detailed comments opposing the prohibition of cash-to-cash money transfers in telemarketing transactions from The Money Services Roundtable (''TMSRT''), a group of several national non-bank money transmitters.[312] Other commenters indicated their general opposition to a prohibition on the use of any novel payment methods in telemarketing, including cash-to-cash money transfers.[313] At least one opponent of the amendment argued that deceptive or abusive telemarketers and sellers are the root of the problem, not the payment method itself.[314] Neither TMSRT nor any other commenter, however, identified a single legitimate telemarketer or seller that requested or accepted payment via money transfer. For example, telemarketing firm InfoCision claimed generally that novel payment methods are ''extremely important'' to legitimate businesses and charities, but focused its comment on remotely created checks and remotely created payment orders.[315]

According to TMSRT, the ''vast majority of the millions of transactions completed by TMSRT members each week are not fraudulently induced.''[316] TMSRT highlighted the numerous reasons why consumers use money transfers, including to pay their rent or receive money used to pay children's tuition at school or medical expenses, and to help victims in areas devastated by disasters.[317] Opponents expressed concern that the prohibition in telemarketing could disrupt such legitimate uses of cash-to-cash money transfers by those who depend on them, causing consumers to incur added costs and inconvenience. This is because consumers may ''abandon'' legitimate transactions in the face of additional scrutiny by providers of cash-to-cash money transfers designed to detect whether a transaction is the result of telemarketing.

TMSRT asserted that it would be challenging for money transfer providers to distinguish telemarketing-related money transfers from all other types of transfers. As a result, two comments warned, the prohibition could severely restrict consumer access to international and domestic funds transfers for all consumers, many of whom are unbanked, underserved by mainstream financial services, or do not have credit or debit cards because they are of ''limited financial means and seek to avoid the fees associated with traditional banking products.''[318] TMSRT expressed concern that the restriction may force money transfer customers to use other payment methods, such as ''sending cash in the mail, or worse, through unlicensed 'underground' money transfer providers.''[319]

In addition, TMSRT questioned whether the prohibition would be effective against the types of fraud-induced money transfers discussed in the NPRM, and argued that it would not deter bad actors. Both the Electronic Transactions Association (''ETA'') and TMSRT expressed concern about third party liability for money transfer providers who accept telemarketing-related money transfers.[320] Specifically, TMSRT noted that the amended Rule would require money transfer providers to ''take steps to prevent potential telemarketers from receiving money transfers, even though the transmitters are unlikely to know or have reason to know if the individual recipient is a telemarketer (or a fraudster posing as a legitimate recipient).''[321] TMSRT expressed confusion as to whether money transfer providers ''will be required to ask consumers several questions at the point of sale in order to ascertain whether they are sending money related to a telemarketing call.''[322] TMSRT argued that such questions can be easily circumvented when perpetrators coach their victims on how to answer and noted that some consumers may find such questioning invasive or may not know that they are dealing with a telemarketer. If the Commission adopts the prohibition, TMSRT argued, it should provide a safe harbor for money transfer providers that act in good faith and utilize fraud protection programs that include: (a) Designation of employees accountable for the fraud monitoring program; (b) transaction blocking for designated consumers; and (c) evaluation of transactional data to monitor and predict fraudulent activity.[323]

TMSRT further argued that the prohibition is unnecessary because money transfer providers already have ''taken steps to substantially reduce the amount of fraudulent activity that is occurring.''[324] Instead of a prohibition on the use of cash-to-cash money transfers in telemarketing, TMSRT suggested, the Commission should elicit information from other intermediaries that ''unknowingly interact with abusive telemarketers,'' such as Internet service providers or telecommunications companies.[325] TMSRT further opined that the Commission should encourage information sharing among law enforcement and money transfer providers and conduct research into more effective disclosures for consumers to prevent fraud-induced transfers. According to TMSRT, the Commission should abandon the prohibition in favor of providing guidance on fraud prevention programs

[308] AARP at 3; NCLC at 13.

[309] AGO at 4; DOJ–CPB at 3; DOJ-Criminal at 4; NCLC at 12.

[310] NCLC at 15 (''Cash reload systems operate somewhat differently from cash-to-cash money transfers'').

[311] *Id.* (''The cash-to-cash money transfer and cash reload system industries are capable of creating internal systems to minimize fraudulent transactions. They are in a much better position than consumers themselves to root out the systemic problems.'').

[312] TMSRT at 1. The group includes: RIA Financial Services, Sigue Corporation, Western Union Financial Services, Inc., MoneyGram Payment Systems, Inc., and Integrated Payment Systems, Inc.

[313] CUNA at 1; ETA at 1; InfoCision at 2.

[314] ETA at 1–2.

[315] InfoCision at 2; *see also supra* note 215.

[316] TMSRT at 1.

[317] *Id.* None of these money transfers involve telemarketing under the TSR.

[318] TMSRT at 4; *see also* ETA at 2.

[319] TMSRT at 5.

[320] ETA at 1 (''The ETA is concerned that a payment processor's innocent acceptance or processing of a 'novel' payment method in a non-fraudulent telemarketing sales transaction would be deemed an abusive act or practice.'').

[321] TMSRT at 5.

[322] *Id.*

[323] *Id.* at 6–7.

[324] *Id.* at 5.

[325] *Id.* at 5–6.

that money transfer providers should adopt.[326]

b. Cash Reload Mechanisms

The Commission received general comments from InfoCision and ETA regarding the importance of all novel payment methods in telemarketing, and specific comments on the prohibition of cash reload mechanisms in telemarketing from two providers, Green Dot and InComm.[327] InComm expressed the view that cash reload mechanisms are no more vulnerable to fraud than other payment methods, and noted that the rate of fraud for cash reloads is low in comparison to the overall transaction volume and dollar amount.[328] In contrast, Green Dot agreed with the Commission's concerns about the misuse of cash reload mechanisms in telemarketing transactions.[329] Both commenters described cash reload mechanisms as a convenient, low-cost payment method for consumers to pay authorized billing partners, load funds to accounts with online payment intermediaries, and conduct person-to-person transactions.[330] Notably, neither commenter identified legitimate telemarketers or sellers covered by the TSR that use cash reload mechanisms.

After the close of the comment period, Green Dot submitted written testimony in a hearing held before the United States Senate Special Committee on Aging on July 16, 2014, in which the company announced the discontinuance of ''the MoneyPak PIN method of reloading a card'' in favor of a ''card swipe'' reload process.[331] The card swipe reload method requires the GPR cardholder to physically present the card in the store and swipe it at the retail point of sale terminal in order to reload funds. Green Dot's testimony confirmed that ''without the MoneyPak PIN, the scammer will have no method of instructing a senior to buy a [MoneyPak] and no method of redeeming any associated PIN number.'' [332] In October 2014, InComm, which operates the Vanilla Reload Network cash reload mechanism, also announced its migration to the swipe reload process.[333] InComm stated the new process would ''eliminate[] opportunities for fraud and scam artists to take advantage of unsuspecting customers through the use of reload packs.'' [334] Similarly, Blackhawk Network—a cash reload provider that did not comment on the proposed Rule—indicated that it has eliminated the use of its cash reload mechanism (''Reloadit pack'') to apply funds directly to any existing GPR card.[335]

Before announcing its voluntary discontinuance of MoneyPak, Green Dot's comment expressed support for a prohibition, but suggested the Commission narrow the definition of cash reload mechanism to exclude from coverage those types of payment mechanisms that facilitate bill payment and other money transmission activity ''so long as the payment mechanism cannot be used to add funds to a GPR Card.'' [336] Similarly, before InComm started phasing out Vanilla Reload packs, InComm's comment opined that the broad definition of ''telemarketing'' would mean that unbanked consumers might not be able to use cash reload mechanisms to pay billers or e-commerce merchants, or make payments to a friend, family member, or other third party who happens to engage in telemarketing activities.[337] InComm argued that a prohibition will not deter fraudulent telemarketers from utilizing cash reload mechanisms to defraud consumers, so the costs of a prohibition would necessarily outweigh any benefits.[338]

InComm and Green Dot each expressed additional concern about the potential liability of a cash reload provider under the TSR's prohibition against assisting and facilitating violations of the Rule.[339] These commenters noted that no single party in the lifecycle of a prepaid card transaction that uses a cash reload mechanism has ''full visibility into the transaction from beginning to end,'' which makes it difficult for the reload provider to know whether the transaction is related to telemarketing.[340] In addition, one said, perpetrators of fraud frequently use stolen identities to open and access GPR cards onto which such funds are loaded, making it difficult for cash reload providers to preemptively shut off the redemption of the cash reload mechanism by telemarketers.[341] To address these concerns, both commenters requested that the Commission explicitly exempt cash reload providers from the Rule's prohibition against providing substantial assistance or support to any seller or telemarketer while knowing or consciously avoiding knowledge that the seller or telemarketer is engaged in violations of certain provisions of the TSR.[342]

3. The Commission Concludes That the Use of Cash-to-Cash Money Transfers and Cash Reload Mechanisms in Telemarketing Meets the Test for Unfairness

This amendment proceeding is limited in scope to the direct regulation of those telemarketers and sellers covered by the TSR and subject to the jurisdiction of the FTC. Accordingly, the amendment is limited to the use of cash-to-cash money transfers and cash reload mechanisms by telemarketers and sellers covered by the TSR. The Commission, therefore, cannot extend the prohibition to Internet based transactions, as suggested by some advocates.[343] In addition, the

[326] *Id.* at 6.

[327] InfoCision at 2; ETA at 1.

[328] InComm at 3.

[329] Green Dot at 1; *see* Written Statement of Green Dot, *supra* note 50.

[330] InComm at 3; Green Dot at 1.

[331] Written Statement of Green Dot, *supra* note 50, at 2.

[332] *Id.* At a subsequent hearing held by the U.S. Senate Special Committee on Aging, a third cash reload provider, Blackhawk Network, testified it will replace its ''Quick Reload'' process with swipe reload. Testimony of Blackhawk Network, *supra* note 51, at 3.

[333] InComm Press Release, *supra* note 51.

[334] *Id.* As of March 31, 2015, Vanilla Reload PIN code cash reload is ''no longer available for purchase.'' *See www.vanillareload.com* (last visited June 6, 2015).

[335] Testimony of Blackhawk Network, *supra* note 51, at 3. Instead, consumers can use a swipe reload method to reload their own GPR card at a register, or sign up for a Reloadit Safe—an account that acts like a digital wallet into which consumers can deposit the funds on Reloadit packs. In turn, the consumer can use the funds from the Reloadit Safe to load GPR cards she has registered with her Reloadit Safe. *See* Reloadit How It Works, *available at https://www.reloadit.com/HowItWorks* (last visited June 6, 2015).

[336] Green Dot at 2.

[337] InComm at 2–3 (noting the proposal ''could potentially prohibit consumers' legitimate uses of cash reload mechanisms that are unrelated or incidental to any telemarketing activity'').

[338] InComm at 2.

[339] Green Dot at 2; InComm at 4.

[340] Green Dot at 2; *see also* InComm at 4.

[341] InComm at 4.

[342] InComm at 4; *see also* Green Dot at 2.

[343] AGO at 1 (recommending that ''the prohibition extend to transactions proposed by email, which transactions cause as much harm to consumers, if not more, than transactions over the phone''). The AGO comment cites to Consumer Sentinel Network data provided by the FTC to conclude that fraud-induced money transfers in connection with email communication is a problem of ''equivalent or greater magnitude'' than telemarketing. AGO at 7. The AGO letter notes that, from January 1, 2011 through June 3, 2013, the Commission received 26,379 complaints (accounting for $188,963,368 of injury) in which consumers identified the payment method as ''wire transfer'' and the method of communication as ''telephone.'' *Id.* During the same time frame, the Commission received 67,217 complaints (accounting for $596,315,020 in injury) for money transfer complaints where the method of contact was ''email.'' *Id.*

The Commission notes that the data cited by the AGO comment include only those complaints in which the consumer reported both the method of payment and the method of initial contact. As a result, these figures exclude a significant number of complaints in which consumers did not report either the method of payment or the method of contact. For example, from January 1, 2011 through

Commission declines to revise the Rule's provision against assisting and facilitating to create strict liability for the providers of cash-to-cash money transfers and cash reload mechanisms, as suggested by supporters of a prohibition. Likewise, the Commission finds it unnecessary and inappropriate either to explicitly exempt or otherwise provide a safe harbor for money transfer or cash reload providers, as suggested by industry representatives. As described in more detail in Section II.A.3, the Commission continues to believe that the ''conscious avoidance'' standard is appropriate when seeking to hold third parties accountable for the actions of others under the TSR.

After careful consideration of the entire rulemaking record, the Commission concludes that the use of cash-to-cash money transfers and cash reload mechanisms in telemarketing transactions meets the unfairness test for an abusive telemarketing practice.

a. The Use of Cash-to-Cash Money Transfers and Cash Reload Mechanisms in Telemarketing Causes Substantial Harm to Consumers

The substantial consumer harm resulting from cash-to-cash money transfers and cash reload mechanisms in telemarketing is ongoing and persistent. The rulemaking record confirms that perpetrators of telemarketing fraud—not legitimate telemarketers and sellers—depend on the speed, convenience, anonymity, and irrevocability of these payment methods to siphon millions from consumer victims each year. Furthermore, the record is conspicuously devoid of evidence of the use of such payment mechanisms by legitimate telemarketers or sellers covered by the TSR.[344]

The law enforcement experience of the Commission and the Department of Justice evidences the high risk to consumers and widespread injury caused by fraud-induced money transfers and cash reload mechanisms in telemarketing. As these enforcement cases and alerts show, perpetrators of fraud have employed a variety of means to dupe or pressure consumers into sending cash-to-cash money transfers, including fake foreign lottery or sweepstakes prizes,[345] phony mystery shopper scams,[346] and work-at-home opportunities.[347] Increasingly, law enforcement is finding these same tactics are being used to convince consumers to send money via cash reload mechanisms.[348]

In some widespread telemarketing frauds, the agents of cash-to-cash money transfer providers have been complicit in the schemes used to defraud consumers. The U.S. Department of Justice has obtained numerous criminal convictions of corrupt and collusive MoneyGram and Western Union agents that carried out, participated in, or laundered the proceeds from telemarketing fraud.[349] For example, the U.S. Attorney's Office for the Middle District of Pennsylvania, alone, has brought conspiracy, fraud and money laundering charges against 28 former MoneyGram agents.[350]

Law enforcement cases demonstrate that some money transfer providers ''have a strong financial incentive to continue facilitating such transactions despite unmistakable signs of fraud.'' [351] For nearly a decade, federal and state agencies have brought civil and criminal law enforcement actions against cash-to-cash money transfer providers to stop them from profiting from the use of their systems by fraudulent telemarketing schemes and other frauds. In 2005, Western Union entered into an agreement with 47 states and the District of Columbia to resolve allegations about the use of the company's wire transfer services by fraudulent telemarketers.[352] Under the settlement, Western Union agreed to fund an $8.1 million national consumer awareness program, place prominent consumer warnings on the send forms used by customers, terminate agents who are involved in fraud, develop a computerized system aimed at identifying transfers that are at risk of fraud and blocking fraud-induced transfers before they are completed, and increase the company's anti-fraud staffing.

In 2008, MoneyGram entered into a similar agreement with 44 states and the District of Columbia to address the high number of money transfers sent by

June 3, 2013, only 26 percent (or 305,990) of all consumer complaints (1,165,090) reported the method of payment, while 48 percent of consumer complaints (560,811) included the method of contact. FTC, *Consumer Sentinel Network Data Book for January–December 2013,* at 8–9 (Feb. 2014), *available at https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2013/sentinel-cy2013.pdf.* Moreover, the overall Consumer Sentinel data in 2013 demonstrated that consumer fraud victims reported the telephone as the method of contact in 40 percent of complaints, while email was the method of contact in 33 percent of complaints. *Id.* at 9.

[344] InComm expressed concern that the proposed amendment would restrict the ability of consumers to use cash reload mechanisms for non-telemarketing transactions, including e-commerce transactions and payments to billers (such as utility, cable, or telephone providers). InComm at 2–3. As discussed in detail in section II.B.3.c(2) below, the Commission is unpersuaded that these transactions will be adversely affected by the prohibition on cash reload mechanisms in telemarketing.

[345] *See, e.g., FTC* v. *Bezeredi,* Civ. No 05–1739 (W.D. Wash. Apr. 3, 2007) (Summ. J.); *FTC* v. *627867 B.C. Ltd. dba Cash Corner,* Civ. No 03–3166 (W.D. Wash. Aug. 4, 2006) (Stip. Perm. Inj.); *FTC* v. *World Media Brokers, Inc.,* No. 02C6985 (N.D. Ill. June 22, 2004), *aff'd,* 415 F.3d 758 (7th Cir. 2005) (Partial Summ. J.); *see also* Press Release, DOJ, *Jamaican Man First to be Extradited to Face Fraud Charges in International Lottery Scheme* (Feb. 12, 2015) (indictment describing how defendant and co-conspirators obtained victims' money via MoneyGram, Western Union, and Jamaica National money transfers), *available at http://www.justice.gov/opa/pr/jamaican-man-first-be-extradited-face-fraud-charges-international-lottery-scheme*; Press Release, FBI, *Jamaican DJ Arrested in Florida in Connection with North Dakota Telemarketing Lottery Scam: Twenty-Six Individuals Currently Indicted* (May 27, 2014), *available at http://www.fbi.gov/minneapolis/press-releases/2014/jamaican-dj-arrested-in-florida-in-connection-with-north-dakota-telemarketing-lottery-scam*; Press Release, FBI, *Telemarketer Sentenced in Manhattan Federal Court to 75 Months in Prison for Sweepstakes Fraud That Targeted Elderly Victims* (Sept. 24, 2013), *available at http://www.fbi.gov/newyork/press-releases/2013/telemarketer-sentenced-in-manhattan-federal-court-to-75-months-in-prison-for-sweepstakes-fraud-that-targeted-elderly-victims.*

[346] *See, e.g., U.S.* v. *Brister,* Cr. No. 13–0276 (E.D. Pa. June 6, 2013) (indictment describing various mystery shopper and job schemes used by defendant to induce victims to transfer money via Western Union), *available at http://www.justice.gov/usao/pae/News/2013/June/brister_indictment.pdf*; FTC Consumer Alert, *Mystery Shopper Scams* (Nov. 2012), *available at http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt151.shtm*; Press Release, DOJ, *Georgia Woman Pleads Guilty In Mystery Shopper Scam* (July 23, 2014), *available at http://www.justice.gov/usao/paw/news/2014/2014_july/2014_07_23_03.html*; Press Release, DOJ, *Santa Barbara County Man Sentenced to Six Years in Federal Prison for Running $6 Million Job Scam* (Apr. 5, 2011), *available at https://www.fbi.gov/losangeles/press-releases/2011/la040511.htm* (defendant sentenced for $6 million bogus mystery shopper scam).

[347] *FTC* v. *USS Elder Enters., Inc.,* Civ. No. 04–1039 (C.D. Cal. Jul. 26, 2005) (default judgment against telemarketers using bogus work-at-home opportunity to lure consumers to send at least $885,196 in money transfers).

[348] AARP Bulletin, *Scam Alert: Beware of Green Dot MoneyPak Scams—The crooks' other preferred payment method has become the weapon of choice* (Apr. 23, 2012), *available at http://www.aarp.org/money/scams-fraud/info-04-2012/avoid-moneypak-scams.html*; Press Release, Better Business Bureau, *Fraud Task Force Warns Consumers Of Scams Using Western Union, MoneyGram, Green Dot MoneyPaks* (Aug. 2, 2012), *available at http://interact.stltoday.com/pr/business/PR08021203459861.*

[349] DOJ-Criminal at 3 & n.10 (citing examples of cases involving corrupt money transfer agents); NCLC at 14 & nn.56–59 (same).

[350] Press Release, DOJ, *MoneyGram International Inc. Admits Anti-Money Laundering and Wire Fraud Violations, Forfeits $100 Million in Deferred Prosecution* (Nov. 9, 2012), *available at http://www.justice.gov/opa/pr/2012/November/12-crm-1336.html.*

[351] *Id.;* DOJ–CPB at 3.

[352] *See* Press Release, Office of the Vermont Attorney General, *Western Union Enters Into Settlement With Attorneys General* (Nov. 14, 2005), *available at http://ago.vermont.gov/focus/news/western-union-enters-into-settlement-with-attorneys-general.php.* A copy of the five-year, multi-state agreement is available on the Web site of the Office of the Iowa Attorney General at *http://www.state.ia.us/government/ag/latest_news/releases/nov_2005/Western_Union.html.*

consumers to fraudulent telemarketers.[353] The agreement required the company to fund a $1.1 million national consumer awareness program, use prominent consumer warnings on the forms used by consumers to wire money, revise and enhance the company's agent anti-fraud training programs, and provide special training to agents with elevated fraud levels at their locations.

In October 2009, the Commission reached a separate $18 million settlement with MoneyGram to settle charges that it allowed telemarketers to bilk U.S. consumers out of tens of millions of dollars using its money transfer system.[354] According to the complaint, MoneyGram knew that its system was being used to defraud people but did very little about it. For example, the FTC alleged that MoneyGram knew, or consciously avoided knowing, that 131 of its more than 1,200 agents accounted for more than 95 percent of the fraud complaints MoneyGram received in 2008 regarding money transfers to Canada. The Commission further alleged that MoneyGram ignored warnings from law enforcement officials and its own employees that widespread fraud was being conducted over its network, and even discouraged its employees from enforcing the company's own fraud prevention policies or taking action against suspicious or corrupt agents.[355] As a result of the settlement, MoneyGram is permanently enjoined from failing to: (1) Provide consumer fraud warnings, which must be reviewed and updated to ensure the company's effectiveness in preventing fraud, (2) enable a consumer to reverse a money transfer if the funds have not been picked up and the consumer alleges the transfer was induced by fraud; (3) establish, implement, and maintain a comprehensive anti-fraud program reasonably designed to detect and prevent fraud-induced money transfers as well as money transfer agents who may be complicit in fraud.[356] The Commission sent more than 34,000 checks totaling almost $18 million to consumers identified as victims of a series of cross-border fraud schemes.[357]

In 2012, the U.S. Attorney for the Middle District of Pennsylvania filed a criminal case against MoneyGram, alleging that the company willfully disregarded obvious signs that its money transfer network was being used by fraudulent telemarketers and other con-artists, including its own money transfer agents.[358] According to the Statement of Facts, ''MoneyGram's processing of fraudulent transactions [through complicit MoneyGram agents] was critical to the success of the fraud scheme because the Perpetrators relied on MoneyGram's money transfer system to receive the victim's money.'' [359] To resolve the case, MoneyGram entered into a five-year deferred prosecution agreement in which it admitted to ''criminally aiding and abetting wire fraud and failing to maintain an effective anti-money laundering program.'' [360] The agreement required MoneyGram to provide $100 million to the victims of fraud-induced transfers, undertake enhanced compliance monitoring procedures, and employ a corporate compliance monitor.[361]

Increasingly, law enforcement and consumer advocates have encountered the use of cash reload mechanisms in telemarketing schemes that defraud consumers in a variety of ways.[362] The testimony and voluntary actions of three cash reload providers also support the conclusion that perpetrators of fraud are increasingly turning to cash reload mechanisms.[363] As with cash-to-cash money transfers, these schemes include advance fees on bogus loans,[364] ''processing'' fees for government grants,[365] taxes on purported lottery or sweepstakes winnings,[366] and claims of money owed to the IRS.[367]

Existing consumer complaint data, including the complaints collected by the Commission's Consumer Sentinel Network (''CSN''), also indicates the significant injury resulting from fraud-induced money transfers and cash reload mechanisms. The CSN data includes unverified complaints and does not represent a statistical consumer survey. However, it provides important information on the number of consumer complaints reported and the amount of injury reported. The CSN data is consistent with the significant injury documented in law enforcement cases involving fraud-induced money transfers and cash reload mechanisms.[368] Both MoneyGram and Western Union are data contributors to the CSN. These companies voluntarily contribute to the CSN a significant numbers of consumer complaints they receive from customers, which necessarily affects the distribution of the reported methods of payment.[369] For

[353] *See* Press Release, Office of the Vermont Attorney General, *Attorney General Announces $1.2 Million Settlement With MoneyGram* (July 2, 2008), *available at http://ago.vermont.gov/focus/news/attorney-general-announces-1.2-million-settlement-with-moneygram.php.* A copy of the five-year, multi-state agreement can be found on the Web site of the Texas Attorney General at *http://www.oag.state.tx.us/newspubs/releases/2008/070208moneygram_avc.pdf.*

[354] *FTC* v. *MoneyGram Int'l, Inc.,* Civ. No. 1:09–06576 (N.D. Ill. Oct. 19, 2009) (Stip. Perm. Inj.).

[355] *See* Press Release, FTC, *MoneyGram to Pay $18 Million to Settle FTC Charges That it Allowed its Money Transfer System To Be Used for Fraud* (Oct. 20, 2009), *available at http://www.ftc.gov/news-events/press-releases/2009/10/moneygram-pay-18-million-settle-ftc-charges-it-allowed-its-money.*

[356] Stip. Order for Perm. Inj. and Final Judgment, *filed in FTC* v. *MoneyGram, supra* note 354.

[357] *See* Press Release, FTC, *FTC Mails Redress Checks to Fraud Victims Who Lost Money Through MoneyGram's Money Transfer System* (Apr. 28, 2010), *available at http://www.ftc.gov/news-events/press-releases/2010/04/ftc-mails-redress-checks-fraud-victims-who-lost-money-through.*

[358] *U.S.* v. *MoneyGram Int'l, Inc.,* Cr. No. 1:12–291 (M.D. Pa. Nov. 9, 2012).

[359] Statement of Facts, ¶ 18, filed in *US* v. *MoneyGram,* Cr. No. 1:12–291 (M.D. Pa. Nov. 9, 2012).

[360] *See* Press Release, DOJ, *supra* note 350 (alleging, among other things, that MoneyGram failed to implement policies or procedures governing the termination of agents involved in fraud and/or money laundering; (2) failed to implement policies regarding the filing of the required Suspicious Activity Reports (SARs) when victims reported fraud to MoneyGram on transactions over $2,000; (3) failed to file SARs on agents MoneyGram knew were involved in the fraud; and (4) failed to conduct effective AML audits of or due diligence on its agents, prospective agents, and outlets).

[361] *Id.* According to the Statement of Facts, MoneyGram has implemented a number of remedial actions, including the creation of an Anti-Fraud Alert System to identify and place on hold potentially fraudulent transactions. Statement of Facts, *supra* note 359, at ¶ 32f.

[362] *See supra* note 348; DOJ-Criminal at 4; NCLC at 11–12; AFR at 1; *see also* Jorgen Wouters, Daily Finance, Beware of Green Dot MoneyPak Scams (June 23, 2011), *available at http://www.dailyfinance.com/2011/06/23/beware-of-green-dot-moneypak-scams/* (article including statements of president and CEO of the BBB regarding the increase of frauds using cash reload mechanisms).

[363] *See, e.g.,* Written Statement of Green Dot, *supra* note 50, at 2; Testimony of Blackhawk Network, *supra* note 51, at 3; InComm Press Release, *supra* note 51.

[364] Consumer Alert, Bill Schuette Attorney General, *Green Dot MoneyPak Cards, available at http://www.michigan.gov/ag/0,4534,7-164-17337_20942-318482--,00.html.*

[365] Consumer Alert, Federal Reserve, $ Consumer Help (Dec. 11, 2013), *available at https://www.federalreserveconsumerhelp.gov/.*

[366] Sue McConnell, *BBB Consumer News and Opinion Blog: Cleveland Woman Loses Hundreds of Dollars to Government Grant Scam* (Feb. 28, 2014), *available at http://www.bbb.org/blog/2014/02/cleveland-woman-loses-hundreds-of-dollars-to-government-grant-scam/.*

[367] Press Release, FBI, *Internal Revenue Service Telephone Scam* (Sept. 29, 2014), *available at https://www.fbi.gov/sandiego/press-releases/2014/internal-revenue-service-telephone-scam*; Press Release, FBI, *U.S. Attorney's Office Warns Public of Lottery Scam Telephone Calls* (May 28, 2013), *available at https://www.fbi.gov/minneapolis/press-releases/2013/us-attorneys-office-warns-public-of-lottery-scam-telephone-calls.*

[368] *See supra* notes 345–350 and accompanying text (describing law enforcement cases involving money transfers).

[369] FTC, *Consumer Sentinel Network Data Book for January–December 2014,* at 8 & n.2 (Feb. 2015) (hereinafter ''2014 Consumer Sentinel Network Data Book''), *available at https://www.ftc.gov/system/*

example, in 2014 consumer complaints contributed to the CSN by MoneyGram and Western Union represented 3 percent of the total number of complaints received.[370]

Between January 1, 2012, and December 31, 2014, the CSN database logged 322,850 consumer fraud complaints[371] in which the victims reported the method of payment as ''Wire Transfer''—a category that includes cash-to-cash money transfers. These fraud complaints accounted for more than $1.4 billion in total reported consumer injury.[372] In 2014 alone, the CSN received 106,472 consumer fraud complaints in which the method of payment was Wire Transfer, accounting for $500,705,082 in reported consumer injury.[373] Statistics from the National Consumers League's (''NCL'') Fraud Center confirm the widespread use of cash-to-cash money transfers in telemarketing fraud. According to NCL's 2012 complaint data, cash-to-cash money transfers accounted for ''nearly 63 percent of all telemarketing [fraud] payments.''[374]

The CSN consumer complaint data also is beginning to show the significant injury inflicted when perpetrators of fraud use cash reload mechanisms to siphon money from consumer victims. In 2014, CSN logged 119,100 consumer fraud complaints accounting for $80,860,327 in reported injury in which the victims reported the method of payment as ''Prepaid Card''—a category that captures cash reload mechanisms.[375] Green Dot voluntarily contributed a significant number (4 percent) of consumer complaints received by the CSN in 2014, which affects the distribution of the reported methods of payment.[376] According to Green Dot estimates, consumer complaints of fraud-induced cash reloads ''represented approximately $30 million in cash loads in 2013 out of total load volume of approximately $20 [b]illion, or approximately one-quarter of one percent of loads.''[377] NCL stated that its 2012 complaint data also indicate that a growing percentage of telemarketing fraud complaints involve payments made via cash reload mechanisms.[378]

Notwithstanding the investigations, lawsuits, consumer alerts, monetary settlements, and injunctions requiring implementation and strengthening of anti-fraud measures, the use of cash-to-cash money transfers and cash reload mechanisms by telemarketers continues to cause substantial injury to consumers. As the rulemaking record makes clear, the substantial harm and losses sustained by consumers usually cannot be undone.[379] Once a cash-to-cash money transfer is picked up, or funds are offloaded from a cash reload mechanism to a GPR card, the money is irretrievable. There are no federal or state statutory or contractual chargeback rights for consumers who make such payments.[380] Existing federal and state laws pertaining to cash-to-cash money transfers and cash reload mechanisms are not aimed at consumer protection and do not address the abuse of these payment methods by fraudulent telemarketers and con artists.[381] The absence of consumer protections providing consumers with the means to recover their money once they or their family members discover the fraud compounds the substantial injury sustained by consumers.

b. The Injury Is Not Reasonably Avoidable by Consumers

As described in the context of remotely created checks and remotely created payment orders, the Commission considers the extent to which a consumer can reasonably avoid injury, in part, by whether the consumer can make an informed choice. The Commission seeks ''to halt some form of seller behavior that unreasonably creates or takes advantage of an obstacle to the free exercise of consumer decisionmaking.''[382] Unscrupulous telemarketers are adept at interfering with a consumer's decisionmaking by spawning lies about the products and services offered, as well as by steering consumers into making payments that are irretrievable.

As is true in other telemarketing contexts, the ability of consumers to identify and avoid the risk of injury is substantially diminished when telemarketers engage in deceit to sell sham goods or services. Consumers often rely upon the representations made in telemarketing calls and comply with the payment instructions dictated by the telemarketer or seller. When deceitful telemarketers persuade consumers to deliver payment via cash-to-cash money transfers or cash reload mechanisms, the telemarketer causes additional harm that consumers cannot reasonably avoid. Consumers cannot avoid risks they do not perceive, and consumers generally do not appreciate that these payment mechanisms pose enhanced obstacles to detection of fraudulent conduct, to identification of the perpetrator, and to recovery of financial losses.

The lack of systematic monitoring of these payment mechanisms makes

files/documents/reports/consumer-sentinel-network-data-book-january-december-2014/sentinel-cy2014-1.pdf.

[370] *Id.* at 74.

[371] *Id.* at 8–9. These figures include telemarketing and non-telemarketing complaints.

[372] The 2014 Consumer Sentinel Network Data Book documented a total of $1,468,647,723 in injury from January 1, 2011 through December 31, 2014. *Id.* at 8 & n.2.

[373] *Id.* at 8–9. These figures include telemarketing and non-telemarketing complaints.

[374] NCLC at 12.

[375] 2014 Consumer Sentinel Network Data Book, *supra* note 369, at 8.

[376] *Id.* at 8 n.2 & 74.

[377] Written Statement of Green Dot Corporation, *supra* note 50, at 2.

[378] NCLC at 12.

[379] *See NPRM, supra* note 1, at 41213 (describing injury estimates from consumer complaint data and cases).

[380] If the CFPB's proposed Prepaid Account Rule is adopted, the protections of the EFTA and Regulation E would extend to registered cash reload mechanisms. *See supra* note 279. The Commission is aware of no state law providing chargeback rights for consumers using cash-to-cash money transfers or cash reload mechanisms. State laws governing money services businesses (''MSBs''), including the Texas statute highlighted in the comment submitted by InComm, typically mandate disclosures to consumers. InComm at 5 & n.2 (referencing a Texas statute, 7 TX ADC 33.51, which requires MSBs to provide consumers with customer service contact information, and information on how to file a complaint with the Texas Department of Banking if a complaint remains unresolved).

[381] The BSA and related laws target terrorism financing, tax evasion, and money laundering activity. U.S. Department of Treasury, FinCEN, *Statutes & Regulations: Bank Secrecy Act, available at http://www.fincen.gov/statutes_regs/bsa/.* The Prepaid Access Rule amends the money services businesses rules of the BSA regulations to mandate similar reporting and transactional information collection requirements on providers and sellers of certain types of prepaid access, including some cash reload mechanisms that meet certain criteria. *Final Rule; Bank Secrecy Act Regulations—Definitions and Other Regulations Relating to Prepaid Access,* 76 FR 45403–02 (Jul. 29, 2011). In addition, state statutes provide licensing requirements for money transfer providers. *See, e.g.,* Ariz. Rev. Stat. 6–1202 (licensing requirements for money transfer providers); Kan. Stat. Ann. 9–509 (same).

Certain cash-to-cash money transfers (those made to locations outside of the U.S.) are governed by the Remittance Rule, which provides disclosures to customers of money transfer providers. 12 CFR 1005.30(e) (definition of ''remittance transfer'' includes transfers ''sent by a remittance transfer provider'' to a ''designated recipient'' outside of the United States). In contrast, cash reload mechanisms, which consumers purchase directly from a retailer at the point of sale, may not qualify as remittance transfers covered by the Remittance Rule, depending on whether cash reloads are transferring funds outside of the United States and whether the transfer is ''sent by a remittance transfer provider.'' Whether the Remittance Rule applies to a particular cash-to-cash money transfer or cash reload mechanism, however, is immaterial to the Commission's analysis of the Final Rule. As discussed in section I.B.1.b above, existing laws regulate the relationship between the consumer and the money transfer provider, not the relationship between the consumer and the telemarketer or seller. *See also, supra* note 279 (discussing the CFPB's Proposed Prepaid Account Rule).

[382] *See supra* note 202 (citing cases deciding whether consumers' injuries were reasonably avoidable).

detection and deterrence of fraud challenging. In particular, as noted previously, these payments are difficult to track, and by the time consumers realize the operation was a scam, they cannot mitigate their losses by seeking a refund or a reversal of the transaction.[383] In fact, consumers typically discover all too late that legal protections to help recover money lost in a fraudulent transaction are absent once a cash-to-cash money transfer is picked up or a cash reload mechanism is offloaded.

Some opponents of a prohibition seem to suggest that consumers who have been deceived can and should reasonably avoid the harm—the initiation of a cash-to-cash money transfer or the turnover of a cash reload mechanism—by heeding the warnings not to transfer money or provide cash reloads to strangers.[384] These warnings are posted by money transfer providers in storefronts and on send forms, among other places, or are provided on the back of cash reload mechanisms.

Consumers, however, are under no duty to ferret out the truthfulness of marketing claims.[385] In telemarketing fraud perpetrated through cash-to-cash money transfers and cash reload mechanisms, a consumer often is thoroughly convinced and compelled—through false promises or fear of imminent threat of financial or legal consequences—to consummate payment by taking a number of burdensome steps. The consumer leaves his home in a determined effort to make immediate payment in the amount and manner dictated by the telemarketer or seller. Once a consumer is so deceived, generalized warnings against fraud (at the money transfer location or on the back of a cash reload mechanism) do not render avoidable the harm inflicted after the cash-to-cash transfer is picked up or the cash reload mechanism is offloaded by the telemarketer.

Green Dot recognized this dynamic in recent testimony to the U.S. Senate Special Committee on Aging, ''it would appear that this tactic [consumer warnings on MoneyPak packaging] has not achieved the intended goal because the seniors ignore the warnings, convinced that the con artist is genuine.'' [386] Thus, it is clear that for some consumers, once they are persuaded to initiate a cash-to-cash money transfer or provide the cash reload mechanism to the perpetrator, it is impossible to cure the initial deception with subsequent general warnings about the potential danger of sending money to strangers.[387]

Opponents further argue that a prohibition against cash-to-cash money transfers and cash reload mechanisms is unwarranted because it is the unscrupulous actions of telemarketers and sellers—not the payment methods—that cause the unavoidable harm to consumers.[388] The Commission agrees that the immediate source of the problem is the fraudulent conduct of the telemarketer or seller, but the payment mechanism makes the economic injury more significant as the money is largely irretrievable once it's been sent. Consumers are unlikely to appreciate that the regulatory framework includes a paucity of consumer protections or that the systems moving their money cannot track the specific recipient of their payment.

Furthermore, this argument by opponents ignores the fact that the record is replete with evidence of corrupt money transfer agents who have colluded with the perpetrators of telemarketing frauds, while money transfer companies did little to stop it.[389] It also ignores the inextricable link in telemarketing transactions between these payment methods and fraudulent schemes, as there is no record evidence that legitimate telemarketers or sellers use cash-to-cash money transfers or cash reload mechanisms. For these reasons, the Commission has determined that a prohibition on the use of cash-to-cash money transfers and cash reload payment mechanisms by telemarketers and sellers is necessary to prevent substantial and unavoidable consumer harm.

c. The Benefits of Cash-to-Cash Money Transfers and Cash Reload Mechanisms in Telemarketing Do Not Outweigh the Harm to Consumers

The use of cash-to-cash money transfers and cash reload mechanisms by telemarketers and sellers produces clear adverse consequences for consumers that are not accompanied by an increase in services or benefits to consumers or to competition.

(1) Cash-to-Cash Money Transfers

The rulemaking record confirms that the substantial and unavoidable harm to consumers resulting from the use of cash-to-cash money transfers in telemarketing transactions is not outweighed by any countervailing benefits to consumers or competition. No commenter cited a single legitimate telemarketer or seller that uses cash-to-cash money transfers in telemarketing. Instead, representatives of the money transfer industry described the benefits that cash-to-cash money transfers provide to consumers in non-telemarketing transactions, such as personal remittances to family and friends. As the law enforcement cases and consumer complaint data demonstrate, fraudulent telemarketers and sellers prefer anonymous, unrecoverable money transfers to conventional payment alternatives that are subject to federal consumer protections and that ensure systemic monitoring and dispute rights.

The Commission recognizes that consumers who wish to transfer money to friends, send money to family to pay tuition and medical bills, or remit money abroad to family may benefit from the convenience, speed, and cost that cash-to-cash money transfers can provide. These benefits, however, do not extend to the telemarketing context. Unlike ACH debits and card-based payment methods—including GPR cards that are used widely by unbanked and underbanked consumers [390]—that permit a telemarketer to instantly complete the sale over the telephone,

[383] *See Neovi, supra* note 202, at 1158 (''Regardless of whether a bank eventually restored consumers' money, the consumer suffered unavoidable injuries that could not be fully mitigated.'').

[384] TMSRT at 2 n.5 (noting that ''consumers engage in cash-to-cash transfers with telemarketers despite explicit warnings not to do so.'').

[385] As Judge Easterbrook stated in *Mayer* v. *Spanel Intern. Ltd.,* 51 F.3d 670, 675 (7th Cir. Mar. 31, 1995), ''[t]olerating fraud by excusing deceit when the victim is too easily gulled increases . . . the volume of fraud''). *See also, FTC* v. *Crescent Pub. Group, Inc.,* 129 F.Supp.2d 311, 321 (S.D.N.Y. Jan. 24, 2001) (describing consumer reliance on express claims to be ''presumptively reasonable,'' and noting that ''[i]n evaluating [the] tendency . . . to deceive, it is appropriate to look not at the most sophisticated, but the least sophisticated consumer.'') (citations omitted).

[386] Written Statement of Green Dot, *supra* note 50, at 2; *see generally,* Testimony of Blackhawk Network, *supra* note 51.

[387] AARP at 2 (''AARP studies have confirmed that education alone will not protect older people from telemarketing fraud. . . . ''there is always a hard core of victims whose behavior cannot be changed by messages''); *see also* Letter from the FTC to Hon. John D. Dingell, Chairman Committee on Energy and Commerce, United States House of Representatives, Commission Policy Statement on Deception, appended to *Cliffdale Associates, Inc.,* 103 F.T.C. 110, 174 (1984) (''When representations or sales practices are targeted to a specific audience, such as children, the elderly, or the terminally ill, the Commission determines the effect of the practice on a reasonable member of that group.'').

[388] ETA at 1 (''The ETA submits that it is not the payment methods themselves that are fraudulent, but rather the actors that are attempting to sell goods and services in a fraudulent manner that constitute the real problem.''); TMSRT at 2 (''[T]he NPRM suggests that these payment methods themselves, rather than an abusive telemarketing practice are the problem.'').

[389] DOJ-Criminal at 3 & nn.9–13 (citing numerous cases brought by the Department of Justice); *see supra* note 350.

[390] *See supra* notes 227–233 and accompanying text (describing studies of consumer payment preferences and the rapid growth of prepaid cards).

cash-to-cash money transfers require the consumer to take several burdensome steps to initiate payment after the telephone call ends. The consumer typically must go to a money transfer provider's location, fill out a send form, pay a fee, and provide the currency to be transferred. In addition, the recipient, which cannot even ensure the consumer will comply with its directions, incurs time and costs resulting from the delay in payment by having to go to a money transfer location to receive the funds in cash. As a result, legitimate telemarketers simply do not rely on burdensome, unpredictable and costly cash-to-cash money transfers to receive payment for goods or services purchased over the telephone. Not surprisingly then, the record is devoid of evidence that any legitimate telemarketers or sellers currently use (or have ever used) cash-to-cash money transfers in telemarketing transactions.

The Commission is of the firm view that a prohibition on the use of these payment methods by telemarketers and sellers will provide bright line guidance benefitting both consumers and the telemarketing industry. While the warnings that money transfer providers provide are useful, there are substantial benefits to bright line guidance. First, the message is clear and it is concise: It is illegal for telemarketers ask consumers to wire cash. Second, it is delivered by the government, a neutral and authoritative source. Third, it is a message about the requirements of the law rather than advice on when to be cautious in these types of transactions.

Pragmatically, consumers educated about the prohibition who later encounter a telemarketer asking for a cash-to-cash money transfer will be able to more quickly identify the illegal behavior and simply hang up. Money transfer providers will have the benefit of being able to deliver a clear and concise message to all consumers, and importantly, a message that does not implicate cash transfers to relatives or friends. Legitimate telemarketers and sellers should also benefit from increased consumer confidence.

Citing to the benefits that cash-to-cash money transfers provide to consumers in non-telemarketing transactions, such as personal remittances to family and friends,[391] TMSRT asserts that the prohibition threatens to deprive consumers of these benefits because money transfer providers cannot distinguish such personal remittances from cash-to-cash money transfers ''to individuals who may be telemarketers.'' [392] Therefore, TMSRT argues, the prohibition on cash-to-cash money transfers in telemarketing will have the unintended consequence of severely restricting all cash-to-cash money transfers.[393]

The Commission does not find TMSRT's argument persuasive. First, the prohibition affects a discrete sub-set of all money transfers: cash-to-cash transfers. The prohibition does not restrict or prohibit the use, in telemarketing or non-telemarketing transactions, of other types of money transfers that originate from or are received into bank accounts, payment cards (including GPR cards), or accounts with payment intermediaries, for example. Second, money transfer providers already are trained in how to detect consumer fraud [394] and other types of illegal activity. Indeed, they are required to file with FinCEN suspicious activity reports (''SARs'') identifying certain transactions in which the provider knows, suspects, or has reason to suspect its system is being used to facilitate criminal activity.[395] Finally, two of the largest money transfer providers, MoneyGram and Western Union, have taken voluntary and court-mandated measures to improve their BSA and AML compliance, including their ability to identify and stop fraud-induced transactions and those agents who are complicit in fraud.[396]

For cash-to-cash money transfer providers that have and enforce policies and procedures designed to screen out fraud-induced transfers, any additional burden should be minimal. TMSRT indicates that its members already have implemented fraud prevention programs, and it does not quantify the costs of any programmatic changes the Rule would require.[397] Indeed, a prohibition on the use of cash-to-cash money transfers in telemarketing transactions should enhance the effectiveness of the efforts taken by responsible money transfer providers to deter and detect the abuse of their money transfer systems by reinforcing their anti-fraud warnings to consumers and money transfer agents.[398]

TMSRT further argues that the amended rule would result in ''substantial disruption'' absent additional guidance on how members should determine if the recipient is a telemarketer.[399] Commission staff regularly provides guidance to industry about how to comply with specific rules, as well as other legal obligations,[400] while also recognizing in other contexts that it is critical for industry segments and individual members to have the flexibility to comply with the requirements of a rule in ways that are consistent with their business practices. As noted above, some members of TMSRT already have practices in place, for example, to train and incentivize agents to recognize and halt unlawful transactions. For instance, Western Union trains agents ''on how to

[391] TMSRT at 1.

[392] *Id.* at 3.

[393] *Id.* At the same time, TMSRT maintains that money transfer providers ''have taken steps to substantially reduce the amount of fraudulent activity that is occurring.'' *Id.* at 5.

[394] For example, in testimony to the U.S. Senate Special Committee on Aging, an official from Western Union explained how the company trains money transfer agents to help identify potential fraud victims, including ''how to listen to consumers for verbal cues indicating fraudulent activity, look for body language that indicates nervousness or a sense of urgency, and ask questions to determine the consumer's relationship with the receiver and reasons for sending the money.'' Testimony of Mr. Phil Hopkins, Vice President Global Security, The Western Union Company, submitted to the United States Senate, Special Committee on Aging, at 4–5 (Mar. 13, 2013). *http://www.aging.senate.gov/imo/media/doc/07_Hopkins_3_13_13.pdf.* According to the testimony, ''[i]f an Agent suspects the transaction is fraudulent, the Agent is trained to refuse the transaction or report it to Western Union for further investigation.'' *Id.*

[395] Indeed, money transfer providers are required to implement an effective AML program, which is ''reasonably designed to prevent the [money transfer provider] from being used to facilitate money laundering and the financing of terrorist activities,'' and ''shall be commensurate with the risks posed by the location and size of, and the nature and volume of the financial services provided by, the [money transfer provider].'' FinCEN, Interpretive Release 2004–01: Anti-Money Laundering Program Requirements For Money Services Businesses with respect to Foreign Agents or Foreign Counterparties, 7 (2004) (citing 31 CFR 103.125). In addition, FinCEN has made clear that the AML programs of money transfer providers should, among other things, ''establish procedures for conducting reasonable, risk-based due diligence on potential and existing foreign agents and counterparties to help ensure that such foreign agents and counterparties are not themselves complicit in illegal activity.'' *Id.* at 9. This includes ''establish[ing] procedures for risk-based monitoring and review of transactions'' sufficient to ''identify and, where appropriate, report as suspicious such occurrences as[] instances of unusual wire activity''. *Id.* at 10.

[396] *See supra* notes 352–361 and accompanying text discussing law enforcement cases against Western Union and MoneyGram.

[397] TMSRT at 3.

[398] Moreover, the prohibition will have no adverse impact on the industry's potential implementation of a database of terminated agents. *Id.* at 7 (''Facilitation of such a database will be instrumental in fighting telemarketing fraud and should be considered as an approach to addressing the issues raised in the rulemaking.'').

[399] *Id.* at 5.

[400] *See, e.g.,* Compliance Guide, FTC, *Complying With the Telemarketing Sales Rule, available at http://www.ftc.gov/tips-advice/business-center/complying-telemarketing-sales-rule*; Business Guide, FTC, *.com Disclosures: How to Make Effective Disclosures in Digital Advertising* (March 2013), *available at http://www.ftc.gov/system/files/documents/plain-language/bus41-dot-com-disclosures-information-about-online-advertising.pdf.*

detect and deter fraud at the point-of-sale,'' makes a fraud hotline available to all agents, has a monetary reward program to encourage agents to detect and deter consumer fraud, and monitors agent activity to identify those complicit in fraudulent activity.[401]

The Commission also declines TMSRT's request to amend the proposed Rule to provide an exemption or safe harbor for providers of cash-to-cash money transfers.[402] Past law enforcement actions by the Commission and others provide detailed information about how money transfer providers can operate within the bounds of the law. For example, in the Commission's case against MoneyGram, the complaint contains detailed allegations describing how MoneyGram knew that its system was being used to defraud people but did very little about it.[403] The stipulated permanent injunction in the case also outlines specific measures that MoneyGram must take to detect and prevent fraud-induced money transfers (not just cash-to-cash money transfers), including those involving telemarketing.[404] Similarly, DOJ-Criminal's complaint and deferred prosecution agreement illustrates the company's failure to terminate specific MoneyGram agents it knew to be involved in fraud schemes and its willful failure to maintain an effective AML program.[405]

Under the amended Rule, a cash-to-cash money transfer provider that has actual knowledge that the transfer is related to telemarketing, or consciously avoids knowing (such as by deliberately ignoring) signs that the transfer is related to telemarketing, may be found liable for assisting and facilitating a violation of the TSR. The Commission sees no reason to afford special treatment to this industry segment, particularly given past actions, by either lowering or raising the liability standard.[406] To the contrary, the Commission expects the bright lines set by the amended Rule to create a level playing field for all money transfer providers and assist consumers in avoiding fraud.

Finally, addressing commenters' general concerns about this Rule amendment, the Commission recognizes that regulation and law enforcement have limitations and cannot prevent or eliminate all fraud. However, the Commission concludes, based on the substantial record of fraudulent telemarketers' use of cash-to-cash money transfers, that a prohibition on the use of this type of money transfer in telemarketing is an important, beneficial, and a vital step in protecting consumers from the substantial and unavoidable harm caused by these practices. Given that there is no evidence that legitimate telemarketers use this payment mechanism, the Commission concludes that the burden on legitimate marketers is non-existent and that any burden to money transmitters seeking to comply with the new rule would be minimal given the existing prohibition against assisting and facilitating violations of the Rule and past law enforcement actions.

(2) Cash Reload Mechanisms

The rulemaking record confirms that the substantial and unavoidable harm to consumers resulting from the use of cash reload mechanisms in telemarketing transactions is unjustified by any countervailing benefits to consumers or competition. As with cash-to-cash money transfers, fraudulent telemarketers and sellers exploit cash reload mechanisms to avoid the use of conventional payment alternatives that are subject to federal consumer protection laws. Recent complaint data indicates that increasing numbers of consumers each year are paying tens of millions of dollars in fraud-induced cash reload mechanisms, including in the telemarketing context.[407]

Also, as with cash-to-cash money transfers, the use of cash reload mechanisms in telemarketing requires the consumer to take several burdensome steps to initiate payment after the telephone call ends. The consumer typically must go to a retail location to select a cash reload card, pay a fee, provide the funds to be loaded, and engage in another telephone call to provide the telemarketer with the PIN code. For these reasons, it is not surprising that the record is devoid of evidence that any legitimate telemarketers or sellers rely on cash reload mechanisms in telemarketing transactions.

The rulemaking record demonstrates that cash reload mechanisms offer perpetrators of telemarketing fraud a relatively anonymous and irretrievable method for obtaining funds from consumers. The Commission concludes that this mounting economic harm is not outweighed by any countervailing benefits to consumers or competition. The largest cash reload provider, Green Dot, evidently agrees.[408] Green Dot recently completed the discontinuance of its MoneyPak cash reload mechanism for GPR cards on its network.[409] The company's testimony explains that ''without the MoneyPak PIN, the scammer will have no method of instructing a senior to buy a product and no method of redeeming any associated PIN number.''[410] Notably, other cash reload providers, InComm and Blackhawk Network, also completed the voluntary discontinuance of cash reload mechanisms for GPR cards on their networks.[411] Despite the voluntary measures taken by these three major cash reload providers, the prohibition is necessary to ensure that all current and future cash reload providers abide by the same rules.

The Commission believes that a prohibition on the use of cash reload mechanisms will complement and reinforce the laudable response of these three cash reload providers to the growing use of these payment methods in telemarketing fraud. A prohibition on the use of these payment methods by telemarketers and sellers will provide bright line guidance benefitting both consumers and the telemarketing industry. Instead of general warnings from cash reload providers, consumer will receive the benefit of clear instructions and guidance from the federal government, advising that it is illegal for a seller or telemarketer to accept a cash reload mechanism as payment. Legitimate telemarketers and sellers, in turn, should benefit from increased consumer confidence.

Commenters opposed to the prohibition submit that the amendment is overbroad and ''could potentially prohibit consumers' legitimate uses of cash reload mechanisms that are unrelated or incidental to any

[401] *See supra* note 394.

[402] TMSRT at 7.

[403] *See supra* notes 354–355 and accompanying text.

[404] The allegations and settlements reached by state attorneys general against Western Union are similarly instructive. *See supra* notes 352–353 and accompanying text.

[405] *See supra* notes 350 and accompanying text.

[406] The Commission also declines the requests of some commenters to impose strict liability on those cash-to-cash money transfer providers that, despite their best efforts to detect unlawful transactions, unwittingly transfer money in connection with telemarketing transactions. AFR at 1; NCLC at 13.

[407] Written Statement of Green Dot, *supra* note 50, at 2; 2014 Consumer Sentinel Network Data Book, *supra* note 371, at 8.

[408] Green Dot weighed the impact of its decision on ''honest customers who routinely rely on the MoneyPak PIN method for adding money to a family member's card'' in determining to ''eliminate the MoneyPak as an instrument of [fraud]''). Written Statement of Green Dot, *supra* note 50, at 2.

[409] According to the Web site *www.moneypak.com* (last visited April 8, 2015), ''MoneyPak® is no longer available for purchase.''

[410] *Id.*

[411] InComm Press Release, *supra* note 51; Testimony of Blackhawk Network, *supra* note 51, at 3 & 5.

telemarketing activity,'' such as payments to billers, e-commerce merchants, and utility companies.[412] These comments overlook the fact that the prohibition is limited to telemarketing transactions covered by the Rule and does not extend to non-telemarketing transactions like the bill payment transactions they cite. The payment of an existing bill without further solicitation is not a telemarketing transaction subject to the TSR, and the language of the amended Rule does not broadly prohibit or restrict the use of cash reload mechanisms in such non-telemarketing transactions, as some opponents suggested.[413]

Moreover, the implementation by the three major cash reload providers of the swipe reload process for GPR cards will likely render obsolete the use of cash reload mechanisms as direct payment for such non-telemarketing transactions. Today, consumers without access to traditional banking can load funds using the swipe process directly to a GPR card instead of using a PIN-based reload mechanism. In turn, consumers can use these GPR cards to pay for goods or services, make a bill payment, or buy from an e-commerce merchant. To the extent that cash reload mechanisms may have been used for such transactions in the past,[414] the Commission is not persuaded that permitting their use is still necessary. Thus, any adverse effect of the TSR's prohibition against cash reload mechanisms on their use in non-telemarketing transactions would be minimal.

In light of the swipe reload availability, it may be useful to further clarify the scope of the cash reload ban in telemarketing. The prohibition does not prevent the use of other payment mechanisms, such as GPR cards, single-use prepaid cards, or funds in an account with an online payment intermediary, to pay for purchases. This is true even if a consumer uses a (PIN-based) cash reload mechanism to load funds onto an existing GPR card or another personal account. The Commission's concern is not the use of GPR cards or personal accounts—these have additional and more robust protections than cash reload mechanisms.[415]

Comments opposed to the prohibition expressed concern about liability exposure for assisting and facilitating violations of the Rule and argue for a safe harbor or limitation on what constitutes ''substantial assistance'' under the TSR.[416] The Commission recognizes that the ''self-service'' nature of cash reload mechanisms, to the extent they still exist in the marketplace, could create particular challenges for providers to know whether a consumer will use a cash reload mechanism to pay an authorized biller, reload a GPR card for a college-bound student, or send funds to a fraudulent telemarketer. The Commission is not persuaded, however, that it is necessary or appropriate to amend the proposed Rule to provide an exemption or safe harbor for providers of cash reload mechanisms, or otherwise to limit the assisting and facilitating provision as it may be applied to them. The record makes clear that providers of cash reload mechanisms already have implemented anti-fraud measures and proactively already have restricted the availability of a reload mechanism altogether. Commenters, however, have not shown how the rule change might impose costs different from those already incurred (or being eliminated) for fraud detection or why the general ''substantial assistance'' standard otherwise imposes a burden unique to providers of cash reload mechanisms. Thus, the Commission sees no basis upon which to change the existing TSR standards for ''substantial assistance.''

4. Final Rule Language

The NPRM proposed new definitions of ''cash-to-cash money transfer'' and ''cash reload mechanism.'' The Commission solicited public comment as to whether the proposed definitions adequately, precisely, and correctly described each payment alternative. In response, the Commission received no comments on the definition of cash-to-cash money transfer; and relevant comments from two cash reload providers, InComm and Green Dot regarding the definition of cash reload mechanism. Both of these comments were received before three providers began implementing a swipe reload process for adding funds to GPR cards on their networks. At that time, both commenters expressed concern that the term, in combination with the definition of ''telemarketing,'' would restrict the use of this payment method by consumers in legitimate non-telemarketing transactions, such as bill payments.[417] Only Green Dot proposed a specific change to the definition, suggesting that the Commission amend the definition specifically to cover only those cash reload mechanisms used to load GPR cards.[418] Based on the evidence in the record, the Commission declines to narrow the definition of ''cash reload mechanism'' as proposed by Green Dot, which was based on a business model that has now shifted dramatically with the discontinuance of GreenDot's cash reload mechanism.

Nevertheless, the Commission concludes that some changes to the definition are warranted. As noted previously, the Commission's concern pertains to the ease with which perpetrators of telemarketing fraud use cash reload mechanisms as an inexpensive and largely irreversible method of siphoning money from defrauded consumers who divulge their cash reload PIN number or similar security code. Con artists can easily abscond with the money by applying funds from the cash reload mechanism to GPR cards or to online accounts they obtain using false names. This is the problem the Commission intends to curtail.

By contrast, the Commission does not intend the Rule to cover telemarketing transactions in which a consumer uses a GPR card (or an online account balance with a payment intermediary) to

[412] InComm at 2; *see* Green Dot at 2.

[413] InComm at 2–3; ETA at 1. The prohibition restricts a telemarketer or seller from accepting a cash reload mechanism as payment only ''for goods or services offered or sold through telemarketing or as a charitable contribution solicited or sought through telemarketing''). *NPRM, supra* note 1, at 41218.

[414] Before the discontinuance of MoneyPak, Green Dot established ''authorized biller relationships'' permitting consumers to use a cash reload mechanism to legitimately pay existing bills without having to first load the funds onto an existing GPR card or into an account with an online payment intermediary. It appears that no other cash reload providers currently have established such authorized biller relationships. For example, consumers cannot redeem a Vanilla Reload Pack directly with a biller or e-commerce merchant. Instead, consumer must use Vanilla Bill Payment, which is a single-use prepaid card that can be used to make purchases or pay bills wherever MasterCard or Visa are accepted. *See,* InComm, *Vanilla Bill Pay: Important Things to Know, available at https://www.vanillabillpay.com/product.html* (follow link to Vanilla Visa Web page and click on ''Click here to learn more about your Vanilla Bill Payment Prepaid Visa®'') (last visited February 12, 2015). Similarly, Blackhawk's Reloadit Pack can be used only to reload an existing GPR or a Reloadit Safe (an online account balance). *See,* Blackhawk Network, Inc., *Reloadit: How it Works, available at https://www.reloadit.com/HowItWorks* (last visited February 11, 2015). For these reasons, the Commission is unpersuaded that the prohibition against cash reload mechanisms in telemarketing will have any adverse effect on consumers' ability to pay billers and utility companies.

[415] *See supra* notes 32 & 36 (describing how merchants accepting network-branded debit cards, including prepaid cards, are subject to the operating rules and anti-fraud monitoring of the payment card networks) and 178 (describing the voluntary zero liability protections afforded consumers in signature debit card transactions). In addition, the CFPB's proposed Prepaid Account Rule may extend to GPR cards the protections of the EFTA and Regulation E. *See* Prepaid Account Rule, *supra* note 36.

[416] Green Dot at 2; InComm at 4; ETA at 1.

[417] Green Dot at 2; InComm at 2–3.

[418] Green Dot at 2.

pay for goods and services. This is true even if the consumer previously added funds to the GPR card or other online account via a swipe reload process or (to the extent it still exists) a PIN-based cash reload mechanism). In those instances, the telemarketer or seller is accepting the GPR card as payment, not a cash reload mechanism like a PIN number.[419] The Commission has revised the final definition of cash reload mechanism to ensure that the language is flexible enough to cover future adaptations by scammers, and sufficiently narrow to prohibit the abusive practices documented in the rulemaking record.

To implement the prohibition against the use of cash-to-cash money transfers and cash reload mechanisms, the Commission amends § 310.4(a) to add a new paragraph (a)(10). Section 310.4(a)(10) of the amended Rule states that it is an abusive practice for a seller or telemarketer to accept from a customer or donor, directly or indirectly, a cash-to-cash money transfer or cash reload mechanism as payment for goods or services offered or sold through telemarketing or as a charitable contribution solicited or sought through telemarketing. The language of the prohibition addresses the receipt, directly or indirectly, of a cash reload mechanism by a telemarketer or seller. For reasons already discussed above, the prohibition does not cover circumstances where a consumer pays bills or merchants (including telemarketers) using a GPR card or account with an online payment intermediary that was funded by a cash reload mechanism.

As with the prohibition against the use of remotely created payment orders, the Commission concludes that the risks associated with cash-to-cash money transfers and cash reload mechanisms exist equally in outbound and inbound telemarketing calls. Accordingly, the prohibitions in § 310.4(a)(10) apply to both outbound and inbound telemarketing. However, to minimize the burden on sellers and telemarketers that have qualified for the general media and direct mail exemptions from the TSR for inbound telemarketing, the Commission is modifying the proposed amendments to § 310.6(b)(5) and (6). The purpose of the modification is to clarify that sellers and telemarketers that comply with the prohibition on the use of cash-to-cash money transfers and cash reload mechanisms in inbound telemarketing remain exempt from the TSR's requirements if they otherwise qualify for the general media or direct mail exemptions. Thus, they are covered by the TSR only if they violate the prohibition. Moreover, while non-compliance with one of these prohibitions subjects the violator to a TSR enforcement action for the violation, it does not deprive the violator of its exemption from the other requirements of the TSR.

C. Final Rule and Comments Received on Expansion of Advance Fee Ban on Recovery Services

The original TSR prohibited the abusive telemarketing practice of collecting advanced fees for services promising to recover losses incurred by consumers in a previous telemarketing transaction.[420] The NPRM proposed to expand the coverage of the existing advance fee ban on recovery services to include losses incurred in any prior transaction, not just telemarketing transactions.[421] The Commission received several comments supporting the expansion of the Rule to cover non-telemarketing transactions.[422] No commenters opposed the amendment.

The NPRM proposed the expansion in response to the widespread migration of frauds to other communication channels made possible by new technologies, including Internet Web sites and email. As a result, the Commission finds that telemarketers selling recovery services are just as likely to obtain lists of online scam victims as they are to obtain lists of victims of telemarketing fraud. These telemarketers can easily avoid the Rule's current advance fee prohibition simply by telemarketing their advance fee recovery services only to victims of online scams. Indeed, in *United States* v. *Business Recovery Services, LLC,* the defendants were charged with selling worthless do-it-yourself kits for as much as $499 to consumers who had lost money on business opportunity and work-at-home scams sold via telemarketing and online marketing.[423] Where consumers' losses resulted from online scams, prosecutors could not charge defendants with violations of the TSR.

The Commission agrees with the DOJ–CPB that there exists ''no logical reason'' to differentiate recovery room victims based on whether the original scam was a telemarketing scam.[424] To ensure that advanced fees are prohibited for all recovery services, regardless of whether the loss resulted from a telemarketing transaction, the Commission adopts the change to § 310.4(a)(3) proposed in the NPRM.

III. Final Rule and Comments Received on Clarifying Amendments

The Commission received comparatively few comments on the proposals in the NPRM to modify five existing TSR provisions to make Commission enforcement policy more transparent. These amendments: (1) Clarify that any recording made to memorialize a customer's or donor's express verifiable authorization (''EVA'') pursuant to § 310.3(a)(3)(ii) must include an accurate description, clearly and conspicuously stated, of the goods or services or charitable contribution for which payment authorization is sought; (2) clarify that the exemption for calls to businesses in § 310.6(b)(7) extends only to calls inducing a sale or contribution from the business, and not to calls inducing sales or contributions from individuals employed by the business; and (3) address provisions pertaining to the Do Not Call requirements of the TSR.

Specifically, the amendments to the Do Not Call provisions pertain to three sections. The first amendment expressly states that a seller or telemarketer bears the burden of demonstrating that the seller has an existing business relationship (''EBR'') with a customer whose number is listed on the Do Not Call Registry, or has obtained an express written agreement (''EWA'') from such a

[419] Similarly, the prohibition does not apply to payments made from a digital wallet or safe, regardless of whether they were deposited by means of a swipe reload or PIN-based cash reload mechanism.

[420] 16 CFR 310.4(a)(3).

[421] *NPRM, supra* note 1, at 41215.

[422] AARP at 1 (''AARP strongly supports the FTC proposal[ ] to . . . expand the scope of the advance fee ban on recovery services''); AFR at 2 (''We support the proposal to ban advance fees charged for purported help in recovering losses in connection with prior internet scams''); AGO at 12 (expressing support for ''broadening the ban on telemarketing recovery services to include losses incurred in any medium''); DOJ–CPB at 3–4 (''The goal of this specific provision is to protect consumers from the deceptive acts of recovery services, not the underlying business from which the consumer lost money. Thus, whether the underlying business acted through telemarketing is irrelevant.''); DOJ-Criminal at 4 (''Because mass-marketing fraud techniques have changed over time, there is no substantial reason that the TSR's scope should be limited only to recovery schemes that claim to recover funds lost in a previous telemarketing transaction.''); Michael (stating that recovery companies ''prey on victims of work-at-home and other similar companies who have been defrauded for thousands of dollars and are looking for a place to turn.''); NCLC at 15 (''There is no reason to make a distinction based on the circumstances of the [original] loss.''); *see generally* Transp. FCU.

[423] *U.S.* v. *Bus. Recovery Servs., LLC,* Civ. No. 11–00390–JAT (D. Ariz. Sept. 13, 2013) (Stip. Perm. Inj.); DOJ–CPB at 4–5; Press Release, FTC, *FTC Settlement and Default Judgment Impose Permanent Ban on Marketers of Scam 'Recovery' Kits* (Nov. 20, 2013), *available at http://www.ftc.gov/news-events/press-releases/2013/11/ftc-settlement-default-judgment-impose-permanent-ban-marketers.*

[424] DOJ–CPB at 4.

customer, as required by § 310.4(b)(1)(iii)(B)(i)–(ii). Second, the amendments illustrate the types of impermissible burdens on consumers that violate § 310.4(b)(1)(ii), which prohibits denying or interfering with a consumer's right to be placed on a seller's or telemarketer's entity-specific do-not-call list. In addition, they specify that a seller's or telemarketer's failure to obtain the information needed to place a consumer on a seller's entity-specific do-not-call list pursuant to that section disqualifies it from relying on the safe harbor for isolated or inadvertent violations in § 310.4(b)(3). Third, they modify the prohibition in section 310.8(c) against sellers sharing the cost of registry fees to emphasize that the prohibition is absolute.

A. Section 310.3(a)(3)(ii)—Oral Verification Recording as Evidence of EVA

The NPRM proposed an amendment to make it unmistakably clear that an oral verification recording of a consumer's agreement to be charged for a telemarketing transaction must include ''an accurate description, clearly and conspicuously stated, of the goods or services or charitable contribution for which payment authorization is sought.'' [425] Five comments supported this clarification,[426] and none opposed it.

Section 310.3(a)(3)(ii) permits the use of an audio recording to memorialize a consumer's express verifiable oral authorization of a charge for a telemarketing transaction.[427] It requires that the recording ''evidences clearly both the customer's or donor's authorization of payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction,'' and the customer's or donor's receipt of specified material information about the transaction.[428] The Commission has uniformly interpreted this provision as requiring a clear and conspicuous description in the recording of the goods, services, or charitable donation for which payment is sought.[429] Because the Commission's law enforcement experience shows that some sellers and telemarketers appear to have omitted this information intentionally from their audio recordings to conceal from consumers the real purpose of the verification recording and the fact that they will be charged,[430] the Commission has decided to adopt the proposed amendment.

B. Section 310.6(b)(7)—Limitation on Business-to-Business Exemption

The NPRM proposed an amendment to make it explicit that the business-to-business exemption is available only to sellers and telemarketers that are soliciting the purchase of goods or services or a charitable contribution by the business itself, rather than personal purchases or contributions by employees of the business. Five comments generally supported the amendment,[431] and one argued against it.[432]

The comment opposing the amendment is based on a fundamental misunderstanding. It incorrectly presumes that the existing provision exempts telemarketing calls directed to a business telephone number to solicit sales or charitable contributions from individual employees. That has never been the case. By its terms, the exemption applies only to ''[t]elephone calls between a telemarketer *and any business.*'' [433] Moreover, the fact that the exemption expressly excludes ''calls to induce the retail sale of non-durable cleaning or office supplies,'' which are hardly for the personal use of individual employees, provides additional evidence that the Commission limited the exemption at the outset to solicitations directed to a business, and not its employees.[434]

Thus, the Commission's decision to adopt this amendment is simply a clarification of the scope of the existing exemption, not a change in its substance. This clarification should further deter telemarketers from attempting to circumvent the Registry by soliciting employees at their places of business to make personal charitable contributions or to purchase goods or services for their individual use.[435] As amended, the exemption applies only to ''[t]elephone calls between a telemarketer and any business to induce the purchase of goods or services or a charitable contribution by the business.''

C. Amendments To Clarify Do Not Call Provisions

The 2003 amendments to the TSR that created the National Do Not Call Registry included provisions: (1) Permitting live telemarketing calls to numbers on the registry if the seller has an EBR with the person called or has obtained his or her EWA to receive the call; (2) prohibiting sellers or telemarketers from denying or interfering in any way with a consumer's right to be placed on its entity-specific do-not-call list; and (3) barring sellers and telemarketers from sharing the fees for accessing the Registry. The remaining amendments seek to clarify these three provisions to reflect the Commission's intent and enforcement policy. The TSR requires sellers and telemarketers to delete from their calling lists any home or cell phone number that consumers have placed on the Registry.

1. Section 310.4(b)(1)(iii)(B)—EBR and EWA Burden of Proof

The NPRM proposed modifications to the EBR and EWA carve outs from the prohibition against outbound

[425] *NPRM, supra* note 1, at 41217.

[426] Transp. FCU at 1; DOJ-Criminal at 5; AGO at 12; AARP at 1–2; NCLC at 15–16. The latter two comments, while supporting the amendment, also argued for a recording of the entire telemarketing call, a proposal that would require a separate rulemaking proceeding.

[427] Section 310.3(a)(3) prohibits sellers and telemarketers from billing for telemarketing purchases or donations without a customer's or donor's ''express verifiable authorization,'' if payment is not made by credit or debit card.

[428] 16 CFR 310.3(a)(3)(ii). The new mandate of an accurate description of the goods or services or charitable contribution will be added to the list of required disclosures identified in § 310.3(a)(3)(ii)(A). The six original disclosures the seller or telemarketer has been required to make and include in the recording by § 310.3(a)(3)(ii)(A)–(G) will be renumbered as § 310.3(a)(3)(ii)(B)–(H). These disclosures are the number of debits, charges or payments (if more than one); the date(s) the debit(s), charge(s), or payment(s) will be submitted for payment; the amount(s) of the debit(s), charges(s), or payment(s); the customer's or donor's name; the customer's or donor's billing information identified with sufficient specificity that the customer or donor understands what account will be used to collect payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction; a telephone number for customer or donor inquiry that is answered during normal business hours; and the date of the customer's or donor's oral authorization.

[429] As the Commission noted in the NPRM, ''it is difficult to imagine how a verification recording could 'evidence clearly' a payment authorization 'for the goods or services or charitable contribution that are the subject of the telemarketing transaction' without mentioning the goods, services, or charitable contribution.'' 78 FR at 41217 & n. 182 (citing cases alleging material changes or complete omissions in verification recordings of the pre-sale descriptions of the goods or services).

[430] *Id.*

[431] AFR at 2; NCLC at 16; AGO at 12; DOJ–CPB at 1; DOJ-Criminal at 1; *cf.* Blue Diamond Remodeling at 1 (complaining that its business has been ''flooded by telemarketer calls for years'').

[432] InfoCision at 4–5.

[433] 16 CFR 310.6(b)(7) (emphasis added).

[434] *Id.; see also TSR Final Rule 1995, supra* note 8, at 43861 (discussing the exemption and noting that cleaning and office supply scams are not included in the exemption because ''such telemarketing falls within the Commission's definition of deceptive telemarketing acts or practices''). Contrary to an additional objection on First Amendment grounds, InfoCision at 4–6, it remains the Commission's opinion that telemarketing calls made to business telephone numbers to solicit individual employees at work can be deceptive, and therefore are properly subject to the limited commercial speech restrictions of the TSR.

[435] *NPRM, supra* note 8, at 41219 (mentioning solicitations to employees at work for dietary products, auto warranties, and credit assistance).

telemarketing calls to numbers on the National Do Not Call Registry. The amendments emphasize that calls to numbers on the Registry are permitted only if the seller or telemarketer ''can demonstrate that the seller has'' an EBR or EWA.[436] Four comments supported the amendments.[437] One comment opposed the amendment as unnecessary in view of prior Commission statements that sellers and telemarketers bear that burden, arguing that it would ''confuse sellers, telemarketers, consumers, and regulators.'' [438]

As stated in the NPRM, the Commission's goal in proposing these amendments was ''to make it unmistakably clear that the burden of proof for establishing'' an EWA or EBR as an affirmative defense to otherwise prohibited calls to numbers on the Registry ''falls on the seller or telemarketer relying on it.'' [439] The Commission believes that the two carve outs from the prohibition should transparently alert anyone reading them that the seller or telemarketer must be able to demonstrate that the seller meets the EWA or EBR requirements, rather than require research into applicable law and prior Commission statements to determine this burden of proof. Consequently, the Commission has decided to adopt the two amendments that accurately reflect existing law.

In adopting the amendments, the Commission again wishes to emphasize that each of the carve outs is limited to the specific seller that obtained the EWA directly from, or has an EBR directly with, the person called.[440] Consequently, cold calls to consumers whose names and numbers appear on a calling list purchased from a third-party list broker are prohibited by the TSR's do-not-call provisions because the calls are not placed by the specific seller that obtained the EWA or EBR.

2. Section 310.4(b)(1)(ii) & (b)(3)—Denying or Interfering With a Consumer's Right To Opt-Out

The NPRM proposed an amendment to clarify the types of burdens that impermissibly deny or interfere with a consumer's right to be placed on an entity-specific do-not-call list. In addition, it included an amendment to disqualify a seller or telemarketer from the safe harbor for isolated or inadvertent violations if it fails to obtain the information needed to honor a do-not-call request.[441] Six comments supported the amendments,[442] and none opposed them.

The Commission accordingly has decided to adopt the amendment to § 310.4(b)(1)(ii), which currently prohibits sellers and telemarketers from ''[d]enying or interfering in any way, directly or indirectly'' with a consumer's right to be placed on an entity-specific do-not-call list. In order to make the prohibition more explicit and to put sellers and telemarketers clearly on notice of the practices it prohibits, the amendment adds illustrative examples of the types of burdens the Commission regards as impermissible. As amended, the prohibition lists the following examples of impermissible burdens: Harassing consumers who make such a request, hanging up on them, failing to honor the request, requiring the consumer to listen to a sales pitch before accepting the request, assessing a charge or fee for honoring the request, requiring the consumer to call a different number to submit the request, and requiring the consumer to identify the seller or charitable organization making the call or on whose behalf the call is made.[443]

The Commission also amends § 310.4(b)(3), which provides a safe harbor for inadvertent violations of the prohibition in § 310.4(b)(1)(ii) against denying or interfering with an entity specific do-not-call request if certain requirements are met. The amendment was specifically supported by one comment and none opposed it.[444] As amended, § 310.4(b)(3) withholds the benefits of the safe harbor from a seller or telemarketer that fails to obtain the information necessary to honor an entity-specific do-not-call request. This amendment emphasizes that § 310.4(b)(1)(ii) places the burden on sellers and telemarketers to obtain the information they need to comply with a do-not-call request because they are in a better position to obtain the information they need than consumers, who are often uncertain about the identity of the seller on whose behalf a call is made.[445]

3. Section 310.8(c)—Prohibition on Registry Fee Sharing

The NPRM proposed a clarification that would make it explicit that the TSR prohibition against sellers sharing the cost of Registry fees is absolute. Five comments noted their support for the amendment,[446] and none opposed it.

The original prohibition was adopted by the Commission in conformity with regulations previously adopted by the FCC that flatly ban any sharing or division of costs for accessing the National Do Not Call Registry.[447] As the NPRM noted, it was the Commission's intention to adopt a blanket prohibition on any division or sharing of costs for accessing the Do Not Call Registry, but the provision could be read as permitting a person to sign up to access the Registry and, before ever actually accessing it, sell or transfer the registration for consideration to others seeking Registry access. The Commission has determined to adopt the proposed amendment to conform it more closely to the FCC prohibition and to prevent any possible misreading of the absolute prohibition.[448] As amended, the prohibition in the final sentence of § 310.8(c) emphasizes that no person may participate in any arrangement to share the cost of accessing the National Do Not Call Registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

IV. Regulatory Analysis and Regulatory Flexibility Act Requirements

The Regulatory Flexibility Act of 1980 (''RFA'') [449] requires a description and analysis of proposed and final rules that will have a significant economic impact on a substantial number of small entities.[450] The RFA requires an agency to provide an Initial Regulatory Flexibility Analysis (''IRFA'') [451] with the proposed rule and a Final Regulatory Flexibility Analysis (''FRFA'') [452] with the final rule, if any. Section 605 of the RFA [453] provides that such an analysis is not required if the agency head certifies that the regulatory

[436] *Id.* at 41218–19.

[437] AFR at 2; NCLC at 16; AGO at 12; DOJ–CPB at 4 (citing legal principles and case law assigning the burden to the seller or telemarketer).

[438] InfoCision at 4.

[439] *NPRM, supra* note 1, at 41218.

[440] *Id.* at 41219.

[441] *Id.* at 41218.

[442] Transp. FCU; AFR at 2; NCLC at 16; AGO at 12; DOJ–CPB at 1; DOJ-Criminal at 1.

[443] *See NPRM, supra* note 1, at 41218.

[444] DOJ-Criminal at 1.

[445] *See NPRM, supra* note 1, at 41200.

[446] AFR at 2; NCLC at 16; AGO at 12; DOJ–CPB at 1; DOJ-Criminal at 1.

[447] *Telemarketing Sales Rule Fees,* 68 FR 45134, 45136 nn.29–30 (July 31, 2003) (citing 47 CFR 64.1200(c)(2)(i)(E), as amended July 3, 2003)). The prohibition is necessary because ''allowing telemarketers and others to share the information obtained from the national registry would threaten the financial support for maintaining the database.'' *Id.* at 45136.

[448] *See NPRM, supra* note 1, at 41220.

[449] 5 U.S.C. 601–612.

[450] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small-business concern'' as a business that is ''independently owned and operated and which is not dominant in its field of operation.'' 15 U.S.C. 632(a)(1).

[451] 5 U.S.C. 603.

[452] 5 U.S.C. 604.

[453] 5 U.S.C. 605.

action will not have a significant economic impact on a substantial number of small entities.

Although the Commission believed that the amendments it proposed would not have a significant economic impact upon small entities, it included an IRFA in the NPRM and solicited public comment on it. None of the public comments received addressed the IRFA. The Commission continues to believe that the amendments it is adopting will not have a significant economic impact upon small entities, but nonetheless in the interest of caution is providing this FRFA.

A. Need for and Objectives of the Rule Amendments

As described in Sections II through III above, the amendments are intended to address telemarketing sales abuses arising from the use of remotely created checks, remotely created payment orders, cash-to-cash money transfers, cash reload mechanisms, recovery services, and entity-specific do-not-call requests. Other amendments clarify several TSR requirements in order to reflect longstanding Commission enforcement policy. The objective of the amendments is to curb deceptive and abusive practices occurring in telemarketing. The legal basis for the amendments is the Telemarketing Act.

B. Significant Issues Raised by Public Comments in Response to the IRFA, Including Any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration, and the Agency's Response, Including Any Changes Made in the Final Rule Amendments

As noted earlier, no comments, including any from the Small Business Administration, were received directly in response to the IRFA. Some concerns were raised about the potential effect of the prohibition against remotely created payment orders and remotely created checks on small business by FRBA and by InfoCision, as discussed in section II.A.2 above.[454]

C. Description and Estimate of the Number of Small Entities To Which the Amendments Will Apply or Explanation Why No Estimate Is Available

The amendments to the Rule affect sellers and telemarketers engaged in ''telemarketing,'' as defined by the Rule to mean ''a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call.''[455] For the majority of entities subject to the amendments—sellers and telemarketers—a small business is defined by the Small Business Administration as one whose average annual receipts do not exceed $7 million.[456]

Determining a precise estimate of how many of these are small entities, or describing those entities further, is not readily feasible because the staff is not aware of published data that report annual revenue or employment figures for the industry. The Commission invited comment and information on this issue, but received no comments.

D. Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Amendments, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The Commission does not believe that the amendments impose any new disclosure, reporting, recordkeeping or other compliance burdens. Rather, the amendments add to or revise existing TSR prohibitions and clarify existing requirements. The amendments: (1) Add new prohibitions barring the use of remotely created checks, remotely created payment orders, cash-to-cash money transfers, and cash reload mechanisms in both outbound and inbound telemarketing; and (2) revise the existing prohibition on advance fee recovery services, now limited to recovery of losses in prior telemarketing transactions, to include recovery of losses in *any* previous transaction.

The amendments also include a number of minor technical revisions that do not impose any new disclosure, reporting, recordkeeping or other compliance burdens, but merely clarify existing TSR requirements to reflect Commission enforcement policy. These amendments state expressly (1) that the seller or telemarketer bears the burden of demonstrating under 16 CFR 310.4(b)(1)(iii)(B) that the seller has an existing business relationship (''EBR'') with a customer whose number is listed on the Do Not Call Registry, or has obtained the express written agreement (''EWA'') of such a customer to receive a telemarketing call, as previously stated by the Commission; (2) that the requirement in 16 CFR 310.3(a)(3)(ii) that any recording made to memorialize a customer's or donor's express verifiable authorization (''EVA'') must include an accurate description, clearly and conspicuously stated, of the goods or services or charitable contribution for which payment authorization is sought; (3) that the business-to-business exemption in 16 CFR 310.6(b)(7) extends only to calls inducing a sale or contribution from the business itself, and not to calls inducing sales or contributions from individuals employed by the business; (4) that under 16 CFR 310.8(c) no person can participate in an arrangement to share the cost of accessing the National Do Not Call Registry; and (5) provide examples of the types of impermissible burdens on consumers that the Commission regards as violations of 16 CFR 310.4(b)(1)(ii) because they deny or interfere with their right to be placed on a seller's or telemarketer's entity-specific do-not-call list. A related amendment specifies that a seller's or telemarketer's failure to obtain the information necessary to honor a consumer's request to be placed on a seller's entity-specific do-not-call list pursuant to 16 CFR 310.4(b)(1)(ii) disqualifies it from relying on the safe harbor in 16 CFR 310.4(b)(3) for isolated or inadvertent violations.

The classes of small entities affected by the amendments include telemarketers or sellers engaged in acts or practices covered by the Rule. The Commission maintains its belief, in the absence of any comments it requested on this issue, that no professional skills will be required for compliance with the amendments because the amendments do not impose any new reporting, recordkeeping, disclosure or other compliance requirements, and do not extend the scope of the TSR to cover additional entities.

E. Steps Taken To Minimize the Significant Impact, If Any, of the Rule Amendments, Including Why Any Significant Alternatives Were Not Adopted

Although some of the public comments did suggest alternatives to the prohibition on the use of remotely

[454] *See also supra* note 220; InfoCision at 2; FRBA–1 at 3.

[455] 16 CFR 310.2(dd). The Commission notes that, as mandated by the Telemarketing Act, the interstate telephone call requirement in the definition excludes small business sellers and the telemarketers who serve them in their local market area, but may not exclude some sellers and telemarketers in multi-state metropolitan markets, such as Washington, DC.

[456] These numbers represent the size standards for most sellers in retail and service industries ($7 million total receipts). The standard for ''Telemarketing Bureaus and Other Contact Centers'' (NAICS Code 561422) is also $7 million. A list of the SBA's current size standards for all industries can be found in SBA, *Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

created checks and remotely created payment orders in telemarketing, the Commission is not persuaded that the alternatives suggested would be equally effective in protecting consumers or that they are within the Commission's authority, as described above in section II.A.3.a(2). Nonetheless, in formulating the amendments, the Commission made every effort to avoid imposing unduly burdensome requirements on sellers and telemarketers. To that end, sellers and telemarketers that comply with the prohibitions on the use of remotely created checks and payment orders, cash-to-cash money transfers, and cash reload mechanisms in inbound telemarketing remain exempt from the TSR's requirements if they otherwise qualify for the general media or direct mail exemptions. Moreover, while non-compliance with one of these prohibitions subjects the violator to a TSR enforcement action for the violation, it does not deprive the violator of its exemption from the other requirements of the TSR. The Rule amendments regarding the advance fee ban on recovery services and the inapplicability of the safe harbor for telemarketers that fail to obtain the information necessary to honor a request to be placed on a seller's entity-specific do-not-call list do not add additional disclosure or recordkeeping burdens or unduly expand the scope of the TSR and are necessary to protect consumers.

V. Paperwork Reduction Act

The amendments adopted by the Commission do not create any new recordkeeping or disclosure requirements, or expand the existing coverage of those requirements to marketers not previously covered by the TSR. Accordingly, they do not invoke the Paperwork Reduction Act.[457]

The new prohibitions on the use of remotely created checks, remotely created payment orders, cash-to-cash money transfers, and cash reload mechanisms apply not only to marketers making outbound calls that are currently subject to the TSR, but also to those who receive inbound calls from consumers as a result of direct mail or general media advertising. While the new prohibition on the use of novel payment methods applies to both outbound and inbound telemarketing calls, sellers and telemarketers that comply with these inbound telemarketing prohibitions remain exempt from the TSR if they otherwise qualify for the direct mail or general media exemptions.[458] These two exceptions include exemption from the TSR's disclosure and recordkeeping obligations. Moreover, while non-compliance with one of these prohibitions subjects the violator to a TSR enforcement action for the violation, it does not deprive the violator of its exemption from the other requirements of the TSR.

The expansion of the TSR's ban on advance fees for recovery services to apply to funds lost in *any* prior transaction also has no discernible PRA ramifications because it, too, requires no disclosures or recordkeeping. The same is true for the amendment making sellers and telemarketers ineligible for the safe harbor for isolated or inadvertent TSR violations if they fail to obtain the information necessary to honor a request to be placed on a seller's entity-specific do-not-call list. Nothing in that amendment requires any disclosure or recordkeeping.[459] Likewise, the Commission believes that the five technical amendments intended to make explicit the existing requirements of the TSR does not impose any new disclosure or recordkeeping obligations.

List of Subjects in 16 CFR Part 310

Telemarketing, Trade practices.

For the reasons set forth in the preamble, the Federal Trade Commission amends title 16 Code of Federal Regulations as follows:

PART 310—TELEMARKETING SALES RULE 16 CFR PART 310

■ 1. The authority citation for part 310 continues to read as follows:

Authority: 15 U.S.C. 6101–6108.

■ 2. Amend § 310.2 by redesignating paragraphs (aa) through (ee) as paragraphs (dd) through (hh), redesignating paragraphs (f) through (z) as paragraphs (h) through (bb), and adding paragraphs (f), (g), and (cc) to read as follows:

§ 310.2 Definitions.

* * * * *

(f) *Cash-to-cash money transfer* means the electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2)) transfer of the value of cash received from one person to another person in a different location that is sent by a money transfer provider and received in the form of cash. For purposes of this definition, *money transfer provider* means any person or financial institution that provides cash-to-cash money transfers for a person in the normal course of its business, whether or not the person holds an account with such person or financial institution. The term *cash-to-cash money transfer* includes a remittance transfer, as defined in section 919(g)(2) of the Electronic Fund Transfer Act (''EFTA''), 15 U.S.C. 1693a, that is a cash-to-cash transaction; however it does not include any transaction that is:

(1) An electronic fund transfer as defined in section 903 of the EFTA;

(2) Covered by Regulation E, 12 CFR 1005.20, pertaining to gift cards; or

(3) Subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*

(g) *Cash reload mechanism* is a device, authorization code, personal identification number, or other security measure that makes it possible for a person to convert cash into an electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2)) form that can be used to add funds to a general-use prepaid card, as defined in Regulation E, 12 CFR 1005.2, or an account with a payment intermediary. For purposes of this definition, a cash reload mechanism is not itself a general-use prepaid debit card or a swipe reload process or similar method in which funds are added directly onto a person's own general-use prepaid card or account with a payment intermediary.

* * * * *

(cc) *Remotely created payment order* means any payment instruction or order drawn on a person's account that is created by the payee or the payee's agent and deposited into or cleared through the check clearing system. The term includes, without limitation, a ''remotely created check,'' as defined in Regulation CC, Availability of Funds and Collection of Checks, 12 CFR 229.2(fff), but does not include a payment order cleared through an Automated Clearinghouse (ACH) Network or subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.,* and Regulation Z, 12 CFR part 1026.

* * * * *

■ 3. Amend § 310.3 by redesignating paragraphs (a)(3)(ii)(A) through (G) as paragraphs (a)(3)(ii)(B) through (H) and adding paragraph (a)(3)(ii)(A) to read as follows:

[457] 44 U.S.C. 3501–3521. The PRA also addresses reporting requirements, but neither the TSR nor the amendments present them.

[458] 16 CFR 310.6(b)(5)–(6).

[459] Even though some sellers and telemarketers, in order to prove that they are eligible for the safe harbor, might seek to document the fact that they have honored such requests, neither the amendment nor the TSR requires them to do so.

§ 310.3 Deceptive telemarketing acts or practices.

(a) * * *

(3) * * *

(ii) * * *

(A) An accurate description, clearly and conspicuously stated, of the goods or services or charitable contribution for which payment authorization is sought;

* * * * *

■ 4. Amend § 310.4 by:

■ a. Revising paragraph (a)(3);

■ b. Effective June 13, 2016, amending paragraph (a)(7)(ii)(B) by removing ''or'' from the end of the paragraph;

■ c. Effective June 13, 2016, amending paragraph (a)(8) by removing the final period and adding a semicolon in its place.

■ d. Effective June 13, 2016, adding paragraphs (a)(9) and (10);

■ e. Revising paragraphs (b)(1)(ii), (b)(1)(iii)(B), and (b)(3)(vi);

The revisions and additions read as follows:

§ 310.4 Abusive telemarketing acts or practices.

(a) * * *

(3) Requesting or receiving payment of any fee or consideration from a person for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney;

* * * * *

(9) Creating or causing to be created, directly or indirectly, a remotely created payment order as payment for goods or services offered or sold through telemarketing or as a charitable contribution solicited or sought through telemarketing; or

(10) Accepting from a customer or donor, directly or indirectly, a cash-to-cash money transfer or cash reload mechanism as payment for goods or services offered or sold through telemarketing or as a charitable contribution solicited or sought through telemarketing.

(b) * * *

(1) * * *

(ii) Denying or interfering in any way, directly or indirectly, with a person's right to be placed on any registry of names and/or telephone numbers of persons who do not wish to receive outbound telephone calls established to comply with paragraph (b)(1)(iii)(A) of this section, including, but not limited to, harassing any person who makes such a request; hanging up on that person; failing to honor the request; requiring the person to listen to a sales pitch before accepting the request; assessing a charge or fee for honoring the request; requiring a person to call a different number to submit the request; and requiring the person to identify the seller making the call or on whose behalf the call is made;

(iii) * * *

(B) That person's telephone number is on the ''do-not-call'' registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services unless the seller or telemarketer:

(*1*) Can demonstrate that the seller has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature[664] of that person; or

(*2*) Can demonstrate that the seller has an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls under paragraph (b)(1)(iii)(A) of this section; or

* * * * *

(3) * * *

(vi) Any subsequent call otherwise violating paragraph (b)(1)(ii) or (iii) of this section is the result of error and not of failure to obtain any information necessary to comply with a request pursuant to paragraph (b)(1)(iii)(A) of this section not to receive further calls by or on behalf of a seller or charitable organization.

* * * * *

■ 5. Amend § 310.6 by revising paragraphs (b)(5) through (7) to read as follows:

§ 310.6 Exemptions.

* * * * *

(b) * * *

(5) Telephone calls initiated by a customer or donor in response to an advertisement through any medium, other than direct mail solicitation, *provided,* however, that this exemption does not apply to:

(i) Calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or advertisements involving offers for goods or services described in § 310.3(a)(1)(vi) or § 310.4(a)(2) through (4);

(ii) [Reserved]

(iii) Any instances of upselling included in such telephone calls;

(6) Telephone calls initiated by a customer or donor in response to a direct mail solicitation, including solicitations via the U.S. Postal Service, facsimile transmission, electronic mail, and other similar methods of delivery in which a solicitation is directed to specific address(es) or person(s), that clearly, conspicuously, and truthfully discloses all material information listed in § 310.3(a)(1), for any goods or services offered in the direct mail solicitation, and that contains no material misrepresentation regarding any item contained in § 310.3(d) for any requested charitable contribution; *provided,* however, that this exemption does not apply to:

(i) Calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or goods or services described in § 310.3(a)(1)(vi) or § 310.4(a)(2) through (4);

(ii) [Reserved]

(iii) Any instances of upselling included in such telephone calls; and

(7) Telephone calls between a telemarketer and any business to induce the purchase of goods or services or a charitable contribution by the business, except calls to induce the retail sale of nondurable office or cleaning supplies; *provided,* however, that §§ 310.4(b)(1)(iii)(B) and 310.5 shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.

■ 6. Effective June 13, 2016, § 310.6 is further amended by adding paragraphs (b)(5)(ii) and (b)(6)(ii) to read as follows:

§ 310.6 Exemptions.

* * * * *

(b) * * *

(5) * * *

(ii) The requirements of § 310.4(a)(9) or (10); or

* * * * *

(6)

(ii) The requirements of § 310.4(a)(9) or (10); or

* * * * *

[664] For purposes of this Rule, the term ''signature'' shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

■ 7. Amend § 310.8 by revising paragraph (c) to read as follows:

§ 310.8 Fee for access to the National Do Not Call Registry.

* * * * *

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is $60 for each area code of data accessed, up to a maximum of $16,482; provided, however, that there shall be no charge to any person for accessing the first five area codes of data, and provided further, that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing area codes of data in the National Do Not Call Registry if the person is permitted to access, but is not required to access, the National Do Not Call Registry under this Rule, 47 CFR 64.1200, or any other Federal regulation or law. No person may participate in any arrangement to share the cost of accessing the National Do Not Call Registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

* * * * *

By direction of the Commission, Commissioner Ohlhausen dissenting.

Donald S. Clark,

Secretary.

Note: The following Statement of the Federal Trade Commission and Separate Statement of Commissioner Maureen K. Ohlhausen, Dissenting In Part, will not appear in the Code of Federal Regulations.

Statement of the Federal Trade Commission on Amendments to the Telemarketing Sales Rule

Following careful study of an extensive public record, the Commission is amending the Telemarketing Sales Rule (''TSR'') to address new forms of telemarketing fraud and more effectively protect consumers from deceptive and abusive telemarketing practices.[1] The main change is a ban on the use in telemarketing of four types of non-conventional payment methods as to which fraudulent use is pervasive—remotely created checks (''RCCs''), remotely created payment orders (''RCPOs''), cash reload mechanisms, and cash-to-cash money transfers.

In assessing whether a telemarketing practice is ''abusive,'' we apply our traditional unfairness test and ask whether the practice causes or is likely to cause substantial injury to consumers that is neither reasonably avoidable by consumers nor outweighed by countervailing benefits to consumers or competition. As detailed at length in our **Federal Register** Notice, we conclude that the use of these four payment methods in telemarketing transactions constitutes an abusive practice.

The record demonstrates that the telemarketing use of each of these payment methods has resulted in rampant abuse that has caused substantial harm to consumers. This abuse persists despite significant law enforcement efforts by the Federal Trade Commission and other federal and state law enforcers. Indeed, gaps in our financial system make it difficult to detect and stop fraudulent use of these payment methods. And, in contrast to the overwhelming evidence of telemarketing fraud exploiting the use of these payment methods, we find almost no evidence that they are being used for legitimate telemarketing purposes. This has led numerous law enforcers to call for a prohibition on the use of all four of these non-conventional payment methods.[2] Based on the record before us, as well as our own extensive enforcement experience, we agree that a ban is both necessary and appropriate.

Opponents of a ban acknowledge the substantial harm consumers have suffered and continue to suffer but argue that a prohibition is premature, would fragment legal requirements for payments, and would impinge on legitimate and emerging uses of the four payment methods. We find these arguments unpersuasive when balanced against the unmitigated and significant harm to consumers that the Commission continues to see in this area.

First, it is undeniable that years of public efforts to control the widespread abuse of RCCs and RCPOs in telemarketing have failed to protect consumers, and there is no indication that this situation will change in the foreseeable future. For instance, efforts to add protections to RCCs have languished for the past decade. Nor has there been any progress in recent years in efforts to improve the tracking of remotely created payments. Similarly, regulations governing remittances, including cash-to-cash money transfers, as well as proposed rules regarding prepaid accounts, which would address only certain cash reload mechanisms, do not address the telemarketing abuses that concern us. Simply put, there are no regulatory efforts underway that would address the serious harms to consumers that our proceeding has identified.

Second, we believe the clear, bright line rules we are putting in place provide much needed clarity for telemarketers and payment processors in a landscape that currently consists of a patchwork of state and federal rules. Rather than fragmenting the law in this area, we are simplifying it.

Finally, as noted above, we have found virtually no evidence of legitimate telemarketing uses of the four payment methods at issue. Our ban is focused on addressing abusive telemarketing practices using these payment methods; it does not get in the way of future innovation in the area of payor-initiated payments—including the use of digital checks created by consumers using their smartphones—in telemarketing and other transactions. In fact, the telemarketing industry has already adopted a variety of newer and safer payment alternatives.[3] Moreover, in light of existing requirements, our amended TSR Rule is unlikely to impose any significant additional costs on the payments industry.[4]

For all of these reasons, we believe the TSR amendments we announce today are an important and necessary step to stop ongoing substantial harm to consumers from telemarketing fraud.

By direction of the Commission, Commissioner Ohlhausen dissenting.

Donald S. Clark,

Secretary.

Separate Statement of Commissioner Maureen K. Ohlhausen, Dissenting in Part in the Matter of the Telemarketing Sales Rule

Today the Commission amends the Telemarketing Sales Rule (TSR) in an effort to combat telemarketing fraud.[1] I support the Commission's long-standing efforts to combat fraud. However, I do not support the amendments prohibiting telemarketers and sellers in both inbound and outbound telemarketing calls from requesting or accepting as payment four ''novel'' payment methods: Remotely created checks (RCCs), remotely created payment orders (RCPOs), money transfers, and cash reload mechanisms. The amendments do not satisfy the third prong of the unfairness analysis in

[1] This statement reflects the views of Chairwoman Ramirez, Commissioner Brill, and Commissioner McSweeny.

[2] The Commission received comments in support of the proposed TSR amendments from the following federal and state agencies: Consumer Protection Branch, U.S. Department of Justice; Criminal Division, U.S. Department of Justice; Consumer Financial Protection Bureau; and the Offices of Attorneys General in 24 states and the District of Columbia.

[3] *See* Press Release, InComm, *InComm Expands Vanilla Reload Network, Plans to Add Swipe Reload at Over 15,000 More Retail Locations: InComm removes reload packs from stores to help prevent victim assisted fraud* (Oct. 24, 2014), *available at http://www.incomm.com/news-events/Pages/Press%20Releases/InComm-Expands-Vanilla-Reload-Network-Plans-to-Add-Swipe-Reload-to-Over-15000-More-Retail-Locations.aspx* (describing InComm's plans to add over 15,000 swipe reload locations to its network to help eliminate fraud perpetrated through the use of reload packs); Testimony of William Tauscher Chairman and Chief Executive Officer Blackhawk Network Holdings, Inc. Before United States Senate Special Committee on Aging Hearing ''Private Industry's Role in Stemming the Tide of Phone Scams,'' at 3 (Nov. 19, 2014), *available at http://www.aging.senate.gov/imo/media/doc/Tauscher_11_19_14.pdf* (describing Blackhawk's enhancements to its reload options for its Reloadit Pack product to combat fraud).

[4] Payment processors and their financial institutions already must comply with the Bank Secrecy Act and associated anti-money laundering laws and regulations which require initial and ongoing customer due diligence. *See* 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 18 U.S.C. 1956–1957 & 1960, 31 U.S.C. 5311–5314 and 5316–5332, with implementing regulations at 31 CFR Ch. X. These obligations require banks to understand and monitor the business of their merchant and merchant processor customers.

[1] These amendments make several clarifications of the existing rule, which I support. Additionally, I support the amendment's expansion of the prohibition against advanced fees for all recovery services, regardless of whether the original loss resulted from a telemarketing transaction.

Section 5(n) of the FTC Act,[2] which requires us to balance consumer injury against countervailing benefits to consumers or competition. Although the record shows there is consumer injury from the use of novel payment methods in telemarketing fraud, it is not clear that this injury likely outweighs the countervailing benefits to consumers and competition of permitting novel payments methods.

The comments filed by the Federal Reserve Bank of Atlanta (FRBA) [3] raise several serious objections to these amendments that undergird my conclusion. Although the FRBA supports efforts to reduce telemarketing fraud and improve oversight of payments, it does not support the specific prohibitions on novel payments for the following reasons:

• ''[I]t is clearly preferable public policy not to create a fragmented 'law of payments' in which multiple federal agencies take differing and/or conflicting views on the legitimacy of specific payment instruments.'' [4]

• ''RCPOs are an emerging form of payment. . . . Prohibiting their use prior to achieving clarity regarding the potentially enhanced consumer protections they offer or the business functionalities they could provide would be premature.'' [5]

• ''With respect to the difficulty in distinguishing legitimate uses from fraudulent uses of RCPOs, the FRBA would ask that the FTC allow industry some time to develop mechanisms by which this distinction could be achieved. There is an opportunity, through authentication and other technology driven solutions, for RCPOs to provide many of the benefits of checks without carrying many of the risks. A premature ban on their use in the telemarketing context may limit their use elsewhere as they would be stigmatized as a 'risky' form of payment.'' [6]

• ''FRBA and the Commission both perceive the check collection and return system is lacking a comprehensive method or process of identifying and responding to transactional patterns that are strongly indicative of large scale consumer fraud. However, FRBA does not believe that the problem can be addressed effectively by banning the use of RCCs and RCPOs.'' [7]

• ''FRBA respectfully suggests that a strengthened regulatory response to this lack of data that could identify significant patterns of consumer fraud is not to ban the use of checks or any subset of checks, but to require every bank to collect and report to its primary federal regulator on a frequent basis each instance in which any of its customers deposited significant numbers of checks that resulted in an abnormal number or rate of returns.'' [8]

In sum, the FRBA's analysis of the prohibition of novel payments in telemarketing indicates that any reduction in consumer harm from telemarketing fraud is outweighed by the likely benefits to consumers and competition of avoiding a fragmented law of payments, not limiting the use of novel payments prematurely, and allowing financial regulators working with industry to develop better consumer protections. The FRBA has instead requested that we work together with our sister agencies by striving to ''strengthen anti-fraud and consumer protection measures around existing and emerging payment mechanisms rather than by prohibiting the use of specific payment methods only in the telemarketing industry.'' [9] I believe the better course for consumers and competition is to accept this invitation.

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[2] 15 U.S.C. 45(n) (prohibiting acts or practices that cause or are likely to cause substantial injury to consumers, which are not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition).

[3] The FRBA operates the Federal Reserve System's Retail Payments Product Office, which manages and oversees the check and Automated Clearing House (ACH) services that the Federal Reserve banks provide to U.S. financial institutions.

[4] Comments of Federal Reserve Bank of Atlanta, at 2 (Aug. 8, 2013), *https://www.ftc.gov/policy/public-comments/comment-00031-1*.

[5] *Id.*

[6] *Id.* at 3.

[7] *Id.* at 4.

[8] *Id.*

[9] *Id.*

FEDERAL REGISTER

Vol. 80 Monday,

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Part IV

The President

Proclamation 9380—Human Rights Day and Human Rights Week, 2015

Federal Register
Vol. 80, No. 239
Monday, December 14, 2015

Presidential Documents

Title 3—

The President

Proclamation 9380 of December 9, 2015

Human Rights Day and Human Rights Week, 2015

By the President of the United States of America

A Proclamation

Sixty-seven years ago, the leaders of 48 countries from around the world declared with one voice that progress depends on defending human rights, and that a nation is strongest when the contributions of its whole citizenry are valued. Today, we celebrate the Universal Declaration of Human Rights—a milestone in our ongoing global march to uphold the inherent dignity and worth of every person. To honor the legacy of this historic document and to help ensure that its ideals endure for generations to come, we reaffirm our commitment to upholding the freedoms it safeguards, which are the birthright of all humanity.

When rights are suppressed, human potential is stifled. A nation draws upon new talents and ideas when opposition parties are fairly represented and those in power are accountable to their citizens at the ballot box. A free and independent press and a vibrant civil society can inform the public, expose corruption, and empower citizens to participate in self-governance. And when institutions are built to protect rights and freedoms, rather than serve the interests of those in power, those institutions can provide the stable foundation for stability needed for future generations to thrive.

In too many places around the world we see rights and freedoms denied. People are imprisoned for peaceful worship and girls are barred from attending school. LGBT individuals are subject to abuse because of who they are and who they love, and citizens are prevented from petitioning those in power for change. The United States of America stands in solidarity with those seeking to realize a brighter and freer future for themselves and their families, whether in their home country or as immigrants in a new land. We will continue to lift up the lives of all who yearn to exercise their inherent human rights and to shine a light on those still living in the darkest pockets of our world.

The strongmen of today will never extinguish the hope that persists around the world. Dissenters may be jailed, but ideas can never be imprisoned. Controlling access to information will not turn lies into truths, nor will it deter the longing for justice that stirs in every human soul. And refusing to recognize the basic dignity of every man, woman, and child—regardless of gender, background, race, ethnicity, sexual orientation, or belief—will only lend further momentum to the quest for equality that for generations has stirred hearts and spurred action. On this day, and every day, let us remember our roots as one human family, forever dedicated to upholding the central tenets of the Universal Declaration of Human Rights.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim December 10, 2015, as Human Rights Day and the week beginning December 10, 2015, as Human Rights Week. I call upon the people of the United States to mark these observances with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of December, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and fortieth.

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