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# Contents

**Federal Register**

Vol. 81, No. 5

Friday, January 8, 2016

## **Agriculture Department**

*See* Animal and Plant Health Inspection Service

## **Animal and Plant Health Inspection Service**

### **NOTICES**

Petition for Determination of Nonregulated Status:  
 Scotts Co. and Monsanto Co.; Creeping Bentgrass  
 Genetically Engineered for Resistance to Glyphosate,  
 902–903

## **Centers for Disease Control and Prevention**

### **NOTICES**

Meetings:  
 Disease, Disability, and Injury Prevention and Control  
 Special Emphasis Panel; Initial Review, 937

## **Chemical Safety and Hazard Investigation Board**

### **NOTICES**

Meetings; Sunshine Act, 903

## **Commerce Department**

*See* International Trade Administration

*See* National Oceanic and Atmospheric Administration

## **Committee for Purchase From People Who Are Blind or Severely Disabled**

### **NOTICES**

Procurement List; Additions and Deletions, 915–917

## **Defense Department**

### **NOTICES**

Arms Sales, 917–924

Meetings:

National Defense University Board of Visitors, 922

## **Defense Nuclear Facilities Safety Board**

### **NOTICES**

Meetings; Sunshine Act, 924

## **Education Department**

### **NOTICES**

Agency Information Collection Activities; Proposals,  
 Submissions, and Approvals:  
 Loan Cancellation in the Federal Perkins Loan Program,  
 924–925

## **Energy Department**

*See* Federal Energy Regulatory Commission

### **RULES**

Energy Conservation Program:  
 Energy Conservation Standards for Refrigerated Bottled or  
 Canned Beverage Vending Machines, 1028–1113

## **Environmental Protection Agency**

### **NOTICES**

Environmental Impact Statements; Availability, etc.;  
 Availability, 936

Meetings:

Great Lakes Advisory Board, 935–936

## **Federal Aviation Administration**

### **RULES**

Airworthiness Directives:

The Boeing Company Airplanes, 869

### **NOTICES**

Environmental Impact Statements; Availability, etc.:  
 Proposed Airport, Angoon, AK, 991

Meetings:

RTCA Special Committee 214/EUROCAE WG–78:  
 Standards for Air Traffic Data Communication  
 Services, 990

## **Federal Emergency Management Agency**

### **NOTICES**

Tribal Declarations Pilot Guidance, 943

## **Federal Energy Regulatory Commission**

### **NOTICES**

Combined Filings, 928–930, 932–934  
 Environmental Assessments; Availability, etc.:  
 Comanche Trail Pipeline, LLC; San Elizario Crossing  
 Project, 935  
 Trans-Pecos Pipeline, LLC; Presidio Border Crossing  
 Project, 925–926

Filings:

City of Anaheim, CA, 927–928

City of Colton, CA, 925

Heartland Consumers Power District, 933

Martha Coakley, Massachusetts Attorney General, et al. v.  
 Bangor Hydro-Electric Co., et al., 931

Martha Coakley, Massachusetts Attorney General, et al. vs  
 Bangor Hydro-Electric Co., et al., 928, 931–932

Martha Coakley, Massachusetts Attorney General;  
 Connecticut Public Utilities Regulatory Authority; et  
 al. vs. Bangor Hydro-Electric Co.; Central Maine  
 Power Co.; et al., 927

Missouri Joint Municipal Electric Utility Commission,  
 927

Hydroelectric Applications:

Public Service Co. of New Hampshire, 930–931

Preliminary Permit Applications:

Water District No.1 of Johnson County, KS, 926

## **Federal Reserve System**

### **NOTICES**

Formations of, Acquisitions by, and Mergers of Bank  
 Holding Companies, 936–937

## **Fish and Wildlife Service**

### **PROPOSED RULES**

Endangered and Threatened Wildlife and Plants:

12-Month Finding on a Petition to Downlist the West  
 Indian Manatee, and Proposed Rule to Reclassify the  
 West Indian Manatee as Threatened, 1000–1026

Non-subsistence Take of Wildlife, and Public Participation  
 and Closure Procedures, on National Wildlife Refuges  
 in Alaska, 886–897

### **NOTICES**

Environmental Impact Statements; Availability, etc.:

Chincoteague National Wildlife Refuge and Wallops

Island National Wildlife Refuge, Accomack County,  
 VA, 947–948

**Food and Drug Administration****NOTICES**

## Guidance:

- Over-the-Counter Sunscreens—Safety and Effectiveness Data, 940–941
- Use of Nucleic Acid Tests to Reduce the Risk of Transmission of Hepatitis B Virus from Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products, 937–938

## Meetings:

- Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee, 938–940

**General Services Administration****PROPOSED RULES**

## Federal Travel Regulation:

- Incidental Expenses Definition and the Laundry, Cleaning, and Pressing of Clothing Policy, 883–884

**Health and Human Services Department**

See Centers for Disease Control and Prevention

See Food and Drug Administration

See National Institutes of Health

**PROPOSED RULES**

- National Vaccine Injury Compensation Program: Revisions to the Vaccine Injury Table, 884–885

**Homeland Security Department**

See Federal Emergency Management Agency

See Transportation Security Administration

**Housing and Urban Development Department****PROPOSED RULES**

## Meetings:

- Negotiated Rulemaking Committee Native American Housing Assistance and Self-Determination Act of 1996, 881–882

**NOTICES**

- Federal Property Suitable as Facilities to Assist the Homeless, 945–947

**Indian Affairs Bureau****NOTICES**

- Proclaiming Certain Lands as Reservation for the Mashpee Wampanoag, 948–961

**Interior Department**

See Fish and Wildlife Service

See Indian Affairs Bureau

See Land Management Bureau

See National Park Service

See Reclamation Bureau

See Special Trustee for American Indians Office

**Internal Revenue Service****PROPOSED RULES**

- Substantiation Requirement for Certain Contributions; Withdrawal, 882–883

**International Trade Administration****NOTICES**

- Antidumping or Countervailing Duty Investigations, Orders, or Reviews:

- Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia and the People's Republic of China, 907–908
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China, 908–910

- Multilayered Wood Flooring from the People's Republic of China, 903–907

**Labor Department****NOTICES**

- Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  - Agreement Approval Process for Use of Functional Affirmative Action Programs, 970–971
  - VETS' Competitive Grant Programs Reporting, 970
- Requests for Information:
  - Department of Labor Research and Evaluation Plan for 2016, 967–970

**Land Management Bureau****NOTICES**

## Meetings:

- Las Cruces District Resource Advisory Council, NM, 961–962
- Wyoming Resource Advisory Council, 961

**Management and Budget Office****NOTICES**

- Final Sequestration Report to the President and Congress for Fiscal Year 2016, 971–972

**National Institutes of Health****NOTICES**

## Meetings:

- Center for Scientific Review, 942–943
- National Institute of Mental Health, 941–942
- National Institute on Alcohol Abuse and Alcoholism, 942

**National Oceanic and Atmospheric Administration****PROPOSED RULES**

- Fisheries of the Exclusive Economic Zone Off Alaska:
  - Bycatch Management in the Bering Sea Pollock Fishery, 897–901
- Review of Monitor National Marine Sanctuary Boundary, 879–881

**NOTICES**

- Agency Information Collection Activities; Proposals, Submissions, and Approvals, 910
- Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  - Fisheries Certificate of Origin, 914–915
  - Socioeconomics of Commercial Fishers and For Hire Diving and Fishing Operations in the Flower Garden Banks National Marine Sanctuary, 910–911

## Meetings:

- Gulf of Mexico Fishery Management Council, 911–912
- New England Fishery Management Council, 912–913
- South Atlantic Fishery Management Council, 913–914

**National Park Service****NOTICES**

## Charter Renewals:

- National Park System Advisory Board, 962

## Environmental Impact Statements; Availability, etc.:

- Glen Canyon Dam, Page, AZ; Long-Term Experimental and Management Plan for Operation; Meetings, 963–966

- National Register of Historic Places; Pending Nominations and Related Actions, 962–963

**National Science Foundation****NOTICES**

- Agency Information Collection Activities; Proposals, Submissions, and Approvals, 972

Antarctic Conservation Act Permit Applications, 972–973

### **Nuclear Regulatory Commission**

#### **NOTICES**

Meetings; Sunshine Act, 973

Requests to Amend a License to Import Radioactive Waste, 973–974

### **Pipeline and Hazardous Materials Safety Administration**

#### **PROPOSED RULES**

Pipeline Safety:

Liquid Pipeline Advisory Committee Meeting, 885–886

### **Postal Regulatory Commission**

#### **RULES**

Procedures Related to Commission Views, 869–878

#### **NOTICES**

New Postal Products, 974–978

### **Postal Service**

#### **NOTICES**

Product Changes:

First-Class Package Service Negotiated Service Agreement, 978

Parcel Select Negotiated Service Agreement, 978

### **Reclamation Bureau**

#### **NOTICES**

Environmental Impact Statements; Availability, etc.:

Glen Canyon Dam, Page, AZ; Long-Term Experimental and Management Plan for Operation; Meetings, 963–966

### **Securities and Exchange Commission**

#### **NOTICES**

Self-Regulatory Organizations; Proposed Rule Changes:

BATS Exchange, Inc., 989

EDGX Exchange, Inc., 987–989

NYSE Arca, Inc., 987

The NASDAQ Stock Market LLC, 978–986

### **Social Security Administration**

#### **NOTICES**

Privacy Act; Computer Matching Program, 989–990

### **Special Trustee for American Indians Office**

#### **NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Application to Withdraw Tribal Funds from Trust Status, 966–967

### **Surface Transportation Board**

#### **NOTICES**

Acquisitions and Operation Exemptions:

Jackson County, Mo. from Union Pacific Railroad Co., 992

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 991–992

### **Transportation Department**

See Federal Aviation Administration

See Pipeline and Hazardous Materials Safety Administration

See Surface Transportation Board

#### **NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 992–995

### **Transportation Security Administration**

#### **NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Airspace Waiver Program, 945

Enhanced Security Procedures at Ronald Reagan Washington National Airport, 943–944

Office of Law Enforcement/Federal Air Marshal Service Mental Health Certification, 944–945

### **Treasury Department**

See Internal Revenue Service

### **Veterans Affairs Department**

#### **NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Voice of Veteran Surveys, Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, etc., 995–997

Meetings:

MyVA Federal Advisory Committee, 998

Reimbursement for Caskets and Urns for Burial of

Unclaimed Remains in a National Cemetery, 997–998

---

### **Separate Parts In This Issue**

#### **Part II**

Interior Department, Fish and Wildlife Service, 1000–1026

#### **Part III**

Energy Department, 1028–1113

---

### **Reader Aids**

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

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settings); then follow the instructions.

**CFR PARTS AFFECTED IN THIS ISSUE**

---

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

**10 CFR**

429.....1028  
431.....1028

**14 CFR**

39.....869

**15 CFR****Proposed Rules:**

922.....879

**24 CFR****Proposed Rules:**

Ch. IX.....881

**26 CFR****Proposed Rules:**

1.....882

**39 CFR**

3017.....869

**41 CFR****Proposed Rules:**

300-3.....883

301-11.....883

301-12.....883

301-70.....883

**42 CFR****Proposed Rules:**

100.....884

**49 CFR****Proposed Rules:**

195.....885

**50 CFR****Proposed Rules:**

17.....1000

32 (2 documents) .....886, 887

36 (2 documents) .....886, 887

679.....897

# Rules and Regulations

Federal Register

Vol. 81, No. 5

Friday, January 8, 2016

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

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2015-0828; Directorate Identifier 2014-NM-146-AD; Amendment 39-18341; AD 2015-25-03]

RIN 2120-AA64

#### Airworthiness Directives; The Boeing Company Airplanes

##### Correction

In rule document 2015-30881, appearing on pages 80242-80247, in the Issue of Thursday, December 24, 2015, make the following correction:

Beginning in the second column, under the heading “**Request to Add Terminating Action**” on page 80243 and continuing to the end of the document, the entry “Boeing Alert Service Bulletin 747-57A2443” is corrected to read “Boeing Alert Service Bulletin 747-57A2343”.

[FR Doc. C1-2015-30881 Filed 1-7-16; 8:45 am]

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## POSTAL REGULATORY COMMISSION

### 39 CFR Part 3017

[Docket No. RM2015-14; Order No. 2960]

#### Procedures Related to Commission Views

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is issuing a set of final rules establishing the Commission’s process for developing views to the Secretary of State on certain international mail matters pursuant to 39 U.S.C. 407(c)(1). Relative to the proposed rules, the changes are minor in nature.

**DATES:** *Effective:* February 8, 2016.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. Introduction
- II. Rulemaking Context
- III. Summary of Proposed Rules
- IV. Review and Analysis of Comments
- V. Ordering Paragraphs

#### I. Introduction

On July 21, 2015, the Commission issued proposed rules describing general procedures related to the development of the Commission’s views on certain international mail matters pursuant to 39 U.S.C. 407(c)(1).<sup>1</sup> For the reasons discussed below, the Commission adopts final rules on this topic. The final rules reflect several minor revisions to the proposed rules.

#### II. Rulemaking Context

In addition to revising the longstanding approach to establishing domestic mail rates and classifications, the Postal Accountability and Enhancement Act (PAEA) of 2006 amended several statutory provisions concerning international mail matters.<sup>2</sup> One of these amendments directs the Secretary of State, prior to concluding a treaty, convention, or amendment establishing a market dominant rate or classification, to request the Commission’s views on the consistency of such rate or classification with the standards and criteria established by the Commission under 39 U.S.C. 3622. 39 U.S.C. 407(c)(1). Section 3622 concerns the establishment of a modern system for regulating rates and classes for market dominant products.

A companion provision requires the Secretary of State to ensure that each treaty, convention, or amendment concluded under section 407(b) is consistent with the Commission’s views unless the Secretary makes a written determination that ensuring such consistency is not in the Nation’s foreign policy or national security interest. 39 U.S.C. 407(c)(2). Such a written determination must be provided to the Commission, along with a full explanation of the reasons, but portions

<sup>1</sup> Notice of Proposed Rulemaking, July 21, 2015 (Order No. 2602).

<sup>2</sup> See Postal Accountability and Enhancement Act, Public Law 109-435, 120 Stat. 3198 (2006), section 405(a) (PAEA).

of the determination may be designated confidential for reasons of foreign policy or national security. *Id.*

The introduction of a formal advisory role for the Commission in this area was a significant change from previous law, as previous law did not require the Secretary of State to request the Commission’s views in carrying out the Secretary’s responsibilities.<sup>3</sup> Notwithstanding a degree of shared responsibility, the PAEA makes clear that the Secretary of State exercises primary authority for the conduct of foreign policy with respect to international postal services and other international delivery services, including the determination of U.S. positions and the conduct of U.S. participation in negotiations with foreign governments and international bodies. *See* 39 U.S.C. 407(b)(2).

Pursuant to the directive in section 407(c)(1), the Secretary of State requested—and the Commission provided—views on certain proposals submitted for consideration at the quadrennial Universal Postal Union (UPU) Congresses<sup>4</sup> held in 2008 and 2012, which occurred after enactment of the PAEA. In anticipation of preparing views in connection with the 2012 Congress, the Commission established Docket No. PI2012-1 to receive written comments from the public on the principles that should guide the development of its views.<sup>5</sup> The Commission closed Docket No. PI2012-1 on January 29, 2015.<sup>6</sup>

#### III. Summary of Proposed Rules

The proposed rules describe general procedures associated with the development of the Commission’s views on certain proposals submitted for consideration at UPU Congresses and related meetings. They are patterned on the approach followed in Docket No.

<sup>3</sup> *See* 39 U.S.C. 407(d) (1998), amended by the PAEA.

<sup>4</sup> The UPU Congress is the plenipotentiary body of this international organization that has the authority to amend the UPU Acts. These Acts include the UPU Constitution, General Regulations, Rules of Procedure, and Postal Payment Services Agreement.

<sup>5</sup> Docket No. PI2012-1, Order No. 1420, Notice Providing Opportunity to Comment on Development of Commission Views pursuant to 39 U.S.C. 407(c)(1), July 31, 2012. The next UPU Congress is tentatively scheduled to convene in mid-September 2016 in Istanbul, Turkey.

<sup>6</sup> Docket No. PI2012-1, Order No. 2335, Order Closing Docket, January 29, 2015, at 1.

PI2012–1 with several adjustments to reflect the Commission's experience in that docket.

The proposed rules establish a docket for each UPU Congress and related meetings to serve as an administrative mechanism for soliciting and receiving public comments and posting related notices and documents. Each docket will be established on or about 150 days before the date a UPU Congress is scheduled to convene. As in Docket No. PI2012–1, the Commission will seek comments on the general principles that should guide the Commission in the formation of its views. The proposed rules also allow comments on specific proposals to the extent such proposals are publicly available. Comment deadlines will be established on a case-by-case basis and based on the Commission's assessment of how much time can be allowed, consistent with timely submission of its views to the Secretary of State.

#### IV. Review and Analysis of Comments

##### A. Overview

The Commission received initial comments from Joyce Dillard, Federal Express Corporation (FedEx), the Public Representative, and the Postal Service.<sup>7</sup> The Commission received reply comments from FedEx, United Parcel Service (UPS), the Public Representative, and the Postal Service.<sup>8</sup> Commenters generally support issuance of rules on procedures for administering certain view-related matters, but seek clarification of, and revisions relating to:

- The applicability of Administrative Procedure Act (APA) procedural requirements to views;
- the scope of comments and scope of Commission views, particularly with regard to the proposed definition of modern market regulation;

<sup>7</sup> Comments Received from Joyce Dillard, August 28, 2015 (Dillard Comments); Comments of Federal Express Corporation, August 27, 2015 (FedEx Comments); Comments of the Public Representative, August 27, 2015 (PR Comments); and United States Postal Service Comments on Procedures Related to Commission Views, August 27, 2015 (Postal Service Comments).

<sup>8</sup> Reply Comments of Federal Express Corporation, September 11, 2015 (FedEx Reply Comments); Reply Comments of United Parcel Service on the Proposed Rule to Adopt Procedures Related to the Commission's Views on International Postal Agreements, September 11, 2015 (UPS Reply Comments); Errata Notice of United Parcel Service, September 14, 2015; and Reply Comments of United Parcel Service on the Proposed Rule to Adopt Procedures Related to the Commission's Views on International Postal Agreements (Corrected and Refined), September 14, 2015 (Corrected UPS Reply Comments); Reply Comments of the Public Representative, September 11, 2015 (PR Reply Comments); and United States Postal Service Reply Comments on Procedures Related to Commission Views, September 11, 2015 (Postal Service Reply Comments).

- several other matters related to the comment procedure, including the absence of an affirmative right to file reply comments;
- the definition of views;
- the Commission's option to suspend or forego solicitation of comments, including the proposed standard for exercising this option; and
- the availability of proposals and the Commission's views.

Having considered the comments received, the Commission adopts final rules that reflect several revisions to the proposed rules in response to comments as well as several other minor changes. The latter include revisions to reflect the Commission's intention to designate future dockets established pursuant to 39 CFR part 3017 as "International Mail" (IM) dockets, instead of "Public Inquiry" (PI) dockets, and to refer to "comments" instead of "public comments." The Commission used the IM docket designation prior to the enactment of the PAEA for agency action related to preparation of a series of annual reports to Congress on international mail financial results. This change, which makes it easier for interested persons to locate international documents on the Commission's Web site, requires minor conforming changes to several of the proposed sections of part 3017.

##### B. Applicability of APA Procedural Requirements to Commission Views

*Proposed rules.* The Commission proposed adding rules in a new part 3017 to provide the public with a description of the general procedures it plans to use in connection with the development of views pursuant to 39 U.S.C. 407(c)(1), primarily with regard to obtaining public input. The proposed rules incorporate procedures consistent with the Commission's core responsibility to provide its views to the Secretary of State in a timely manner. The proposed rules also reflect the Commission's commitment to having the docket serve as a mechanism for handling related matters, such as informing the public about the availability of relevant proposals, the Commission's views, or other documents.

*Commenters' positions.* FedEx asserts that the proposed docket must comply with the notice and comment requirements of the APA, located in 5 U.S.C. 553.<sup>9</sup> FedEx states that the Commission must employ APA procedures whenever it adopts a rule, and asserts there is "no reasonable

<sup>9</sup> FedEx Comments at 8–12; FedEx Reply Comments at 4.

doubt that the [v]iews are a 'rule' as defined by the APA." FedEx Comments at 8. FedEx acknowledges that there are several exceptions to the APA notice and comment requirements, and comments that the foreign affairs exception is the only one that "could plausibly be deemed applicable." *Id.* at 8–9.

FedEx asserts that Congress has carefully avoided the procedural dilemma that combining regulatory and executive functions poses by deliberately creating a bifurcated decision-making process in 39 U.S.C. 407(c)(1) and (c)(2). *Id.* at 9. According to FedEx, under this process the Commission's responsibility is to apply title 39 of the U.S. Code to the rates and classifications under consideration, while the responsibility of the Secretary of State is to protect the foreign policy and national security interests of the United States by limiting, if necessary, application of the Commission's views. *Id.* FedEx acknowledges that the courts have never addressed this bifurcation in the context of the approval of intergovernmental postal agreements, but cites two cases it alleges concern similar bifurcations of regulatory and foreign policy functions in support of its position.<sup>10</sup>

FedEx contends that *South African Airways* concerned a bifurcation of functions very similar to those in section 407. FedEx Comments at 9–10. As explained by FedEx, in *South African Airways*, the Court of Appeals for the District of Columbia Circuit found it appropriate for a court to review an order of the Secretary of Transportation revoking a permit of a foreign air carrier. *Id.* at 10. While such orders were subject to disapproval for foreign policy or national defense considerations by the President, the court found that judicial review was appropriate because the Secretary of Transportation's order was based on economic considerations and thus did not encroach on the President's foreign policy powers. *Id.*

FedEx contends that the *South African Airways* holding was confirmed and extended in *Aerolineas Argentinas*. *Id.* at 11. In support of this contention, FedEx asserts that the Court of Appeals for the District of Columbia Circuit held that a determination by the Secretary of Transportation that Argentina had unjustly discriminated against U.S. carriers was subject to judicial review

<sup>10</sup> *Id.* at 9–10. See *South African Airways v. Dole*, 817 F.2d 119 (D.C. Cir. 1987); and *Aerolineas Argentinas S.A. v. U.S. Department of Transportation*, 415 F.3d 1 (D.C. Cir. 2005) (hereafter, *South African Airways* and *Aerolineas Argentinas*, respectively).



after expiration of the period in which the President could have, but did not, disapprove of the determination. *Id.* FedEx asserts that the court “pointedly noted” that it should not lightly presume that Congress intended to grant the Department of Transportation “an unreviewable discretion to engage in otherwise noxious decisionmaking.” *Id.* FedEx concludes that the two cases demonstrate that the Commission must comply with the requirements of 5 U.S.C. 553 because the Commission’s views do not involve a foreign affairs function of the United States. *Id.* at 11–12.

UPS supports FedEx’s proposal to amend the proposed rules and incorporate APA notice and comment procedures on grounds that the Commission’s views meet the definition of a rule under the APA because they are agency statements interpreting or prescribing law or policy. Corrected UPS Reply Comments at 8 n.6. UPS also asserts that the Commission has an important role under section 407(c)(1), noting that the Commission’s views should be crucial in determining the Secretary of State’s posture in international postal negotiations. *Id.* at 2. It nevertheless concludes that the foreign affairs exception is inapplicable on grounds that it is a particularly narrow exception to APA notice and comment requirements. *Id.* at 8–9. UPS asserts that for the exception to apply, the rulemaking should provoke undesirable international consequences, and concludes that complying with APA notice and comment procedures “could hardly be said” to produce this result. *Id.* at 9. UPS also contends that the scope of comments and the Commission’s views are limited to compliance with the standards and criteria established by the Commission under 39 U.S.C. 3622 and concludes the foreign affairs exception is inapplicable because 39 U.S.C. 3622 does not directly concern foreign affairs. *Id.*

The Public Representative and the Postal Service assert that characterization of the Commission’s views as a rule under the APA is incorrect.<sup>11</sup> The Public Representative states that while the APA broadly defines a rule, the definition does not include a statement from an expert agency intended to inform the Secretary of State on the consistency of a potential international agreement with U.S. regulations. PR Reply Comments at 2. Moreover, she contends that a significant characteristic of a rule to which APA notice and comment

procedures apply is that the rule must have the force and effect of law. *Id.* She reasons that a view does not fall under the APA’s broad definition of a rule because absent action by the Secretary of State, it lacks any future legal effect. *Id.* The Public Representative also notes that a UPU body must approve the relevant proposals before they can take effect. *Id.* at 3.

The Public Representative also considers FedEx’s reliance on *South African Airways* misplaced because the order at issue in that case is distinguishable from the Commission’s views. *Id.* First, she asserts that the order from the Secretary of Transportation revoking foreign air carrier permits is distinguishable because the order was presented for presidential review while views are subject to the approval of the Secretary of State. *Id.* at 3–4. Second, the order at issue in *South African Airways* revoked a permit, while views provide the Secretary of State with the expert opinion of the agency in the best position to determine the consistency of such rates and classifications with domestic postal law before the Secretary supports or opposes a proposal. *Id.* at 4. She asserts that Congress intended for views to contribute to the development of the United States’ position on a specific foreign relations matter, while the Secretary of Transportation revoked *South African Airways’* permit pursuant to a foreign policy determination expressed by Congress, by statute, and the President, by executive order. *Id.* at 4–5.

The Postal Service asserts that FedEx’s assertion that the Commission providing its views to the Secretary of State constitutes issuance of an agency rule pursuant to the APA is simply wrong. Postal Service Reply Comments at 4. It contends that FedEx’s discussion of the definition of rule relies on only part of the definition, and that a complete understanding of the APA definition of rule clearly establishes that the views of the Commission are not a rule subject to the APA rulemaking requirements. *Id.*

The Postal Service states that a rule as defined by the APA implements, interprets, or prescribes law or policy. *Id.* at 5. The Postal Service examines each of these characteristics separately as they relate to the role of the Commission in 39 U.S.C. 407(c)(1) and contends that the views do not constitute rules under the APA. *Id.* It states that implementation of a law or policy requires an action that results in an impact on a specific party, and contends that views are merely the position of the Commission on the

consistency of UPU proposals with U.S. postal laws that assist the Secretary of State in making foreign policy decisions. *Id.* at 5. The Postal Service asserts that interpretation relates to an agency action to review and provide a true meaning or understanding as to language. *Id.* It concludes that 39 U.S.C. 407(c)(1) does not involve any interpretation by the Commission. *Id.* Finally, the Postal Service states the Commission’s views do not prescribe law or policy within the purview of the Commission; instead, it asserts the views have no legal or policy ramifications, but instead provide interagency guidance. *Id.* As such, the Postal Service contends these views are not a rule under the APA and the Commission need not comply with the formal rulemaking requirements of title 5 of the United States Code. *Id.*

*Commission analysis.* Under the APA, a rule is defined broadly and includes any agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy, including the approval or prescription for the future of rates. 5 U.S.C. 551(4). Rulemaking is the agency process for formulating, amending, or repealing a rule.<sup>12</sup> 5 U.S.C. 551(5). Significantly, 5 U.S.C. 553, which addresses rulemakings, provides an exception to the requirements of that provision to the extent a military or foreign affairs function of the United States is implicated by the rulemaking or the rulemaking relates to agency management or personnel or to public property, loans, grants, benefits, or contracts. 5 U.S.C. 553(a)(1) and (2).

Under 5 U.S.C. 553, rulemakings generally require that an agency publish a notice concerning the intended rulemaking in the **Federal Register** and provide an opportunity for commenters to submit written comments. 5 U.S.C. 553(b)(1)–(3); 5 U.S.C. 553(c). Publication of a substantive rule is to occur not less than 30 days before the effective date, except in certain specified circumstances. 5 U.S.C. 553(d)(1)–(3).

FedEx and UPS contend that views are rules as defined by the APA, and as a result, FedEx and UPS assert that the Commission should amend the proposed rules to ensure that the APA’s notice and comment requirements are incorporated into the final rules. FedEx Comments at 8–12; Corrected UPS

<sup>12</sup> Rulemaking is one of two categories of agency actions defined in the APA; adjudication is the other. See 5 U.S.C. 551(7). Adjudication involves matters such as the issuance of permits or certificates. 5 U.S.C. 551(8). No commenter addressing APA procedural requirements asserts that development of views involves adjudication.

<sup>11</sup> PR Reply Comments at 2; Postal Service Reply Comments at 4.

Reply Comments at 8–9. The Postal Service and the Public Representative disagree and provide support for their assertion that the APA's notice and comment requirements do not apply to views. Postal Service Reply Comments at 4–6; PR Reply Comments at 2–5. As a whole, the comments raise two distinct questions concerning the applicability of the APA to views: Whether views constitute rules under 5 U.S.C. 551(4); and whether views must comply with the notice and comment requirements of 5 U.S.C. 553 if views are in fact rules under the APA. The Commission concludes that views are not rules as defined by the APA, and that even if views were considered to be rules, they are exempt from the notice and comment requirements of 5 U.S.C. 553.

Determining whether views are rules under the APA begins with examination of the function the Commission performs in developing views and the statutory authority for the exercise of that function. With respect to function, the plain language of 39 U.S.C. 407 makes clear that Commission views are an interagency advisory communication prepared at the request, and for the sole consideration of, the Secretary of State prior to his/her conclusion of treaties, conventions, or amendments addressing certain international postal rates and classifications. See 39 U.S.C. 407(c)(1) and (2). This interagency communication advises the Secretary of State on the consistency of those rate and classification proposals with title 39 policies. The advisory nature of views is demonstrated by how many steps the views are removed from final international postal rates and classifications. After the Commission transmits its views to the Secretary of State, the Secretary of State then finalizes U.S. positions on UPU proposals consistent with the Commission's views unless the Secretary of State determines foreign policy or national security reasons dictate otherwise. 39 U.S.C. 407(c)(2). The Secretary of State then uses the various U.S. positions to negotiate and act on UPU proposals. The UPU Acts are then amended to incorporate adopted proposals and generally must be signed by the President or his/her delegate for U.S. ratification or accession. The Commission's views are simply too many steps removed from the final rates and classifications adopted by the UPU and signed by the President to be classified as rules. The number of steps between the view and a final binding decision also distinguishes views from the types of

orders at issue in *South African Airways* and *Aerolineas Argentinas*.<sup>13</sup>

The advisory, interagency nature of the communication and the subject matter—international rates and classifications—also materially distinguish the Commission's views from the conventional rulemaking activity of ratemaking. The Commission's domestic rate and classification rulemakings typically are not purely advisory in nature, nor are they designed for the sole consideration of the Secretary of State. Instead, these rulemakings are intended to have binding effect on those who are regulated (or engage in activities regulated) by the agency conducting the rulemaking. However, the Secretary of State pursuant to title 39 exercises the primary authority for the conduct of foreign policy with respect to international postal and delivery services, including the determination of U.S. positions in negotiations with foreign governments and international bodies. See 39 U.S.C. 407(b)(2).

The Commission provides advisory views to the Secretary of State, which are distinct from rules under the APA that directly implement, interpret, or prescribe law or policy with respect to the application of future rates, wages, or prices. Commission views do not prescribe, establish, or enforce international rates or classifications. These considerations all support the conclusion that views sent to the Secretary of State are a statutory responsibility that falls outside the APA's definition of a rule.

Even if views were considered rules under the APA, the notice and comment requirements of 5 U.S.C. 553 do not apply. First, under the APA, substantive legislative rules are the only rules subject to the notice and comment requirements of 5 U.S.C. 553.<sup>14</sup> Legislative rules are defined as “those that grant rights, impose obligations, or produce other significant effects on private interests.” *Id.* (citing *Batterton v. Marshall*, 648 F.2d 694, 701–02 (D.C. Cir. 1980)). Legislative rules also must

<sup>13</sup> The two cases are also distinguishable from views on several other grounds, including that the orders in these cases involved action on permits, not rates and classifications. Agency action on permits falls within the APA definition of a license, which is associated with adjudication (and related orders), rather than rulemaking. See 5 U.S.C. 551(8); see also 5 U.S.C. 551(6) and (7). In addition, the facts involved statutory provisions that mandated issuance of an order and directly addressed the terms for judicial review of permit actions, in contrast to section 407's silence on issuance of an order and judicial review.

<sup>14</sup> *Perez v. Mortgage Bankers Assn*, 135 S.Ct. 1199, 1203–04 (2015); *Mountain States Health Alliance v. Burwell*, No. 13–641, 2015 WL 5297498, at \*7 (D.D.C. Sep. 10, 2015).

have legal effect. *Id.* The test for determining whether a rule has legal effect involves consideration of the following factors: “(1) Whether in the absence of the rule there would not be an adequate legislative basis for enforcement action or other agency action to confer benefits or ensure the performance of duties, (2) whether the agency has published the rule in the Code of Federal Regulations, (3) whether the agency has explicitly invoked its general legislative authority, [and] (4) whether the rule effectively amends a prior legislative rule.” *Id.* (citing *Am. Mining Cong. v. Mine Safety & Health Admin.*, 995 F.2d 1106, 1112 (D.C. Cir. 1993)). Courts also consider the agency's characterization of its rule and whether the rule has been applied consistently in the past. *Id.*

The Commission's views are not substantive legislative rules. They do not grant rights or impose obligations, nor do they produce other significant effects on private interests; instead, they simply advise the Secretary of State. They have not been and will not be published in the **Federal Register**. The Commission provides its advisory views in accordance with 39 U.S.C. 407(c)(1), which does not grant the Commission general legislative authority. Views, unlike regulations, do not amend past views but instead address current UPU proposals. Therefore, even if views were considered to be rules, the notice and comment requirements of 5 U.S.C. 553 do not apply.

Second, views are also exempt from APA notice and comment requirements pursuant to 5 U.S.C. 553(a)(1) as an agency action involving a foreign affairs function. In considering the applicability of the foreign affairs exception, the initial question is whether a view involves a foreign affairs function. Several factors support the conclusion that this is the case with Commission views. For example, the Commission's responsibility for developing a view is lodged in 39 U.S.C. 407(c)(1). The parent provision, 39 U.S.C. 407, is captioned “International postal arrangements.” Also, contextually, the plain language of 39 U.S.C. 407(c)(1) establishes the requisite nexus to a foreign affairs function by providing that “before concluding any treaty, convention, or amendment” that establishes a rate for a market dominant product, the Secretary of State shall request the Commission's views. By definition, the Commission is advising the Secretary of State on matters directly related to foreign affairs—the terms of international postal treaties, conventions, and amendments.

As exemptions to the APA's procedural requirements are to be narrowly construed, the second question is whether a rulemaking would unduly interfere with the asserted foreign affairs function. If not, the exemption generally does not apply.<sup>15</sup> The critical considerations associated with 39 U.S.C. 407(c), in terms of the Commission's role, are the soundness and timeliness of the views, as the Secretary of State must have an opportunity to review and assess them prior to concluding his/her responsibilities under 39 U.S.C. 407(c), which includes development of U.S. positions on UPU proposals.

In practice, the development of the Commission's view occurs within an extremely compressed timetable. Given this practical reality, compliance with all APA procedural requirements would hamstring the Commission's ability to provide the Secretary of State with sound, timely views. A brief review of the process illustrates the difficulties.

First, development of a Commission view typically occurs in the context of a UPU Congress. The UPU is solely responsible for determining the distribution schedule for the proposals the Commission reviews. In light of different submission deadlines and the need for translation, typically the UPU does not make all proposals available at once, and often makes many proposals available only very near the start of a UPU Congress. In some cases, amendments to proposals are only made available immediately before the meeting at which the proposals are to be considered. In addition, verbal amendments may be proposed during deliberations.

Second, the Commission is unable to ensure the availability of the proposals to interested parties because the UPU does not make them publicly available.

Third, upon receipt of the proposals, development of views entails deliberations by the Commission and coordination of a view in time for the Secretary of State to have a meaningful opportunity to consider the Commission's advice. In cases when proposals are made available by the

UPU with very little time for evaluation, the Commission will frequently provide its preliminary assessment verbally, following up later with a written view. Ensuring that interested persons have an opportunity to review all proposals—and responding to each concern as occurs in most rulemakings—would preclude timely preparation and submission of views to the Secretary of State.

Fourth, given the compressed timetable under which 39 U.S.C. 407(c) functions occur, waiting until 30 days after publication in the **Federal Register** would in many cases mean that the Secretary of State could not rely on the Commission's views until well after a U.S. position had been developed and the proposals are deliberated at the UPU. *See* 5 U.S.C. 553(d)(3). For these reasons, the foreign affairs exemption would apply if views were found to be rules within the meaning of the APA.

#### *C. Section 3017.1(a)—Definition of Modern Rate Regulation*

*Proposed rule.* Proposed § 3017.1(a) defines modern rate regulation as the standards and criteria the Commission has established pursuant to 39 U.S.C. 3622.

*Commenters' positions.* The Postal Service proposes that the definition of modern rate regulation be amended to “the standards and criteria that the Commission has established in [39 CFR part 3010] with respect to rates and part 3020 with respect to classification pursuant to its authority in [39 U.S.C. 3622].” Postal Service Comments at 9. The Postal Service observes that the definition in the proposed rules is identical to the statutory language of 39 U.S.C. 407(c)(1). *Id.* However, it contends that this definition, if interpreted as it has been in the past, not only deviates from the Commission's statutory authority, but may result in confusion for members of the public and unnecessary work for those submitting comments. *Id.* at 2. It urges the Commission to clarify the definition to ensure comments do not exceed the scope of the Commission's views as delineated by 39 U.S.C. 407(c)(1). *Id.*

The Postal Service notes that in Docket No. PI2012–1, the Commission solicited comments on the principles that should guide development of its views on the consistency of proposals with the standards and criteria of 39 U.S.C. 3622. *Id.* at 6. It asserts that this solicitation, while closely related to the statute, exceeded the scope of 39 U.S.C. 407(c)(1) and resulted in comments focused on the objectives and factors of 39 U.S.C. 3622 rather than the standards

and criteria established by the Commission. *Id.* at 7. The Postal Service contends that its proposed definition of modern rate regulation unambiguously identifies the standards and criteria established by the Commission as being found in part 3010 for UPU proposals related to rates and in part 3020 for UPU proposals related to classifications, and points commenters to the relevant regulations on which the Commission will base its view to the Secretary of State. *Id.* at 9–10.

The Postal Service suggests that changes in these rates might be analogized to a Type 1 rate adjustment and proposes that the standards for Type 1 rate adjustments in 39 CFR 3010.11(d) be applied to UPU proposals. *Id.* at 5. The Postal Service also notes that part 3020 establishes the rules for Postal Service products and the classification of those products. *Id.* With respect to the Commission review process of UPU proposals, however, it states that part 3020 is rarely applicable because UPU proposals reviewed by the Commission rarely relate to classification changes for market dominant products. *Id.* Thus, the Postal Service asserts that the Commission usually does not need to consider the standards and criteria in part 3020 when issuing its views to the Secretary of State. *Id.*

UPS asserts that the Postal Service's proposed definition of modern rate regulation is inconsistent with 39 U.S.C. 407(c) and urges the Commission to reject it. Corrected UPS Reply Comments at 1. UPS observes that the issues raised by UPU proposals extend beyond the legality of terminal dues rates. *Id.* at 4. It asserts that the Commission must also consider other UPU proposals in light of, for example, the objective of 39 U.S.C. 3622(b)(7) to enhance mail security and deter terrorism. *Id.*

UPS also contends the Postal Service's proposal is at odds with how the Postal Service interpreted the Commission's authority in 2012, when the Postal Service stated that under section 407(c), the Commission is tasked with providing its view on whether proposals are consistent with the 39 U.S.C. 3622 objectives and factors. *Id.* at 10 n.7.

UPS asserts that when the Commission considers the objectives and factors of 39 U.S.C. 3622 in evaluating UPU proposals, it is giving heed to the statutory language of 39 U.S.C. 407(c)(1). *Id.* at 10. UPS contends that any standard or criterion established by the Commission “under” section 3622 must be consistent with section 3622 because agencies'

<sup>15</sup> *See* United States Department of Justice, *Attorney General's Manual on the Administrative Procedure Act* 26 (1947), noting that the Senate and House reports stated that the phrase “foreign affairs function” is not to be loosely interpreted to mean any function extending beyond the borders of the United States, but only to those “affairs” which so affect relations with other governments that, for example, the public rulemaking provisions would clearly provoke definitely undesirable international consequences. In addition, it has been held that modification, interpretation, or violation of an international agreement's terms are clearly and directly matters of foreign affairs. *Mast Industries, Inc. v. Regan*, 596 F. Supp. 1567, 1579 (1984).

jurisdiction and substantive powers are limited by statute, and they can only act in conformance with their statutory mandate. *Id.*

UPS also states that having empowered and required the Commission to craft regulations in conformance with section 3622, it is implausible that Congress would require that the Commission ignore section 3622 when evaluating UPU proposals. *Id.* at 11. It states that agencies must always consider their governing statutes when taking any action and must ensure that their actions are consistent with those statutes. *Id.* UPS contends that at a minimum, 39 U.S.C. 407(c)(1) should not be read as preventing the Commission from considering the objectives and factors of 39 U.S.C. 3622. *Id.* UPS asserts that 39 U.S.C. 407(c)(1) is most sensibly read as affirmatively encouraging the Commission to consider the objectives and factors. *Id.*

FedEx agrees, in principle, with the Postal Service's assertion that the Commission's approach to reviewing proposed UPU rates and classifications for market dominant products should closely parallel the agency's review of rates and classifications for market dominant domestic products, but disagrees with the Postal Service on the implications of this observation for the proposed rules. FedEx Reply Comments at 1. FedEx disagrees with the Postal Service's conclusion that 39 CFR parts 3010 and 3020 prohibit commenters and the Commission from considering the consistency of relevant UPU proposals with title 39 requirements other than those explicitly mentioned in 39 CFR parts 3010 and 3020. *Id.* at 3. It observes, for example, that 39 CFR 3010.11(c) provides that public comments may address other relevant statutory provisions and applicable Commission orders and directives. *Id.* Moreover, FedEx notes that the Postal Service's position that 39 CFR parts 3010 and 3020 constrain the Commission's review rests on the assumption that UPU rates are considered a Type 1 rate adjustments, an issue that the Commission has not decided. *Id.*

FedEx asserts that given the intense reconsideration of product definitions now underway at the UPU, it is hardly self-evident that the rates and classifications that will be proposed for consideration at the next UPU Congress should be considered analogous to Type 1 rate adjustments. *Id.* It also argues that the international nature of UPU rates necessarily requires the Commission to consider some elements of title 39 that are not involved in a review of domestic rates and classifications. *Id.*

*Commission analysis.* The Commission declines to adopt the revision proposed by the Postal Service. The Commission concludes that the definition as originally proposed, which defines *modern rate regulation* in terms "identical to the statutory language of [39 U.S.C. 407(c)(1)]," is appropriate. See Postal Service Comments at 9. In addition to being consistent with the statute, the definition is also consistent with the Commission's past practices with respect to providing its views to the Secretary of State on the consistency of such rate or classification with modern rate setting criteria.<sup>16</sup>

The Postal Service's proposed modification would also artificially detach the Commission's views from the underlying objectives and factors of modern rate regulation, which are the basis of the "standards and criteria established by the Commission under section 3622." 39 U.S.C. 407(c)(1). Moreover, the Postal Service's proposed analogy to Type 1 rate cases seemingly conflicts with its comments in light of the fact that sections in 39 CFR part 3010 request expansive comments (*i.e.*, 39 CFR 3010.11(c)) and explicitly refer to the objectives and factors enumerated in 39 U.S.C. 3622 (*i.e.*, 39 CFR 3010.12(b)(7) and (8)). Furthermore, the Postal Service's suggestion to restrict the definition to 39 CFR parts 3010 and 3020 is too limiting. For example, the Commission's authority to regulate service performance standards was also drawn from 39 U.S.C. 3622. See 39 CFR part 3055. Consequently, the Commission declines to adopt the Postal Service's proposed modification and adopts the proposed paragraph (a) as a final rule, without change.

#### *D. Section 3017.1(b)—Definition of Views*

*Proposed rule.* Proposed § 3017.1(b) defines views as the opinion the Commission provides to the Secretary of State in the context of certain UPU proceedings on the consistency of a proposal affecting a market dominant rate or classification with modern rate regulation.

*Commenters' positions.* FedEx and the Public Representative suggest revisions to the definition of views. FedEx asserts that the definition should correspond to the scope of the Commission's obligations under section 407(c)(1), and should not be limited only to the opinion the Commission provides to the Secretary of State in the context of certain UPU proceedings. FedEx

Comments at 12–13. Instead, FedEx contends that the definition should encompass each opinion the Commission is obliged to provide to the Secretary of State before a treaty, convention, or amendment that establishes a rate or classification for a product subject to subchapter I of chapter 36 is concluded. *Id.* FedEx asserts that section 407(c)(1) applies to all rates and classifications for international market dominant products established by the Secretary of State by intergovernmental agreement. *Id.* at 13.

In response, the Public Representative asserts that FedEx's proposed revision is unnecessary. PR Reply Comments at 6. She nonetheless states that the proposed rules may benefit from clarifying that part 3017 does not preclude the Commission from initiating a docket and soliciting comments on a relevant non-UPU treaty, convention, or amendment. *Id.* at 6–7.

The Public Representative also recommends, in conjunction with a suggestion to add a definition of relevant proposal, that the proposed definition of views be limited to opinions on "relevant proposals." PR Comments at 6–7. She notes that the proposed rules indicate that the Commission will provide views on proposals that affect a market dominant rate or classification but would not exclude proposals that are unable to be assessed because they are for future rates or classifications and lack the detail needed to make an assessment, or proposals that were rejected or withdrawn. *Id.* at 7. The Public Representative recommends that the Commission amend § 3017.1 to limit views to relevant proposals and then offer a separate definition of relevant proposal in § 3017.1. *Id.* at 7; Attachment 1 at 1.

*Commission analysis.* FedEx proposes to define views as opinions the Commission provides to the Secretary of State before the Secretary of State concludes any treaty, convention, or amendment that establishes a rate or classification for a product subject to subchapter I of chapter 36. This accurately reflects the language of 39 U.S.C. 407(c)(1). However, each applicable "treaty, convention, or amendment" since the PAEA was enacted has occurred in the context of certain UPU proceedings. It appears that the two suggested approaches have identical practical effects and that tying each docket to a specific UPU Congress will allow interested persons to more easily track relevant proposed changes. As a result, the Commission adjusts the definition of views in § 3017.1 to accommodate the scope of the statute as

<sup>16</sup> See *e.g.*, Order No. 2602 at 1–2; Docket No. P12012–1, Comments of the United States Postal Service, August 27, 2012, at 2–4.

discussed above. Part 3017 is not intended to preclude the Commission from establishing a docket, accepting comments, or giving views in non-UPU contexts that meet the requirements of 39 U.S.C. 407(c)(1).

The Commission also concludes that the proposals on which it provides its views do not require clarification. According to the proposed definition, the Commission only gives views on “. . . the consistency of a proposal affecting a market dominant rate or classification with modern rate regulation.” The requirement that the proposal affect a market dominant rate or classification excludes proposals that will not have an effect because they have been withdrawn or rejected, as well as proposals with effects unable to be assessed because they lack the requisite detail to make an assessment. Consequently, except for the changes in the definition section as explained above, the Commission adopts the proposed rule as a final rule without any additional changes relating to the comments regarding proposals.

#### E. Section 3017.2—Purpose

*Proposed rule.* The proposed rule states that the proposed part 3017's purpose is to facilitate public participation in, and promote the transparency of, the development of Commission views.

*Commenters' positions.* No commenter specifically addresses this proposed rule.

*Commission analysis.* The Commission has reviewed this section and concludes that it accurately describes the purpose of the rules. Consequently, it adopts the proposed rule as a final rule, without change.

#### F. Section 3017.3—Establishment and Scope of Docket

Proposed § 3017.3 consists of three paragraphs. As proposed, paragraph (a) establishes the target date for establishing a public inquiry docket as on or about 150 days before a UPU Congress convenes, and states that the Commission will solicit comments on the general principles that should guide the Commission's development of views on relevant proposals, in a general way, and, if available, on specific relevant proposals. Proposed paragraph (b) states that the public inquiry docket established pursuant to paragraph (a) of this section may also encompass matters related to development of the Commission's views, such as the availability of relevant proposals, the views, other documents, and related actions. Proposed paragraph (c) provides that the notice establishing

each public inquiry docket will be published in the **Federal Register**.

#### 1. Scope of the Docket

*Commenters' positions.* FedEx seeks expansion of the scope of the public inquiry docket to include all international agreements that impact rates or classifications of market dominant products. FedEx Comments at 13. It asserts that the wording of paragraph (a) suggests that the Commission can limit its views to a high level review of proposed rates and classifications; however, it contends that 39 U.S.C. 407(c)(1) clearly requires the Commission to consider carefully all of the criteria set out in 39 U.S.C. 3622. *Id.* FedEx also asserts that the Commission cannot fail to provide views on relevant proposals merely because they are not available on or about 150 days before a UPU Congress convenes. *Id.* It further asserts that the Commission is obliged by 39 U.S.C. 407(c)(1) to develop views on specific proposals as they become available. *Id.*

The Postal Service characterizes FedEx's position as “directly counter to the plain reading of section 407(c)(1).” Postal Service Reply Comments at 5. It notes that FedEx uses the word “agreement,” which is different and distinct from what is set forth in the statute. *Id.* The Postal Service asserts that 39 U.S.C. 407(c)(1) requires the Secretary of State to seek the Commission's view prior to concluding any treaty, convention, amendment. *Id.* at 5–6. The Postal Service asserts that these terms are distinct from an “agreement” as interpreted by FedEx, and that the Commission has properly focused the proposed rules on issues governed by the UPU Congress. *Id.* at 6. The Postal Service further asserts that 39 U.S.C. 407(c)(1) “only applies to decisions taken by the United States, [through] the Secretary of State, at the UPU Congress, and thus the Commission need not create a procedure for public solicitation of comments for every UPU proposal at meetings between UPU Congresses.” *Id.*

In response to FedEx, the Public Representative notes that proposed § 3017.3 can be interpreted as providing a docket for each UPU Congress, including the relevant proposals for UPU meetings following that Congress but prior to the next Congress. PR Reply Comments at 7. She nonetheless does not object to a clarification of the rule. *Id.* The Public Representative also responds to FedEx's statement that proposed § 3017.3(a) suggests that the Commission can limit its views to a high level review. *Id.* She argues that the language from the proposed rule that

FedEx applies to views was intended to apply to commenters. It was also intended to allow comments on both specific proposals and general principles that can be applied to various proposals or in cases where specific proposals are unavailable. *Id.* at 7–8. The Public Representative concludes that she supports § 3017.3 as proposed. *Id.* at 8.

*Commission analysis.* FedEx highlights a need to revise the wording of § 3017.3 to clarify that it is the solicitation of comments that may be limited due to the Commission's inability to make proposals available. FedEx Comments at 13. The Commission intends for § 3017.3(a) to allow for comments to cover both approaches and principles that pertain to the proposals generally as well as specific proposals when the Commission is able to make these available.

FedEx also is concerned the proposed rules are too narrowly tailored to UPU Congresses. *Id.* at 13. As noted in Order No. 2602, each docket will cover a UPU Congress and related meetings. Order No. 2602 at 2–3. To further clarify its intent in the proposed regulations, the Commission will insert into section 3017.3 the phrase, “or such advance time as the Commission determines for any other 39 U.S.C. 407(c)(1) matter.” The Commission adopts the proposed § 3017.3 as a final rule, with clarifications outlined above concerning the scope of comments and revisions to reflect the intention to use the IM designation.

#### 2. Availability of Proposals

*Commenters' positions.* The Public Representative suggests that the Commission make every effort to provide the text or a detailed summary of the relevant proposals to the public. PR Comments at 3. She believes this will facilitate discussion by providing potential commenters with a lexicon of terms and titles for use in referencing specific proposals and with better information about the scope of issues in each docket. *See generally* PR Comments at 3–5. By not providing proposals, the Public Representative is concerned the public is segregated into those who have independent knowledge of proposals and those who do not. *Id.* at 5. The Public Representative acknowledges that circumstances may prevent the Commission from providing text or summaries of all proposals, but nonetheless asserts that the Commission should provide information regarding specific proposals in advance. *Id.* at 6. UPS supports this suggestion, and further supports any and all efforts by

the Commission to provide as much information as soon as possible. Corrected UPS Reply Comments at 6. It asserts that “[o]therwise, any discussion of the proposals would likely lack meaningful impact.” *Id.*

The Postal Service observes that UPU proposals generally are not publicly available documents, and states that the Commission should not release documents that are not publicly available. Postal Service Reply Comments at 2. In addition, the Postal Service contests the Public Representative’s contention that absent the Commission’s provision of the proposals, the public is not in a position to provide meaningful feedback. *Id.* The Postal Service states that the ability to provide comments on how the Commission should undertake its statutory role is not dependent on access to specific proposals. *Id.* It states that the prior public inquiry docket shows that the public can comment on broad policy objectives and principles. *Id.*

The Postal Service also asserts that comments on specific proposals “will significantly burden the commenters and the Commission without providing the overarching opinions of the commenters that are most beneficial to the Commission in developing its views.” *Id.* In addition, the Postal Service states that the proposed rule 3017.3(a) already sets forth that when a specific proposal is relevant and deemed significant to assist in developing the Commission’s view, the Commission will seek comments on that specific proposal. *Id.* The Postal Service asserts that the proposed rules appropriately seek general comments on relevant proposals that impact market dominant rates and classifications and specific proposals when determined necessary. *Id.* at 2–3.

*Commission analysis.* The Commission appreciates commenters’ interest in access to specific proposals. The Commission is neither the originator nor the official custodian of these documents and as such, it is not in a position to guarantee their availability. As commenters also acknowledge, the proposals are not usually publicly available. However, the rule expresses the Commission’s intent to solicit comments on specific proposals if it can make them available.

In addition, the Commission found comments on the general principles that should guide the Commission’s development of views useful and informative in Docket No. PI2012–1. The inclusion of a reference to specific proposals in the proposed set of rules does not diminish the importance the

Commission places on receiving general comments concerning suggested principles and approaches.

#### *G. Section 3017.4—Comment Deadline(s)*

*Proposed rule.* Proposed § 3017.4 consists of two paragraphs. Proposed paragraph (a) provides that the deadline for public comments will be established consistent with the Commission’s assessment of its ability to file timely views with the Secretary of State. Proposed § 3017.4(b) employs the same standard for suspending or foregoing solicitation of public comments if receiving comments would impede the Commission’s ability to provide timely submission of views to the Secretary of State.

#### 1. Suspending or Foregoing Solicitation of Public Comments

*Commenters’ positions.* FedEx, consistent with its position on the applicability of APA notice and comment requirements to a part 3017 docket, suggests that provisions for deadlines and abbreviated procedures should conform to 5 U.S.C. 553. FedEx Comments at 14. FedEx does not consider timely submission of the Commission views to the Secretary of State an adequate justification for curtailing or eliminating notice and comment procedures required by the APA. *Id.*

Joyce Dillard states comments should not be suspended or foregone because “all public comment should be welcomed on any United States treaty, convention, amendment, or any other transactions.” Dillard Comments at 1. She also states that privatization of the government should not be the Commission’s objective. *Id.* She further asserts that the public needs a voice and representation. *Id.*

FedEx agrees with Joyce Dillard’s position on the public’s need for a voice and representation. FedEx Reply Comments at 4. However, it suggests that Joyce Dillard’s implication that the proposed procedures also imply the Commission’s intent to foster privatization of the government may be due to a misunderstanding of the Commission’s notice. *Id.* at 4–5. The Postal Service opposes Joyce Dillard’s suggestions, arguing that “the Commission should maintain the ability to forego solicitation of comments when necessary, especially when the submission of the Commission’s views to the Secretary of State would otherwise be delayed.” Postal Service Reply Comments at 6–7.

The Public Representative states that circumstances may require suspending

or foregoing comments in order to allow the Commission to provide views to the Secretary of State in a timely manner.<sup>17</sup> She opposes FedEx’s approach because it “would negatively impact the United States’ ability to negotiate and conclude international agreements.” PR Reply Comments at 6. However, she suggests including a requirement for issuance of a notice of suspension as new § 3017.4(b)(1). PR Comments at 9–10; *id.* Attachment 1 at 2.

*Commission analysis.* As explained in section IV.B *supra*, the requirements of 5 U.S.C. 553 are inapplicable to Commission views. Although the APA notice and comment requirements do not apply, the Commission shares the commenters’ interests in having procedures that enhance opportunities for public participation and has crafted part 3017 for that reason. At the same time, Docket No. PI2012–1 demonstrated for the Commission that providing an opportunity for input must be balanced with the Commission’s primary statutory responsibility under 39 U.S.C. 407—the timely submission of its views to the Secretary of State. The Commission concludes that the standard for suspending and foregoing comments that appears in proposed § 3017.4(b) appropriately balances an opportunity for comment with the Commission’s statutory responsibility. The Commission will endeavor to keep commenters informed when comments are suspended. Nonetheless, the Commission declines to adopt the Public Representative’s suggestion of the issuance of a formal notice of suspension (or of foregoing) solicitation of comments on grounds that a formal requirement may reduce the Commission’s ability to file timely comments with the Secretary of State.

The Commission adopts proposed § 3017.4 as a final rule, with minor editorial revisions to reflect the intention to use the IM designation and the replacement of “public comment” with “comment.”

#### 2. Absence of Provision for Reply Comments

The Public Representative acknowledges that the Commission has explained that it is not initiating reply comments due to time constraints, but reads the proposed rules to allow interested parties the opportunity to submit reply comments at the Commission’s discretion. PR Comments at 7–8. She encourages the Commission to provide interested parties an opportunity to submit reply comments

<sup>17</sup> PR Comments at 9–10; PR Reply Comments at 5.

if time permits and suggests incorporating reply comments into § 3017.4. *Id.* at 8; Attachment 1 at 2. She also suggests that the Commission provide advance notice of the opportunity to file reply comments as she believes this will facilitate timely public participation. *Id.* at 9; Attachment 1 at 2.

UPS agrees with the Public Representative's suggestion with respect to providing for reply comments. Corrected UPS Reply Comments at 8. UPS's rationale is that reply comments are valuable because they allow parties to point out flaws in other parties' initial comments. UPS states that reply comments should expedite rather than delay development of the Commission's views. *Id.*

The Postal Service contends that reply comments are unnecessary and would delay the proceedings. Postal Service Reply Comments at 3. It asserts that in the past, the Commission specifically set forth the policies and scope of the comments it was soliciting from the public, resulting in ample opportunity to develop and submit comments. *Id.* The Postal Service further asserts that the proposed dockets are not adversarial proceedings requiring counter arguments and that a single round of comments is sufficient to allow commenters to provide their own views to the Commission. *Id.*

*Commission analysis.* As the Public Representative and the Postal Service note, the Commission did not originally include an opportunity to file reply comments when it established Docket No. P2012-1. However, the Commission subsequently granted a request to file reply comments, but due to the timetable concluded that it could only allow 3 days for reply comments.<sup>18</sup> The limited time for reply comments allowed in Docket No. PI2012-1 strained the Commission's preparation of views and, as the Public Representative observes, the limited time also may not have provided all commenters with adequate time to review the initial comments and file responses.

The Commission appreciates that reply comments may provide additional useful insights; however, as the Postal Service observes, the purpose of a part 3017 docket is not to facilitate an adversarial proceeding, but rather to provide an opportunity for commenters to provide input on how the views should be developed. This can be accomplished without reply comments. As such, the Commission does not plan

to provide an opportunity for reply comments in the ordinary course of a part 3017 docket.

#### *H. Section 3017.5—Commission Discretion*

*Proposed rule.* Proposed rule 3017.5 states that the Commission will review timely filed comments prior to submitting its views to the Secretary of State.

*Commenter's position.* FedEx asserts that proposed § 3017.5 overstates the Commission's discretion. FedEx Comments at 14. It asserts that the Commission's discretion with respect to its review of comments is limited by the APA and principles of administrative law and draws an analogy to the Commission's review of domestic rates. *Id.* FedEx suggests that proposed § 3017.5 be deleted. *Id.*

*Commission analysis.* As explained in section IV.B *supra*, Commission views are not subject to the requirements of 5 U.S.C. 553. As such, the Commission is not required to follow the APA's notice and comment requirements prior to submitting its views. Despite no legal requirement that it do so, the Commission is creating a new part 3017 to allow for increased public input and transparency into the development of its views pursuant to 39 U.S.C. 407(c). Proposed § 3017.5 is intended to place the public on notice that comments submitted in response to a part 3017 solicitation will be reviewed by the Commission, and that the review will be limited to timely filed comments. Limiting review to timely filed comments is consistent with the necessity that an opportunity to provide comments in a part 3017 docket does not hinder the Commission's ability to submit its views to the Secretary of State in a timely manner. However, the Commission concludes that it would be useful to clarify that comments must not only be timely filed, but filed in response to a Commission solicitation under this part.

The Commission adopts proposed § 3017.5 as a final rule, with minor revisions to the caption and text for clarity.

#### *I. Publication of Views in the Federal Register*

*Commenter's position.* UPS proposes that the Commission publish its views in the **Federal Register** when the views are sent to the Department of State. Corrected UPS Reply Comments at 6. It asserts that publishing the Commission's views engenders greater public confidence that the objectives of 39 U.S.C. 3622 and 39 U.S.C. 407 are being followed, increases transparency,

and encourages participation in part 3017 dockets. *Id.* at 7-8.

*Commission analysis.* As indicated in § 3017.3(b), the Commission intends to post its views in the docket with which it is associated after conclusion of deliberations on a related treaty, convention, or amendment. The Commission believes that posting its views on the agency Web site will address UPS's concerns.

#### **V. Ordering Paragraphs**

*It is ordered:*

1. The Commission adopts 39 CFR part 3017 as a final rule, effective 30 days following publication in the **Federal Register**.

2. The Secretary shall arrange for publication of this Order in the **Federal Register**.

#### **List of Subjects in 39 CFR Part 3017**

Administrative practice and procedure, International agreements, Postal Service.

■ For the reasons discussed in the preamble, the Commission amends chapter III of title 39 of the Code of Federal Regulations by adding part 3017 to read as follows:

#### **PART 3017—PROCEDURES RELATED TO COMMISSION VIEWS**

Sec.

- 3017.1 Definitions in this part.
- 3017.2 Purpose.
- 3017.3 Establishment and scope of docket.
- 3017.4 Comment deadline(s).
- 3017.5 Commission discretion as to treatment of comments.

**Authority:** 39 U.S.C. 407; 503.

##### **§ 3017.1 Definitions in this part.**

(a) *Modern rate regulation* refers to the standards and criteria the Commission has established pursuant to 39 U.S.C. 3622.

(b) *Views* refers to the opinion the Commission provides to the Secretary of State pursuant to 39 U.S.C. 407(c)(1) on the consistency with modern rate regulation of a proposed treaty, convention, or amendment that establishes a market dominant rate or classification.

##### **§ 3017.2 Purpose.**

The rules in this part are intended to facilitate public participation in, and promote the transparency of, the development of Commission views.

##### **§ 3017.3 Establishment and scope of docket.**

(a) On or about 150 days before a Universal Postal Union Congress convenes or such advance time as the Commission determines for any other 39

<sup>18</sup> Docket No. PI2012-1, Order No. 1451, Order Allowing for Reply Comments, August 28, 2012.

U.S.C. 407(c)(1) matter, the Commission will establish a docket to solicit comments on the general principles that should guide the Commission's development of views on relevant proposals, in a general way, and on specific relevant proposals, if the Commission is able to make these available.

(b) The docket established pursuant to paragraph (a) of this section may also include matters related to development of the Commission's views, such as the availability of relevant proposals, Commission views, other documents, or related actions.

(c) The Commission shall arrange for publication in the **Federal Register** of the notice establishing each docket authorized under this part.

**§ 3017.4 Comment deadline(s).**

(a) The Commission shall establish a deadline for comments upon establishment of the docket that is consistent with timely submission of the Commission's views to the Secretary of State. The Commission may establish other deadlines for comments as appropriate.

(b) The Commission may suspend or forego solicitation of comments if it determines that such solicitation is not

consistent with timely submission of Commission views to the Secretary of State.

**§ 3017.5 Commission discretion as to treatment of comments.**

The Commission will review timely filed comments responding to a Commission solicitation under this part prior to submitting its views to the Secretary of State.

By the Commission.

**Stacy L. Ruble,**

*Secretary.*

[FR Doc. 2016-00036 Filed 1-7-16; 8:45 am]

**BILLING CODE 7710-FW-P**



# Proposed Rules

Federal Register

Vol. 81, No. 5

Friday, January 8, 2016

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

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 922

#### Notice of Intent To Review Monitor National Marine Sanctuary Boundary

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of intent to review boundaries; intent to prepare environmental impact statement; hold scoping meetings.

**SUMMARY:** In accordance with section 304(e) of the National Marine Sanctuaries Act, as amended, (NMSA), the Office of National Marine Sanctuaries (ONMS) of the National Oceanic and Atmospheric Administration (NOAA) is reviewing the Monitor National Marine Sanctuary (MNMS or sanctuary) boundaries in order to evaluate and consider the benefits, need and impact of expanding the sanctuary's boundaries to include additional submerged maritime cultural and archaeological resources as described in the February 2013 Monitor National Marine Sanctuary Final Management Plan and Environmental Assessment. This review process will be conducted per the National Environmental Policy Act (NEPA) and section 106 of the National Historic Preservation Act (NHPA).

**DATES:** Comments must be received by March 18, 2016. Public scoping meetings will be held on the following dates:

1. February 9, 2016
2. February 10, 2016
3. February 11, 2016
4. February 16, 2016
5. February 17, 2016

**ADDRESS:** Comments may be submitted by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the

Federal eRulemaking Portal. Go to <http://www.regulations.gov/#!docketDetail;D=NOAA-NOS-2015-0165>, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* David Alberg, Superintendent, Monitor National Marine Sanctuary, 100 Museum Drive, Newport News, VA 23606-3759.

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

**FOR FURTHER INFORMATION CONTACT:** David Alberg, Superintendent, Monitor National Marine Sanctuary, (757) 591-7326.

**SUPPLEMENTARY INFORMATION:** Public scoping meetings will be held as detailed below:

#### (1) Raleigh, NC

*Date:* Tuesday, February 9, 2016, 6:00 p.m.–9:00 p.m.

*Location:* North Carolina Museum of History

*Address:* 5 East Edenton St., Raleigh, NC 27601

#### (2) Beaufort, NC

*Date:* Wednesday, February 10, 2016, 6:00 p.m.–9:00 p.m.

*Location:* North Carolina Maritime Museum

*Address:* 315 Front St., Beaufort, NC 28516

#### (3) Hatteras, NC

*Date:* Thursday, February 11, 2016, 6:00 p.m.–9:00 p.m.

*Location:* Graveyard of the Atlantic Museum

*Address:* 59200 Museum Dr., Hatteras, NC 27943

#### (4) Washington, DC

*Date:* Tuesday, February 16, 2016, 6:00 p.m.–9:00 p.m.

*Location:* United States Navy Memorial, Main Auditorium  
*Address:* 701 Pennsylvania Ave. NW., Washington, DC 20004

#### (5) Nags Head, NC

*Date:* Wednesday, February 17, 2016, 6:00 p.m.–9:00 p.m.

*Location:* Jennette's Pier, Oceanview Hall

*Address:* 7223 S. Virginia Dare Trail, Nags Head, NC 27959

#### I. Background

MNMS was designated the nation's first national marine sanctuary in 1975. The site protects the wreck of the famed Civil War ironclad USS MONITOR, best known for its 1862 battle with the Confederate ironclad CSS VIRGINIA at Hampton Roads, VA. It is located approximately 16 miles southeast of Cape Hatteras, North Carolina, where it sank in a storm while under tow on December 31, 1862 with the loss of sixteen sailors. The vessel was the prototype for a class of U.S. Civil War ironclad, turreted warships that significantly altered both naval technology and marine architecture in the nineteenth century. The shipwreck and its contents comprise an irreplaceable historical record and represent a monument to the American naval tradition that the vessel itself helped to create.

The sanctuary consists of a column of water one mile in diameter extending from the seabed to the surface, surrounding the shipwreck. The highest priority management goal for the sanctuary is resource protection through comprehensive and coordinated conservation of the wreck and its surroundings. An important part of our nation's history, the USS MONITOR, the archaeological information at the site, the artifact collection, and the USS MONITOR's records are all part of the sanctuary's resources.

The waters of coastal North Carolina contain some of the most significant shipwrecks in the United States and represent an ideal location to study and preserve nationally significant historic wreck sites that include vessels and other artifacts dating back to the Age of North American Exploration, the Revolutionary War, the Civil War and World War II among others. The Expansion Working Group, as the basis for their recommended expansion models, has considered four broad

thematic categories, which include: (1) The Colonial and Pre-Contact Period, (2) Commerce, (3) Conflict, and (4) Coastal Heritage. Veterans groups, historians, archaeologists, divers, the preservation community, the general public and the MNMS Sanctuary Advisory Council (SAC) have asked NOAA to consider expansion of the sanctuary as a means to protect and conserve these wrecks for current and future generations.

The topic of possible boundary expansion was a primary point of discussion during a series of scoping and public hearings held in 2008 as part of the sanctuary's management plan review process. In 2009, the MNMS SAC voted unanimously to recommend that sanctuary management establish an expansion working group to examine the implications of possible future expansion of the sanctuary's boundaries. The working group recommended NOAA formally evaluate and assess an expansion of existing boundaries to protect, manage, and interpret additional historic shipwrecks and other potential maritime heritage resources that are located or believed to be located in the adjacent waters of North Carolina in an area known as the "Graveyard of the Atlantic". The sanctuary's final management plan (completed in 2013 and available at <http://monitor.noaa.gov/management/2013-plan.html>) included the following strategy: "Evaluate and consider the benefits, need, and impact of a future boundary expansion of MNMS to include additional submerged cultural resources."

The expansion working group presented possible expansion models to the MNMS SAC and the public at the June 5, 2014 SAC meeting. Subsequently, a motion that the SAC consider the working group models passed on October 1, 2015 to submit them to NOAA for consideration as possible templates for expansion. A detailed narrative of each of the models as well as further information regarding the MNMS in general can be found at <http://monitor.noaa.gov/management/expansion.html>. Each model is briefly described below.

Model A: Includes isolated shipwreck sites. Boundaries would be restricted to select wreck sites and separate from each other. Under this model, some examples of sites which might be included are: USS YP-389, U-85, U-352, U-701, HMT Bedfordshire, Diamond Shoals Lightship, and E.M. Clark (this is a sample list only and may include additional wrecks). This model would include wrecks listed on the National Register of Historic Places, state craft, military gravesites and other

individual wrecks of historic significance. Under the SAC's recommendation, State waters would not be included.

Model B: Includes a small area centered around the waters off Cape Hatteras. Boundaries could be established to include several wrecks and adjacent waters and culturally significant features in the landscape, such as Diamond Shoals (Cultural Landscapes are further defined here <http://monitor.noaa.gov/pdfs/gota-final.pdf>). Selected wrecks represent many historic themes, including the period of North American exploration, several conflicts and commerce. This model includes at least 65 known shipwrecks within Federal waters. The recommendations from the Working Group recommended that the inclusion of state waters be considered based on public input and further discussions with the State. If during the public scoping process it is determined to include state waters in the expanded area (denoted by the blue strip designating state waters in each model) many more shipwrecks would be located within the boundaries. The combined collection of resources in federal and state waters in this model are representative of a wide range of previously identified historical themes: Colonial and Pre-Contact, the History of Maritime Commerce, Conflict and War Along the Coast, and Coastal Heritage (fishing, lifesaving service, local watermen).

Model C: Includes a larger area also centered off Cape Hatteras that incorporates many historically significant wrecks in federal waters with the potential for include of state waters based upon future public input and discussions with the State as described in Model B above. This model includes sanctuary boundaries surrounding individual wreck sites, and further surrounded by a larger study area. If other historically significant wrecks are discovered within this study area in the future NOAA could consider adding these wrecks to the MNMS through a future public process. This area encompasses the majority of the most historically significant wrecks (as determined by the criteria of the National Historic Preservation Act) in the waters off Cape Hatteras (at least 75 known wrecks in Federal waters with at least 175 additional sites in adjacent state waters), several representative wrecks from multiple periods of history and cultural significance. The area in between known sites would be designed as a 'study area' allowing for inclusion of sites as they are identified.

Model D: Model includes three specific areas, each exhibiting both a representative collection of wrecks in Federal and potentially State waters from many eras and vessel types, and the primary historically significant wrecks off of the Outer Banks. This model includes a collection of at least 100 known wrecks representing all identified thematic areas of cultural significance in the region. The recommendations from the Working Group recommended that the inclusion of state waters be considered based on public input and further discussions with the State as described in Models B and C above.

## II. Need for Action

NOAA is initiating a review of MNMS boundaries to evaluate the benefits and effects of potential sanctuary expansion. This action is being taken to elevate and promote these resources and their history; to facilitate better protection and management of these nationally important resources under the National Marine Sanctuaries Act (NMSA); to better coordinate maritime heritage resource management with other current and potential users of these waters; to increase the scope of submerged archaeological research; to create educational opportunities for the public; and to potentially benefit local coastal communities through increased tourism and economic growth.

## III. Process

The process for considering changes to MNMS is composed of four primary stages:

1. Scoping, including information collection and characterization, and the consideration of public comments;

2. Preparation and release of a draft environmental impact statement (DEIS) and Draft Management Plan (DMP) as required by Section 304(a) of the NMSA that identifies boundary expansion alternatives (including a no-action alternative under the National Environmental Policy Act (NEPA)), as well as a notice of proposed rulemaking (NPRM) to amend the sanctuary regulations to reflect any new boundary if proposed;

3. Public review and comment on the DEIS, DMP and NPRM; and

4. Preparation and release of a final environmental impact statement and final management plan, including a response to public comments, with a final rule if appropriate.

With this document, NOAA is opening a public comment period to:

1. Gather information and public comments from individuals, organizations, and government agencies

on whether to expand sanctuary boundaries, suggestions for the extent and configuration of an expanded boundary, and the potential effects of a boundary expansion; and

2. Help determine the scope of issues to be addressed in the preparation of an environmental impact statement (EIS) pursuant to NEPA.

#### IV. Consultation Under the National Historic Preservation Act

This document confirms that NOAA will fulfill its responsibility under section 106 of the National Historic Preservation Act (NHPA, 16 U.S.C. 470) through the ongoing NEPA process, pursuant to 36 CFR 800.8(a), including the use of NEPA documents and public and stakeholder meetings to meet the section 106 requirements. The NHPA specifically applies to any agency undertaking that may affect historic properties. Pursuant to 36 CFR 800.16(l)(1), a “historic property means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. The term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.”

In fulfilling its responsibility under the NHPA and NEPA, NOAA intends to identify consulting parties; identify historic properties and assess the effects of the undertaking on such properties; initiate formal consultation with the State Historic Preservation Officer, the Advisory Council of Historic Preservation, and other consulting parties; involve the public in accordance with NOAA’s NEPA procedures; and in consultation with the identified consulting parties, develop alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects on historic properties and describe them in any environmental assessment or draft environmental impact statement.

**Authority:** 16 U.S.C. 1431 *et seq.*; 16 U.S.C. 470.

Dated: December 22, 2015.

**John Armor,**

*Acting Director, Office of National Marine Sanctuaries.*

[FR Doc. 2015–33169 Filed 1–7–16; 8:45 am]

**BILLING CODE 3510-NK-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Chapter IX

[Docket No. FR–5650–N–11]

#### Native American Housing Assistance and Self-Determination Act of 1996: Negotiated Rulemaking Committee; Notice of Eighth Meeting

**AGENCY:** Office of Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of meetings of negotiated rulemaking committee.

**SUMMARY:** This notice announces the eighth meeting of the Indian Housing Block Grant (IHBG) program negotiated rulemaking committee.

**DATES:** The eighth meeting will be held on Tuesday, January 26, 2016 and Wednesday, January 27, 2016. On each day, the session will begin at approximately 8:30 a.m., and adjourn at approximately 5:30 p.m.

**ADDRESSES:** The meeting will take place at the Weaver Building, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

#### FOR FURTHER INFORMATION CONTACT:

Randy Akers, Acting Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4126, Washington, DC 20410, telephone number 202–401–7914 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Native American Housing and Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) changed the way that housing assistance is provided to Native Americans. NAHASDA eliminated several separate assistance programs and replaced them with a single block grant program, known as the Indian Housing Block Grant (IHBG) program. The regulations governing the IHBG formula allocation are codified in subpart D of part 1000 of HUD’s regulations in title 24 of the Code of Federal Regulations. In accordance with section 106 of NAHASDA, HUD developed the regulations with active tribal participation using the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570).

Under the IHBG program, HUD makes assistance available to eligible Indian

tribes for affordable housing activities. The amount of assistance made available to each Indian tribe is determined using a formula that was developed as part of the NAHASDA negotiated process. Based on the amount of funding appropriated for the IHBG program, HUD calculates the annual grant for each Indian tribe and provides this information to the Indian tribes. An Indian Housing Plan for the Indian tribe is then submitted to HUD. If the Indian Housing Plan is found to be in compliance with statutory and regulatory requirements, the grant is made.

On July 3, 2012 at 77 FR 39452, HUD announced its intention to establish a negotiated rulemaking committee for the purpose of developing regulatory changes to the formula allocation for the IHBG program. On June 12, 2013 at 78 FR 35178, HUD announced the list of proposed members for the negotiated rulemaking committee, and requested additional public comment on the proposed membership. On July 30, 2013 at 78 FR 45903, HUD announced the final list of committee members to revise the allocation formula used under the IHBG.

Committee meetings have taken place on August 27–28, 2013, September 17–19, 2013, April 23–24, 2014, June 11–13, 2014, July 29–31, 2014, August 26–28, 2014, and August 11–13, 2015. All of the Committee meetings were announced in the **Federal Register** and were open to the public.<sup>1</sup>

##### II. Eighth Committee Meeting

The eighth meeting of the IHBG Formula Negotiated Rulemaking Committee will be held on Tuesday, January 26, 2016 and Wednesday, January 27, 2016. On each day, the session will begin at approximately 8:30 a.m., and adjourn at approximately 5:30 p.m. The meeting will take place at the Weaver Building, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. The primary agenda items for this meeting will be limited to discussion and vote on adjustments to data sources and approval of final preamble language.

These meetings will be open to the public; however, all members of the public will be required to register their attendance; present valid identification, and be subject to security screening upon entrance to the building. The deadline for registration is 5:00 p.m.

<sup>1</sup> See, 78 FR 45903 (July 30, 2013), 78 FR 54416 (September 4, 2013), 79 FR 14204 (March 13, 2014), 79 FR 29700 (May 23, 2014), 80 FR 30004 (May 26, 2015).

Eastern Standard Time, January 22, 2016. The public may register using the following link: <http://newregistration.firstpic.org/rulemaking/index.php> or by calling 1-202-393-6400 (this is not a toll-free number). Through the registration process, attendees will be informed of the acceptable forms of identification to present for admittance to the building. Public attendance may be limited to the space available. Members of the public may make statements during the meetings, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

### III. Future Committee Meetings

Notices of all future meetings will be published in the **Federal Register**. HUD will make every effort to publish such notices at least 15 calendar days prior to each meeting.

Dated: December 31, 2015.

**Lourdes Castro Ramírez,**

*Principal Deputy Assistant Secretary for Public and Indian Housing.*

[FR Doc. 2016-00185 Filed 1-7-16; 8:45 am]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-138344-13]

RIN 1545-BL94

#### Substantiation Requirement for Certain Contributions; Withdrawal

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Withdrawal of notice of proposed rulemaking.

**SUMMARY:** This document withdraws proposed regulations that would implement the statutory exception to the “contemporaneous written acknowledgement” requirement for substantiating charitable contribution deductions of \$250 or more. The withdrawal affects persons that make charitable contributions and organizations that receive charitable contributions.

**DATES:** As of January 8, 2016 the notice of proposed rulemaking published on September 17, 2015 (80 FR 55802), is withdrawn.

**FOR FURTHER INFORMATION CONTACT:** Robert Basso at (202) 317-7011 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 170(f)(8)(A) of the Internal Revenue Code provides the statutory requirement that a taxpayer who claims a charitable contribution deduction for any contribution of \$250 or more obtain substantiation in the form of a contemporaneous written acknowledgment (CWA) from the donee organization. However, in section 170(f)(8)(D), Congress provided an exception to the CWA requirement. Under the exception, a CWA is not required if the donee organization files a return on such form and in accordance with such regulations as the Treasury Department may prescribe (donee reporting).

Section 1.170A-13(f) of the Income Tax Regulations provides the rules issued by the Treasury Department and the IRS for substantiating charitable contributions of \$250 or more. See TD 8690 (1997-1 CB 68). When issuing TD 8690 in 1997, the Treasury Department and the IRS specifically declined to issue regulations to implement donee reporting under section 170(f)(8)(D). The IRS has consistently maintained that the section 170(f)(8)(D) exception is not available unless and until the Treasury Department and the IRS issue final regulations prescribing the method for donee reporting. Nevertheless, some taxpayers under examination for their claimed charitable contribution deductions have recently argued that a failure to comply with the CWA requirements of section 170(f)(8)(A) may be cured if the donee organization files an amended Form 990, “Return of Organization Exempt From Income Tax,” that includes the donor’s contribution information. These taxpayers argue that an amended Form 990 constitutes permissible donee reporting under section 170(f)(8)(D), even if the amended Form 990 is submitted to the IRS many years after the purported charitable contribution was made. In response to some donors’ requests, some donee organizations have filed amended Forms 990 attempting to effectuate donee reporting. The Treasury Department and the IRS have concluded that the Form 990 is an unsuitable reporting method for this purpose and may not be used to effectuate donee reporting.

However, in response to the interest by some taxpayers in donee reporting under the statutory exception, the Treasury Department and the IRS proposed regulations to implement a

framework addressing the manner and timing for donee reporting under section 170(f)(8)(D). On September 17, 2015, a notice of proposed rulemaking (REG-138344-13) was published in the **Federal Register** (80 FR 55802). The proposed framework for donee reporting was based on a specific-use information return that would include, among other things, the donor’s name, address, and taxpayer identification number. Similar to other specific-use information returns filed with the IRS, the donor’s taxpayer identification number was required in order to properly associate the donation information with the correct taxpayer. Unlike a CWA, which is not sent to the IRS, the donee reporting information return would be sent to the IRS, which must have a means to store, maintain, and readily retrieve the return information for a specific taxpayer if and when substantiation is required in the course of an examination.

The proposed framework for donee reporting was intended to minimize the reporting burden on donee organizations by making it voluntary, and to protect donor privacy by not using the Form 990 series. In the preamble to the proposed regulations, the Treasury Department and the IRS expressed concern about the potential risk for identity theft with a donee reporting system based on a specific-use information return because donee organizations would be collecting donors’ taxpayer identification numbers and maintaining those numbers for some period of time. The Treasury Department and the IRS requested comments, including specifically on whether additional guidance was necessary regarding the procedures a donee organization should use to mitigate the risk of identity theft of donor information.

The Treasury Department and the IRS received a substantial number of public comments in response to the notice of proposed rulemaking. Many of these public comments questioned the need for donee reporting, and many comments expressed significant concerns about donee organizations collecting and maintaining taxpayer identification numbers for purposes of the specific-use information return. In response to those comments, the Treasury Department and the IRS have decided against implementing the statutory exception to the CWA requirement, and therefore that exception remains unavailable unless and until final regulations are issued prescribing the method for donee reporting. Accordingly, the notice of proposed rulemaking is being withdrawn.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Withdrawal of Notice of Proposed Rulemaking**

Under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG-138344-13) that was published in the **Federal Register** on September 17, 2015 (80 FR 55802) is withdrawn.

**Karen M. Schiller,**

*Acting Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2016-00189 Filed 1-7-16; 8:45 am]

BILLING CODE 4830-01-P

**GENERAL SERVICES ADMINISTRATION****41 CFR Parts 300-3, 301-11, 301-12, and 301-70**

[FTR Case 2015-304; Docket 2015-0017, Sequence 1]

RIN 3090-AJ56

**Federal Travel Regulation; Updating the Incidental Expenses Definition and the Laundry, Cleaning, and Pressing of Clothing Policy**

**AGENCY:** Office of Government-wide Policy (OGP), General Services Administration (GSA).

**ACTION:** Proposed rule.

**SUMMARY:** GSA is proposing to amend the Federal Travel Regulation (FTR) by updating the definition for incidental expenses to include ATM fees, and by clarifying the policy for laundry, cleaning, and pressing of clothing.

**DATES:** Interested parties should submit comments to the Regulatory Secretariat at one of the addresses shown below on or before March 8, 2016 to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments identified by FTR Case 2015-304 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "FTR Case 2015-304." Select the link "Comment Now" that corresponds with "FTR Case 2015-304" and follow the instructions provided at the screen. Please include your name, company name (if any), and "FTR Case 2015-304" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), Attn. Ms. Flowers, 1800 F Street NW., Washington, DC 20405.

*Instructions:* Please submit comments only and cite "FTR Case 2015-304", in

all correspondence related to this case. All comments will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov) approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Cy Greenidge, Program Analyst, Office of Government-wide Policy, at 202-219-2349. Contact the Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405, 202-501-4755, for information pertaining to status or publication schedules. Please cite FTR case 2015-304.

**SUPPLEMENTARY INFORMATION:****A. Background**

The FTR currently lists incidental expenses as fees and tips given to porters, baggage carriers, hotel staff, and staff on ships. Including ATM fees in incidental expenses, rather than reimbursing as a miscellaneous expense, will increase the Government's ability to project travel costs, improve cost control, and simplify rules of official travel. Additionally, this proposed rule removes the ambiguity on whether reimbursement of expenses for laundry, cleaning, and pressing of clothing for employees who go on official travel are subject to agency discretion.

**B. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives, and if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

**C. Regulatory Flexibility Act**

This proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This proposed rule is also exempt from the Administrative Procedure Act pursuant

to 5 U.S.C. 553(a)(2) because it applies to agency management or personnel.

**D. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the proposed changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

**E. Small Business Regulatory Enforcement Fairness Act**

This proposed rule is also exempt from Congressional review prescribed under 5 U.S.C. 801. This proposed rule is not a major rule under 5 U.S.C. 804.

**List of Subjects in 41 CFR Parts 300-3, 301-11, 301-12 and 301-70**

Administrative practices and procedures, Government employees, Travel and transportation expenses.

Dated: December 7, 2015.

**Giancarlo Brizzi,**

*Acting Associate Administrator (M), Office of Government-wide Policy.*

For the reasons set forth in the preamble, pursuant to 5 U.S.C. 5701-5711, GSA proposes to amend 41 CFR parts 300-3, 301-11, 301-12, and 301-70 as set forth below:

**PART 300-3—GLOSSARY OF TERMS**

■ 1. The authority citation for 41 CFR part 300-3 continues to read as follows:

**Authority:** 5 U.S.C. 5707; 40 U.S.C. 121(c); 49 U.S.C. 40118; 5 U.S.C. 5738; 5 U.S.C. 5741-5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; E.O. 11609, as amended, 3 CFR, 1971-1975 Comp. p. 586, Office of Management and Budget Circular No. A-126, revised May 22, 1992.

■ 2. Amend § 300-3.1 in the definition "Per diem allowance" by revising paragraph (c) to read as follows:

**§ 300-3.1 What do the following terms mean?**

\* \* \* \* \*

*Per diem allowance* \* \* \*

(c) *Incidental expenses*—Transaction fees for ATM services, and fees and tips given to porters, baggage carriers, hotel staff, and staff on ships.

\* \* \* \* \*

**PART 301-11—PER DIEM EXPENSES**

■ 3. The authority citation for 41 CFR part 301-11 continues to read as follows:

**Authority:** 5 U.S.C. 5707.

■ 4. Amend § 301-11.31 by removing the first two sentences and adding one

sentence in their place to read as follows:

**§ 301–11.31 Are laundry, cleaning, and pressing of clothing expenses reimbursable?**

Your agency may reimburse the expenses incurred for laundry, cleaning, and pressing of clothing as a miscellaneous travel expense for TDY within CONUS. \* \* \*

**PART 301–12—MISCELLANEOUS EXPENSES**

■ 5. The authority citation for 41 CFR part 301–12 continues to read as follows:

Authority: 5 U.S.C. 5707.

**§ 301–12.1 [Amended]**

■ 6. Amend § 301–12.1 by removing from the second column titled “Fees to obtain money” the words “Transaction fees for use of automated teller machines (ATMs)—Government contractor-issued charge card”.

**PART 301–70—INTERNAL POLICY AND PROCEDURE REQUIREMENTS**

■ 7. The authority citation for 41 CFR part 301–70 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec. 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701, note), OMB Circular No. A–126, revised May 22, 1992, and OMB Circular No. A–123, Appendix B, revised January 15, 2009.

■ 8. Amend § 301–70.200 by—

■ a. Removing from paragraph (f) the “cases and” and adding “cases” in its place;

■ b. Removing from paragraph (g) the period after the citation “§ 301–11.18(c)” and adding “; and” in its place; and

■ c. Adding paragraph (h) to read as follows:

**§ 301–70.200 What governing policies must we establish for authorization and payment of per diem expenses?**

\* \* \* \* \*

(h) Who will determine, and in what instances, an employee will be separately reimbursed for transaction fees for use of automated teller machines (ATMs) when using the Government contractor-issued charge card, even though this expense is part of incidental expenses under per diem.

■ 9. Amend § 301–70.301 by revising paragraph (c) to read as follows:

**§ 301–70.301 What governing policies must we establish for payment of miscellaneous expenses?**

\* \* \* \* \*

(c) Who will determine if other miscellaneous expenses such as expenses for laundry, cleaning and pressing of clothing are appropriate for reimbursement in connection with official travel.

[FR Doc. 2015–33147 Filed 1–7–16; 8:45 am]

BILLING CODE 6820–14-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**42 CFR Part 100**

RIN 0906–AB00

**National Vaccine Injury Compensation Program: Revisions to the Vaccine Injury Table**

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of public hearing.

**SUMMARY:** This document announces a public hearing to receive information and views on the Notice of Proposed Rulemaking (NPRM) entitled “National Vaccine Injury Compensation Program: Revisions to the Vaccine Injury Table.”

**DATES:** January 14, 2016, from 11 a.m.–12:30 p.m. (EST).

**ADDRESSES:** 5600 Fishers Lane, Conference Room 08SWH01, Rockville, Maryland 20857 (and via audio conference call and Adobe Connect).

**FOR FURTHER INFORMATION CONTACT:** Dr. Melissa Houston, Director, Division of Injury Compensation Programs, at 855–266–2427 or by email at [ahouston@hrsa.gov](mailto:ahouston@hrsa.gov).

**SUPPLEMENTARY INFORMATION:** The Secretary proposes to amend the Vaccine Injury Table (Table) by regulation. These proposed regulations will have effect only for petitions for compensation under the National Vaccine Injury Compensation Program (VICP) filed after the final regulations become effective. The Secretary is seeking public comment on the proposed revisions to the Table.

The NPRM was published in the **Federal Register**, July 29, 2015, 80 FR 45132, <http://www.gpo.gov/fdsys/pkg/FR-2015-07-29/pdf/2015-17503.pdf>. The public comment period closes on January 26, 2016.

A public hearing will be held within the 180-day public comment period. This hearing is to provide an open forum for the presentation of information and views concerning all aspects of the NPRM by interested persons.

In preparing a final regulation, the Secretary will consider the administrative record of this hearing

along with all other written comments received during the comment period specified in the NPRM. Individuals or representatives of interested organizations are invited to participate in the public hearing in accordance with the schedule and procedures set forth below.

The presiding officer representing the Secretary, HHS will be Dr. Melissa Houston, Director, Division of Injury Compensation Programs, Healthcare Systems Bureau (HSB), Health Resources and Services Administration.

Persons who wish to participate are requested to file a notice of participation with the Department of Health and Human Services (HHS) on or before January 11, 2016. The notice should be mailed to Annie Herzog, Division of Injury Compensation Programs, HSB, 5600 Fishers Lane, Rockville, Room 08N146B, Maryland 20857 or emailed to [aherzog@hrsa.gov](mailto:aherzog@hrsa.gov). To ensure timely handling, any outer envelope or the subject line of an email should be clearly marked “DICP NPRM Hearing.” The notice of participation should contain the interested person’s name, address, email address, telephone number, any business or organizational affiliation of the person desiring to make a presentation, a brief summary of the presentation, and the approximate time requested for the presentation. Groups that have similar interests should consolidate their comments as part of one presentation. Time available for the hearing will be allocated among the persons who properly file notices of participation. If time permits, interested parties attending the hearing who did not submit notice of participation in advance will be allowed to make an oral presentation at the conclusion of the hearing.

Persons who find that there is insufficient time to submit the required information in writing may give oral notice of participation by contacting Annie Herzog, Division of Injury Compensation Programs, at (301) 443–6634 or email at [aherzog@hrsa.gov](mailto:aherzog@hrsa.gov), no later than January 11, 2016.

After reviewing the notices of participation and accompanying information, HHS will schedule each appearance and notify each participant by mail, email, or telephone of the time allotted to the person(s) and the approximate time the person’s oral presentation is scheduled to begin.

Written comments and transcripts of the hearing will be made available for public inspection as soon as they have been prepared, on weekdays (federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m. (EDT) by contacting Annie Herzog by mail at

Division of Injury Compensation Programs, Room 08N146B, 5600 Fishers Lane, Rockville, Maryland 20857, email at [ahertzog@hrsa.gov](mailto:ahertzog@hrsa.gov), or phone at 301-443-6634. We intend to post written comments and transcripts to [regulations.gov](http://regulations.gov) as soon as practicable. The public can join the meeting by:

1. (In Person) Persons interested in attending the meeting in person are encouraged to submit a written notification to: Annie Herzog, Division of Injury Compensation Programs, Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), 5600 Fishers Lane, Room 08N146B, Rockville, Maryland 20857 or email: [ahertzog@hrsa.gov](mailto:ahertzog@hrsa.gov). Since this meeting is held in a federal government building, attendees will need to go through a security check to enter the building and participate in the meeting. This written notification is encouraged so that a list of attendees can be provided to make entry through security quicker. Persons may attend in person without providing written notification, but their entry into the building may be delayed due to security checks and the requirement to be escorted to the meeting by a federal government employee. To request an escort to the meeting after entering the building, call Annie Herzog at 301-443-6634. The meeting will be held at 5600 Fishers Lane, Conference Room 08SWH01, Rockville, Maryland 20857. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed above at least 10 days prior to the meeting.

2. (Audio Portion) Calling the conference phone number 888-455-9673 and providing the following information:

Leaders Name: Dr. A. Melissa Houston.

Password: 4185364.

3. (Visual Portion) Connecting to the ACCV Adobe Connect Pro Meeting using the following URL: <https://hrsa.connectsolutions.com/accv/> (copy and paste the link into your browser if it does not work directly, and enter as a guest). Participants should call and connect 15 minutes prior to the meeting in order for logistics to be set up. If you have never attended an Adobe Connect meeting, please test your connection using the following URL: [https://hrsa.connectsolutions.com/common/help/en/support/meeting\\_test.htm](https://hrsa.connectsolutions.com/common/help/en/support/meeting_test.htm) and get a quick overview by following URL: [http://www.adobe.com/go/connectpro\\_overview](http://www.adobe.com/go/connectpro_overview). Call (301) 443-6634 or send an email to

[ahertzog@hrsa.gov](mailto:ahertzog@hrsa.gov) if you are having trouble connecting to the meeting site.

Dated: January 4, 2016.

**Sylvia M. Burwell,**

*Secretary.*

[FR Doc. 2016-00156 Filed 1-7-16; 8:45 am]

**BILLING CODE 4165-15-P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Part 195

[Docket No. PHMSA-2015-0173]

#### Pipeline Safety: Notice of Liquid Pipeline Advisory Committee Meeting

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

**ACTION:** Notice of Liquid Pipeline Advisory Committee meeting.

**SUMMARY:** This document announces a public meeting of the Liquid Pipeline Advisory Committee (LPAC). The committee will meet to consider and vote on the proposed rule, "Pipeline Safety: Safety of Hazardous Liquid Pipelines," and the associated regulatory assessment.

**DATES:** The meeting will be held on Monday, February 1, 2016, from 10:00 a.m. to 5:00 p.m. EST.

The meeting will not be web cast; however, presentations will be available on the meeting Web site and posted on the E-Gov Web site: <http://www.regulations.gov> under docket number PHMSA-2015-0173 within 30 days following the meeting.

**ADDRESSES:** The meeting will take place in the Washington, DC Metropolitan area at a location yet to be determined. The location of the meeting and other details will be posted on the PHMSA Web site under Regulations/Pipeline Advisory Committees at <http://www.phmsa.dot.gov/pipeline/regs/technical-advisory-comm> about 15 days before the meeting date. Individuals wishing to attend and receive an email with the location should register in advance at <https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=110> or contact the individual listed under **FOR FURTHER INFORMATION CONTACT** by January 15, 2016.

Comments on the meeting may be submitted to the docket in the following ways:

*E-Gov Web site:* <http://www.regulations.gov>. This site allows the public to enter comments on any

**Federal Register** notice issued by any agency.

*Fax:* 1-202-493-2251.

*Mail:* Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., West Building, Room W12-140, Washington, DC 20590-001.

*Hand Delivery:* Room W12-140 on the ground level of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except on Federal Holidays.

*Instructions:* Identify the docket numbers, PHMSA-2010-0229 and PHMSA-2015-0173 at the beginning of your comments. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. You should know that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Therefore, you may want to review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (65 FR 19477) or view the Privacy Notice at <http://www.regulations.gov> before submitting any such comments.

*Docket:* For access to the docket or to read background documents or comments, go to <http://www.regulations.gov> at any time or to Room W12-140 on the ground level of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: "Comments on PHMSA-2010-0229 and PHMSA 2015-0173." The Docket Clerk will date-stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

#### *Privacy Act Statement*

Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11,

2000, (70 FR 19477) or visit <http://dms.dot.gov>.

*Information on Services for Individuals With Disabilities*

For information on facilities or services for individuals with disabilities, or to seek special assistance at the meeting, please contact Cheryl Whetsel at 202–366–4431 by January 15, 2016.

**FOR FURTHER INFORMATION CONTACT:** For information about the meetings, contact Cheryl Whetsel by phone at 202–366–4431 or by email at [cheryl.whetsel@dot.gov](mailto:cheryl.whetsel@dot.gov) or for technical questions about the proposed rule contact Mike Israni by phone at 202–366–4595 or by email at [mike.israni@dot.gov](mailto:mike.israni@dot.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Meeting Details**

Members of the public may attend and make a statement during the advisory committee meetings. For a better chance to speak at the meetings, please contact the individual listed under **FOR FURTHER INFORMATION CONTACT** by January 15, 2016.

**II. Committee Background**

The LPAC is a statutorily created committee that advises PHMSA on proposed safety standards, risks assessments, and safety policies for hazardous liquid pipelines (49 U.S.C. 60115). The committee’s activities are subject to the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1). The committee consists of 15 members—with membership evenly divided among the federal and state government, the regulated industry, and the public. The committee advises PHMSA on technical feasibility,

practicability, and cost-effectiveness of each proposed pipeline safety standard. PHMSA staff may also provide an update on several regulatory and policy initiatives if time allows.

**III. Preliminary Agenda**

The agenda will include the committee’s discussion and vote on the proposed rule, “Pipeline Safety: Safety of Hazardous Liquid Pipelines,” published in the **Federal Register** on October 13, 2015, (80 FR 61610) and on the associated regulatory analysis.

The proposed rule includes critical safety improvements for hazardous liquid pipelines and seeks to strengthen the way they are operated, inspected and maintained in the United States.

In this proposed rule, PHMSA addresses effective measures that hazardous liquid operators can take to improve the protection of high consequence areas and other vulnerable areas along their hazardous liquid onshore pipelines. In summary, the proposed rule addresses the following areas:

- Requirements for gravity lines.
- Reporting requirements for gathering lines.
- Inspections of pipelines following extreme weather events.
- Periodic assessments of pipelines not subject to integrity management.
- Pipeline repair criteria.
- Expanded use of leak detection systems.
- Increased use of in-line inspection tools.
- Clarifying other requirements.

Issued in Washington, DC, on January 4, 2016, under authority delegated in 49 CFR 1.97.

**Alan K. Mayberry,**

*Deputy Associate Administrator for Policy and Programs.*

[FR Doc. 2016–00135 Filed 1–7–16; 8:45 am]

**BILLING CODE 4910–60–P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Parts 32 and 36**

[Docket No. FWS–R7–NWRS–2014–0005; FF07R06000 167 FXRS12610700000]

**RIN 1018–BA31**

**Non-Subsistence Take of Wildlife, and Public Participation and Closure Procedures, on National Wildlife Refuges in Alaska**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; announcement of open houses and public hearings.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (USFWS), published a proposed rule elsewhere in today’s **Federal Register** to amend our regulations for National Wildlife Refuges (refuges) in Alaska. The public comment period on the proposed rule closes on the date specified in that document. This supplementary document contains the dates, times, and locations for the upcoming open houses and public hearings on the proposed rule.

**DATES:** We will hold nine open houses and public hearings on the proposed rule as follows:

Date	City	Time of open house	Time of public hearing
January 26 , 2016 .....	Kotzebue, Alaska .....	1:00 p.m. to 2:00 p.m. ....	2:30 p.m. to 4:30 p.m.
January 27, 2016 .....	Kodiak, Alaska .....	4:00 p.m. to 5:00 p.m. ....	5:30 p.m. to 7:30 p.m.
February 8, 2016 .....	Bethel, Alaska .....	4:00 p.m. to 5:00 p.m. ....	5:30 p.m. to 7:30 p.m.
February 10, 2016 .....	Fairbanks, Alaska .....	5:00 p.m. to 6:00 p.m. ....	6:30 p.m. to 8:30 p.m.
February 11, 2016 .....	Tok, Alaska .....	5:00 p.m. to 6:00 p.m. ....	6:30 p.m. to 8:30 p.m.
February 16, 2016 .....	Soldonta, Alaska .....	4:00 p.m. to 5:00 p.m. ....	5:30 p.m. to 7:30 p.m.
February 18, 2016 .....	Anchorage, Alaska .....	4:00 p.m. to 5:00 p.m. ....	5:30 p.m. to 7:30 p.m.
March 1, 2016 .....	Dillingham, Alaska .....	4:00 p.m. to 5:00 p.m. ....	5:30 p.m. to 7:30 p.m.
March 3, 2016 .....	Galena, Alaska .....	1:00 p.m. to 2:00 p.m. ....	2:30 p.m. to 4:30 p.m.

**ADDRESSES: Document Availability:** You may obtain copies of the proposed rule at <http://www.regulations.gov> at Docket No. FWS–R7–NWRS–2014–0005.

**Comment Submission:** You may submit comments on the proposed rule by any one of the following methods:

- (1) Electronically: Go to the Federal eRulemaking Portal: [http://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov). In the Search box, enter FWS–R7–NWRS–2014–0005, which is the docket number for this rulemaking. Then click on the Search button. On the resulting page, you may submit a comment by clicking on “Comment Now!”

- (2) By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments

Processing, Attn: FWS–R7–NWRS–2014–0005; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

(3) At open houses or the public hearings: Written comments will be accepted by Service personnel at any of



the nine scheduled open houses or public hearings. Public testimony will be recorded and submitted for the record at the public hearings via a court reporter.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally

means that we will post any personal information you provide us.

*Open Houses and Public Hearings:* We will hold open houses and public hearings at the following locations:

City	Location information
Kodiak, Alaska .....	Kodiak National Wildlife Refuge Visitor Center, 402 Center Ave, Kodiak, Alaska; 907-487-2600.
Bethel, Alaska .....	Yukon Delta National Wildlife Refuge Conference Room, 807 Chief, Eddie Hoffman Highway, Bethel, Alaska; 907-543-3151.
Fairbanks, Alaska .....	Morris Thompson Cultural and Visitor Center, 101 Dunkel St., Fairbanks, Alaska; 907-456-0440.
Tok, Alaska .....	Tok School, 249 Jon Summar Road, Tok, Alaska; 907-883-5312.
Soldotna, Alaska .....	Kenai National Wildlife Refuge Visitor Center, Ski Hill Road, Soldotna, Alaska; 907-260-2820.
Anchorage, Alaska .....	U.S. Fish and Wildlife Service Regional Office, Gordon Watson Conference Room, 1011 Tudor Rd., Anchorage, Alaska; 907-786-3872.
Dillingham, Alaska .....	Dillingham City Council Chambers, 141 Main Street, Dillingham, Alaska; 907-842-1063.
Galena, Alaska .....	Charlie Larsen Community Hall, Galena, Alaska; 907-656-1231.
Kotzebue, Alaska .....	Selawik National Wildlife Refuge Conference Room at the Selawik National Wildlife Refuge Headquarters, 160 Second Avenue, Kotzebue, Alaska; 907-442-3799.

#### FOR FURTHER INFORMATION CONTACT:

Stephanie Brady, Chief of Conservation Planning and Policy, National Wildlife Refuge System, Alaska Regional Office, 1011 E. Tudor Rd., Mail Stop 211, Anchorage, AK 99503; telephone (907) 306-7448.

#### SUPPLEMENTARY INFORMATION:

##### Background

We published a proposed rule elsewhere in today's **Federal Register** to clarify how our existing mandates for the conservation of natural and biological diversity, biological integrity, and environmental health on refuges in Alaska relate to predator control; prohibit several particularly effective methods and means for take of predators; and update our public participation and closure procedures. The proposed rule would not change Federal subsistence regulations or restrict the taking of fish or wildlife for subsistence uses under Federal subsistence regulations. See the proposed rule and associated environmental assessment at <http://www.regulations.gov> at Docket No. FWS-R7-NWRS-2014-0005 for further details.

##### Open Houses and Public Hearings

We are holding nine open houses and public hearings on the dates listed above in the **DATES** section at the locations listed above in the **ADDRESSES** section. We are holding the public hearings to provide interested parties an opportunity to present verbal testimony (formal, oral comments) or written comments regarding the proposed rule and associated environmental assessment. A formal public hearing is not, however, an opportunity for dialogue with the Service; it is only a forum for accepting formal verbal testimony. In contrast to the public

hearings, the open houses allow the public the opportunity to interact with Service staff, who will be available to provide information and address questions on the proposed rule and the environmental assessment.

We cannot accept verbal testimony at any of the open houses; verbal testimony can only be accepted at the public hearings. Anyone wishing to make an oral statement at a public hearing for the record is encouraged to provide a written copy of their statement to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Speakers can sign up at a hearing if they desire to make an oral statement. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us.

Persons with disabilities needing reasonable accommodations to participate in an open house or public hearing should contact Stephanie Brady, Chief of Conservation Planning and Policy, National Wildlife Refuge System, Alaska (see **FOR FURTHER INFORMATION CONTACT**). Reasonable accommodation requests should be received at least 3 business days prior to the open house or public hearing to help ensure availability; American Sign Language or English as a second language interpreter needs should be received at least 2 weeks prior to the open house or public meeting.

##### Authors

The primary author of this document is Stephanie Brady, Chief of Conservation Planning and Policy, National Wildlife Refuge System, Anchorage Regional Office.

##### Authority

The authority for this action is 5 U.S.C. 301; 16 U.S.C. 460k *et seq.*, 664, 668dd-668ee, 715i, and 3101 *et seq.*

##### Karen Hyun,

*Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2016-00021 Filed 1-7-16; 8:45 am]

**BILLING CODE 4333-15-P**

#### DEPARTMENT OF THE INTERIOR

##### Fish and Wildlife Service

##### 50 CFR Parts 32 and 36

[Docket No. FWS-R7-NWRS-2014-0005; FF07R05000 145 FXRS12610700000]

RIN 1018-BA31

##### Non-Subsistence Take of Wildlife, and Public Participation and Closure Procedures, on National Wildlife Refuges in Alaska

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (USFWS), propose to amend our regulations for National Wildlife Refuges (refuges) in Alaska. This proposed rule clarifies how our existing mandates for the conservation of natural and biological diversity, biological integrity, and environmental health on refuges in Alaska relate to predator control; prohibits several particularly effective methods and means for take of predators; and updates our public participation and closure procedures. This proposed rule would not change Federal subsistence regulations or restrict the taking of fish or wildlife for subsistence uses under Federal subsistence regulations.

**DATES:** We must receive your comments on or before March 8, 2016.

**ADDRESSES:** You may submit comments by any one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter FWS-R7-NWRS-2014-0005, which is the docket number for this rulemaking. Then click on the Search button. On the resulting page, you may submit a comment by clicking on "Comment Now!"

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R7-NWRS-2014-0005; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041-3803.

(3) *In person:* We will hold nine open houses and public hearings at which comments may be submitted. See the related document published elsewhere in today's **Federal Register** with information about the dates, times, and locations of those open houses and hearings and the various ways in which oral and written comments will be accepted.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us. For additional information, see the Public Participation and Public Availability of Comments sections, below.

**FOR FURTHER INFORMATION CONTACT:**

Stephanie Brady, Chief of Conservation Planning and Policy, National Wildlife Refuge System, Alaska Regional Office, 1011 E. Tudor Rd., Mail Stop 211, Anchorage, AK 99503; telephone (907) 306-7448.

**SUPPLEMENTARY INFORMATION:**

**Background**

The U.S. Fish and Wildlife Service (USFWS) has various mandates it must adhere to in managing the National Wildlife Refuge System (NWRS). There are three statutes in particular that provide direction and authority specific to the Alaska NWRS: The 1980 Alaska National Interest Lands Conservation Act (ANILCA; 16 U.S.C. 3111-3126); the 1997 National Wildlife Refuge System Improvement Act (Improvement Act; 16 U.S.C. 668dd-668ee, which amended the National Wildlife Administration Act of 1966 (Administration Act)); and the 1964 Wilderness Act (16 U.S.C. 1131-1136).

The Improvement Act provides that ANILCA takes precedence if there is a conflict between the two, and thus ANILCA provides the primary direction

for management specific to refuges in Alaska. ANILCA added approximately 54 million acres of land to the NWRS in Alaska, managed by USFWS; established nine new refuges; and established or redesignated seven other already established refuges. ANILCA also designated 18.7 million acres in 13 wilderness areas on refuges in Alaska as units of the National Wilderness Preservation System.

Under ANILCA, each refuge in Alaska has a nonexclusive list of purposes for which it was established, including to "conserve fish and wildlife populations and habitats in their natural diversity" followed by a list of representative species particular to each refuge. Under ANILCA, all other refuge establishment purposes for Alaska refuges (except international treaty obligations) must be managed consistently with the first purpose for the conservation of natural diversity. While "natural diversity" is not defined in ANILCA, its legislative history provides guidance. The Senate Report on H.R. 39 states that refuges represent "the opportunity to manage these areas on a planned ecosystem-wide basis with all of their pristine ecological processes intact" (S. Rep. No. 96-413 at 174 (1979), *reprinted in* 1980 U.S.C.C.A.N. 5118). Nine days after ANILCA was signed into law on December 2, 1980, Congressman Udall, during a speech on the floor of the House of Representatives described the source of the term "natural diversity." He stated that the conservation of natural diversity refers not only to "protecting and managing all fish and wildlife populations within a particular wildlife refuge system unit in the natural 'mix,' not to emphasize management activities favoring one species to the detriment of another" (126 Cong. Rec. H12, 352-53 (daily ed. Dec. 11, 1980) (statement of Rep. Udall)). During this floor speech, Congressman Udall also stated that in managing for natural diversity it was the intent of Congress, "to direct the U.S. Fish and Wildlife Service to the best of its ability, . . . to manage wildlife refuges to assure that habitat diversity is maintained through natural means, avoiding artificial developments and habitat manipulation programs . . . ; to assure that wildlife refuge management fully considers the fact that humans reside permanently within the boundaries of some areas and are dependent, . . . on wildlife refuge subsistence resources; and to allow management flexibility in developing new and innovative management programs different from lower 48 standards, but in the context of

maintaining natural diversity of fish and wildlife populations and their dependent habitats for the long term benefit of all citizens" (126 Cong. Rec. H12,352-53 (daily ed. Dec. 11, 1980) (statement of Rep. Udall)).

In its ANILCA Title VIII statement of policy, Congress stated, "nonwasteful subsistence uses of fish and wildlife and other renewable resources [by rural residents] shall be the priority consumptive uses of all such resources on the public lands of Alaska when it is necessary to restrict taking in order to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population, the taking of such population for nonwasteful subsistence uses shall be given preference on the public land over other consumptive uses" (16 U.S.C. 3112(2)). This subsistence preference includes all National Wildlife Refuges in Alaska.

All refuges in Alaska (except the Kenai National Wildlife Refuge) have among their stated statutory purposes to provide the opportunity for continued subsistence use by local rural residents in a manner consistent with the conservation of fish and wildlife populations and habitats in their natural diversity and fulfilling the international treaty obligations of the United States with respect to fish and wildlife and their habitats. In a further statement of Title VIII policy, Congress stated that "consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands; consistent with management of fish and wildlife in accordance with recognized scientific principles and the purposes for each unit established . . . the purpose of this title [Title VIII] is to provide the opportunity for rural residents engaged in a subsistence way of life to do so" (16 U.S.C. 3112(1)). The Senate Committee on Energy and Natural Resources in its report on H.R. 39 stated that "the phrase 'the conservation of healthy populations of fish and wildlife' is to mean the maintenance of fish and wildlife resources in their habitats in a condition which assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystems, including recognition that local rural residents engaged in subsistence uses may be a natural part of that ecosystem . . ." (S. Rep. No. 96-413 at 233, *reprinted in* 1980 U.S.C.C.A.N. 5177).

The USFWS recognizes the importance of the fish, wildlife, and other natural resources in the lives and cultures of Alaska Native peoples, rural residents, and in the lives of all Alaskans, and we continue to recognize subsistence uses of fish and wildlife and other renewable resources as the priority consumptive use on Federal lands in Alaska, which includes all National Wildlife Refuges in Alaska. This proposed rule would not change existing or future Federal subsistence regulations (36 CFR 242 and 50 CFR 100) or restrict taking of fish or wildlife for subsistence uses under Federal subsistence regulations.

The Improvement Act states that refuges must be managed to fulfill the mission of the NWRS and purposes of the individual refuge. The Improvement Act also clearly states the mission of the NWRS, which is to “administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.” Section 4(a)(4)(B) of the Improvement Act states that “In administering the System, the Secretary shall . . . ensure that the biological integrity, diversity, and environmental health [BIDEH] of the System are maintained for the benefit of present and future generations of Americans . . .” (16 U.S.C. 668dd(a)(4)(B)). The USFWS BIDEH policy (601 FW 3), which provides guidance for implementation of the Improvement Act, defines biological integrity as “biotic composition, structure, and functioning at genetic, organism, and community levels comparable with historic conditions, including the natural biological processes that shape genomes, organisms, and communities.” In that policy, biological diversity is defined as “the variety of life and its processes, including the variety of living organisms, the genetic differences among them, and communities and ecosystems in which they occur.” The policy defines environmental health as the “composition, structure, and functioning of soil, water, air, and other abiotic features comparable with historic conditions, including the natural abiotic processes that shape the environment.” Abiotic features are nonliving chemical and physical features of the environment (e.g., soil, air, water, temperature, etc.). The policy also defines “historic conditions” as the “composition, structure, and functioning of ecosystems resulting from natural processes that we believe,

based on sound professional judgment, were present prior to substantial human related changes to the landscape.” In implementing this policy on refuges, we favor “management that restores or mimics natural ecosystem processes or functions to achieve refuge purposes(s).” Additionally, under this policy, we “formulate refuge goals and objectives for population management by considering natural densities, social structures, and population dynamics at the refuge level” and manage populations for “natural densities and levels of variation.”

The Wilderness Act of 1964 (16 U.S.C. 1131–1136) states that wilderness “is hereby recognized as an area where the earth and its community of life are untrammelled by man . . . which is protected and managed so as to preserve its natural conditions.” Our wilderness stewardship policy (610 FW 1) interprets “untrammelled” to be “the freedom of a landscape from the human intent to permanently intervene, alter, control, or manipulate natural conditions or processes.” The second chapter of the wilderness stewardship policy, which outlines administration and resource stewardship (610 FW 2), directs that USFWS will not manipulate ecosystem processes, specifically including predator/prey fluctuations, in wilderness areas unless “necessary to accomplish the purposes of the refuge, including Wilderness Act purposes, or in cases where these processes become unnatural” (i.e., disrupted predator/prey relationships, spread of invasive species, and so forth). Additionally, nothing in this proposed rule applies to or is inconsistent with our policy that outlines special provisions for Alaska wilderness (610 FW 5).

The overarching goal of our wildlife-dependent recreation policy is to enhance opportunities and access to quality visitor experiences on refuges and to manage the refuge to conserve fish, wildlife, plants, and their habitats (605 FW 1.6). We recognize hunting as one of many priority uses of the Refuge System (when and where compatible with refuge purposes) that is a healthy, traditional outdoor pastime, deeply rooted in the American heritage (605 FW 2). As stated in part 36 of title 50 of the Code of Federal Regulations (50 CFR 36), the taking of fish and wildlife through public recreational activities, including sport hunting, is authorized on refuges in Alaska “as long as such activities are conducted in manner compatible with the purposes for which the areas were established” (50 CFR 36.31(a)).

Sport hunting and trapping on refuges is generally regulated by the States,

unless further restricted by Federal law (see 50 CFR 32.2(d)) or closures to Federal public land, such as under Federal subsistence regulations (36 CFR 242.26 or 50 CFR 100.26). In Alaska, sport hunting is commonly referred to as general hunting and trapping and includes State subsistence hunts and general permits open to both Alaska residents and nonresidents (see proposed definition under the Proposed Regulation Promulgation section, below). These activities remain subject to Federal law, including mandates under ANILCA; the Improvement Act; and, where applicable, the Wilderness Act. Applicable directives and guidance can also be found in policies in the USFWS Manual at 601 FW 3 (Biological Integrity, Diversity, and Environmental Health), 610 FW 2 (Wilderness Administration and Resource Stewardship), and 605 FW 2 (Hunting). Additionally, the regulations at 50 CFR 36.32(a) state that the Refuge Manager “may designate areas where, and establish periods when, no taking of a particular population of fish or wildlife shall be permitted.”

The State of Alaska’s (State) legal framework for managing wildlife in Alaska is based on sustained yield, which is defined by statute to mean “the achievement and maintenance in perpetuity of the ability to support a high level of human harvest of game, subject to preferences among beneficial uses, on an annual or periodic basis” (Alaska Statute (AS) 16.05.255(j)(5)). Since 1994, Alaska State law (AS 16.05.255) has prioritized human consumptive use of ungulates—specifically moose, caribou, and deer. Known as the Intensive Management (IM) statute, the law requires the Alaska Board of Game (BOG) to designate populations of ungulates for which human consumptive use is the highest priority use and to set population and harvest objectives for those populations. To that end, the BOG must “adopt regulations to provide for intensive management programs to restore the abundance or productivity of identified big game prey populations as necessary to achieve human consumptive use goals” (AS 16.05.255(e)). Once designated as an IM population, if either populations or harvests fail to meet management objectives, nonresident hunting must first be eliminated, followed by reductions or eliminations of resident harvest opportunities. However, under the IM statute, the BOG may not significantly reduce the harvest opportunities of an identified IM ungulate population unless it has adopted or is considering the adoption

of regulations “to restore the abundance or productivity of the ungulate population through habitat enhancement, predation control, or other means” (AS 16.05.255(e)–(g) and (j)).

The BOG has adopted regulations under the IM statute that require targeted reductions of wolf, black bear, brown bear, or a combination of these in designated “predation control areas” within game management units. These State regulations are implemented through IM plans that authorize activities including aerial shooting of wolves or bears or both by State agency personnel, trapping of wolves by paid contractors, allowance under permit for same-day airborne hunting of wolves and bears by the public, and allowance under permit for the take of any black or brown bear through baiting or snaring by the public (5 Alaska Administrative Code (AAC) 92).

Thirteen of the 16 refuges in Alaska contain lands within game management units officially designated for IM. While predator control activities occurring under the authority of an IM plan have not been permitted by USFWS on any refuge in Alaska, some predator control programs and activities are being implemented in predation control areas immediately adjacent to refuges. Given the large home ranges of many species affected by IM actions, these control programs have the potential to impact wildlife resources, natural systems, and ecological processes, as well as conservation and management of these species on adjacent refuges.

In recent years, concurrent with its adoption and implementation of IM plans for predation control areas, the BOG has also authorized measures under its general hunting and trapping regulations that have the potential to greatly increase effectiveness of the take of predators and to disrupt natural processes and wildlife interactions. Examples of these recently adopted measures, which apply beyond areas officially designated for IM, including many refuges in Alaska, are:

- Harvesting brown bears over bait at registered black bear bait stations;
- Taking wolves and coyotes (including pups) during the denning season;
- Expanding season lengths and increasing bag limits;
- Classifying black bears as both furbearers and big game species (which could allow for trapping and snaring of bears and sale of their hides and skulls); and
- Authorizing same-day airborne take of bears at registered bait stations (5 AAC 85).

Many of the recent actions by the BOG to liberalize the State’s regulatory frameworks for general hunting and trapping of wolves, bears, and coyotes reverse long-standing prohibitions and restrictions on take of these wildlife species under State law. Unlike the recent practice of taking brown bears over bait, black bear baiting has been an authorized practice in Alaska since 1982, including on refuges. Black bear baiting is authorized by the State pursuant to a permit and, in some instances, a special use permit (USFWS Form 3–1383–G) issued by refuges. Taking of brown bears at black bear baiting stations was recently authorized under State regulations in certain game management units within the State (several of which are within refuges) and is subject to the same restrictions as black bear baiting. The State regulations prohibit setting up a bait station within 1 mile of a home or other dwelling, business, or campground, or within ¼ mile of a road or trail (5 AAC 85).

Implementation of IM actions under the IM statute and many of the recent liberalizations of the general hunting and trapping regulations have direct implications for the management of refuges in Alaska. Predator-prey interactions represent a dynamic and foundational ecological process in Alaska’s arctic and subarctic ecosystems, and are a major driver of ecosystem function. Regulations or activities on refuges in Alaska that are inconsistent with the conservation of fish and wildlife populations and their habitats in their natural diversity, or the maintenance of biological integrity, diversity, and environmental health, are in direct conflict with our legal mandates for administering refuges in Alaska under ANILCA, the Improvement Act, and the Wilderness Act, as well as with several applicable agency policies (601 FW 3, 610 FW 2, and 605 FW 2).

The USFWS is mandated to conserve species and habitats in their natural diversity and ensure that biological integrity, diversity, and environmental health are maintained on refuges in Alaska for the continuing benefit of present and future generations. In managing for natural diversity, the USFWS conserves, protects, and manages all fish and wildlife populations within a particular wildlife refuge system unit in the natural ‘mix,’ not to emphasize management activities favoring one species to the detriment of another. The USFWS assures that habitat diversity is maintained through natural means on refuges in Alaska, avoiding artificial developments and habitat manipulation programs,

whenever possible. The USFWS fully recognizes and considers that rural residents use, and are often dependent on, refuge resources for subsistence purposes, and the USFWS manages for this use consistent with the conservation of species and habitats in their natural diversity. The terms biological integrity, diversity, and environmental health are defined in the BIDEH policy (601 FW 3), which directs the USFWS to maintain the variety of life and its processes; to maintain biotic and abiotic compositions, structure, and functioning; and to manage populations for natural densities and levels of variation throughout the NWRS.

### Proposal

This proposed rule would not change Federal subsistence regulations (36 CFR 242 and 50 CFR 100) or otherwise restrict the taking of fish or wildlife for subsistence by federally qualified users under those regulations. This proposed rule would also not apply to take in Defense of Life and Property as defined under State regulations (see 5 AAC 92.410). Hunting and trapping are priority uses of refuges in Alaska. The proposed rule would not affect implementation of State hunting and trapping regulations that are consistent with Federal law and USFWS policies on refuges, nor would it restrict hunting or trapping activities outside USFWS-managed refuge lands and waters.

The proposed rule would make the following substantive changes:

(1) We would prohibit predator control on refuges in Alaska, unless it is determined necessary to meet refuge purposes, Federal laws, or policy; is consistent with our mandates to manage for natural and biological diversity, biological integrity, and environmental health; and is based on sound science in response to a significant conservation concern. Demands for more wildlife for human harvest cannot be the sole or primary basis for predator control. A Refuge Manager could authorize predator control activities on a National Wildlife Refuge in Alaska only if:

(a) Alternatives to predator control have been evaluated, attempted, and exhausted as a practical means of achieving management objectives;

(b) Proposed actions have been evaluated and found to be in compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*);

(c) A formal refuge compatibility determination has been completed, as required by law; and

(d) The potential effects of predator control on subsistence uses and needs

have been evaluated through an ANILCA section 810 analysis.

For clarity, we would define predator control as the intention to reduce the population of predators for the benefit of prey species. The USFWS in Alaska's position for the last three decades has been that the need for predator control must be based on sound science in response to a significant conservation concern. This requirement is consistent with managing for the conservation of natural and biological diversity, biological integrity, and environmental health under ANILCA and the Improvement Act.

This proposed rule would ensure that take of wildlife under State regulations and implementation of predator control on refuges in Alaska are consistent with our legal mandates and policies for administration of those refuges.

(2) We would also prohibit certain practices for the taking of wildlife on Alaska National Wildlife refuges (except for subsistence uses by federally qualified subsistence users in accordance with applicable Federal laws and regulations), including:

- Taking black or brown bear cubs or sows with cubs (exception allowed for resident hunters to take black bear cubs or sows with cubs under customary and traditional use activities at a den site October 15–April 30 in specific game management units in accordance with State law);
- Taking brown bears over bait;
- Taking of bears using traps or snares;
- Taking wolves and coyotes during the denning season (May 1–August 9); and
- Taking bears from an aircraft or on the same day as air travel has occurred. The take of wolves or wolverines from an aircraft or on the same day as air travel has occurred is already prohibited under current refuge regulations, and this would not change.

The USFWS is seeking comment on the type of bait allowed to be used for the baiting of black or brown bears. Currently, State regulations, which are adopted on refuges, require the bait used at bear baiting stations to be biodegradable. People use a range of different types of bait for the baiting of bears, including parts of fish and game that are not required to be salvaged when these species are harvested, as well as human and pet food products.

(3) We would update our regulations to reflect Federal assumption of management of subsistence hunting and fishing under Title VIII of ANILCA by the Federal Government from the State in the 1990s.

(4) We would amend 50 CFR 32.2(h) to state that black bear baiting is authorized in accordance with State regulations on national wildlife refuges in Alaska. This change would help ensure consistency in our regulations if the amendments to 50 CFR 36, as presented in this proposed rule, are adopted.

(5) We would update procedures for implementing closures or restrictions on refuges, including the taking of fish and wildlife under sport hunting and trapping, to more effectively engage and inform the public and make the notice and durational provisions more consistent with procedures set forth in Federal subsistence closure policy and regulations at 36 CFR 242.19 and 50 CFR 100.19 for emergency special actions on Federal public lands in Alaska. Improved consistency between these Federal regulations and processes is intended to help minimize confusion and make it easier for the public to be involved in the process.

Under the proposed rule, the Regional Director will compile a list, updated at least annually, of Alaska refuge closures and restrictions under Federal Alaska refuge regulations. Notice would be provided in accordance with the

procedures set forth at 50 CFR 36.42. This annual list would include contact information for the lead staff and a process for the public to provide input and review.

The current regulations provide for emergency, temporary, and permanent restrictions. The proposed changes would outline emergency restrictions, limited to 60 days, and temporary restrictions, limited to the minimum time necessary, with review at least every 3 years.

We would also update the closures and restrictions notification procedures for refuges in Alaska to reflect the availability of alternative communications technologies and approaches that have emerged or evolved over the last few decades. These changes recognize that the Internet has become one of the primary methods to communicate with the public and is an effective tool for engaging Alaskans and the broader American public and that there are other forms of broadcast media, beyond just the radio, that we may want to use.

The proposed changes to the notification procedures are not intended to limit public involvement or reduce public notice; rather, we intend to engage in ways more likely to encourage public involvement and in a manner that is fiscally sustainable. We recognize that in-person public meetings will still be the most effective way to engage Alaskans, and we intend to continue that practice. We also recognize that many individuals in rural Alaska do not have access to high speed Internet, and for that reason, we will continue to use other methods of communication, such as newspapers and radio, where available to provide adequate notice.

The following table summarizes the changes we propose to the existing procedures for public participation and closures at 50 CFR 36.42:

Current	Proposed update
<b>Authority</b>	
Refuge Manager may close an area or restrict an activity on an emergency, temporary, or permanent basis.	No updates being considered.
<b>Criteria (50 CFR 36.42(b))</b>	
Criteria includes: Public health and safety, resource protection, protection of cultural or scientific values, subsistence uses, endangered or threatened species conservation, and other management considerations necessary to ensure that the activity or area is being managed in a manner compatible with refuge purposes.	Add conservation of natural diversity, biological integrity, biological diversity, and environmental health to the current list of criteria.

Current	Proposed update
<b>Emergency closures or restrictions (50 CFR 36.42(c))</b>	
Emergency closure may not exceed 30 days .....	Increase the period from 30 to 60 days, with extensions beyond 60 days being subject to nonemergency closure procedures (i.e., temporary or permanent).
Closure effective upon notice as prescribed in 50 CFR 36.42(f) (see below for details). Closures related to the taking of fish and wildlife will be accompanied by notice with a subsequent hearing.	Closure effective upon notice as prescribed in 50 CFR 36.42(f) (see below for details).
<b>Temporary closures or restrictions (50 CFR 36.42(d))</b>	
May extend only for as long as necessary to achieve the purpose of the closure or restriction, not to exceed or be extended beyond 12 months.	Temporary closures or restrictions related to the taking of fish and wildlife may still only extend for so long as necessary to achieve the purpose of the closure or restriction. These closures or restrictions will be periodically re-evaluated at least every 3 years to determine whether the circumstances necessitating the original closure still exist and warrant continuation of the restriction. A formal finding will be made in writing that explains the reasoning for the decision. When a closure is no longer needed, action to remove it will be initiated as soon as practicable. The USFWS will maintain a list of all refuge closures and publish this list annually for public review.
Closure effective upon notice as prescribed in 50 CFR 36.42(f) (see below for details). Closures related to the taking of fish and wildlife effective upon notice and hearing in the vicinity of the area(s) affected by such closures or restriction, and other locations as appropriate.	Closure subject to notice procedures as prescribed in 50 CFR 36.42(f) (see below for details). Closures related to the taking of fish and wildlife would require consultation with the State and affected Tribes and Native Corporations, as well as the opportunity for public comment and a public hearing in the vicinity of the area(s) affected.
<b>Permanent closures or restrictions (50 CFR 36.42(e))</b>	
No time limit .....	No time limit.
Closure effective after notice and public hearings in the affected vicinity and other locations as appropriate, and after publication in the <b>Federal Register</b> .	Closures related to the taking of fish and wildlife would require consultation with the State and affected Tribes and Native Corporations, as well as the opportunity for public comment and a public hearing in the vicinity of the area(s) affected. Closures would continue to be published in the <b>Federal Register</b> .
<b>Notice (50 CFR 36.42(f))</b>	
Notice is to be provided through newspapers, signs, and radio .....	Add the use of the Internet, broadcast media, or other available methods, in addition to continuing to use the more traditional methods of newspapers, signs, and radio.

(6) We propose to codify definitions for several terms (see the Proposed Regulation Promulgation section, below). These terms include “Bait,” “Big game,” “Biological diversity,” “Biological integrity,” “Cub bear,” “Environmental health,” “Furbearer,” “Historic conditions,” “Natural diversity,” “Predator control,” “Regional Director,” “Sport hunting,” and “Trapping.” Most of these definitions, including bait, big game, cub bear, furbearer, and predator control, are based on existing definitions in Federal subsistence regulations or policy.

During our scoping and tribal consultation efforts, we heard that the definitions for biological integrity, biological diversity, natural diversity, and environmental health and the origins of these definitions were of significant interest to people. As discussed earlier in the preamble, the USFWS is mandated under the Improvement Act to “ensure that the biological integrity, diversity, and

environmental health [BIDEH] of the System are maintained for the benefit of present and future generations of Americans . . .” (16 U.S.C. 668dd(a)(4)(B)). The USFWS BIDEH policy (601 FW 3), which provides guidance for implementation of the Improvement Act, provides definitions for each of these terms, as well as the term “historic conditions,” and those definitions are included word-for-word in this proposed rule. As was also discussed earlier in the preamble, under ANILCA, each refuge in Alaska has an establishment purpose to “conserve fish and wildlife populations and habitats in their natural diversity.” Our proposed definition for natural diversity is based on the discussion of the term in the legislative history of ANILCA.

**Required Determinations**

*Regulatory Planning and Review (Executive Orders 12866 and 13563)*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of

Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

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

### Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for “significant impact” and a threshold for a “substantial number of small entities.” See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would have a significant economic impact on a substantial number of small entities.

The proposed rule would amend regulations for refuges in Alaska. The proposed rule would: (1) Codify how our existing mandates for the conservation of natural and biological diversity, biological integrity, and environmental health on refuges in Alaska relate to predator control (50 CFR 36.1); (2) prohibit several particularly effective methods and means for take of predators (50 CFR 36.32); and (3) update our public participation and closure procedures (50 CFR 36.42). Predator control is prohibited on refuges in Alaska unless it is determined necessary to meet refuge purposes, Federal laws, or policy and is consistent with our mandates to manage for natural and biological diversity, biological integrity, and environmental health. The need for predator control must be based on sound science in response to a significant conservation concern. Demands for more wildlife to harvest cannot be the sole or primary basis for predator control. This rule would not change Federal subsistence regulations (36 CFR 242 and 50 CFR 100) or restrict taking of fish or wildlife for subsistence uses under Federal subsistence regulations. Codifying our existing

mandates on conservation of natural diversity, biological integrity, biological diversity, and environmental health would not have a significant impact because the USFWS is and has been required to manage refuges in Alaska consistent with these mandates for the last several decades since they were put into effect. Codifying previously and currently prohibited sport hunting and trapping practices would not have a significant impact because the few changes that have occurred have been relatively recent, occurring over the last several years, and this rule would actually constitute a change back to the status quo. State general hunting and trapping regulations currently apply to refuges in Alaska. Therefore, the prohibition of particular methods and means for the take of predators under State regulations on refuges in Alaska that may affect visitor use on those refuges include the take of brown bears over bait, take of wolves and coyotes during the denning season, and same-day airborne take of bears. The take of black bear sows with cubs is only allowed under State regulations in specific game management units for customary and traditional use; therefore it is not currently nor in the past has it been legal for the general public to participate in this activity outside of that framework. As a result, big game hunting may decrease if a hunter’s preferred hunting method is prohibited. Conversely, wildlife watching activities may increase if there are increased opportunities to view wildlife, including bears, wolves, and coyotes. From 2009 to 2013, big game hunting on refuges in Alaska averaged about 40,000 days annually and represented 2 percent of wildlife-related recreation on refuges. For Statewide hunting, big game hunting on refuges in Alaska represented only 4 percent of all big game hunting days (1.2 million days). Due to the past ban on these proposed prohibited methods and means for take of predators, we estimate that these hunting methods (take of brown bears over bait, take of wolves and coyotes during the denning season, and same-day airborne take of bears) represent a small fraction of all big game hunting on refuges. As a result, big game hunting on refuges would change minimally. This change in opportunity would most likely be offset by other sites (located outside of refuges) gaining participants. Therefore, there would be a substitute site for these hunting methods, and participation rates would not necessarily change.

Hunters’ spending contributes income to the regional economy and benefits

local businesses. Due to the unavailability of site-specific expenditure data, we use the Alaska estimate from the 2011 National Survey of Fishing, Hunting, and Wildlife Associated Recreation to identify expenditures for food and lodging, transportation, and other incidental expenses. Using the average trip-related expenditures for big game hunting (\$139 per day) yields approximately \$5.9 million annually in big game hunting-related expenditures on refuges in Alaska. Since only a small fraction of big game hunters would choose not to hunt on refuges under the proposed rule, the impact would be minimal. The net loss to the local communities would be no more than \$5.9 million annually, and most likely considerably less because few hunters use the prohibited methods and those hunters that do would likely choose a substitute site.

Small businesses within the retail trade industry (such as hotels, gas stations, taxidermy shops, etc.) may be impacted from some decreased refuge visitation. A large percentage of these retail trade establishments in local communities around refuges qualify as small businesses. We expect that the incremental recreational changes will be scattered, and so we do not expect that the rule would have a significant economic effect on a substantial number of small entities in Alaska.

With the small change in overall spending anticipated from this proposed rule, it is unlikely that a substantial number of small entities would have more than a small impact from the spending change near the affected refuges. Therefore, we certify that this proposed rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) An initial regulatory flexibility analysis is not required. Accordingly, a small entity compliance guide is not required.

### Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

- a. Would not have an annual effect on the economy of \$100 million or more.
- b. Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.
- c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

*Unfunded Mandates Reform Act*

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

*Takings (Executive Order 12630)*

This proposed rule does not involve the taking of private property or otherwise have taking implications under Executive Order 12630. This proposed rule, if adopted, would affect the public use and management of Federal lands managed by USFWS in Alaska. A takings implication assessment is not required.

*Federalism (Executive Order 13132)*

In accordance with Executive Order 13132, this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. This proposed rule, if adopted, would affect the public use and management of Federal lands managed by USFWS in Alaska and would not have a substantial direct effect on State or local governments in Alaska.

*Civil Justice Reform (Executive Order 12988)*

This proposed rule complies with the requirements of Executive Order 12988. Specifically, this rule:

- a. Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- b. Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951 (May 4, 1994)), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments; 65 FR 67249 (November 9, 2000)), and the Department of the Interior Manual, 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis, and we are seeking the Tribes'

input in evaluating this proposed rule. In addition, we have evaluated this proposed rule in accordance with 512 DM 4 under Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations, August 10, 2012. We have been and will continue to consult with Alaska Native tribes and Alaska Native corporations regarding this proposed rule.

*Paperwork Reduction Act of 1995 (PRA)*

This proposed rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the PRA (44 U.S.C. 3501 *et seq.*). The special use permit mentioned in this proposed rule, FWS Form 3-1383-G, is already approved by OMB under OMB control number 1018-0102, which expires on June 30, 2017. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act*

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and the Department of the Interior's manual at 516 DM. An environmental assessment has been prepared and is available for public comment during the comment period for this proposed rule. A copy of the environmental assessment can be found at <http://www.regulations.gov> under Docket No. FWS-R7-NWRS-2014-0005.

*Energy Supply, Distribution, or Use (Executive Order 13211)*

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking actions that significantly affect energy supply, distribution, or use. We believe that the rule would not have any effect on energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

*Clarity of This Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section, above. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

**Authors**

The primary authors of this proposed rule are Heather Abbey Tonneson and Stephanie Brady of the U.S. Fish and Wildlife Service, Alaska Regional Office, with considerable review and input from other USFWS Alaska refuge and Office of Subsistence Management managerial and biological staff.

**Public Participation**

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section, above. In addition, see the related document published elsewhere in today's **Federal Register** with information on nine open houses and public hearings that will be held in various locations around the State and at which comments will be accepted.

**Public Availability of Comments**

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. 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.

**List of Subjects***50 CFR Part 32*

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

*50 CFR Part 36*

Alaska, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.



Accordingly, we propose to amend title 50, chapter I, subchapter C, of the Code of Federal Regulations as follows:

**PART 32—HUNTING AND FISHING**

■ 1. The authority citation for part 32 continues to read as follows:

**Authority:** 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i.

**§ 32.2 [Amended]**

■ 2. Amend § 32.2(h) by removing the words, “(Baiting is authorized in accordance with State regulations on national wildlife refuges in Alaska),” and adding in their place the words, “(Black bear baiting is authorized in accordance with State regulations on national wildlife refuges in Alaska.)”.

**PART 36—ALASKA NATIONAL WILDLIFE REFUGES**

■ 3. The authority citation for part 36 continues to read as follows:

**Authority:** 16 U.S.C. 460(k) *et seq.*, 668dd–668ee, 3101 *et seq.*

**Subpart A—Introduction and General Provisions**

■ 4. Amend § 36.1 by:  
 ■ a. Redesignating paragraphs (a), (b), and (c) as paragraphs (b), (c), and (d), respectively; and  
 ■ b. Adding a new paragraph (a) to read as follows:

**§ 36.1 How do the regulations in this part apply to me and what do they cover?**

(a) National Wildlife Refuges in Alaska are maintained to conserve species and habitats in their natural diversity and to ensure biological integrity, diversity, and environmental health for the continuing benefit of present and future generations.

■ 5. Amend § 36.2 by adding, in alphabetical order, definitions for “Bait,” “Big game,” “Biological diversity,” “Biological integrity,” “Cub bear,” “Environmental health,” “Furbearer,” “Historic conditions,” “Natural diversity,” “Predator control,” “Regional Director,” “Sport hunting,” and “Trapping,” to read as follows:

**§ 36.2 What do these terms mean?**

*Bait* means any material excluding a scent lure that is placed to attract an animal by its sense of smell or taste; however, those parts of legally taken animals that are not required to be salvaged and which are left at the kill site are not considered bait.

*Big game* means black bear, brown bear, bison, caribou, Sitka black-tailed

deer, elk, mountain goat, moose, muskox, Dall sheep, wolf, and wolverine.

*Biological diversity* means the variety of life and its processes, including the variety of living organisms, the genetic differences among them, and communities and ecosystems in which they occur.

*Biological integrity* means the biotic compositions, structure, and functioning at genetic, organism, and community level comparable with historic conditions, including the natural biological processes that shape genomes, organisms, and communities.

*Cub bear* means a brown (grizzly) bear in its first or second year of life, or a black bear (including the cinnamon and blue phases) in its first year of life.

*Environmental health* means the composition, structure, and functioning of soil, water, air, and other abiotic features comparable with historic conditions, including the natural abiotic processes that shape the environment.

*Furbearer* means a beaver, coyote, arctic fox, red fox, lynx, marten, mink, least weasel, short-tailed weasel, muskrat, river (land) otter, flying squirrel, ground squirrel, red squirrel, Alaskan marmot, hoary marmot, woodchuck, wolf, or wolverine.

*Historic conditions* means the composition, structure, and functioning of ecosystems resulting from natural processes that we believe, based on sound professional judgment, were present prior to substantial human related changes to the landscape.

*Natural diversity* means the existence of all fish, wildlife, and plant populations within a particular wildlife refuge system unit in the natural mix and in a healthy condition for the long term benefit of current and future generations. Managing for natural diversity includes avoiding emphasis of management activities favoring some species to the detriment of others; assuring that habitat diversity is maintained through natural means, avoiding artificial developments and habitat manipulation programs whenever possible; and taking into consideration the fact that humans are dependent on wildlife refuge subsistence resources.

*Predator control* is the intention to reduce the population of predators for the benefit of prey species.

*Regional Director* means the Alaska Regional Director of the U.S. Fish and

Wildlife Service, or an authorized representative.

*Sport hunting* means the taking of or attempting to take wildlife under State hunting or trapping regulations. In Alaska, this is commonly referred to as general hunting and trapping and includes State subsistence hunts and general permits open to both Alaska residents and nonresidents.

*Trapping* means taking furbearers under a trapping license.

**Subpart B—Subsistence Uses**

**§ 36.11 [Amended]**

■ 6. Amend § 36.11 by removing paragraph (d) and by redesignating paragraph (e) as paragraph (d).  
 ■ 7. Revise § 36.13 to read as follows:

**§ 36.13 Subsistence fishing.**

Fish may be taken by Federally qualified subsistence users, as defined at 50 CFR part 100.5, for subsistence uses on Alaska National Wildlife Refuges where subsistence uses are allowed in compliance with this subpart and 50 CFR part 100.

■ 8. Revise § 36.14 to read as follows:

**§ 36.14 Subsistence hunting and trapping.**

Federally qualified subsistence users, as defined at 50 CFR part 100.5, may hunt and trap wildlife for subsistence uses on Alaska National Wildlife Refuges where subsistence uses are allowed in compliance with this subpart and 50 CFR part 100.

**Subpart D—Non-subsistence Uses**

■ 9. Revise the heading of subpart D to read as set forth above.  
 ■ 10. Amend § 36.32 to read as follows:

**§ 36.32 Taking of fish and wildlife.**

(a) The taking of fish and wildlife for sport hunting and trapping and for sport fishing is authorized in accordance with applicable State and Federal law, and such laws are hereby adopted and made a part of these regulations, except as noted below and provided however, that the Refuge Manager, pursuant to § 36.42, may designate areas where, and establish periods when, no taking of a particular population of fish or wildlife will be allowed.

(b) Predator control is prohibited on National Wildlife Refuges in Alaska, unless it is determined necessary to meet refuge purposes, Federal laws, or policy; is consistent with our mandates to manage for natural and biological diversity, biological integrity, and environmental health; and is based on

sound science in response to a significant conservation concern. Demands for more wildlife for human harvest cannot be the sole or primary basis for predator control. A Refuge Manager will authorize predator control activities on a National Wildlife Refuge in Alaska only if:

(1) Alternatives to predator control have been evaluated, attempted, and exhausted as a practical means of achieving management objectives;

(2) Proposed actions have been evaluated in compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*);

(3) A formal refuge compatibility determination has been completed, as required by law; and

(4) The potential effects of predator control on subsistence uses and needs have been evaluated through an ANILCA section 810 analysis.

(c) The exercise of valid commercial fishing rights or privileges obtained pursuant to existing law, including any use of refuge areas for campsites, cabins,

motorized vehicles, and aircraft landing directly incident to the exercise of such rights or privileges, is authorized; *Provided, however*, that the Refuge Manager may restrict or prohibit the exercise of these rights or privileges or uses of federally owned lands directly incident to such exercise if the Refuge Manager determines, after conducting a public hearing in the affected locality, that they are inconsistent with the purposes of the refuge and that they constitute a significant expansion of commercial fishing activities within such refuge beyond the level of such activities in 1979.

(d) The following provisions apply to any person while engaged in the taking of fish and wildlife within an Alaska National Wildlife Refuge:

(1) *Trapping and sport hunting.* (i) Each person must secure and possess all required State licenses and must comply with the applicable provisions of State law unless further restricted by Federal law;

(ii) Each person must comply with the applicable provisions of Federal law;

(iii) In addition to the requirements of paragraphs (a) and (b) of this section, each person must continue to secure a trapping permit from the appropriate Refuge Manager prior to trapping on the Kenai, Izembek, and Kodiak Refuges and the Aleutian Islands Unit of the Alaska Maritime Refuge.

(iv) It is unlawful for a person having been airborne to use a firearm or any other weapon to take or assist in taking any species of bear, wolf, or wolverine until after 3 a.m. on the day following the day in which the flying occurred, except that a trapper may use a firearm or any other weapon to dispatch a legally caught wolf or wolverine in a trap or snare on the same day in which the flying occurred. This prohibition does not apply to flights on regularly scheduled commercial airlines between regularly maintained public airports.

(v) The following methods and means for take of wildlife are prohibited:

Prohibited acts	Exceptions
(A) Using snares, nets, or traps to take any species of bear .....	None.
(B) Using bait .....	(1) Bait may be used to trap furbearers. (2) Bait may be used to hunt black bears.
(C) Taking wolves and coyotes from May 1 through August 9 .....	None.
(D) Taking bear cubs or sows with cubs .....	In accordance with Alaska State law and regulation, resident hunters may take black bear cubs or sows with cubs under customary and traditional use activities at a den site October 15—April 30 in game management units 19A, 19D, 21B, 21C, 21D, 24, and 25D.

(2) *Sport and commercial fishing.* (i) Each person must secure and possess all required State licenses and must comply with the applicable provisions of State law unless further restricted by Federal law;

(ii) Each person must comply with the applicable provisions of Federal law.

(e) Persons transporting fish or wildlife through Alaska National Wildlife Refuges must carry an Alaska State hunting or fishing license, or in cases where a person is transporting game for another person, they are required to carry an Alaska State “Transfer of Possession Form” on their person and make these available when requested by law enforcement personnel.

(f) Nothing in this section applies to or restricts the taking or transporting of fish and wildlife by Federally qualified subsistence users under Federal subsistence regulations.

(g) Animal control programs will only be conducted in accordance with a special use permit issued by the Refuge Manager.

■ 11. Amend § 36.42 by revising paragraphs (a), (b), (c)(4), (d), (e), (f), (g), and (h) to read as follows:

**§ 36.42 Public participation and closure procedures.**

(a) *Applicability and authority.* The Refuge Manager may close an area or restrict an activity in an Alaska National Wildlife Refuge on an emergency, temporary, or permanent basis in accordance with this section.

(b) *Criteria.* In determining whether to close an area or restrict an activity otherwise allowed, the Refuge Manager will be guided by factors such as public health and safety; resource protection; protection of cultural or scientific values; subsistence uses; conservation of endangered or threatened species; conservation of natural diversity, biological integrity, biological diversity, and environmental health; or other management considerations necessary to ensure that the activity or area is being managed in a manner compatible with the purposes for which the Refuge was established.

(c) \* \* \*

(4) Emergency closures or restrictions may not exceed a period of 60 days. Extensions beyond 60 days are subject to nonemergency closure procedures.

(d) *Temporary closures or restrictions.*

(1) Temporary closures or restrictions relating to the use of aircraft, snowmachines, motorboats, or nonmotorized surface transportation will be effective only after notice and hearing in the vicinity of the area(s) affected by such closures or restriction, and other locations as appropriate.

(2) Temporary closures or restrictions related to the taking of fish and wildlife will be effective only after allowing for the opportunity for public comment and a public hearing in the vicinity of the area(s) affected. Temporary closures or restrictions related to the taking of fish and wildlife also require consultation with the State and affected Tribes and Native Corporations.

(3) Other temporary closures will be effective upon notice as set forth at § 36.42(f).

(4) Temporary closures or restrictions, other than those relating to the taking of fish and wildlife, will extend only for as long as necessary to achieve the purpose

of the closure or restriction, not to exceed 12 months.

(5) Temporary closures or restrictions related to the taking of fish and wildlife will extend only for as long as necessary to achieve the purpose of the closure or restriction. These temporary closures and restrictions will be periodically re-evaluated as necessary, at least every 3 years, to determine whether the circumstances necessitating the original closure or restriction still exist and warrant continuation. A formal finding will be made in writing that explains the reasoning for the decision. When a closure is no longer needed, action to remove it will be initiated as soon as practicable.

(6) The U.S. Fish and Wildlife Service will maintain a list of all refuge closures and restrictions and will publish this list annually for public review.

(e) *Permanent closures or restrictions.* Permanent closures or restrictions relating to the use of aircraft, snowmachines, motorboats, or nonmotorized surface transportation, or taking of fish and wildlife, will be effective only after allowing for the opportunity for public comment and a public hearing in the vicinity of the area(s) affected and publication in the **Federal Register**. Permanent closures or restrictions related to the taking of fish and wildlife would require consultation with the State and affected Tribes and Native Corporations.

(f) *Notice.* Emergency, temporary, or permanent closures or restrictions will be published on the U.S. Fish and Wildlife Service's Web site at [http://www.fws.gov/alaska/nwr/ak\\_sp\\_hunt\\_regs.htm](http://www.fws.gov/alaska/nwr/ak_sp_hunt_regs.htm). Additional means of notice reasonably likely to inform residents in the affected vicinity will also be provided where available, such as:

- (1) Publication in a newspaper of general circulation in the State and in local newspapers;
- (2) Use of electronic media, such as the Internet and email lists;
- (3) Broadcast media (radio, television, etc.); or
- (4) Posting of signs in the local vicinity or at the Refuge Manager's office.

(g) *Openings.* In determining whether to open an area to public use or activity otherwise prohibited, the Refuge Manager will provide notice in the **Federal Register** and will, upon request, hold a public meeting in the affected vicinity and other location, as appropriate, prior to making a final determination.

(h) Except as otherwise specifically allowed under the provisions of this part, entry into closed areas or failure to

abide by restrictions established under this section is prohibited.

**Karen Hyun,**

*Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2016-00022 Filed 1-7-16; 8:45 am]

**BILLING CODE 4333-15-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

**RIN 0648-BF25**

#### Fisheries of the Exclusive Economic Zone Off Alaska; Bycatch Management in the Bering Sea Pollock Fishery

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

**ACTION:** Notice of availability of fishery management plan amendments; request for comments.

**SUMMARY:** The North Pacific Fishery Management Council (Council) submitted Amendment 110 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). If approved, Amendment 110 would improve the management of Chinook and chum salmon bycatch in the Bering Sea pollock fishery by creating a comprehensive salmon bycatch avoidance program. This proposed action is necessary to minimize Chinook and chum salmon bycatch in the Bering Sea pollock fishery to the extent practicable while maintaining the potential for the full harvest of the pollock total allowable catch within specified prohibited species catch limits. Amendment 110 is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

**DATES:** Comments must be received no later than March 8, 2016.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2015-0081, 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-2015-0081](http://www.regulations.gov/), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

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

Electronic copies of Amendment 110 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis prepared for this action (collectively the "Analysis") may be obtained from [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Gretchen Harrington, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. This notice announces that proposed Amendment 110 to the FMP is available for public review and comment.

NMFS manages the pollock fishery in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) under the FMP. The Council prepared this FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

#### The Bering Sea Pollock Fishery

Amendment 110 would apply to owners and operators of catcher vessels, catcher/processors, motherships, inshore processors, and the six Western Alaska Community Development Quota

(CDQ) Program groups participating in the pollock (*Gadus chalcogrammus*) fishery in the Bering Sea subarea of the BSAI. The pollock fishery is the largest single species fishery, by volume, in the United States. In 2013, the value of this fishery was more than 1.329 billion dollars, the most recent year of complete data on wholesale value. In 2015, the pollock TAC was 1,310,000 metric tons (mt).

The pollock fishery is managed under the American Fisheries Act (AFA) (16 U.S.C. 1851 note). In October 1998, Congress enacted the AFA, which “rationalized” the pollock fishery by identifying the vessels and processors eligible to participate in the fishery and allocating pollock among those eligible participants. For more information on the AFA, please see the final rule implementing the AFA (67 FR 79692, December 30, 2002).

Under the AFA, 10 percent of the pollock total allowable catch (TAC) is allocated to the CDQ Program. After the CDQ Program allocation is subtracted, an amount needed for the incidental catch of pollock in other groundfish fisheries is subtracted from the TAC. In 2015, the CDQ allocation was 131,000 mt of pollock and the incidental catch allowance was 47,160 mt. The allocation of pollock to the CDQ Program is further allocated among the six non-profit corporations (CDQ groups) that represent the 65 communities eligible for the CDQ Program under section 305(i)(1)(D) of the Magnuson-Stevens Act.

The “directed fishing allowance” is the remaining amount of pollock, after subtraction of the CDQ Program allocation and the incidental catch allowance. The directed fishing allowance is then allocated among the AFA inshore sector (50 percent), the AFA catcher/processor sector (40 percent), and the AFA mothership sector (10 percent). Annually, NMFS further apportions the pollock allocations to the CDQ Program and the other three AFA sectors between two seasons—40 percent to the A season (January 20 to June 10) and 60 percent to the B season (June 10 to November 1) (see § 679.20(a)(5)(i)(B)(1)).

The AFA allows for the formation of fishery cooperatives within the non-CDQ sectors. A purpose of these AFA cooperatives is to further subdivide each sector’s or inshore cooperative’s pollock allocation among participants in the sector or cooperative through private contractual agreements. The cooperatives manage these allocations to ensure that individual vessels and companies do not harvest more than their agreed upon share. The

cooperatives also facilitate transfers of pollock among the cooperative members, enforce contract provisions, and participate in an intercooperative agreement to minimize non-Chinook salmon bycatch as well as an incentive plan agreement to minimize Chinook salmon bycatch.

The inshore sector is comprised of catcher vessels eligible to deliver pollock to the seven eligible AFA inshore processors. Eligible catcher vessels may form inshore cooperatives associated with a particular inshore processor. NMFS permits the inshore cooperatives, allocates pollock to them, and manages these allocations through a regulatory prohibition against an inshore cooperative exceeding its pollock allocation.

The AFA catcher/processor sector is comprised of the catcher/processors and catcher vessels eligible under the AFA to deliver to catcher/processors. The AFA mothership sector is made up of three motherships and the catcher vessels eligible under the AFA to deliver pollock to these motherships. These sectors have formed cooperatives; however, NMFS does not manage the sub-allocations of pollock among the cooperative members. The cooperatives control the harvest by their member vessels so that the pollock allocation to the sector is not exceeded. However, NMFS monitors pollock harvest by all members of the catcher/processor sector and mothership sector. NMFS retains the authority to close directed fishing for pollock by a sector if vessels in that sector continue to fish once the sector’s seasonal allocation of pollock has been harvested.

#### **Salmon Bycatch in the Bering Sea Pollock Fishery**

Pollock is harvested with fishing vessels using trawl gear, which are large nets towed through the water by the vessel. Pollock can occur in the same locations as Chinook salmon and chum salmon. Consequently, Chinook salmon and chum salmon are incidentally caught in the nets as fishermen target pollock.

Section 3 of the Magnuson-Stevens Act defines bycatch as fish that are harvested in a fishery, which are not sold or kept for personal use. Therefore, Chinook salmon and chum salmon caught in the pollock fishery are considered bycatch under the Magnuson-Stevens Act, the FMP, and NMFS regulations at 50 CFR part 679. Bycatch of any species, including discard or other mortality caused by fishing, is a concern of the Council and NMFS. National Standard 9 and section 303(a)(11) of the Magnuson-Stevens Act

requires the Council to select, and NMFS to implement, conservation and management measures that, to the extent practicable, minimize bycatch and bycatch mortality.

The bycatch of culturally and economically valuable species like Chinook salmon and chum salmon, which are fully allocated and, in some cases, facing conservation concerns, are categorized as prohibited species under the FMP and are the most regulated and closely managed category of bycatch. Pacific salmon, steelhead trout, Pacific halibut, king crab, Tanner crab, and Pacific herring are classified as prohibited species in the groundfish fisheries off Alaska. As a prohibited species, fishermen must avoid salmon bycatch and any salmon caught must either be donated to the Prohibited Species Donation Program under § 679.26, or returned to Federal waters as soon as is practicable, with a minimum of injury, after an observer has determined the number of salmon and collected any scientific data or biological samples.

#### *Chinook Salmon Bycatch*

The pollock fishery catches more than 95 percent of the Chinook salmon taken incidentally in the BSAI groundfish fisheries, based on data from 1992 through 2014. However, this percentage has declined in recent years with the decline in the amount of Chinook salmon caught in the pollock fishery. From 1992 through 2001, the average Chinook salmon bycatch in the pollock fishery was 32,482 fish per year. Bycatch increased substantially from 2002 through 2007, to an average of 74,067 Chinook salmon per year. A historic high of approximately 122,000 Chinook salmon was taken in the pollock fishery in 2007. However, since 2007 Chinook salmon bycatch then declined substantially to an average of 15,500 Chinook salmon per year from 2008 to 2014. The decline is most likely due to a combination of factors, including changes in abundance and distribution of Chinook salmon and pollock, as well as changes in fleet behavior to avoid salmon bycatch.

Chinook salmon taken in the pollock fishery originate from Alaska, the Pacific Northwest, and Canada. Estimates vary, but more than half of the Chinook salmon bycatch in the pollock fishery may be destined for western Alaska. Western Alaska includes the Bristol Bay, Kuskokwim, Yukon, and Norton Sound areas. Section 3.4 of the Analysis provides additional information about Chinook salmon biology, distribution, and stock

assessments by river system or region (see **ADDRESSES**).

#### *Chum Salmon Bycatch*

The pollock fishery catches over 95 percent of the chum salmon taken incidentally as bycatch in the BSAI groundfish fisheries. The pollock fishery catches chum salmon almost exclusively in the B season (after June 10). The pollock fishery has caught large numbers of chum, with a historic high of approximately 700,000 chum salmon taken in 2005. Since then, bycatch levels have been quite variable, ranging from a low of 13,280 chum salmon in 2010 to a high of 309,646 chum salmon in 2006. Average chum salmon bycatch from 2006 to 2014 was 115,190 chum salmon. In 2014, the pollock fishery caught 219,428 chum salmon.

Genetic information indicates that the majority of the chum salmon caught in the pollock fishery are of Asian origin (approximately 60 percent) while a smaller percentage (approximately 21 percent) originate from aggregate streams in western Alaska. Chum salmon from elsewhere in Alaska, the Pacific Northwest, and Canada comprise the remaining percentage of the bycatch (approximately 19 percent). While the genetics cannot differentiate hatchery-origin fish from wild Asian chum salmon, given the high proportion of Pacific Rim hatchery-released chum from Japan, much of the Asian origin chum observed in the bycatch is likely to be of Asian hatchery-origin. While Alaska chum salmon runs have indicated a history of volatility in run sizes, chum salmon stocks in Alaska are generally at higher levels of abundance than historical periods. Section 3.4 of the Analysis provides additional information about chum salmon biology, distribution, and stock assessments by river system or region (see **ADDRESSES**).

#### **Importance of Salmon in Western Alaska**

The Council and NMFS have been concerned about the potential impact of Chinook and chum salmon bycatch on returns to western Alaska given the relatively large proportion of bycatch from these river systems that occurs in the pollock fishery. Chinook salmon and chum salmon support commercial, subsistence, sport, and personal use fisheries in their regions of origin. The Alaska Board of Fisheries adopts regulations through a public process to conserve salmon and to allocate salmon to the various users. The State of Alaska Department of Fish and Game manages the salmon commercial, subsistence, sport, and personal use fisheries. The

first management priority is to meet spawning escapement goals to sustain salmon resources for future generations. The next priority is for subsistence use under both State and Federal law. Salmon is a primary subsistence food in some areas. Subsistence fisheries management includes coordination with U.S. Federal agencies where Federal rules apply under the Alaska National Interest Lands Conservation Act.

In recent years of low Chinook salmon returns, the in-river harvest of western Alaska Chinook salmon has been severely restricted and, in some cases, river systems have not met escapement goals. Surplus fish beyond escapement needs and subsistence use are made available for other uses. Commercial fishing for Chinook salmon may provide the only source of income for many people who live in remote villages. Appendix A-4 of the Analysis provides an overview of the importance of subsistence salmon harvests and commercial salmon harvests (see **ADDRESSES**).

#### **Management of Salmon Bycatch in the Bering Sea and Aleutian Islands**

Over the last 20 years, the Council and NMFS have implemented several management measures to limit salmon bycatch in the BSAI trawl fisheries. Management measures have focused on minimizing Chinook salmon bycatch, chum salmon bycatch, and non-Chinook salmon bycatch. Non-Chinook bycatch is a category that includes all salmon species except Chinook salmon, but is comprised predominantly by chum salmon.

Most recently, NMFS implemented Amendment 84 to the FMP to address increases in Chinook salmon and non-Chinook (predominantly chum) salmon bycatch in the pollock fishery that were occurring despite PSC limits being reached and the closures of the Chinook Salmon Savings Area and Chum Salmon Savings Area (72 FR 61070, October 29, 2007) and Amendment 91 to the FMP, which implemented a program to manage Chinook salmon bycatch that provides incentives for each vessel to avoid Chinook salmon at all times (75 FR 53026, August 30, 2010).

Amendment 84 was implemented to enhance the effectiveness of salmon bycatch measures by exempting pollock vessels from Chinook Salmon Savings Area and Chum Salmon Savings Area closures if they participate in an intercooperative agreement (ICA) to reduce salmon bycatch. The ICA allowed vessels participating in the pollock fishery to use their internal cooperative structure to reduce Chinook salmon and non-Chinook salmon

bycatch using a method called the voluntary rolling hotspot system. The ICA operates in lieu of a fixed area closure and is required to identify and close areas of high salmon bycatch and move vessels to other areas.

Amendment 84 required that parties to the ICA include the AFA cooperatives, the six CDQ groups, at least one third party group, including any organizations representing western Alaskans who depend on salmon and have an interest in salmon bycatch reduction, and at least one entity retained to facilitate bycatch avoidance behavior and information sharing. All AFA cooperatives and CDQ groups participate in the ICA.

Amendment 91 removed Chinook salmon bycatch from the Amendment 84 program and established a separate program to manage Chinook salmon. Amendment 91 combined a limit on the amount of Chinook salmon that may be caught incidentally with a novel approach designed to minimize bycatch to the extent practicable in all years and prevent bycatch from reaching the limit in most years while providing the fleet the flexibility to harvest the pollock TAC.

Amendment 91 established two PSC limits for the pollock fishery—60,000 and 47,591 Chinook salmon. Under Amendment 91, the PSC limit is 60,000 Chinook salmon if some or all of the pollock industry participates in an industry-developed contractual arrangement, called an incentive plan agreement (IPA) that establishes an incentive program to minimize bycatch at all levels of Chinook salmon abundance. Participation in an IPA is voluntary; however, any vessel or CDQ group that chooses not to participate in an IPA is subject to a restrictive opt-out allocation (also called a backstop cap). Since implementation, all AFA vessels have participated in an IPA.

To ensure participants develop effective IPAs, participants provide the Council and NMFS annual reports that describe the efforts each IPA is taking to ensure that each vessel does its best to avoid Chinook salmon at all times while fishing for pollock and, that collectively, bycatch is minimized in each year. The IPA system is based on being flexible, responsive, and able to be tailored by each sector to fit its operational needs. The IPAs that impose rewards for avoiding Chinook salmon bycatch, and/or penalties for failure to avoid Chinook salmon bycatch at the vessel level, warrant setting the PSC limit at 60,000 Chinook salmon. While the IPAs provide an incentive to minimize bycatch in all years to a level below the limit, a limit of 60,000 Chinook salmon

provides the industry the flexibility to harvest the pollock TAC in high-abundance years when bycatch is extremely difficult to avoid.

Under Amendment 91, the 47,591 Chinook salmon PSC limit applies fleet-wide if the industry does not form any IPAs. This PSC limit was the approximate 10-year average of Chinook salmon bycatch from 1997 to 2006. The 47,591 PSC limit limits Chinook salmon bycatch in the pollock fishery if no other incentives, namely IPAs, are operating to minimize bycatch below this level.

Both PSC limits are divided between the A and B seasons and allocated to AFA sectors, inshore cooperatives, and CDQ groups as transferable PSC allocations. Transferability of the PSC mitigates the variation in the encounter rates of salmon bycatch among sectors, inshore cooperatives, and CDQ groups, in a given season. It allows eligible participants to obtain a larger portion of the PSC allocation in order to harvest their pollock allocation or to transfer surplus PSC allocation to other entities. When a transferable PSC allocation is reached, the affected sector, inshore cooperative, or CDQ group must stop fishing for pollock for the remainder of the season even if its pollock allocation has not been fully harvested.

The sector-level performance standard is an additional tool to ensure that the IPA is effective and that sectors do not fully harvest the Chinook salmon PSC allocations under the 60,000 Chinook salmon PSC limit in most years. For a sector to continue to receive Chinook salmon PSC allocations under the 60,000 Chinook salmon PSC limit, that sector may not exceed its annual threshold amount in any three years within seven consecutive years. If a sector fails this performance standard, it will permanently be allocated a portion of the 47,591 Chinook salmon PSC limit. The risk of bearing the potential adverse economic impacts of a reduction from the 60,000 PSC limit to the 47,591 PSC limit creates incentives for fishery participants to cooperate in an effective IPA.

#### **Amendment 110 Management Measures**

In April 2015, the Council recommended Amendment 110 to the FMP to create a comprehensive salmon bycatch avoidance program for the pollock fishery that works more effectively than the current salmon bycatch programs to avoid Chinook salmon bycatch and Alaska-origin chum salmon bycatch. Amendment 110 would modify the existing Chinook salmon bycatch program to make it more effective at avoiding Chinook salmon

and incorporate measures to avoid chum salmon into the IPAs. In particular, the Council expressed that it remains extremely important to ensure that the Chinook salmon bycatch program is working as intended and to evaluate whether the incentives are strong in times of historically low Chinook salmon abundance. Thus the management measures included in Amendment 110 focus on retaining the incentives to avoid Chinook salmon bycatch at all levels of abundance as intended by Amendment 91.

The Council also expressed that it remains extremely important to provide the incentives to avoid Alaska-origin chum salmon while maintaining the flexibility to avoid Chinook salmon. The Council's action is designed to consider the importance of continued production of critical chum salmon runs in western Alaska by focusing on bycatch avoidance of Alaskan chum salmon runs. These runs have indicated a history of volatility in run sizes and an historic importance in the subsistence lifestyle of Alaskans. Additional protections to other chum stocks outside of Alaska are embedded in the Council's objective to avoid the high bycatch of chum salmon overall, recognizing that most non-Alaska chum salmon are likely from Asian hatcheries.

Amendment 110, if approved, would—

- Incorporate chum salmon avoidance into the IPAs established under Amendment 91 to the FMP and remove the non-Chinook salmon bycatch reduction ICA program previously established under Amendment 84 to the FMP;
- modify the requirements for the content of the IPAs to increase the incentives for fishermen to avoid Chinook salmon; and
- reduce the Chinook salmon PSC limit and performance standard in years with low Chinook salmon abundance.

#### *Incorporate Chum Salmon Avoidance Into the Incentive Plan Agreements*

Currently, Chinook salmon and chum salmon bycatch are managed under two different programs (Amendment 84 and Amendment 91). This has created inefficiencies and does not allow participants in the pollock fishery the flexibility to modify their harvest patterns and practices to effectively minimize both Chinook salmon and chum salmon bycatch. Adding chum salmon measures to the IPAs would make salmon bycatch management more effective, comprehensive, and efficient by increasing flexibility to respond to changing conditions and providing greater incentives to reduce bycatch of

both salmon species. The chum salmon specific requirements in the implementing regulations for Amendment 84 sometimes prevent fishery participants from making decisions to avoid Chinook salmon when the vessels are encountering both chum salmon and Chinook salmon.

Amendment 110 would incorporate chum salmon avoidance into the IPAs established under Amendment 91. Chum salmon would no longer be managed under Amendment 84. However, Amendment 110 would maintain the current non-Chinook salmon PSC limit of 42,000 fish and the closure of the Chum Salmon Savings Area to pollock fishing when the PSC limit has been reached. Vessels that participate in an IPA would be exempt from the Chum Salmon Savings Area closure. The purpose of maintaining the non-Chinook salmon PSC limit and the Chum Salmon Savings Area closure is to provide additional incentives for vessels to join an IPA and as back-stop chum salmon measures for those vessels that choose not to participate in an IPA. Incorporating chum salmon into the IPAs meets the purpose and need for this action by providing measures to prevent high chum salmon bycatch, while allowing for participants in the pollock fishery the flexibility to avoid Alaska chum stocks and to adapt quickly to changing conditions through their coordinated management under the IPAs. In doing so, the Council intended to strike an appropriate balance between regulatory requirements and adaptive management for chum salmon bycatch.

#### *Modify the IPAs To Increase the Incentives To Avoid Chinook Salmon*

Amendment 110 would modify the IPAs to increase the incentives for fishermen to avoid Chinook salmon. The Council and NMFS recognize that the IPAs were effective at providing incentives for each vessel to avoid Chinook salmon, but that additional measures are necessary to address higher Chinook salmon PSC rates observed during October (the last month when the pollock fishery is authorized to operate) and to address concerns with individual vessels that consistently have significantly higher Chinook salmon PSC rates relative to other vessels fishing at the same time. The Council and NMFS wanted to ensure the use of salmon excluder devices (*i.e.*, gear modifications that are designed to exclude salmon bycatch while retaining pollock) and a rolling hotspot program. The new provisions described below are intended to provide an opportunity for IPAs to increase their responsiveness in

October, and improve performance of individual vessels.

*Reduce the Chinook Salmon Performance Standard and PSC Limit in Years of Low Chinook Salmon Abundance*

Amendment 110 would add a new lower Chinook salmon PSC limit and performance standard for the pollock fishery in years of low Chinook salmon abundance. The Council and NMFS considered a lower performance standard and PSC limit would be appropriate at low levels of Chinook salmon abundance in western Alaska to accommodate the fact that most of the Chinook salmon bycatch comes from western Alaska. These provisions work in conjunction with the change to the IPA requirements to ensure that Chinook salmon bycatch is avoided at all times, particularly at low abundance levels.

Each year NMFS would determine whether Chinook salmon abundance was low based on information provided by the State of Alaska. Annually, the State would provide an index of abundance based on the post-season in-river Chinook salmon run size for the Kuskokwim, Unalakleet, and Upper Yukon aggregate stock grouping. When this index is less than or equal to 250,000 Chinook salmon, then the new

lower performance standard and low PSC limit would apply.

In low Chinook salmon abundance years, NMFS would set the performance standard at 33,318 Chinook salmon and the PSC limit at 45,000 Chinook salmon. NMFS would publish the lower PSC limit and performance standard in the annual harvest specifications. In years when abundance is above 250,000 Chinook salmon, NMFS would manage under the current 47,591 Chinook salmon performance standard and 60,000 Chinook salmon PSC limit established under Amendment 91.

The inclusion of a lower PSC limit and performance standard is based on the need for additional incentives to reduce bycatch when Chinook salmon stocks are critically low in order to minimize the impact of the pollock fishery on the salmon stocks. Any additional fish returning to Alaska rivers improves the ability to meet the escapement goals, which is necessary for long-term sustainability of Chinook salmon and the people reliant on salmon fisheries. While the performance standard is the operational limit in the IPAs, reducing the 60,000 PSC limit is also appropriate given the potential for decreased bycatch reduction incentives should a sector exceed its performance standard before the PSC limit is reached. The reduced PSC limit is intended to encourage vessels to avoid

bycatch in years of low abundance and to set a maximum permissible PSC limit that reduces the risk of adverse impact on stocks in western Alaska during periods of low abundance.

NMFS is soliciting public comments on proposed Amendment 110 through the end of the comment period (see **DATES**). NMFS intends to publish in the **Federal Register** and seek public comment on a proposed rule that would implement Amendment 110, following NMFS' evaluation of the proposed rule under the Magnuson-Stevens Act. All comments received by the end of the comment period on Amendment 110, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the approval/disapproval decision on Amendment 110. Comments received after that date will not be considered in the approval/disapproval decision on Amendment 110. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the last day of the comment period.

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

Dated: January 5, 2016.

**Emily H. Menashes,**

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

[FR Doc. 2016-00150 Filed 1-7-16; 8:45 am]

**BILLING CODE 3510-22-P**

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

### Animal and Plant Health Inspection Service

[Docket No. APHIS-2015-0096]

#### The Scotts Co. and Monsanto Co.; Availability of Petition for Determination of Nonregulated Status of Creeping Bentgrass Genetically Engineered for Resistance to Glyphosate

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service has received a petition from the Scotts Company and Monsanto Company seeking a determination of nonregulated status of creeping bentgrass designated as event ASR368, which has been genetically engineered for resistance to the herbicide glyphosate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. We are making the Scotts Company and Monsanto Company petition available for review and comment to help us identify potential environmental and interrelated economic issues and impacts that the Animal and Plant Health Inspection Service may determine should be considered in our evaluation of the petition.

**DATES:** We will consider all comments that we receive on or before March 8, 2016.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0096>.
- *Postal Mail/Commercial Delivery:*

Send your comment to Docket No. APHIS-2015-0096, Regulatory Analysis

and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road, Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov#!docketDetail;D=APHIS-2015-0096> or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

The petition is also available on the APHIS Web site at: [http://www.aphis.usda.gov/biotechnology/petitions\\_table\\_pending.shtml](http://www.aphis.usda.gov/biotechnology/petitions_table_pending.shtml) under APHIS petition 15-300-01p.

**FOR FURTHER INFORMATION CONTACT:** Dr. John Turner, Director, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737-1236; (301) 851-3954, email: [john.t.turner@aphis.usda.gov](mailto:john.t.turner@aphis.usda.gov). To obtain copies of the petition, contact Ms. Cindy Eck at (301) 851-3892, email: [Cynthia.a.eck@aphis.usda.gov](mailto:Cynthia.a.eck@aphis.usda.gov).

**SUPPLEMENTARY INFORMATION:** Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered (GE) organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS has received a petition (APHIS Petition Number 15-300-01p) from the Scotts Company of Marysville, OH, and Monsanto Company of St. Louis, MO (Scotts/Monsanto), seeking a determination of nonregulated status of creeping bentgrass (*Agrostis stolonifera* L.) designated as event ASR368, which has been genetically engineered for resistance to the herbicide glyphosate. The Scotts/Monsanto petition states that information collected during field trials and laboratory analyses indicates that ASR368 bentgrass is not likely to be a plant pest and therefore should not be a regulated article under APHIS' regulations in 7 CFR part 340.

As described in the petition, ASR368 bentgrass contains the *cp4 epsps* gene from *Agrobacterium* sp. strain CP4 that confers resistance to the herbicide glyphosate. ASR368 bentgrass is currently regulated under 7 CFR part 340. Interstate movements and field tests of ASR368 bentgrass have been conducted under notifications acknowledged by APHIS.

Field tests conducted under APHIS oversight allowed for evaluation in a natural agricultural setting while imposing measures to minimize the risk of persistence in the environment after completion of the tests. Data are gathered on multiple parameters and used by the applicant to evaluate agronomic characteristics and product performance. These and other data are used by APHIS to determine if the new variety poses a plant pest risk.

Paragraph (d) of § 340.6 provides that APHIS will publish a notice in the **Federal Register** providing 60 days for public comment for petitions for a determination of nonregulated status. On March 6, 2012, we published in the **Federal Register** (77 FR 13258-13260, Docket No. APHIS-2011-0129) a notice<sup>1</sup> describing our process for soliciting public comment when considering petitions for determinations of nonregulated status for GE organisms. In that notice we indicated that APHIS would accept written comments regarding a petition once APHIS deemed it complete.

In accordance with § 340.6(d) of the regulations and our process for soliciting public input when considering petitions for determinations

<sup>1</sup>To view the notice, go to <http://www.regulations.gov#!docketDetail;D=APHIS-2011-0129>.



of nonregulated status for GE organisms, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. The petition is available for public review and comment, and copies are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

We are interested in receiving comments regarding potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition. We are particularly interested in receiving comments regarding biological, cultural, or ecological issues, and we encourage the submission of scientific data, studies, or research to support your comments. We also request that, when possible, commenters provide relevant information regarding specific localities or regions as creeping bentgrass growth, crop management, and crop utilization may vary considerably by geographic region.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information. Any substantive issues identified by APHIS based on our review of the petition and our evaluation and analysis of comments will be considered in the development of our decisionmaking documents. As part of our decisionmaking process regarding a GE organism's regulatory status, APHIS prepares a plant pest risk assessment to assess its plant pest risk and the appropriate environmental documentation—either an environmental assessment (EA) or an environmental impact statement (EIS)—in accordance with the National Environmental Policy Act (NEPA), to provide the Agency with a review and analysis of any potential environmental impacts associated with the petition request. For petitions for which APHIS prepares an EA, APHIS will follow our published process for soliciting public comment (see footnote 1) and publish a separate notice in the **Federal Register** announcing the availability of APHIS' EA and plant pest risk assessment.

Should APHIS determine that an EIS is necessary, APHIS will complete the NEPA EIS process in accordance with Council on Environmental Quality regulations (40 CFR part 1500–1508) and APHIS' NEPA implementing regulations (7 CFR part 372).

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.13.

Done in Washington, DC, this 4th day of January 2016.

**Michael C. Gregoire,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2016–00160 Filed 1–7–16; 8:45 am]

**BILLING CODE 3410–34–P**

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## CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

### Sunshine Act Meeting

**TIME AND DATE:** January 13, 2016, 5:00 p.m. PST.

**PLACE:** City Hall, Council Chamber, 3031 Torrance Blvd., Torrance, CA 90503.

**STATUS:** Open to the public.

### Matters To Be Considered

The Chemical Safety and Hazard Investigation Board (CSB) will convene a public meeting on January 13, 2016, starting at 5:00 p.m. PST at Torrance City Hall Council Chamber, 3031 Torrance Blvd., Torrance, CA 90503. The Board will discuss its investigation of the incident at the ExxonMobil Refinery on February 18, 2015. CSB Staff will present interim findings to the Board. Following the staff presentation, the Board will hear from a panel of experts on process safety management (PSM) reform in the State of California.

### Additional Information

The meeting is free and open to the public. If you require a translator or interpreter, please notify the individual listed below as the “Contact Person for Further Information,” at least three business days prior to the meeting.

This meeting will be webcast for those who cannot attend in person. Please visit [www.csb.gov](http://www.csb.gov) for access to the live webcast.

The CSB is an independent federal agency charged with investigating accidents and hazards that result, or may result, in the catastrophic release of extremely hazardous substances. The agency's Board Members are appointed by the President and confirmed by the Senate. CSB investigations look into all aspects of chemical accidents and hazards, including physical causes such as equipment failure as well as inadequacies in regulations, industry standards, and safety management systems.

### Public Comment

The time provided for public statements will depend upon the

number of people who wish to speak. Speakers should assume that their presentations will be limited to three minutes or less, but commenters may submit written statements for the record.

### Contact Person for Further Information

Shauna Lawhorne, Public Affairs Specialist, [public@csb.gov](mailto:public@csb.gov) or (202) 261–7600. Further information about this public meeting can be found on the CSB Web site at: [www.csb.gov](http://www.csb.gov).

Dated: January 6, 2016.

**Kara A. Wenzel,**

*Acting General Counsel, Chemical Safety and Hazard Investigation Board.*

[FR Doc. 2016–00298 Filed 1–6–16; 4:15 pm]

**BILLING CODE 6350–01–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–570–970]

### Multilayered Wood Flooring From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (“the Department”) is conducting an administrative review of the antidumping duty order on multilayered wood flooring (“MLWF”) from the People's Republic of China (“PRC”). The period of review (“POR”) is December 1, 2013, through November 30, 2014. The review covers two mandatory respondents, Fine Furniture (Shanghai) Limited (“Fine Furniture”) and Dalian Penghong Floor Products Co., Ltd. (“Dalian Penghong”). We preliminarily find that both respondents made sales of subject merchandise at less than normal value (“NV”).

**DATES:** *Effective date:* January 8, 2016.

**FOR FURTHER INFORMATION CONTACT:** Lilit Astvatsatrian or William Horn AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6412 and (202) 482–2615.

### SUPPLEMENTARY INFORMATION:

#### Scope of the Order

The merchandise covered by the order includes MLWF, subject to certain

exceptions.<sup>1</sup> Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States (“HTSUS”):

4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.3175; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.4075; 4412.31.4080; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.0565; 4412.32.0570; 4412.32.2510; 4412.32.2520; 4412.32.2525; 4412.32.2530; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5105; 4412.99.5115; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; 4418.72.9500; and 9801.00.2500.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

<sup>1</sup> 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 Preliminary Results of 2013–2014 Antidumping Duty Administrative Review: Multilayered Wood Flooring from the People’s Republic of China,” (“Preliminary Decision Memorandum”), issued and dated concurrently with this notice, for a complete description of the Scope of the Order.

## Methodology

The Department has conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (“the Act”). Export prices and constructed export prices have been calculated in accordance with section 772 of the Act. Because the PRC is a non-market economy (“NME”) within the meaning of section 771(18) of the Act, normal value (“NV”) has been calculated in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, please see the Preliminary Decision Memorandum, hereby adopted by 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>. The Preliminary Decision Memorandum is also available 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/index.html>. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

## Affiliation and Collapsing

Based on the evidence presented in Dalian Penghong’s questionnaire responses, we preliminarily find (1) that Dalian Penghong is affiliated with a certain glue producer within the meaning of sections 771(33)(A), (F), and (G) of the Act; and (2) that Dalian Penghong and Dalian Shumaiké Floor Manufacturing Co., Ltd. (“Shumaiké”) are affiliated within the meaning of section 773(33)(F) of the Act. Additionally, we are preliminarily treating Dalian Penghong and Shumaiké as a single entity for antidumping duty purposes, within the meaning of 19 CFR 351.401(f), because we find that those two affiliated companies have a high level of common ownership, production facilities for similar or identical products that would not require substantial retooling to restructure manufacturing priorities, and that there is a significant potential for manipulation of price or production.<sup>2</sup>

<sup>2</sup> See *Dalian Penghong Floor Products Co., Ltd., Preliminary Affiliation and Single Entity Memorandum* dated concurrently with this Notice.

## Preliminary Results of Review

The Department preliminarily finds that nineteen companies subject to this review did not establish eligibility for a separate rate. As such, we preliminarily determine they are part of the PRC-wide entity.<sup>3</sup> Because no party requested a review of the PRC-wide entity and the Department no longer considers the PRC-wide entity as an exporter conditionally subject to administrative reviews,<sup>4</sup> we did not conduct a review of the PRC-wide entity. Thus, the rate for the PRC-wide entity is not subject to change as a result of this review.

For companies subject to this review that have established their entitlement to a separate rate, the Department preliminarily determines that the following weighted-average dumping margins exist for the POR from December 1, 2013, through November 30, 2014:<sup>5</sup>

<sup>3</sup> The following companies were named in the *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 6041 (February 4, 2014), but did not submit a certification of no shipment, separate rate application or separate rate certification; therefore they are part of the PRC-wide entity: Anhui Suzhou Dongda Wood Co., Ltd.; Baiying Furniture Manufacturer Co., Ltd.; Cheng Hang Wood Co., Ltd.; Dalian Huilong Wooden Products Co., Ltd.; Dalian Jiuyuan Wood Industry Co., Ltd.; Fu Lik Timber (HK) Co., Ltd.; Guangzhou Homebon Timber Manufacturing Co., Ltd.; HaiLin XinCheng Wooden Products, Ltd.; Hangzhou Dazhuang Floor Co., Ltd. (dba Dasso Industrial Group Co., Ltd); Linyi Anying Wood Co., Ltd.; Qingdao Barry Flooring Co., Ltd. (Qingdao Barry); Shanghai Anxin (Weiguang) Timber Co., Ltd.; Vicwood Industry (Suzhou) Co., Ltd.; Xiamen Yung De Ornament Co., Ltd.; Yingyi-Nature (Kunshan) Wood Industry Co., Ltd.; Zhejiang Anji XinFeng Bamboo & Wood Industry Co., Ltd.; Zhejiang Desheng Wood Industry Co., Ltd.; Zhejiang Haoyun Wooden Co., Ltd.; and Zhejiang Shiyou Timber Co., Ltd. We note that Qingdao Barry is currently subject to a new shipper review that covers the same POR as this administrative review. The only sale(s) made by Qingdao Barry during that period are being reviewed in the new shipper review. As a result, the Department may rescind this administrative review as to Qingdao Barry in the final results if there are no reviewable entries that remain subject to this administrative review.

<sup>4</sup> See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65969–70 (November 4, 2013).

<sup>5</sup> In addition to the companies listed in the table, certain companies certified that they did not ship subject merchandise to the United States during the POR. The Department confirmed these certifications of no shipments with U.S. Customs and Border Protection (“CBP”); therefore, the following companies will maintain their rate from the most recent segment in which they participated: Changbai Mountain Development and Protection Zone Hongtu Wood Industrial Co., Ltd.; Dalian T-Boom Wood Products Co., Ltd.; Hangzhou Zhengtian Industrial Co., Ltd.; Jiangsu Guyu International Trading Co., Ltd.; Jiangsu Mingle Flooring Co., Ltd.; Linyi Bonn Flooring Manufacturing Co., Ltd.; Shanghai Eswell Timber Co., Ltd.; Shenyang Senwang Wooden Industry Co., Ltd.; Tongxiang Jisheng Import and Export Co., Ltd.; and Zhejiang Fuerjia Wooden Co., Ltd.

Exporter	Weighted-average dumping margin
Fine Furniture (Shanghai) Limited .....	13.34
Dalian Penghong Floor Products Co., Ltd/Dalian Shumaike Floor Manufacturing Co., Ltd <sup>6</sup> .....	0.00
A&W (Shanghai) Woods Co., Ltd .....	13.34
Anhui Longhua Bamboo Product Co., Ltd .....	13.34
Armstrong Wood Products (Kunshan) Co., Ltd .....	13.34
Baishan Huafeng Wood Product Co., Ltd .....	13.34
Benxi Wood Company .....	13.34
Changzhou Hawd Flooring Co., Ltd .....	13.34
Chinafloors Timber (China) Co., Ltd .....	13.34
Dalian Dajen Wood Co., Ltd .....	13.34
Dalian Huade Wood Product Co., Ltd .....	13.34
Dalian Kemian Wood Industry Co., Ltd .....	13.34
Dalian Xinjinghua Wood Co., Ltd .....	13.34
Dasso Industrial Group Co., Ltd .....	13.34
Dongtai Fuan Universal Dynamics, LLC .....	13.34
Dunhua City Dexin Wood Industry Co., Ltd .....	13.34
Dunhua City Hongyuan Wood Industry Co., Ltd .....	13.34
Dun Hua City Jisen Wood Industry Co., Ltd .....	13.34
Dunhua City Wanrong Wood Industry Co., Ltd .....	13.34
Dun Hua Sen Tai Wood Co., Ltd .....	13.34
Dunhua Shengda Wood Industry Co., Ltd .....	13.34
Fusong Jinlong Wooden Group Co., Ltd .....	13.34
Fusong Qianqiu Wooden Product Co., Ltd .....	13.34
GTP International Ltd .....	13.34
Guangdong Yihua Timber Industry Co., Ltd .....	13.34
Guangzhou Panyu Kangda Board Co., Ltd .....	13.34
Guangzhou Panyu Southern Star Co., Ltd .....	13.34
HaiLin LinJing Wooden Products, Ltd .....	13.34
Hangzhou Hanje Tec Co., Ltd .....	13.34
Henan Xingwangjia Technology Co., Ltd .....	13.34
Hunchun Forest Wolf Wooden Industry Co., Ltd .....	13.34
Hunchun Xingjia Wooden Flooring Inc .....	13.34
Huzhou Chenghang Wood Co., Ltd .....	13.34
Huzhou Fulinmen Imp. & Exp. Co., Ltd .....	13.34
Huzhou Fuma Wood Co., Ltd <sup>7</sup> .....	13.34
Huzhou Jesonwood Co., Ltd .....	13.34
Huzhou Ruifeng Imp. & Exp. Co., Ltd .....	13.34
Huzhou Sunergy World Trade Co., Ltd .....	13.34
Jiafeng Wood (Suzhou) Co., Ltd <sup>8</sup> .....	13.34
Jiangsu Senmao Bamboo and Wood Industry Co., Ltd .....	13.34
Jiangsu Simba Flooring Co., Ltd .....	13.34
Jiangsu Yuhui International Trade Co., Ltd .....	13.34
Jiashan HuiJiaLe Decoration Material Co., Ltd .....	13.34
Jiaxing Hengtong Wood Co., Ltd .....	13.34
Jilin Forest Industry Jinqiao Flooring Group Co., Ltd .....	13.34
Jilin Xinyuan Wooden Industry Co., Ltd .....	13.34
Karly Wood Product Limited .....	13.34
Kemian Wood Industry (Kunshan) Co., Ltd .....	13.34
Les Planchers Mercier, Inc .....	13.34
Linyi Youyou Wood Co., Ltd .....	13.34
MuDanJiang Bosen Wood Industry Co., Ltd .....	13.34
Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd .....	13.34
Nanjing Minglin Wooden Industry Co., Ltd .....	13.34
Ningbo Tianyi Bamboo & Wood Products Co., Ltd .....	13.34
Pinge Timber Manufacturing (Zhejiang) Co., Ltd .....	13.34
Power Dekor Group Co., Ltd .....	13.34
Puli Trading Limited .....	13.34
Shanghai Lairunde Wood Co., Ltd .....	13.34
Shanghai Lizhong Wood Products Co., Ltd/The Lizhong Wood Industry Limited Company of Shanghai <sup>9</sup> .....	13.34
Shanghai New Sihe Wood Co., Ltd .....	13.34
Shanghai Shenlin Corporation .....	13.34
Shenyang Haobainian Wooden Co., Ltd .....	13.34
Shenzhenshi Huanwei Woods Co., Ltd .....	13.34
Sino-Maple (JiangSu) Co., Ltd .....	13.34
Suzhou Dongda Wood Co., Ltd .....	13.34
Xuzhou Antop International Trade Co., Ltd .....	13.34
Xuzhou Shenghe Wood Co., Ltd .....	13.34
Yekalon Industry, Inc .....	13.34
Yixing Lion-King Timber Industry Co., Ltd .....	13.34
Zhejiang Biyork Wood Co., Ltd .....	13.34
Zhejiang Dadongwu Green Home Wood Co., Ltd .....	13.34
Zhejiang Fudeli Timber Industry Co., Ltd .....	13.34
Zhejiang Fuma Warm Technology Co., Ltd .....	13.34

Exporter	Weighted-average dumping margin
Zhejiang Longsen Lumbering Co., Ltd .....	13.34
Zhejiang Shuimojiangnan New Material Technology Co., Ltd .....	13.34

## Disclosure and Public Comment

The Department intends to disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice.<sup>10</sup> Interested parties may submit a case brief no later than 30 days after the date of publication of these preliminary results of review.<sup>11</sup> Rebuttal briefs may be filed no later than five days after the deadline for filing case briefs and may respond only to arguments raised in the case briefs.<sup>12</sup> A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to the Department.<sup>13</sup> This summary

<sup>6</sup> We note that the record reflects that Dalian Penghong and Shumaike were not affiliated until April 2014 (*i.e.*, approximately 4 months into the POR). Because the record does not support treating Dalian Penghong as a single entity with Shumaike prior to the date of affiliation (*i.e.*, April 2014), separate assessment rates will apply for the period from 11/30/2013 through 3/31/2014. In particular, the assessment rate for any entries by Shumaike will be 13.34 percent (the rate applicable to unexamined separate rate companies) and the assessment rate for any entries by Dalian Penghong will be 0.00.

<sup>7</sup> On July 13, 2015, the Department determined that Zhejiang Fuma Warm Technology Co., Ltd. is the successor-in-interest to Huzhou Fuma Wood Co., Ltd. See *Multilayered Wood Flooring From the People's Republic of China: Final Results of Changed Circumstances Review*, 80 FR 39998 (July 13, 2015). Because Huzhou Fuma Wood Co., Ltd. no longer exists as a legal entity, the rate assigned to Huzhou Fuma Wood Co., Ltd. will apply for assessment purposes only.

<sup>8</sup> On November 16, 2015, the Department determined that Sino-Maple (JiangSu) Co., Ltd. is the successor-in-interest to Jiafeng Wood (Suzhou) Co., Ltd. See *Multilayered Wood Flooring From the People's Republic of China: Final Results of Changed Circumstances Review*, 80 FR 70756 (November 16, 2015). Because Jiafeng Wood (Suzhou) Co., Ltd. no longer exists as a legal entity, the rate assigned to Jiafeng Wood (Suzhou) Co., Ltd. will apply for assessment purposes only.

<sup>9</sup> On September 30, 2014, the Department determined that Linyi Youyou Wood Co., Ltd. is the successor-in-interest to Shanghai Lizhong Wood Products Co., Ltd./The Lizhong Wood Industry Limited Company of Shanghai. See *Multilayered Wood Flooring From the People's Republic of China: Final Results of Changed Circumstances Review*, 79 FR 58740 (September 30, 2014). Because Shanghai Lizhong Wood Products Co., Ltd./The Lizhong Wood Industry Limited Company of Shanghai no longer exists as a legal entity, the rate assigned to Shanghai Lizhong Wood Products Co., Ltd./The Lizhong Wood Industry Limited Company of Shanghai will apply for assessment purposes only.

<sup>10</sup> See 19 CFR 351.224(b).

<sup>11</sup> See 19 CFR 351.309(c)(1)(ii).

<sup>12</sup> See 19 CFR 351.309(d).

<sup>13</sup> See 19 CFR 351.309(c)(2) and (d)(2).

should be limited to five pages total, including footnotes. Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice.<sup>14</sup> Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time to be determined.<sup>15</sup> Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions, with limited exceptions, must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by 5 p.m. Eastern Time ("ET") on the due date. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with the APO/Dockets Unit in Room 1870 and stamped with the date and time of receipt by 5 p.m. ET on the due date.<sup>16</sup>

Unless extended, the Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

## Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.<sup>17</sup> The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. For any individually examined respondent whose weighted-average dumping margin is above *de minimis* (*i.e.*, 0.50 percent) in the final results of this

review, the Department will calculate an importer- (or customer-) specific assessment rate on the basis of the ratio of the total amount of antidumping duties calculated for the importer's examined sales and the total entered value of sales, in accordance with 19 CFR 351.212(b)(1). In these preliminary results, the Department applied the assessment rate calculation method adopted in the *Final Modification for Reviews*.<sup>18</sup> Where either the respondent's weighted-average dumping margin is zero or *de minimis*, or an importer- (or customer-) specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.<sup>19</sup> We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the current rate for the PRC-wide entity (which, as noted above, is not subject to change in this review).

On October 24, 2011, the Department announced a refinement to its assessment practice in NME antidumping duty cases.<sup>20</sup> Pursuant to this refinement in practice, for merchandise that was not reported in the U.S. sales databases submitted by an exporter individually examined during this review, but that entered under the case number of that exporter (*i.e.*, at the individually-examined exporter's cash deposit rate), the Department will instruct CBP to liquidate such entries at the PRC-wide rate. Additionally, pursuant to this refinement, 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 will be liquidated at the PRC-wide rate.

## Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of

<sup>18</sup> See *Antidumping Proceeding Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012) ("*Final Modification for Reviews*").

<sup>19</sup> See 19 CFR 351.106(c)(2).

<sup>20</sup> See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011), for a full discussion of this practice.

<sup>14</sup> See 19 CFR 351.310(c).

<sup>15</sup> See 19 CFR 351.310(d).

<sup>16</sup> See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

<sup>17</sup> See 19 CFR 351.212(b)(1).

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 the companies listed above the cash deposit rate will be their respective rate established in the final results of this review, except if the rate is zero or *de minimis* (*i.e.*, less than 0.5 percent), then the cash deposit rate will be zero; (2) for previously investigated PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC 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 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.

#### Notification to Interested Parties

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 31, 2015.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

#### Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Period of Review
4. Extension of Preliminary Results
5. Scope of the Order
6. Selection of Respondents
7. Non-Market Economy Country
8. Separate Rate
9. Surrogate Country and Surrogate Value Data
10. Date of Sale
11. Fair Value Comparisons
12. Affiliation and Single Entity Status

13. U.S. Price
14. Value Added Tax
15. Normal Value
16. Factor Valuations
17. Adjustment Under Section 777(A)(f) of the Act
18. Currency Conversion
19. Recommendation

[FR Doc. 2016-00180 Filed 1-7-16; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-560-823, A-570-958]

#### Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From Indonesia and the People's Republic of China: Final Results of Expedited First Sunset Reviews of the Antidumping Duty Orders

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** As a result of these sunset reviews, the Department of Commerce (the Department) finds that revocation of the antidumping duty orders on certain coated paper suitable for high-quality print graphics using sheet-fed presses (coated paper) from Indonesia and the People's Republic of China (PRC) would be likely to lead to continuation or recurrence of dumping at the levels indicated in the "Final Results of Sunset Reviews" section of this notice.

**DATES:** *Effective date:* January 8, 2016.

#### FOR FURTHER INFORMATION CONTACT:

Terre Keaton Stefanova or Brian Smith, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-1280 or (202) 482-1766, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On November 17, 2010, the Department published the antidumping duty orders on coated paper from Indonesia and the PRC.<sup>1</sup> On October 1, 2015, the Department published the notice of initiation of the first sunset

<sup>1</sup> See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From Indonesia: Antidumping Duty Order*, 75 FR 70205 (November 17, 2010); and *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 75 FR 70203 (November 17, 2010) (*Orders*).

reviews of the antidumping duty orders on coated paper from Indonesia and the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).<sup>2</sup> On October 14, 2015, the Department received a Notice of Intent to Participate in these reviews from Verso Corporation (Verso), S.D. Warren Company d/b/a Sappi North America (Sappi), Appleton Coated LLC (Appleton) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (USW) (collectively, "the petitioners"), within the deadline specified in 19 CFR 351.218(d)(1)(i). Verso, Sappi and Appleton claimed interested party status under section 771(9)(C) of the Act and 19 CFR 351.102(b)(29)(v), as domestic producers of a domestic like product in the United States. USW claimed interested party status under section 771(9)(D) of the Act and 19 CFR 351.102(b)(29)(vi), as a certified union or recognized union that represents workers engaged in the manufacturing of a domestic like product in the United States. On October 30, 2015, we received complete substantive responses from the petitioners within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).<sup>3</sup> We received no substantive responses from any respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited (120-day) sunset reviews of these orders.

#### Scope of the Orders

The merchandise subject to these orders is coated paper. The merchandise subject to these orders are provided for under subheadings: 4810.14.11, 4810.14.1900, 4810.14.2010, 4810.14.2090, 4810.14.5000, 4810.14.6000, 4810.14.70, 4810.19.1100, 4810.19.1900, 4810.19.2010, 4810.19.2090, 4810.22.1000, 4810.22.50, 4810.22.6000, 4810.22.70, 4810.29.1000, 4810.29.5000, 4810.29.6000, 4810.29.70, 4810.32, 4810.39 and 4810.92 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the

<sup>2</sup> See *Initiation of Five-Year ("Sunset") Reviews*, 80 FR 59133 (October 1, 2015).

<sup>3</sup> See October 30, 2015, filings from the petitioners regarding "1st Sunset Review of Antidumping Order on Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Substantive Response to Notice of Initiation" (Indonesia Substantive Response), and 1st Sunset Review of Antidumping Order on Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Substantive Response to Notice of Initiation (PRC Substantive Response).

HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these orders is dispositive.<sup>4</sup>

**Analysis of Comments Received**

All issues raised in these reviews, including the likelihood of continuation or recurrence of dumping in the event of revocation and the magnitude of the margins likely to prevail if the orders were revoked, are addressed in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at <http://enforcement.trade.gov/frn/>. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

**Final Results of Sunset Reviews**

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, we determine that revocation of the antidumping duty orders on coated paper from Indonesia and the PRC would be likely to lead to continuation or recurrence of dumping up to the following weighted-average margin percentages:

Country	Weighted-average margin (percent)
Indonesia .....	20.13
PRC .....	135.84

**Notification to Interested Parties**

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of

<sup>4</sup> A full description of the scope of these orders is contained in the memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Reviews of the Antidumping Duty Orders on Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia and the People's Republic of China" (Issues and Decision Memorandum), dated concurrently with these results and hereby adopted by this notice.

their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely 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 results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, 19 CFR 351.218 and 19 CFR 351.221(c)(5)(ii).

Dated: January 4, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

**Appendix—List of Topics Discussed in the Issues and Decision Memorandum**

- I. Summary
- II. Background
- III. Scope of the Orders
- IV. History of the Orders
- V. Legal Framework
- VI. Discussion of the Issues
  - A. Likelihood of Continuation or Recurrence of Dumping
  - B. Magnitude of the Margins Likely To Prevail
- VII. Final Results of Sunset Reviews
- VIII. Recommendation

[FR Doc. 2016-00179 Filed 1-7-16; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[C-570-980]

**Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2013; and Partial Rescission of Countervailing Duty Administrative Review**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting the second administrative review of the countervailing duty (CVD) order on crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from the People's Republic of China (PRC). The period of review (POR) is January 1, 2013, through December 31, 2013. We preliminarily determine that JA Solar Technology Yangzhou Co., Ltd. and its cross-owned affiliates, including JingAo Solar Co., Ltd. and Shanghai JA Solar Technology

Co., Ltd., (collectively, JA Solar) received countervailable subsidies during the POR. Interested parties are invited to comment on these preliminary results.

**DATES:** *Effective date:* January 8, 2016.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Baker or Gene Calvert, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-6251, and (202) 482-3586, respectively.

**SUPPLEMENTARY INFORMATION:**

**Scope of the Order**

The merchandise subject to the CVD order is crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels, and building integrated materials. A full description of the scope of the order is contained in the Department memorandum, "Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China; 2013," dated concurrently with this notice (Preliminary Decision Memorandum) and hereby adopted by 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, located in 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://www.trade.gov/frn/index.html>. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

**Methodology**

The Department is conducting this administrative 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 preliminarily find that there is a subsidy, (*i.e.*, a financial contribution from an authority that

gives rise to a benefit to the recipient) and that the subsidy is specific.<sup>1</sup> 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 Preliminary Decision Memorandum.

A list of topics discussed in the Preliminary Decision Memorandum is provided at Appendix I to this notice.

### Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. For those companies named in the *Initiation Notice*<sup>2</sup> for which all review requests were 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 cash deposits for estimated countervailing duties required at the time of entry, or withdrawn from warehouse, for consumption, during the period January 1, 2013, through December 31, 2013, in accordance with 19 CFR 351.212(c)(2).

### Companies Not Selected for Individual Review

There are two companies for which a review was requested and not rescinded, and which were not selected as mandatory respondents: Changzhou Trina Solar Energy Co., Ltd. (Trina Solar) and Wuxi Suntech Power Co., Ltd. (Suntech).<sup>3</sup> Because JA Solar is the

sole mandatory respondent, we assigned to Trina Solar and Suntech, the rate calculated for JA Solar.

### Preliminary Results of Review

As a result of this review, we preliminarily determine the countervailable subsidy rates to be:

Company	Subsidy rate (percent)
JA Solar Technology Yangzhou Co., Ltd. and its cross-owned affiliates <sup>4</sup> .	19.62 percent.
Changzhou Trina Solar Energy Co., Ltd.	19.62 percent.
Wuxi Suntech Power Co., Ltd.	19.62 percent.

### Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in reaching these preliminary results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs, rebuttal briefs, and hearing requests.<sup>5</sup> For a schedule of the deadlines for filing case briefs, rebuttal briefs, and hearing requests, see the Preliminary Decision Memorandum.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, we intend to issue the final results of this administrative review, including the results of our analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice.

### Assessment Rates

Upon issuance of the final results, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of this review.

### Cash Deposit Instructions

Pursuant to section 751(a)(2)(C) of the Act, the Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties, in the

Guiguang); Yanguang Guifeng Electronic Technology Co., Ltd.; Ningjin Jingxing Electronic Materials Co., Ltd.; Ningjin Saimei Ganglong Electronic Materials Co., Ltd.; Jingwei Electronic Material Co., Ltd.; Ningjin Changlong Electronic Materials Manufacturing Co.; Ningjin Jingfeng Electronic Materials Co., Ltd.; Ningjin County Jinyuan New Energy Investment Co., Ltd. (Ningjin County Jinyuan); Xingtai Jinglong Electronic Materials Co., Ltd.; Hebei Yujing Electronic Science and Technology Co., Ltd.; Hebei Ningtong Electronic Materials Co., Ltd.; and Ningjin Sunshine New Energy Co., Ltd. See Preliminary Decision Memorandum.

<sup>5</sup> See 19 CFR 351.309(c)-(d), 19 CFR 351.310(c).

amounts shown above for each of the respective companies shown above, 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 review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most-recent company-specific or all others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: December 31, 2015.

### Paul Piquado,

*Assistant Secretary for Enforcement and Compliance.*

### Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Subsidies Valuation
- IV. Use of Facts Otherwise Available and Adverse Inferences
- V. Analysis of Programs
- VI. Verification
- VII. Disclosure and Public Comment
- VIII. Conclusion

### Appendix II—Rescinded Companies

1. Yingli Energy (China) Company Limited
2. Yingli Green Energy Holding Company Limited
3. Baoding Tianwei Yingli New Energy Resources Co., Ltd.
4. Baoding Jiasheng Photovoltaic Technology Co. Ltd.
5. Beijing Tianneng Yingli New Energy Resources Co. Ltd.
6. Hainan Yingli New Energy Resources Co., Ltd.
7. Hengshui Yingli New Energy Resources Co., Ltd.
8. Lixian Yingli New Energy Resources Co., Ltd.
9. Tianjin Yingli New Energy Resources Co., Ltd.
10. Yingli Green Energy International Trading Company Limited
11. Yingli Green Energy Americas, Inc.
12. Era Solar Co., Ltd.
13. Canadian Solar, Inc.
14. Canadian Solar International Limited
15. Canadian Solar Manufacturing (Changshu) Inc.
16. Canadian Solar Manufacturing (Luoyang) Inc.
17. Canadian Solar (USA) Inc.
18. CSG PVTech Co., Ltd.
19. Changzhou NESL Solartech Co., Ltd.
20. DelSolar Co., Ltd.
21. Dongfang Electric (Yixing) MAGI Solar Power Technology Co., Ltd.
22. ET Solar Energy Limited
23. Hengdian Group DMEGC Magnetics Co., Ltd.
24. Himin Clean Energy Holdings Co., Ltd.

<sup>1</sup> 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.

<sup>2</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 6041 (February 4, 2015) (*Initiation Notice*).

<sup>3</sup> We note that untimely requests for withdrawal of review were also submitted on behalf of Shanghai JA Solar Technology Co., Ltd., and JingAo Solar Co., Ltd. However, we have preliminarily determined that these companies are cross-owned with the mandatory respondent, JA Solar Technology Yangzhou Co., Ltd., under 19 CFR 351.525(b)(6)(vi), and are, thereby, subject to the review. See Preliminary Decision Memorandum.

<sup>4</sup> Cross-owned affiliates are: JingAo Solar Co., Ltd.; JA Solar Technology Yangzhou Co., Ltd.; Jing Hai Yang Semiconductor Material (Donghai) Co., Ltd.; Donghai JA Solar Technology Co., Ltd.; JA (Hefei) Renewable Energy Co., Ltd. (JA Hefei); Hefei JA Solar Technology Co., Ltd.; Solar Silicon Valley Electronic Science and Technology Co., Ltd.; Hebei Ningjin Songgong Semiconductor Co., Ltd.; Shanghai JA Solar Technology Co., Ltd.; Ningjin Songgong Electronic Materials Co., Ltd.; JingLong Industry and Commerce Group Co., Ltd.; Ningjin Guiguang Electronic Investment Co., Ltd (Ningjin

25. Innosolar
26. Jiawei Solarchina Co., Ltd.
27. Jinko Solar Co., Ltd.
28. Jinko Solar Import and Export Co, Ltd.
29. Jinko Solar International Limited
30. Jiangsu Green Power PV Co., Ltd.
31. Jiangsu Sunlink PV Technology Co., Ltd.
32. Konca Solar Cell Co., Ltd.
33. Kuttler Automation Systems (Suzhou) Co., Ltd.
34. LDK Solar Hi-Tech (Suzhou) Co., Ltd.
35. LDK Solar Hi-Tech (Nanchang) Co., Ltd.
36. Lightway Green New Energy Co., Ltd.
37. Leye Photovoltaic Science Tech.
38. Magi Solar Technology
39. Motech (Suzhou) Renewable Energy Co., Ltd.
40. Ningbo ETDZ Holdings, Ltd.
41. Ningbo Ulica Solar Science & Technology Co., Ltd.
42. Perlight Solar Co., Ltd.
43. ReneSola Jiangsu Ltd.
44. Renesola Zhejiang Ltd.
45. Sumec Hardware & Tools Co., Ltd.
46. Solarbest Energy-Tech (Zhejiang) Co., Ltd.
47. Shenglong PV-Tech
48. ShunFeng PV
49. Sopray Energy Co., Ltd.
50. Luoyang Suntech Power Co., Ltd.
51. Suntech Power Co., Ltd.
52. Shenzhen Suntech Power Co., Ltd.
53. Suzhou Shenglong PV-Tech Co., Ltd.
54. Tianwei New Energy (Chengdu) PV Module Co., Ltd.
55. Upsolar Group, Co. Ltd.
56. Wanxiang Import & Export Co., Ltd.
57. Yangzhou Rietech Renewal Energy Co., Ltd.
58. Yangzhou Suntech Power Co., Ltd.
59. Wuxi Sunshine Power Co., Ltd.
60. Zhiheng Solar Inc.
61. Zhejiang ZG-Cells Co., Ltd.
62. Zhejiang Xinshun Guangfu Science and Technology Co., Ltd.
63. Zhejiang Jiutai New Energy Co., Ltd.
64. Zhejiang Shuqimeng Photovoltaic Technology Co., Ltd.
65. Zhenjiang Rietech New Energy Science & Technology Co., Ltd.
66. Trina Solar (Changzhou) Science & Technology Co., Ltd.
67. tenKsolar (Shanghai) Co., Ltd.
68. Shanghai BYD Company Limited
69. BYD (Shangluo) Industrial Co., Ltd.
70. Ningbo Qixin Solar Electrical Appliance Co., Ltd.

[FR Doc. 2016-00182 Filed 1-7-16; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Vessel Monitoring System Requirements under the Western and Central Pacific Fisheries Convention.

*OMB Control Number:* 0648-0596.

*Form Number(s):* None.

*Type of Request:* Regular (extension of a currently approved information collection).

*Number of Respondents:* 23.

*Average Hours per Response:* VMS unit purchase and installation, 1 hr; activation reports, 5 min; on/off reports, 5 min; VMS unit maintenance, 1 hr.

*Burden Hours:* 57.

*Needs and Uses:* This request is for an extension of a currently approved information collection. National Marine Fisheries Service (NMFS) has issued regulations under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFCIA; 16 U.S.C. 6901 *et seq.*) to carry out the obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), including implementing the decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission). The regulations include a requirement for the owners and operators of U.S. vessels that fish for highly migratory species on the high seas in the Convention Area to carry and operate near real-time satellite-based position-fixing transmitters ("VMS units") at all times except when the vessel is in port. As part of this requirement, vessel owners and operators must transmit: (1) "on/off reports" to NMFS whenever the VMS unit is turned off while the vessel is in port, (2) "activation reports" to NMFS prior to the first use of a VMS unit, and (3) automatic "position reports" from the VMS unit to NOAA and the Commission as part of a vessel monitoring system (VMS) operated by the Commission (50 CFR 300.45). Under this information collection, it is expected that vessel owners and operators would also need to purchase, install, and occasionally maintain the VMS units.

The information collected from the vessel position reports is used by NOAA and the Commission to help ensure compliance with domestic laws and the Commission's conservation and management measures, and are necessary in order to the United States to satisfy its obligations under the Convention.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* Annually and on occasion.

*Respondent's Obligation:* Mandatory.

This information collection request may be viewed at [reginfo.gov](http://reginfo.gov). Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to (202) 395-5806.

Dated: January 5, 2016.

**Sarah Brabson,**

*NOAA PRA Clearance Officer.*

[FR Doc. 2016-00146 Filed 1-7-16; 8:45 am]

BILLING CODE 3510-22-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Socioeconomics of Commercial Fishers and For Hire Diving and Fishing Operations in the Flower Garden Banks National Marine Sanctuary

*AGENCY:* National Oceanic and Atmospheric Administration (NOAA), Commerce.

*ACTION:* Notice.

*SUMMARY:* The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

*DATES:* Written comments must be submitted on or before March 8, 2016.

*ADDRESSES:* Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at [Jjessup@doc.gov](mailto:Jjessup@doc.gov)).

*FOR FURTHER INFORMATION CONTACT:* Requests for additional information or copies of the information collection instrument and instructions should be directed to Dr. Vernon R. Leeworthy (240) 533-0647 or [Bob.Leeworthy@noaa.gov](mailto:Bob.Leeworthy@noaa.gov).

**SUPPLEMENTARY INFORMATION:**



## I. Abstract

This request is for reinstatement with change of a currently approved information collection.

The National Marine Sanctuaries Act (16 U.S.C. 1431, *et seq.*) authorizes the use of research and monitoring within National Marine Sanctuaries (NMS). In 1996, the Flower Gardens Bank National Marine Sanctuary (FGBNMS) was added to the system of NMS via 15 CFR part 922, subpart L. In 2001, Stetson Bank was added in a revision of 15 CFR part 922.

The National Marine Sanctuaries Act (NMSA) specifies that each NMS should revise their management plans on a five-year cycle. The FGBNMS has begun the management plan review process. The NMSA also allows for the creation of Sanctuary Advisory Councils (SACs). SACs are comprised of representatives of all NMS stakeholders. Management Plan Review (MPR) is a public process and the SACs, along with a series of public meetings, are used to help scope out issues in revising the management plans and regulations. SAC Working Groups are often used to evaluate management or regulatory alternatives. In the current MPR for the FGBNMS, two major issues have emerged: Boundary expansion and research-only areas. In addition, several new or modified regulations are being considered to meet specific needs for diver safety and resource protection (no anchoring/mooring buoy use requirement and a more stringent pollution discharge regulation).

To address each one these issues, a socioeconomic panel composed of NOAA staff and social scientists from other agencies, or from universities, developed information and tools to assess the socioeconomic impacts of management strategies and regulatory alternatives. The information and tools developed in this process will also provide the necessary information for meeting agency requirements for socioeconomic impact analyses under the National Environmental Policy Act (NEPA), Executive Order 12086 (Regulatory Impact Review) and an Initial and Final Regulatory Flexibility Analyses (impacts on small businesses). Our initial plan, as the first step in the assessment process, was to interview three key sanctuary user groups—commercial fishers, for-hire recreational dive operations and for-hire recreational fishing operations (charter and party/head boat operations)—with questions focusing on: (1) General information, economic information and trip costs and (2) knowledge, attitudes and

perceptions of sanctuary management strategies and regulations.

In 2011–2012, the for-hire dive and fishing industry interviews were completed. The commercial fisheries interviews were completed in 2013.

The FGBNMS management and SAC now want to evaluate moving the scope of boundary expansion eastward; this will require us to gather the same information for the three user groups in areas east of the original data collection.

## II. Method of Collection

Interviews will be conducted face-to-face and recorded on paper forms.

## III. Data

*OMB Control Number:* 0648–0597.

*Form Number:* None.

*Type of Review:* Regular submission (reinstatement with change of a currently approved collection).

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 27.

*Estimated Time per Response:* Three hours per interview.

*Estimated Total Annual Burden Hours:* 81.

*Estimated Total Annual Cost to Public:* \$0 in recordkeeping/reporting costs.

## IV. Request for Comments

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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 4, 2016.

**Sarah Brabson,**

*NOAA PRA Clearance Officer.*

[FR Doc. 2016–00145 Filed 1–7–16; 8:45 am]

**BILLING CODE 3510-NK-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648–XE391

### Gulf of Mexico Fishery Management Council; Public Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will hold a four-day meeting to consider actions affecting the Gulf of Mexico fisheries in the exclusive economic zone (EEZ).

**DATES:** The meeting will be held on Monday, Tuesday, Wednesday, and Thursday, January 25–28, 2016, starting at 8:30 a.m. daily.

**ADDRESSES:** The meeting will be held at the Perdido Beach Resort, 27200 Perdido Beach Boulevard, Orange Beach, AL 36561; telephone: (251) 981–9811.

*Council address:* Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630.

**FOR FURTHER INFORMATION CONTACT:** Douglas Gregory, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

### SUPPLEMENTARY INFORMATION:

#### Agenda

*Monday, January 25, 2016; 8:30 a.m.–5 p.m.*

The Gulf Council will begin with updates and presentations from management committees. The Joint Administrative Policy & Budget Management Committee will review the Ad Hoc Advisory Panels and appointment terms. Under other business, the committee will hear an update on the Advisory Panel background checks by the Gulf States. The Data Collection Committee will receive a presentation on transition considerations for Charter Vessel Electronic Reporting, review Final Action—Electronic Charter Vessel Reporting Amendment and public comments. The Shrimp Management Committee will discuss final action on Shrimp Amendment 17A—Addressing the Expiration of the Shrimp Permit Moratorium. They will receive a summary from the public hearings and written comments; review draft codified text; and have a discussion on NOAA's Turtle Excluder Device (TED)

Enforcement Boarding Form. After lunch, the Reef Fish Management Committee will review the Scientific and Statistical Committee (SSC) Summary Report, and discuss Draft Reef Fish Amendment 43—To Add West Florida Hogfish Stock to Fishery Management Unit (FMU) and establish Annual Catch Limits (ACL). They will also review a draft framework action to modify gear restrictions for yellowtail snapper; review the scoping document for Amendment 33—Reef Fish Limited Access Privilege Program, and discuss Amendment 36—Red Snapper Individual Fishing Quotas (IFQ) Modifications.

*Tuesday, January 26, 2016; 8:30 a.m.–5 p.m.*

The Reef Fish Management Committee will discuss taking final action on Reef Fish Amendment 39—Regional Management of Recreational Red Snapper; and, review draft Amendment 41—Red Snapper Management for Federally Permitted Charter Vessels and draft Amendment 42—Federal Reef Fish Headboat Management. After lunch, the committee will discuss draft Options—Red Snapper Recreational annual catch target (ACT) Adjustment and National Marine Fisheries Service (NMFS) season projection and probability methodology. The Reef Fish Management Committee will discuss gray triggerfish acceptable biological catch (ABC) recommendations and provide guidance to staff on the rebuilding plan parameters. Finally, the Reef Fish Management Committee will discuss the Ad Hoc Private Recreational Advisory Panel, and review any other business.

*Wednesday, January 27, 2016; 8:30 a.m.–5:30 p.m.*

The Mackerel Management Committee will review the Joint Public Hearing Draft for Coastal Migratory Pelagics (CMP) Amendment 26—Changes in Allocations, Stock Boundaries and Sale Provisions for Gulf of Mexico and Atlantic Migratory Groups of King Mackerel; and review the CMP Advisory Panel recommendations.

The Full Council will convene mid-morning with a Call to Order, Announcements and Introductions; Adoption of Agenda and Approval of Minutes; and review Exempt Fishing Permit (EFPs) Applications, if any. The Council will then receive presentations on Landing Summaries, Illegal Unreported and Unregulated Fishing and Seafood Traceability, and NOAA's Catch Share Review Guidelines. After lunch, the Council will receive public

testimony (1:30 p.m.–5:30 p.m.) on Final Action Reef Fish Amendment 39—Regional Management of Recreational Red Snapper, Final Action Generic Electronic Charter Vessel Reporting Amendment, and for Final Action Shrimp Amendment 17A—Addressing the Expiration of the Shrimp Permit Moratorium; and hold an open public comment period regarding any other fishery issues or concern. People wishing to speak before the Council should complete a public comment card prior to the comment period.

*Thursday, January 28, 2016; 8:30 a.m.–4 p.m.*

The Council will receive committee reports from the Administrative Policy/Budget, Mackerel, Data Collection, Shrimp, and Reef Fish Management Committees; and, vote on Exempted Fishing Permits (EFP) applications, if any. Lastly, the Council will discuss Other Business items; and receive summary reports from supporting agencies: South Atlantic Council, Gulf States Marine Fisheries Commission, U.S. Coast Guard, U.S. Fish and Wildlife Service, and Department of State.

#### *Meeting Adjourns*

The timing and order in which agenda items are addressed may change as required to effectively address the issue. The latest version will be posted on the Council's file server, which can be accessed by going to the Council's Web site at <http://www.gulfcouncil.org> and clicking on FTP Server under Quick Links. For meeting materials, select the "Briefing Books/Briefing Book 2016–01" folder on Gulf Council file server. The username and password are both "gulfguest". The meetings will be webcast over the internet. A link to the webcast will be available on the Council's Web site, <http://www.gulfcouncil.org>.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

#### **Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to

Kathy Pereira (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: January 5, 2016.

**Jeffrey N. Lonergan,**

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

[FR Doc. 2016–00140 Filed 1–7–16; 8:45 am]

**BILLING CODE 3510–22–P**

## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

**RIN 0648–XE386**

#### **New England Fishery Management Council; Public Meeting**

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The New England Fishery Management Council (Council, NEFMC) will hold a three-day meeting to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

**DATES:** The meeting will be held on Tuesday, Wednesday and Thursday, January 26, 27, and 28, 2016, starting at 9 a.m. on January 26, and at 8:30 a.m. on both January 27 and 28.

**ADDRESSES:** The meeting will be held at the Sheraton Portsmouth Harborside Hotel, 250 Market Street, Portsmouth, NH 03801; telephone: (603) 431–2300, or online at [www.sheratonportsmouth.com/](http://www.sheratonportsmouth.com/).

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492, ext. 113.

#### **SUPPLEMENTARY INFORMATION:**

##### **Agenda**

*Tuesday, January 26, 2016*

After introductions and any announcements, the Council meeting will open with brief reports from the NEFMC Chairman and Executive Director, the NOAA Regional Administrator for the Greater Atlantic Region, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel and Office of Law Enforcement representatives, and staff from the Atlantic States Marine

Fisheries Commission and the U.S Coast Guard. Following these reports, the Council will receive an update on plans for a February sea scallop workshop being held to explore concerns about inshore scallop fishing in the Northeast. Next, the public will have an opportunity to make brief comments on items that are relevant to Council business but otherwise not listed on the published agenda.

Following a lunch break, the Council's Risk Policy Working Group will provide an update on finalizing what is being termed a "roadmap" that contains guidance on the implementation of the NEFMC's recently approved risk policy. The Atlantic Herring Committee will then provide a briefing on the following: (a) The development of Amendment 8 to the Atlantic Herring Fishery Management Plan (FMP), an action that will the focus on long-term harvest strategies for Atlantic herring, including an acceptable biological catch control rule that explicitly accounts for herring's role in the ecosystem, and the issue of localized depletion; (b) revising the Georges Bank haddock catch cap accountability measure through a framework adjustment to the Herring FMP; and (c) the use of portside data in river herring/shad catch cap monitoring.

*Wednesday, January 27, 2016*

The second day of the meeting will begin with an overview to be provided by NOAA Fisheries on its Fishery Dependent Data Project, to be followed by a Council and public comments on the topic. The Observer Policy Committee will report on its development of an Industry-Funded Monitoring Amendment (IFM). At this meeting, the committee will review a draft environmental assessment and select preferred alternatives for the omnibus elements of the action for purposes of public review. They include: Standard cost responsibilities, framework provisions for IFM programs, service provider requirements, a prioritization process to allocate federal funding, and a monitoring set-aside option. The Council is expected to select preferred alternatives for the herring and mackerel alternatives in this draft amendment at its April 2016 meeting.

After a lunch break, the Scientific and Statistical Committee (SSC) will present its recommendations, if any, for a revised overfishing limit and an acceptable biological catch for witch flounder for fishing years 2016–18. The Council will receive an update on additional topics discussed by the SSC at their January 20 meeting, as

appropriate. During the Groundfish Committee's report, the Council expects to take final action on the 2016–18 fishery specifications for witch flounder and receive an update on the development of measures to address its the 2016 groundfish priorities. These include potential changes to the at-sea monitoring program and the management process for recreational fishing. The day will conclude with a review of NOAA's Draft Catch Share Guidance document and approval of NEFMC comments on the draft.

*Thursday, January 28, 2015*

The final meeting day will begin with an overview of the Northeast Regional Planning Body's (RPB) Regional Ocean Plan, followed by Council discussion of the plan and other work products developed by the RPB. The Small Mesh Multispecies Committee will present an overview of the scoping comments received for Amendment 22 to the Northeast Multispecies FMP and ask for approval of the range of issues to be addressed in the action. The major topic under consideration is the development of a limited access program for the small mesh fishery, which is comprised of whiting (silver and offshore hake) and red hake. The Council also will consider Northeast Regional Coordinating Council-recommended changes to the Stock Assessment Workshop/Stock Assessment Review Committee process. The Council meeting will adjourn after its members address any other outstanding Council business.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

#### **Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: January 5, 2016.

**Jeffrey N. Lonergan,**

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

[FR Doc. 2016-00141 Filed 1-7-16; 8:45 am]

**BILLING CODE 3510-22-P**

## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

**RIN 0648-XE387**

#### **South Atlantic Fishery Management Council; Public Meetings**

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

**ACTION:** Notice of Public Hearings/Scoping and Advisory Panel Meeting.

**SUMMARY:** The South Atlantic Fishery Management Council (SAFMC) will hold a series of public hearings/scoping meetings pertaining to Amendments 41 and 37 to the Snapper Grouper Fishery Management Plan (FMP) for the South Atlantic, and Atlantic Generic Charterboat/Headboat Reporting Amendment, and Amendment 26 to the Coastal Migratory Pelagic (mackerel) Fishery Management Plan for the Gulf of Mexico and South Atlantic. Scoping comments will be accepted for Snapper Grouper Amendment 41 addressing management measures for mutton snapper. Public Hearings will be held for Snapper Grouper Amendment 37 pertaining to management measures for hogfish, the Atlantic Charterboat/Headboat Reporting Amendment, and Mackerel Amendment 26 addressing management measures for king mackerel in the Gulf of Mexico and South Atlantic. Note that the Florida Fish and Wildlife Conservation Commission (FWC) will solicit public input on mutton snapper management measures for Florida State waters during selected public hearing/scoping meetings held in Florida (see **DATES** and **SUPPLEMENTARY INFORMATION**). The Council will also hold a meeting of its Mackerel Advisory Panel in conjunction with the public hearing/scoping meeting scheduled in Cocoa Beach, FL.

**DATES:** The series of public hearings/scoping meetings will be held from January 25–February 8, 2016. The public hearing/scoping meetings will be held from 4 p.m. until 7 p.m. with the exception of the public hearing/scoping meeting in Morehead City that will begin at 5 p.m. and a public hearing via webinar that will begin at 6 p.m. The meeting of the Mackerel Advisory Panel

will be held from 12 p.m. until 4 p.m. on February 3, 2016 in Cocoa Beach, FL. See **SUPPLEMENTARY INFORMATION**.

Registration is required for the public hearing/scoping meeting via webinar. Registration information will be posted on the SAFMC Web site at [www.safmc.net](http://www.safmc.net) as it becomes available.

**ADDRESSES:** See **SUPPLEMENTARY INFORMATION** for specific meeting locations.

*Council address:* South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571-4366 or toll free: (866) SAFMC-10; fax: (843) 769-4520; email: [kim.iverson@safmc.net](mailto:kim.iverson@safmc.net).

**SUPPLEMENTARY INFORMATION:** The public hearing/scoping meetings will be held on the following dates and locations:

1. January 25, 2016—Richmond Hill City Center, 520 Cedar Street, Richmond Hill, GA 31324; phone: (912) 445-0043.

2. January 26, 2016—Hilton Garden Inn Charleston Airport, 5265 International Boulevard, North Charleston, SC 29418; phone: (843) 308-9330.

3. January 27, 2016—Murrells Inlet Community Center, 4450 Murrells Inlet Road, Murrells Inlet, SC 29576; phone: (843) 651-7373.

4. January 28, 2016—NC Division of Marine Fisheries, Central District Office, 5285 Highway 70 West, Morehead City, NC 28557; phone: (252) 726-7021.

5. February 1, 2016—Hilton Garden Inn, 180 SW 18th Avenue, Dania Beach, FL 33004; phone: (954) 924-9204. This hearing will be held in conjunction with FWC.

6. February 2, 2016—Hawks Cay Resort, 61 Hawks Cay Blvd., Duck Key, FL 33050; phone: (305) 743-7000. This hearing will be held in conjunction with FWC.

7. February 3, 2016—Marriott Beachside Hotel, 3841 N. Roosevelt Blvd., Key West, FL 33040; phone: (305) 296-8100. This hearing will be held in conjunction with FWC.

8. February 3, 2016—International Palms Resort & Conference Center, 1300 North A1A, Cocoa Beach, FL 32931; phone: (321) 783-2271. A meeting of the Council's King and Spanish Mackerel Advisory Panel will be held in conjunction with this public hearing.

9. February 8, 2016—Public hearings via webinar beginning at 6 p.m. for the Atlantic Charter/For-Hire Reporting Amendment and Coastal Migratory Pelagic Amendment 26.

The Council is soliciting public scoping comments on proposed measures in Amendment 41 to the Snapper Grouper FMP addressing mutton snapper. The measures are based on a recent stock assessment for mutton snapper and include specifying the Maximum Sustainable Yield (MSY), Maximum Stock Size Threshold (MSST), revising the Annual Catch

Limit (ACL) and Optimum Yield (OY) and recreational Annual Catch Target. The amendment also includes options to modify the recreational bag limit.

Public hearings are being held for the following amendments:

1. Atlantic Generic Charter/For-Hire Reporting Amendment to the South Atlantic Snapper Grouper, Atlantic Dolphin Wahoo and Coastal Migratory Pelagic fisheries. The amendment includes actions to require mandatory electronic reporting for charter (six-pack) vessels and modifies existing reporting requirements for headboats. The reporting requirements would affect vessels involved in the South Atlantic Snapper Grouper fishery, Dolphin Wahoo fishery, and Coastal Migratory Pelagic fishery along the Atlantic coast.

2. Amendment 37 to the Snapper Grouper FMP addressing hogfish. The amendment includes actions to modify the management boundary between the South Atlantic and Gulf of Mexico, establish two separate stocks in the South Atlantic with a "Georgia/North Carolina" stock and a "Florida Keys/East Florida" stock for management purposes, specify the MSY, MSST, ACLs and ACTs for both stocks and establish a rebuilding plan for the Florida Keys/East Florida stock. The rebuilding plan includes measures to increase the minimum size limit, establish a commercial trip limit, reduce the recreational bag limit, and establish a recreational fishing season. The amendment would also establish Accountability Measures for both stocks.

3. Coastal Migratory Pelagic Amendment 26 addresses management measures for Atlantic and Gulf of Mexico king mackerel. Actions in the amendment include modifying the management/stock boundary for Gulf and Atlantic migratory groups of king mackerel, updating the biological reference points and revising the ABC, OY, ACLs and recreational ACT for Atlantic Group king mackerel, creating an incidental catch allowance of Atlantic group king mackerel caught in the shark gillnet fishery, establishing split season commercial quotas for harvest of Atlantic group king mackerel in the Southern Zone, and establishing boundaries and trip limits for a [new] Florida East Coast management zone for Atlantic group king mackerel. The amendment includes the following actions specific to Gulf group king mackerel: Update biological reference points and revise the ACL, revise the commercial zone quotas, revise the recreational and commercial allocation, and modify recreational bag limit.

### Mackerel Advisory Panel Meeting

The Council will hold a meeting of its King and Spanish Mackerel Advisory Panel in conjunction with the public hearing scheduled for February 3, 2016, from 12 p.m. until 4 p.m. The advisory panel will review Coastal Migratory Pelagic Amendment 26 and the Atlantic Generic For-Hire/Charterboat Reporting Amendment and provide recommendations.

Written comments on the amendments may be directed to Gregg Waugh, Executive Director, SAFMC (see **ADDRESSES**) or via email to: [Mike.Collins@safmc.net](mailto:Mike.Collins@safmc.net). Note that email comments should specify the name of the specific amendment(s) in the Subject Line of the email according to the comment being submitted. Public hearing and scoping comments for the amendments will be accepted until 5 p.m. on February 10, 2016. Copies of the public hearing documents for each amendment will be posted on the Council's Web site at [www.safmc.net](http://www.safmc.net) when they become available.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 days prior to the meeting.

**Note:** The times and sequence specified in this agenda are subject to change.

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

Dated: January 5, 2016.

**Jeffrey N. Lonergan,**  
*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2016-00142 Filed 1-7-16; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Fisheries Certificate of Origin

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before March 8, 2016.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at [Jjessup@doc.gov](mailto:Jjessup@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Daniel Studt, (562) 980-4073, or [Daniel.Studt@noaa.gov](mailto:Daniel.Studt@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

*I. Abstract*

This request is for an extension of a current information collection.

The information required by the International Dolphin Conservation Program Act, amendment to the Marine Mammal Protection Act, is needed to: (1) Document the dolphin-safe status of tuna import shipments; (2) verify that import shipments of fish were not harvested by large scale, high seas driftnets; and (3) verify that tuna was not harvested by an embargoed nation or one that is otherwise prohibited from exporting tuna to the United States. Forms are submitted by importers and processors.

**II. Method of Collection**

Respondents have a choice of either electronic or paper forms. Methods of submittal include a secure file transfer protocol Web site for electronic forms, or postal mail.

**III. Data**

*OMB Control Number:* 0648-0335.

*Form Number(s):* NOAA Form 370.

*Type of Review:* Regular submission (extension of a current information collection).

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 430.

*Estimated Time per Response:* 25 minutes.

*Estimated Total Annual Burden Hours:* 5,417.

*Estimated Total Annual Cost to Public:* \$4,745.

**IV. Request for Comments**

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 (including hours and cost) of the

proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 4, 2016.

**Sarah Brabson,**

*NOAA PRA Clearance Officer.*

[FR Doc. 2016-00144 Filed 1-7-16; 8:45 am]

**BILLING CODE 3510-22-P**

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**COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED**

**Procurement List; Addition**

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Addition to the Procurement List.

**SUMMARY:** This action adds a service to the Procurement List that will be provided by nonprofit agency employing persons who are blind or have other severe disabilities.

**DATES:** *Effective:* February 7, 2016.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202-4149.

**FOR FURTHER INFORMATION CONTACT:** Barry S. Lineback, Telephone: (703) 603-7740, Fax: (703) 603-0655, or email [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

**SUPPLEMENTARY INFORMATION:**

**Addition**

On 11/20/2015 (80 FR 72710-72711), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to furnish the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

**Regulatory Flexibility Act Certification**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will provide the service to the Government.

2. The action will result in authorizing small entities to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the service proposed for addition to the Procurement List.

**End of Certification**

Accordingly, the following service is added to the Procurement List:

*Service:*

Service Type: Custodial Service

Service is Mandatory For: U.S. Air

Force, Area C, Wright Patterson Air Force Base, OH

Mandatory Source(s) of Supply:

Goodwill Easter Seals Miami Valley, Dayton, OH

Contracting Activity: FA8601 AFLCMC PZIO, Wright Patterson AFB, OH

**Barry S. Lineback,**

*Director, Business Operations.*

[FR Doc. 2016-00197 Filed 1-7-16; 8:45 am]

**BILLING CODE 6353-01-P**

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**COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED**

**Procurement List; Additions and Deletions**

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to and Deletions from the Procurement List.

**SUMMARY:** This action adds services to the Procurement List that will be provided by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products from the Procurement List previously furnished by such agencies.

**DATES:** Effective Date: 2/7/2016.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202-4149.

**FOR FURTHER INFORMATION CONTACT:** Barry S. Lineback, Telephone: (703) 603-7740, Fax: (703) 603-0655, or email [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

**SUPPLEMENTARY INFORMATION:****Additions**

On 1/16/2015 (80 FR 2400–2401) and 10/2/2015 (80 FR 59740–59741), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

*Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the services to the Government.
2. The action will result in authorizing small entities to provide the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the services proposed for addition to the Procurement List.

*End of Certification*

Accordingly, the following services are added to the Procurement List:

**Services**

Service Type: Custodial Service

Service is Mandatory For:

DoDEA, Domestic Dependent Elementary and Secondary Schools: Andersen Elementary and Middle Schools, Andersen AFB, 1600 Ponape Avenue, Yigo, GU

District Superintendent's Office, Naval Hospital Base, 101 Johnson Road, Agana Heights, GU

Guam High School, Naval Hospital Base, 401 Stitt Street, Agana Heights, GU

Commander William C. McCool Elementary/Middle School, US Naval Base Guam, 311 Amaryllis Avenue, Sumay, GU

Mandatory Source(s) Of Supply: iCAN Resources, Inc., Dededo, GU

Contracting Activity: Dept of Defense Education Activity (DODEA), DODDS Pacific Director's Office APO, AP

Service Type: Furniture Design and Configuration Service

Service is Mandatory For: Rhode Island

National Guard, 330 Camp Street, Providence, RI  
Mandatory Source(s) Of Supply: Industries for the Blind, Inc., West Allis, WI  
Contracting Activity: Dept of the Army, W7NY USPFO Activity RI ARNG East, Greenwich, RI

**Deletions**

On 12/4/2015 (80 FR 75857–75858), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

*Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products deleted from the Procurement List.

*End of Certification*

Accordingly, the following products are deleted from the Procurement List:

*Products*

NSN(s)—Product Name(s): 5340–01–218–8346—Bracket, Angle, Aviation  
Mandatory Source(s) of Supply: Herkimer County Chapter, NYSARC, Herkimer, NY  
Contracting Activity: Defense Logistics Agency Troop Support

NSN(s)—Product Name(s): 4935–00–824–5469—Strap Set, Webbing  
Mandatory Source(s) of Supply: Huntsville Rehabilitation Foundation, Huntsville, AL  
Contracting Activity: Defense Logistics Agency Troop Support

NSN(s)—Product Name(s): 6545–00–139–3671—Kit, Survival, 6545–01–521–8530—Kit, Survival  
Mandatory Source(s) of Supply: Opportunity Resources, Inc., Missoula, MT

Contracting Activity: Defense Logistics Agency Troop Support

**Barry S. Lineback,**

*Director, Business Operations.*

[FR Doc. 2016–00152 Filed 1–7–16; 8:45 am]

**BILLING CODE 6353–01–P**

**COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED****Procurement List; Proposed Addition and Deletions**

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed Addition to and Deletions from the Procurement List.

**SUMMARY:** The Committee is proposing to add a product to the Procurement List that will be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities, and deletes products previously furnished by such agencies.

*Comments Must Be Received on or Before: 2/7/2016.*

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

**FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT:** Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

**SUPPLEMENTARY INFORMATION:**

This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

**Addition**

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice will be required to procure the product listed below from the nonprofit agency employing persons who are blind or have other severe disabilities.

The following product is proposed for addition to the Procurement List for production by the nonprofit agency listed:

*Product*

NSN(s)—Product Name(s): MR 381—Gift Box, Sweet Treat, Christmas  
Mandatory Source(s) of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC

Mandatory Purchase For: Military commissaries and exchanges in accordance with the Code of Federal Regulations, Chapter 51, 51–6.4.  
Contracting Activity: Defense Commissary Agency  
Distribution: C-List

**Deletions**

The following products are proposed for deletion from the Procurement List:

*Products*

NSN(s)—Product Name(s):

7510-01-600-8033—Dated 2015 18-month Paper Wall Planner, 24" × 37"

7510-01-600-8044—Dated 2015 12-Month 2-Sided Laminated Wall Planner, 24" × 37"

Mandatory Source(s) of Supply: The Chicago Lighthouse for People Who Are Blind or Visually Impaired, Chicago, IL

Contracting Activity: General Services Administration, FSS Household and Industrial Furniture, Arlington, VA

NSN(s)—Product Name(s):

7510-01-600-7560—Monthly Wall Calendar, Dated 2015, Jan–Dec, 8-½"×11"

7530-01-600-7569—Daily Desk Planner, Dated 2015, Wire bound, Non-refillable, Black Cover

7510-01-600-7574—Wall Calendar, Dated 2015, Wire Bound w/Hanger, 12" × 17"

7530-01-600-7603—Monthly Desk Planner, Dated 2015, Wire Bound, Non-refillable, Black Cover

7530-01-600-7613—Weekly Desk Planner, Dated 2015, Wire Bound, Non-refillable, Black Cover

7530-01-600-7628—Weekly Planner Book, Dated 2015, 5" × 8"

7510-01-600-7631—Wall Calendar, Dated 2015, Wire Bound w/hanger, 15.5" × 22"

Mandatory Source(s) of Supply: The Chicago Lighthouse for People Who Are Blind or Visually Impaired, Chicago, IL

Contracting Activity: General Services Administration, New York, NY

NSN(s)—Product Name(s): 4240-00-803-5839—Bag, Waterproof

Mandatory Source(s) of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC

Contracting Activity: W40M Northern Region Contract Ofc, Fort Belvoir, VA

**Barry S. Lineback,**

*Director, Business Operations.*

[FR Doc. 2016-00151 Filed 1-7-16; 8:45 am]

**BILLING CODE 6353-01-P**

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**[Transmittal No. 16-10]**

**36(b)(1) Arms Sales Notification**

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Sarah A. Ragan or Heather N. Harwell, DSCA/LMO, (703) 604-1546/(703) 607-5339.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 16-10 with attached Policy Justification.

Dated: January 5, 2016.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**BILLING CODE 5001-06-P**



DEFENSE SECURITY COOPERATION AGENCY

201 12TH STREET SOUTH, STE 203  
ARLINGTON, VA 22202-5408

The Honorable Paul D. Ryan  
Speaker of the House  
U.S. House of Representatives  
Washington, DC 20515

DEC 18 2015

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 16-10, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to the Government of Australia for defense articles and services estimated to cost \$180 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,  
  
J. W. Bixey  
Vice Admiral, USN  
Director

- Enclosures:  
1. Transmittal  
2. Policy Justification  
3. Sensitivity of Technology



BILLING CODE 5001-06-C

Transmittal No. 16-10

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Australia

(ii) *Total Estimated Value:*

Major Defense Equipment* ..	\$105 million
Other .....	\$ 75 million
Total .....	\$180 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

- Major Defense Equipment (MDE):*
- Three (3) CH-47F Chinook Helicopters
- Six (6) T55-GA-714A Aircraft Turbine Engines
- Three (3) Force XXI Battle Command, Brigade & Below (FBCB2)/Blue Force Tracker (BFT)
- Three (3) Common Missile Warning Systems (CMWS)
- Three (3) Honeywell H-764 Embedded Global Positioning/Inertial Navigation Systems

Three (3) Infrared Signature Suppression Systems

This request also includes the following Non-Major Defense Equipment; AN/APX-123A Identification Friend or Foe (IFF) Transponders, Defense Advanced Global Positioning System (GPS) Receiver (DAGR), AN/ARC-201D SINGARS Airborne Radio Systems, AN/ARC-220 High Frequency Airborne Communication Systems, AN/ARC-231(V)(C) Airborne VHF/UHF/LOS SATCOM Communications Systems,



KY-100 Secure Communication Systems, KIV-77 Common IFF Cryptographic Computers, AN/AVS-6 Aviator's Night Vision Systems, AN/ARN-147 Very High Frequency (VHF) Omni Ranging/Instrument Landing System Receiver, AN/PYQ-10(C) Simple Key Loaders, AN/ARN-153 Tactical Airborne Navigation (TACAN) System, Spare Parts, Tools, Ground Support Equipment, Technical Publications, Contractor and U.S. Government Technical Services.

(iv) *Military Department: Army, VAF*  
(v) *Prior Related Cases, if any: UDK—\$353M—May 2010*

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None*  
(vii) *Sensitivity of Technology*

*Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached*

(viii) *Date Report Delivered to Congress: 18 DEC 2015*

\*as defined in Section 47(6) of the Arms Export Control Act.

#### *Policy Justification*

##### *Australia—CH-47F—Aircraft*

The Government of Australia has requested a possible sale of:

##### *Major Defense Equipment (MDE):*

Three (3) CH-47F Chinook Helicopters  
Six (6) T55-GA-714A Aircraft Turbine Engines

Three (3) Force XXI Battle Command, Brigade & Below (FBCB2)/Blue Force Tracker (BFT)

Three (3) Common Missile Warning Systems (CMWS)

Three (3) Honeywell H-764 Embedded Global Positioning/Inertial Navigation Systems

Three (3) Infrared Signature Suppression Systems

This request also includes the following Non-Major Defense Equipment; AN/APX-123A Identification Friend or Foe (IFF) Transponders, Defense Advanced Global Positioning System (GPS) Receiver (DAGR), AN/ARC-201D SINGARS Airborne Radio Systems, AN/ARC-220 High Frequency Airborne Communication Systems, AN/ARC-231(V)(C) Airborne VHF/UHF/LOS SATCOM Communications Systems, KY-100 Secure Communication Systems, KIV-77 Common IFF Cryptographic Computers, AN/AVS-6 Aviator's Night Vision Systems, AN/ARN-147 Very High Frequency (VHF) Omni Ranging/Instrument Landing System Receiver, AN/PYQ-10(C) Simple Key Loaders, AN/ARN-153 Tactical Airborne Navigation (TACAN) System, Spare Parts, Tools, Ground Support Equipment, Technical

Publications, Contractor and U.S. Government Technical Services.

The total estimated value of MDE is \$105 million. The total overall estimated value is \$180 million.

This proposed sale will enhance the foreign policy and national security objectives of the United States by helping to improve the security of a strategic partner which has been, and continues to be an important force for political stability and economic progress within the Pacific region and globally.

The proposed sale of the CH-47F aircraft will improve Australia's heavy lift capability. Australia will use the enhanced capability to strengthen its homeland defense and deter regional threats. The CH-47F aircraft will replace Australia's retiring CH-47D aircraft. Australia will have no difficulty absorbing these aircraft into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be the Boeing Helicopter Company of Philadelphia, Pennsylvania. There are no known offset agreements at this time associated with this proposed sale.

Implementation of this sale will not require the assignment of any additional U.S. or contractor representatives to Australia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 16-10

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

##### (vii) *Sensitivity of Technology*

1. The CH-47F aircraft, which includes two T55-GA-714A engines, has been identified as Major Defense Equipment (MDE). The CH-47F is a medium lift, newly manufactured rotary winged aircraft. The CH-47F has the Common Avionics Architecture System (CAAS) cockpit, which provides aircraft system, flight, mission, and communication management systems. The Navigation System will have two Embedded GPS/INS (EGIs), two Digital Advanced Flight Control System (DAFCS), one ARN-149 Automatic Direction Finder, one ARN-147 (VOR/ILS marker Beacon System), one ARN-153 TACAN, two air data computers, one Radar Altimeter system. The communications suite is as follows: Two each AN/ARC-231 Multi-mode radios, and two each AN/ARC-201D SINGARS radios. The Identification

Friend or Foe (IFF) will be the APX-123A, which provides the additional functionality of Mode 5 capability. Aircraft survivability equipment (ASE) will not be provided on this LOA.

Support and fielding for the CH-47Fs and installed CAAS would require one copy of technical documentation, along with a Contractor Field Representative.

2. The AN/APX-123A, Identification Friend or Foe (IFF) Transponder is a space diversity transponder and is installed on several military platforms. When installed in conjunction with platform antennas and the Remote Control Unit (RCU) (or other appropriate control unit), the transponder provides identification, altitude and surveillance reporting in response to interrogations from airborne, ground-based and/or surface interrogators. The transponder provides operational capabilities for Mark XII IFF capabilities of Modes 1, 2, 3/A, C, 4, 5 capable and Mode S (levels 1, 2, and 3 capable). Additionally, the AN/APX-123A also provides automated ID, position and latitude of the aircraft, and unencrypted Automatic Dependent Surveillance Broadcast (ADS-B) and is compatible with the Traffic Alert and Collision Avoidance System (TCAS) II equipment. The AN/APX-123A is classified SECRET when loaded with software.

3. The AN/ARC-201D is a tactical airborne military VHF radio system consisting of Receiver-Transmitter, Radio RT-1478D/ARC-201D(V), Battery Box CY-8515/ARC-201(V) and; Mounting Base MT-7101/ARC-201D(V). This radio system is capable of secure COMSEC, anti-jam, voice and data communications in any of 2320 channels and two frequency-hopping (FH) modes. The radio is interconnected and interoperated with the aircraft's MIL-STD-1553B bus controller equipment. The AN/ARC-201D is classified SECRET when loaded with software.

4. The AN/ARC-220 is a multifunctional, fully digital signal processing (DSP) high frequency (HF) radio intended for airborne applications. Advanced communications features made possible by DSP technology include embedded Automatic Link Establishment (ALE), Serial Tone Data Modem, and Anti-jam Electronic Counter-Counter Measures (ECCM) functions. The AN/ARC-220 Advanced HF Aircraft Communications System is applicable for a variety of tactical rotary-wing and fixed-wing airborne applications. In addition to offering enhanced voice communications capabilities, the AN/ARC-220 is an advanced data communications system capable of providing reliable digital

connectivity. The AN/ARC-220 is classified SECRET when loaded with software.

5. The AN/ARC-231(V)(C) is a secure communication system that provides Line-of-Sight (LOS) communications and Beyond Line-of-Sight (BLOS) satellite communications (SATCOM), as well as Voice and data communications capabilities. In addition to Satellite Communications, the AN/ARC-231(V)(C) provides Secure/Electronic Counter Measures (ECCM) communications Single Channel Ground and Airborne System (SINCGARS) and HAVE QUICK (HQ) waveforms. The AN/ARC-231(V)(C) is classified SECRET when loaded with software.

6. The TSEC KY-100 is COMSEC equipment that has sensitive technology and is classified SECRET if software fill is installed. A separate case with NSA would be required to procure this equipment. The KY-100 is classified SECRET when loaded with software.

7. Blue Force Tracker—Aviation (BFT-A) within the Force XXI Battle Command Brigade & Below program, BFT-AVN is a network system with varied configurations utilizing integrated UHF/VHF/FM voice/data communications and GPS positioning data that allow integration into various Army, joint, and coalition rotary and fixed-wing aircraft types. The system provides commanders, staffs, and other key personnel situational awareness of aviation assets, including Unmanned Aerial Vehicles. With BFT-AVN, aircrews are able to view positions of friendly forces as well as enemy locations. The system also enables rapid, dynamic tasking and re-tasking of those assets to accomplish aviation missions in complex environments. Another key capability of BFT-AVN is the ability to send and receive data and messages beyond line-of-sight, overcoming the communication challenges of distance and terrain. The BFT-A is UNCLASSIFIED.

Note: The following items are not identified in the CH-47F Security Classification Guide and sensitive technology classification could not be

determined. Therefore the assumption is that they may contain sensitive technology.

8. The Embedded GPS/INS (EGI) unit CN-1689-(H-764GU) contains sensitive GPS technology. The EGI+429 is a self-contained, all-attitude navigation system providing outputs of linear and angular acceleration, linear and angular velocity, position, attitude (roll, pitch), platform azimuth, magnetic and true heading, altitude, body angular rates, time tags, and Universal Time Coordinated (UTC) synchronized time. The EGI is UNCLASSIFIED/Missile Technology Regime (MTCR) Controlled.

9. The AN/ARN-149, Automatic Direction Finder (ADF) Receiver, is a low frequency radio that provides automatic compass bearing on any radio signal within the frequency range of 100 to 2199.5 kHz as well as navigation where a commercial AM broadcast signal is the only available navigation aid. The AN/ARN-149 is UNCLASSIFIED.

10. The AN/ARN-153, Tactical Airborne Navigation (TACAN) System, is a full featured navigational system that supports four modes of operation: receive mode; transmit receive mode; air-to-air receive mode; and air-to-air transmit-receive mode. The ARN-153 is UNCLASSIFIED.

11. The AN/ARN-147, Very High Frequency (VHF) Omni Ranging/Instrument Landing System Receiver that provides internal MIL-STD-1553B capability and is MIL-E-5400 class II qualified. The ARN-147 is UNCLASSIFIED.

12. The KIV-77, is a Common Crypto Applique for Identification, Friend or Foe (IFF) that provides Mode 4/5 capability. The KIV-77 is SECRET when loaded with software.

13. The AN/PYQ-10 (C) Simple Key Loader (SKL) is a ruggedized, portable, hand-held fill device used for securely receiving, storing, and transferring electronic key material and data between compatible end cryptographic units (ECU) and communications equipment. The AN/PYQ-10(C) is SECRET when loaded with software.

14. The ramifications of this technology in the hands of an adversary

are severe. Should a fill device or cryptographic asset with the accompanying radio system become compromised, it would enable an adversary to intercept our communications, both verbal and encrypted until the COMSEC keys were changed.

15. A determination has been made that the recipient country can provide the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

16. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Australia.

[FR Doc. 2016-00148 Filed 1-7-16; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Transmittal No. 0A-16]

#### 36(b)(5)(C) Arms Sales Notification

**AGENCY:** Defense Security Cooperation Agency, Department of Defense.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(5)(C) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Sarah A. Ragan or Heather N. Harwell, DSCA/LMO, (703) 604-1546/(703) 607-5339.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 0A-16 with attached Policy Justification.

Dated: January 4, 2016.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*



## DEFENSE SECURITY COOPERATION AGENCY

201 12TH STREET SOUTH, STE 203  
ARLINGTON, VA 22202-6408


The Honorable Paul D. Ryan  
Speaker of the House  
U.S. House of Representatives  
Washington, DC 20515

DEC 08 2015

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 0A-16. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 13-33 of 29 July 2013.

Sincerely,

  
J. W. Rixey  
Vice Admiral, USN  
Director

## Enclosures:

1. Transmittal
2. Regional Balance (Classified Document Provided Under Separate Cover)



## BILLING CODE 5001-06-P

Transmittal No. 0A-16

REPORT OF ENHANCEMENT OR  
UPGRADE OF SENSITIVITY OF  
TECHNOLOGY OR CAPABILITY (SEC.  
36(B)(5)(C), AECA)

- (i) *Purchaser:* Government of Qatar
- (ii) *Sec. 36(b)(1), AECA Transmittal*

No.: 13-33

Date: 29 July 2013

Military Department: Air Force

(iii) *Description:* On 29 July 2013,  
Congress was notified by Congressional  
certification transmittal number 13-33,

of the possible sale under Section 36(b)(1) of the Arms Export Control Act of one (1) AN/FPS-132 Block 5 Early Warning Radar (EWR) to include a Prime Mission Equipment package; technical and support facilities; communication equipment; encryption devices; spare and repair parts; support and test equipment, publications and technical documentation; personnel training and training equipment; U.S. Government and contractor engineering, technical, and logistics support services; and related elements of logistics and

program support. The estimated total cost was \$1.2 billion. Major Defense Equipment (MDE) constituted \$800 million of the total.

This transmittal reports the replacement of the original AN/FPS-132 Block 5 EWR with the AN/FPS-132 Block 15 EWR. The Block 15 EWR has an increased maximum range. Upgrading the status of this equipment will result in an estimated net increase in MDE cost of \$800 million. The revised estimated total value is \$2 billion, with the revised MDE value

constituting \$1.6 billion of this new total.

(iv) *Significance*: The EWR will be a component of Qatar's planned air and missile defense system, which includes the Terminal High Altitude Area Defense (THAAD) and Patriot missile defense systems. The EWR will provide sensor data and advanced warning of incoming missiles. The Block 15 system employs three electronically steered phased array radar faces to provide 360 degree azimuth coverage. The Block 15 system is also capable of reporting airborne tracks.

(v) *Justification*: This proposed sale contributes to the foreign policy and national security of the United States by helping to improve the security of a friendly country. Qatar is an important force for political stability and economic progress in the Persian Gulf region. This proposed sale strengthens U.S. efforts to promote regional stability by enhancing the defense to a key United States ally. The proposed sale strengthens Qatar's capability to counter current and future threats in the region and reduce dependence on United States forces. Qatar should have no difficulty integrating this radar into its defense systems.

(vi) *Date Report Delivered to Congress*: 08 DEC 2015

(vii) *Sensitivity of Technology*:

1. The AN/FPS-132 Block 15 supports Missile Defense, Space Situational Awareness, and Missile Warning mission areas. The Block 15 system employs 3 electronically steered phased array radar faces to provide 360 degree azimuth coverage. The Block 15 system is capable of detecting ballistic missiles up to a maximum range of 5,000 km. The AN/FPS-132 Block 15 hardware is UNCLASSIFIED. The AN/FPS-132 Block 15 software and the data produced are classified SECRET REL QATAR.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures that might reduce system effectiveness or be

used in the development of a system with similar or advanced capabilities.

[FR Doc. 2016-00110 Filed 1-7-16; 8:45 am]

**BILLING CODE 5001-06-C**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Notification of an Open Meeting of the National Defense University Board of Visitors (BOV)

**AGENCY**: National Defense University, DoD.

**ACTION**: Notice of open meeting.

**SUMMARY**: The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the National Defense University Board of Visitors (BOV) will take place.

**DATES**: The meeting will be held on Thursday, January 28, 2016 from 12:00 p.m. to 4:30 p.m. and will continue on Friday, January 29, 2016, from 8:00 a.m. to 11:15 a.m.

**ADDRESSES**: The Board of Visitors meeting will be held at Marshall Hall, Building 62, Room 155B, the National Defense University, 300 5th Avenue SW., Fort McNair, Washington, DC 20319-5066.

**FOR FURTHER INFORMATION CONTACT**: The point of contact for this notice of open meeting is Ms. Joycelyn Stevens at (202) 685-0079, Fax (202) 685-3920 or [StevensJ7@ndu.edu](mailto:StevensJ7@ndu.edu).

**SUPPLEMENTARY INFORMATION**: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.150. Pursuant to 5 U.S.C. 552b and 41 CFR 102-3.140 through 102-3.165, and the availability of space, this meeting is open to the public.

The future agenda will include discussion on accreditation compliance, organizational management, strategic planning, resource management, and other matters of interest to the National

Defense University. Limited space made available for observers will be allocated on a first come, first served basis.

Pursuant to 41 CFR 102-3.105(j) and 102-3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, written statements to the committee may be submitted to the committee at any time or in response to a stated planned meeting agenda by FAX or email to the point of contact person listed in **FOR FURTHER INFORMATION CONTACT**. (Subject Line: Comment/Statement to the NDU BOV).

Dated: January 5, 2016.

**Aaron Siegel**,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2016-00193 Filed 1-7-16; 8:45 a.m.]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Transmittal No. 0B-16]

#### 36(b)(5)(C) Arms Sales Notification

**AGENCY**: Defense Security Cooperation Agency, Department of Defense.

**ACTION**: Notice.

**SUMMARY**: The Department of Defense is publishing the unclassified text of a section 36(b)(5)(C) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996.

**FOR FURTHER INFORMATION CONTACT**: Sarah A. Ragan or Heather N. Harwell, DSCA/LMO, (703) 604-1546/(703) 607-5339.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 0B-16 with attached Policy Justification.

Dated: January 5, 2016.

**Aaron Siegel**,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**BILLING CODE 5001-06-P**



## DEFENSE SECURITY COOPERATION AGENCY

201 12TH STREET SOUTH, STE 203  
ARLINGTON, VA 22202-6408

The Honorable Paul D. Ryan  
Speaker of the House  
U.S. House of Representatives  
Washington, DC 20515

DEC 02 2015

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), we are forwarding Transmittal No. 0B-16, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to India for defense articles and services. This change results in a net Major Defense Equipment (MDE) increase of \$107 million, for a revised MDE total of \$757 million. There is also a non-MDE increase of \$29 million. The total Congressional Notification value increases from \$1.2 billion to \$1.336 billion. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 11-44 of 26 October 2011.

Sincerely,

J. W. Rixey  
Vice Admiral, USN  
Director

## Enclosures:

1. Transmittal
2. Policy Justification



Transmittal No. 0B-16  
REPORT OF ENHANCEMENT OR  
UPGRADE OF SENSITIVITY OF  
TECHNOLOGY OR CAPABILITY (SEC.  
36(B)(5)(C), AECA)

(i) *Purchaser:* Government of India  
(ii) *Sec. 36(b)(1), AECA Transmittal  
No.:* 11-44  
Date: 26 October 2011  
Military Department: Air Force  
(iii) *Description:* On 26 October 2011,  
Congress was notified by Congressional  
certification transmittal number 11-44,

of the possible sale under Section  
36(b)(1) of the Arms Export Control Act  
of 6 Lockheed Martin C-130J United  
States Air Force (USAF) baseline aircraft  
including: USAF baseline equipment, 6  
Rolls Royce AE 2100D3 spare engines,  
8 AN/AAR-47 Missile Warning Systems  
(two spares), 8 AN/ALR-56M Advanced  
Radar Warning Receivers (two spares), 8  
AN/ALE-47 Counter-Measures  
Dispensing Systems (two spares), 8  
AAQ-22 Star SAFIRE III Special  
Operations Suites (two spares), 8 ARC-  
210 Radios (non-COMSEC), and 3200

Flare Cartridges. Also included are  
spare and repair parts, configuration  
updates, communications security  
equipment and radios, integration  
studies, support equipment,  
publications and technical  
documentation, technical services,  
personnel training and training  
equipment, foreign liaison office  
support, Field Service Representatives'  
services, U.S. Government and  
contractor engineering and logistics  
personnel services, and other related  
elements of logistics support. The

estimated Major Defense Equipment (MDE) was \$650 million, non-MDE was \$550 million, with a total estimated cost of \$1.2 billion.

This transmittal reports the inclusion of the following quantity of items:

*Major Defense Equipment:* one (1) Lockheed Martin C-130J USAF baseline aircraft with four (4) Rolls Royce AE 2100D3 engines.

*Non-MDE:* one (1) AN/AAR-47 Missile Warning System, one (1) AN/ALR-56M Advanced Radar Warning Receiver, one (1) AN/ALE-47 Counter-Measures Dispensing System, one (1) AAQ-22 Star SAFIRE III Special Operations Suite, and one (1) ARC-210 Radio (non-COMSEC).

Adding an additional aircraft to this case results in a net MDE increase of \$107 million, and a non-MDE increase of \$29 million. The revised estimated total value is \$1.336 billion, with the revised MDE value constituting \$757 million of this new total.

(iv) *Significance:* The Government of India has requested the purchase of an additional C-130J aircraft. India purchased six (6) C-130J aircraft in 2008. In April 2014, one (1) of the six (6) original aircraft was lost in a crash. The potential sale of one (1) additional C-130J allows India to replace the lost aircraft.

(v) *Justification:* This proposed sale will contribute to the foreign policy and national security of the United States by helping to strengthen the U.S.-India strategic relationship and to improve the capabilities of a major South Asian partner which has been, and continues to be, an important force for economic progress and stability in South Asia. The proposed sale provides India with additional airlift capability for military transport, humanitarian assistance, and disaster relief.

(vi) *Date Report Delivered to Congress:* 02 DEC 2015

[FR Doc. 2016-00115 Filed 1-7-16; 8:45 am]

**BILLING CODE 5001-06-C**

## DEFENSE NUCLEAR FACILITIES SAFETY BOARD

### Sunshine Act Notice

**AGENCY:** Defense Nuclear Facilities Safety Board.

**ACTION:** Notice of closed meeting.

**SUMMARY:** Pursuant to the provisions of the Government in the Sunshine Act (5 U.S.C. 552b), and the Defense Nuclear Facilities Safety Board's (Board) regulations implementing the Government in the Sunshine Act, notice

is hereby given of the Board's closed meeting described below.

**DATES:** 2:00 p.m.-3:00 p.m., January 27, 2016.

**ADDRESSES:** Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Mark Welch, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004-2901, (800) 788-4016. This is a toll-free number.

**SUPPLEMENTARY INFORMATION:** The meeting will be closed to the public. No participation from the public will be considered during the meeting.

### Status

Closed. During the closed meeting, the Board Members will discuss issues dealing with potential Recommendations to the Secretary of Energy. The Board is invoking the exemption to close a meeting described in 5 U.S.C. 552b(c)(3) and (9)(B) and 10 CFR 1704.4(c) and (h). The Board has determined that it is necessary to close the meeting since conducting an open meeting is likely to disclose matters that are specifically exempted from disclosure by statute, and/or be likely to significantly frustrate implementation of a proposed agency action. In this case, the deliberations will pertain to potential Board Recommendations which, under 42 U.S.C. 2286d(b) and (h)(3), may not be made publicly available until after they have been received by the Secretary of Energy or the President, respectively.

**MATTERS TO BE CONSIDERED:** The meeting will proceed in accordance with the closed meeting agenda which is posted on the Board's public Web site at [www.dnfsb.gov](http://www.dnfsb.gov). Technical staff may present information to the Board. The Board Members are expected to conduct deliberations regarding potential Recommendations to the Secretary of Energy.

Dated: January 6, 2016.

**Joyce L. Connery,**

*Chairman.*

[FR Doc. 2016-00315 Filed 1-6-16; 4:15 pm]

**BILLING CODE 3670-01-P**

## DEPARTMENT OF EDUCATION

[Docket No.: ED-2016-ICCD-0003]

### Agency Information Collection Activities; Comment Request; Loan Cancellation in the Federal Perkins Loan Program

**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 March 8, 2016.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED-2016-ICCD-0003. 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:* Loan Cancellation in the Federal Perkins Loan Program.

*OMB Control Number:* 1845-0100.

*Type of Review:* An extension of an existing information collection.

*Respondents/Affected Public:* Individuals or Households, Private Sector, State, Local and Tribal Government.

*Total Estimated Number of Annual Responses:* 116,872.

*Total Estimated Number of Annual Burden Hours:* 43,832.

*Abstract:* This is a request for an extension of the OMB approval for the record-keeping requirements contained in 34 CFR 674.53, 674.56, 674.57, 674.58 and 674.59. The information collections in these regulations are necessary to determine Federal Perkins Loan (Perkins Loan) Program borrower's eligibility to receive program benefits and to prevent fraud and abuse of program funds.

Dated: January 5, 2016.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.*

[FR Doc. 2016-00138 Filed 1-7-16; 8:45 am]

**BILLING CODE 4000-01-P**

Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5:00 p.m. Eastern Time on January 14, 2016.

Dated: December 31, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016-00099 Filed 1-7-16; 8:45 am]

**BILLING CODE 6717-01-P**

operate, and maintain a new natural gas pipeline in Presidio County, Texas.

The EA assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act of 1969. The FERC staff concludes that approval of the proposed Project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The proposed Presidio Border Crossing Project would involve construction of approximately 1,093 feet of FERC-jurisdictional 42-inch-diameter pipeline, installed beneath the Rio Grande River. The new pipeline would transport natural gas to a new delivery interconnect with pipeline facilities owned by an affiliate of Trans-Pecos at the United States-Mexico border for expanding electric generation and industrial market needs in Mexico.

The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the Project area. In addition, the EA is available for public viewing on the FERC's Web site ([www.ferc.gov](http://www.ferc.gov)) using the eLibrary link. A limited number of copies of the EA are also available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502-8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are properly recorded and considered prior to a Commission decision on the proposal, it is important that the FERC receives your comments in Washington, DC on or before February 3, 2016.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (CP15-500-000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202-502-8258 or [efiling@ferc.gov](mailto:efiling@ferc.gov).

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. NJ16-6-000]

#### City of Colton, California; Notice of Filing

Take notice that on December 24, 2015, City of Colton, California submitted its tariff filing: City of Colton 2015 Transmission Revenue Balancing Account Adjustment and Existing Transmission Contracts Update to be effective 1/1/2016.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP15-500-000]

#### Trans-Pecos Pipeline, LLC; Notice of Availability of the Environmental Assessment for the Proposed Presidio Border Crossing Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an Environmental Assessment (EA) of the Presidio Border Crossing Project (Project) proposed by Trans-Pecos Pipeline, LLC (Trans-Pecos) in the above-referenced docket. Trans-Pecos requests authorization to construct,

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's Web site at [www.ferc.gov](http://www.ferc.gov) under the link to *Documents and Filings*. An eComment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Web site at [www.ferc.gov](http://www.ferc.gov) under the link to *Documents and Filings*. With eFiling you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).<sup>1</sup> Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the Project is available from the Commission's Office of External Affairs, at 1-866-208-FERC (3372) or on the FERC Web site ([www.ferc.gov](http://www.ferc.gov)) using the eLibrary link. Click on the eLibrary link, click on "General Search," and enter the docket number excluding the last three digits in the Docket Number field (*i.e.*, CP15-500). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov) or toll free at 1-866-208-3676, or for TTY, contact 1-202-502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

<sup>1</sup> See the previous discussion on the methods for filing comments.

In addition, the Commission offers a free service called eSubscription, which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to [www.ferc.gov/docs-filing/esubscription.asp](http://www.ferc.gov/docs-filing/esubscription.asp).

Dated: January 4, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016-00119 Filed 1-7-16; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 14716-000]

#### Water District No. 1 of Johnson County, KS; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 30, 2015, Water District No. 1 of Johnson County, KS filed an application for a preliminary permit under section 4(f) of the Federal Power Act proposing to study the feasibility of the proposed WaterOne Kansas River Hydroelectric Project No. 14716-000, to be located at the existing WaterOne Kansas River Weir on the Kansas River, near the town of Kanas City, in Wyandotte County, Kansas. The WaterOne Kansas River Weir is owned by the Water District No.1 of Johnson County, KS.

The proposed project would consist of: (1) An existing 1,284-foot-long weir structure comprised of eighteen 54-foot-diameter substrate filled, concrete capped cells; (2) a new 42-foot-long, 72-foot-wide reinforced concrete powerhouse containing two 550-kilowatt vertical Kaplan hydropower turbine-generators having a total combined generating capacity of 1.1 megawatts; (3) a new 20-foot-long by 20-foot-wide switchyard containing a 480 volt(V) to 2,400V step-up transformer; (4) a new 400 to 500-foot-long, 2,400V underground transmission line; and (5) appurtenant facilities. The project would have an estimated annual generation of 7,700,000 kilowatt-hours.

*Applicant Contact:* Mr. Michael J. Armstrong, 10747 Renner Boulevard, Lenexa, KS 66219; telephone (913) 895-5500.

*FERC Contact:* Tyrone A. Williams, (202) 502-6331.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto: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-14716-000.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-14716) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: December 31, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016-00100 Filed 1-7-16; 8:45 am]

**BILLING CODE 6717-01-P**



**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. EL11-66-000]

**Martha Coakley, Massachusetts Attorney General; Connecticut Public Utilities Regulatory Authority; Massachusetts Department of Public Utilities; New Hampshire Public Utilities Commission; Connecticut Office of Consumer Counsel; Maine Office of the Public Advocate; George Jepsen, Connecticut Attorney General; New Hampshire Office of Consumer Advocate; Rhode Island Division of Public Utilities and Carriers; Vermont Department of Public Service; Massachusetts Municipal Wholesale Electric Company; Associated Industries of Massachusetts; The Energy Consortium; Power Options, Inc.; and the Industrial Energy Consumer Group, v. Bangor Hydro-Electric Company; Central Maine Power Company; New England Power Company d/b/a National Grid; New Hampshire Transmission LLC d/b/a NextEra; NSTAR Electric and Gas Corporation; Northeast Utilities Service Company; The United Illuminating Company; Unifit Energy Systems, Inc. and Fitchburg Gas and Electric Light Company; Vermont Transco, LLC, Notice of Filing**

Take notice that on December 31, 2015, Central Maine Power Company submitted tariff filing per: Refund Report to be effective N/A, pursuant to the Commission's Opinion No. 531-A, issued on October 16, 2014.<sup>1</sup>

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the

<sup>1</sup> *Martha Coakley, Mass. Attorney Gen., et al. v. Bangor Hydro-Elec. Co., et al.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014) (Opinion No. 531), order on paper hearing, Opinion No. 531-A, 149 FERC ¶ 61,032 (2014) (Opinion No. 531-A).

“eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an “eSubscription” link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5:00 p.m. Eastern Time on January 21, 2016.

Dated: December 31, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016-00097 Filed 1-7-16; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[EL16-26-000]

**Missouri Joint Municipal Electric Utility Commission; Notice of Filing**

Take notice that on December 31, 2015, the Missouri Joint Municipal Electric Utility Commission submitted a Reactive Compensation Rate Filing.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the

Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5:00 p.m. Eastern Time on January 21, 2016.

Dated: January 4, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016-00126 Filed 1-7-16; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. NJ16-5-000]

**City of Anaheim, California; Notice of Filing**

Take notice that on December 22, 2015, City of Anaheim, California submitted its tariff filing: City of Anaheim 2016 Transmission Revenue Balancing Account Adjustment to be effective 1/1/2016.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5:00 p.m. Eastern Time on January 12, 2016.

Dated: December 31, 2015.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

[FR Doc. 2016-00098 Filed 1-7-16; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL11-66-000]

**Martha Coakley, Massachusetts Attorney General; Connecticut Public Utilities Regulatory Authority; Massachusetts Department of Public Utilities; New Hampshire Public Utilities Commission; Connecticut Office of Consumer Counsel; Maine Office of the Public Advocate; George Jepsen, Connecticut Attorney General; New Hampshire Office of Consumer Advocate; Rhode Island Division of Public Utilities and Carriers; Vermont Department of Public Service; Massachusetts Municipal Wholesale Electric Company; Associated Industries of Massachusetts; The Energy Consortium; Power Options, Inc.; and the Industrial Energy Consumer Group, v. Bangor Hydro-Electric Company; Central Maine Power Company; New England Power Company d/b/a National Grid; New Hampshire Transmission LLC d/b/a NextEra; NSTAR Electric and Gas Corporation; Northeast Utilities Service Company; The United Illuminating Company; Unitil Energy Systems, Inc. and Fitchburg Gas and Electric Light Company; Vermont Transco, LLC; Notice of Filing**

Take notice that December 31, 2015, NSTAR Electric Company submitted tariff filing per: Refund Report to be effective N/A, pursuant to the Commission's Opinion No. 531-A, issued on October 16, 2014.<sup>1</sup>

<sup>1</sup> *Martha Coakley, Mass. Attorney Gen., et al. v. Bangor Hydro-Elec. Co., et al.*, Opinion No. 531, 147

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible online at <http://www.ferc.gov>, using the "eLibrary" link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5:00 p.m. Eastern Time on January 21, 2016.

Dated: January 4, 2016.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

[FR Doc. 2016-00122 Filed 1-7-16; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10-2265-010; ER14-1818-010; ER12-1238-007; ER10-2338-012; ER10-2340-012; ER12-1239-007; ER10-2385-008;

FERC ¶ 61,234 (2014) (Opinion No. 531), *order on paper hearing*, Opinion No. 531-A, 149 FERC ¶ 61,032 (2014) (Opinion No. 531-A).

ER11-2062-019; ER11-2508-018; ER11-4307-019; ER12-261-018; ER10-2368-007; ER11-2107-010; ER11-2108-010; ER10-2888-019; ER11-4308-019; ER11-2805-018; ER10-2382-008; ER10-2357-008; ER10-2369-007; ER10-2361-008.

*Applicants:* NRG Power Marketing LLC, Boston Energy Trading and Marketing LLC, Broken Bow Wind, LLC, CP Power Sales Nineteen, L.L.C., CP Power Sales Twenty, L.L.C., Crofton Bluffs Wind, LLC, Elkhorn Ridge Wind, LLC, Energy Plus Holdings LLC, GenOn Energy Management, LLC, Green Mountain Energy Company, Independence Energy Group LLC, Laredo Ridge Wind, LLC, North Community Turbines LLC, North Wind Turbines LLC, Norwalk Power LLC, Reliant Energy Northeast LLC, RRI Energy Services, LLC, San Juan Mesa Wind Project, LLC, Sleeping Bear, LLC, Taloga Wind, LLC, Wildorado Wind, LLC.

*Description:* Updated Market Power Analysis for the Southwest Power Pool Region of NRG SPP MBR Sellers.

*Filed Date:* 12/31/15.

*Accession Number:* 20151231-5100.

*Comments Due:* 5 p.m. ET 2/29/16.

*Docket Numbers:* ER10-2721-006.

*Applicants:* El Paso Electric Company.  
*Description:* Updated Market Power Analysis of El Paso Electric Company (Volume1 of 2).

*Filed Date:* 12/31/15.

*Accession Number:* 20151231-5101.

*Comments Due:* 5 p.m. ET 2/29/16.

*Docket Numbers:* ER10-2805-005; ER10-2564-006; ER10-2600-006; ER10-2289-006.

*Applicants:* Central Hudson Gas & Electric Corporation, Tucson Electric Power Company, UNS Electric, Inc., UniSource Energy Development Company.

*Description:* Triennial Market Power Update for the Southwest Region of the Fortis, Inc. subsidiaries.

*Filed Date:* 12/31/15.

*Accession Number:* 20151231-5159.

*Comments Due:* 5 p.m. ET 2/29/16.

*Docket Numbers:* ER10-2984-022.

*Applicants:* Merrill Lynch Commodities, Inc.

*Description:* Notice of Non-Material Change in Status of Merrill Lynch Commodities, Inc.

*Filed Date:* 12/31/15.

*Accession Number:* 20151231-5110.

*Comments Due:* 5 p.m. ET 1/21/16.

*Docket Numbers:* ER10-3310-011; ER15-2013-003; ER14-1439-005; ER11-2489-008; ER12-2639-006.

*Applicants:* New Harquahala Generating Company, LLC, Talen Energy Marketing, LLC, TrailStone

Power, LLC, Hatchet Ridge Wind, LLC, Ocotillo Express LLC.

*Description:* Updated Market Power Analysis for the Southwest Region of New Harquahala Generating Company, LLC, et al.

*Filed Date:* 12/30/15.

*Accession Number:* 20151230–5385.

*Comments Due:* 5 p.m. ET 2/29/16.

*Docket Numbers:* ER15–1737–001.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Compliance filing: 2nd Comp. Filing in ER15–1737 Revising Westar Energy's Formula Rate Protocols to be effective 3/1/2015.

*Filed Date:* 12/31/15.

*Accession Number:* 20151231–5095.

*Comments Due:* 5 p.m. ET 1/21/16.

*Docket Numbers:* ER15–1738–001.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Compliance filing: 2nd Compliance Filing in ER15–1738 Revising KCP&L–GMO's Formula Rate Protocols to be effective 3/1/2015.

*Filed Date:* 12/31/15.

*Accession Number:* 20151231–5107.

*Comments Due:* 5 p.m. ET 1/21/16.

*Docket Numbers:* ER15–1739–001.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Compliance filing: 2nd Compliance Filing in ER15–1739 Revising KCP&L's Formula Rate Protocols to be effective 3/1/2015.

*Filed Date:* 12/31/15.

*Accession Number:* 20151231–5160.

*Comments Due:* 5 p.m. ET 1/21/16.

*Docket Numbers:* ER16–673–000.

*Applicants:* Sierra Pacific Power Company, Nevada Power Company.

*Description:* Section 205(d) Rate Filing; Service Agreement No. 15–00086 (NVE–NVE) to be effective 1/1/2016.

*Filed Date:* 12/31/15.

*Accession Number:* 20151231–5120.

*Comments Due:* 5 p.m. ET 1/21/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For

other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 31, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016–00095 Filed 1–7–16; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–1107–005.

*Applicants:* Pacific Gas and Electric Company.

*Description:* Updated Market Power Analysis for the Southwest Region of Pacific Gas and Electric Company.

*Filed Date:* 12/31/15.

*Accession Number:* 20151231–5083.

*Comments Due:* 5 p.m. ET 2/29/16.

*Docket Numbers:* ER10–2739–012; ER14–2499–003; ER10–2755–010; ER10–2751–007; ER10–2743–007.

*Applicants:* LS Power Marketing, LLC, Oneta Power, LLC, Las Vegas Power Company, LLC, Renaissance Power, L.L.C., Bluegrass Generation Company, L.L.C.

*Description:* Updated Market Power Analysis in Southwest Power Pool Region of the LS Power Development, LLC subsidiaries.

*Filed Date:* 12/30/15.

*Accession Number:* 20151230–5329.

*Comments Due:* 5 p.m. ET 2/29/16.

*Docket Numbers:* ER10–2913–013; ER13–1791–008; ER13–1746–011; ER13–1799–008; ER13–1801–008; ER13–1802–008; ER10–2916–013; ER10–2915–013; ER12–1525–014; ER12–2019–012; ER10–2266–005; ER12–2398–013; ER11–3459–013; ER10–2931–014; ER13–1965–011; ER10–2969–013; ER11–4351–008; ER11–4308–018; ER11–2805–017; ER10–1580–015; ER10–2382–007; ER11–2856–019; ER10–2356–007; ER10–2357–007; ER13–2107–009; ER13–2020–009; ER13–2050–009; ER14–2820–007; ER14–2821–007; ER11–2857–019; ER10–2359–007; ER10–2360–007; ER10–2369–006; ER10–2947–013; ER10–2381–007; ER10–2575–007; ER10–2361–007.

*Applicants:* NRG Energy Center Paxton LLC, NRG Florida LP, NRG Marsh Landing LLC, NRG Potomac River LLC, NRG Power Midwest LP, NRG REMA LLC, NRG Rockford LLC, NRG Rockford II LLC, NRG Solar Alpine

LLC, NRG Solar Avra Valley LLC, NRG Solar Blythe LLC, NRG Solar Borrego I LLC, NRG Solar Roadrunner LLC, NRG Sterlington Power LLC, NRG Wholesale Generation LP, Oswego Harbor Power LLC, Pinnacle Wind, LLC, Reliant Energy Northeast LLC, RRI Energy Services, LLC, Saguardo Power Company, a Limited Partnership, San Juan Mesa Wind Project, LLC, Sand Drag LLC, Sierra Wind, LLC, Sleeping Bear, LLC, Solar Partners I, LLC, Solar Partners II, LLC, Solar Partners VIII, LLC, Spring Canyon Energy II LLC, Spring Canyon Energy III LLC, Sun City Project LLC, Sunrise Power Company, LLC, TAIR Windfarm, LLC, Taloga Wind, LLC, Vienna Power LLC, Walnut Creek Energy, LLC, Watson Cogeneration Company, Wildorado Wind, LLC.

*Description:* Notice of Change in Status of NRG MBR Sellers [Part 3 of 3].

*Filed Date:* 12/30/15.

*Accession Number:* 20151230–5355.

*Comments Due:* 5 p.m. ET 1/20/16.

*Docket Numbers:* ER12–2499–014; ER12–2498–014; ER13–764–014; ER11–4055–006; ER12–1566–008; ER14–1548–006; ER12–1470–006; ER11–3987–009; ER10–1290–007; ER14–474–005; ER14–1775–004; ER10–3026–006.

*Applicants:* Alpaugh North, LLC, Alpaugh 50, LLC, CED White River Solar, LLC, Copper Mountain Solar 1, LLC, Copper Mountain Solar 2, LLC, Copper Mountain Solar 3, LLC, Energia Sierra Juarez U.S., LLC, Mesquite Solar 1, LLC, San Diego Gas & Electric Company, Sempra Generation, LLC, SEP II, LLC, Termoelectrica U.S., LLC.

*Description:* Updated Market Power Analysis for Southwest Region of the SDG&E Sellers.

*Filed Date:* 12/30/15.

*Accession Number:* 20151230–5332.

*Comments Due:* 5 p.m. ET 2/29/16.

*Docket Numbers:* ER16–287–000.

*Applicants:* BIF III Holtwood LLC.

*Description:* Clarification to November 6, 2015 BIF III Holtwood LLC tariff filing.

*Filed Date:* 12/30/15.

*Accession Number:* 20151230–5346.

*Comments Due:* 5 p.m. ET 1/20/16.

*Docket Numbers:* ER16–670–000.

*Applicants:* New England Power Pool Participants Committee.

*Description:* Section 205(d) Rate Filing; Dec 30 2015 Membership Filing to be effective 1/1/2016.

*Filed Date:* 12/30/15.

*Accession Number:* 20151230–5314.

*Comments Due:* 5 p.m. ET 1/20/16.

*Docket Numbers:* ER16–671–000.

*Applicants:* Golden Spread Electric Cooperative, Inc.

*Description:* Market-Based Triennial Review Filing; Updated Market Power Analysis to be effective 3/1/2014.

Filed Date: 12/31/15.
Accession Number: 20151231-5070.
Comments Due: 5 p.m. ET 2/29/16.

Docket Numbers: ER16-672-000.
Applicants: Golden Spread Panhandle Wind Ranch, LLC.

Description: Market-Based Triennial Review Filing: Updated Market Power Analysis to be effective 3/1/2014.

Filed Date: 12/31/15.
Accession Number: 20151231-5072.
Comments Due: 5 p.m. ET 2/29/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: http://www.ferc.gov/docs-filing/efiling/filing-req.pdf. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: December 31, 2015.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016-00094 Filed 1-7-16; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2457-041]

Public Service Company of New Hampshire; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

- a. Type of Application: New Major License
b. Project No.: 2457-041

c. Date Filed: December 18, 2015
d. Applicant: Public Service Company of New Hampshire (PSNH)

e. Name of Project: Eastman Falls Hydroelectric Project (Eastman Falls Project)

f. Location: The existing project is located on the Pemigewasset River in Merrimack and Belknap Counties, New Hampshire. The project boundary includes approximately 476 acres of federal land.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. Applicant Contact: Curtis R. Mooney, Project Manager, Public Service Company of New Hampshire, 780 North Commercial Street, P.O. Box 330, Manchester, NH 03105-0330; Telephone: (603) 744-8855 or curtis.mooney@eversource.com.

i. FERC Contact: Steve Kartalia, (202) 502-6131 or stephen.kartalia@ferc.gov.

j. This application is not ready for environmental analysis at this time.

k. The Project Description: The Eastman Falls Project has a total installed capacity of 6.4-megawatts (MW). The project's average annual generation is 27,871 megawatt-hours. The power generated by the project is sold to PSNH's electrical distribution customers.

The dam for the Eastman Falls Project is located approximately 1.5 miles downstream of the U.S. Army Corps of Engineers' (Corps) Franklin Falls Flood Control Dam (Franklin Falls Dam). While the project boundary for the Eastman Falls Project extends through and upstream of Franklin Falls Dam, it does not encompass Franklin Falls Dam or any Corps facilities.

The existing project consists of: (1) A 341-foot-long, 37-foot-high concrete gravity dam and spillway with a crest elevation of 301 feet above mean sea level (msl) that includes: (i) 6-foot-high steel flashboards with a crest elevation of 307 feet msl; and (ii) a concrete waste gate structure that includes a 16-foot-high, 30-foot-wide steel slide gate; (2) a 582-acre, 9-mile-long impoundment, with a normal maximum pool elevation of 307 feet msl; (3) a 342-foot-long, 8-foot-deep floating louver array; (4) generating facility No. 1 that includes: (i) A 12.5-foot-high, 15-foot-wide headgate structure with a 23.75-foot-high, 17-foot-wide trashrack with 3.5-inch clear-bar spacing; (ii) a 12.5-foot-high, 12.5-foot-wide, 21-foot-long

concrete penstock; (iii) a 40-foot-high, 20-foot-wide stop log slot; (iv) a 29-foot-long, 29-foot-wide, 34-foot-high concrete and masonry powerhouse containing a single 1.8-MW turbine-generator unit; and (v) a 23-foot-wide, 14.5-foot-high, 60-foot-long draft tube; (5) generating facility No. 2 facility that includes: (i) An intake structure with a 20-foot-high, 21-foot-wide headgate with two 12.3-foot-wide, 9.3-foot-high trashracks with 3.5-inch clear-bar spacing; (ii) a 20.8-foot-high, 22.4-foot-wide stop log slot; (iii) a 88-foot-long, 78-foot-wide, 56-foot-high concrete and masonry powerhouse containing a single 4.6 MW turbine-generator unit; (iv) a 23-foot-wide, 14.5-foot-high, 60-foot-long draft tube; (6) a 100-foot-long, 2.4-kilovolt transmission line that connects the turbine-generator units to the regional grid; and (7) appurtenant facilities.

The Eastman Falls Project operates in a run-of-river mode. The existing license (Article 401) requires that the project release a continuous minimum flow of 410 cubic feet per second (cfs), or inflow (whichever is less). PSNH proposes to continue run-of-river operation and to eliminate the requirement to release a minimum flow.

l. Locations of the Application: A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at http://www.ferc.gov using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at http://www.ferc.gov/docs-filing/esubscription.asp to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Procedural Schedule:

The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Table with 2 columns: Milestone and Target date. Rows include: Notice of Acceptance/Notice of Ready for Environmental Analysis (February 2016), Filing of recommendations, preliminary terms and conditions, and fishway prescriptions (April 2016), Commission issues Non-Draft Environmental Assessment (EA) (September 2016), Comments on EA (October 2016).

Milestone	Target date
Modified terms and conditions .....	December 2016.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: January 4, 2016.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

[FR Doc. 2016-00127 Filed 1-7-16; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL11-66-000]

**Martha Coakley, Massachusetts Attorney General; Connecticut Public Utilities Regulatory Authority; Massachusetts Department of Public Utilities; New Hampshire Public Utilities Commission; Connecticut Office of Consumer Counsel; Maine Office of the Public Advocate; George Jepsen, Connecticut Attorney General; New Hampshire Office of Consumer Advocate; Rhode Island Division of Public Utilities and Carriers; Vermont Department of Public Service; Massachusetts Municipal Wholesale Electric Company; Associated Industries of Massachusetts; The Energy Consortium; Power Options, Inc.; and the Industrial Energy Consumer Group, v. Bangor Hydro-Electric Company; Central Maine Power Company; New England Power Company d/b/a National Grid; New Hampshire Transmission LLC d/b/a NextEra; NSTAR Electric and Gas Corporation; Northeast Utilities Service Company; The United Illuminating Company; Unitil Energy Systems, Inc. and Fitchburg Gas and Electric Light Company; Vermont Transco, LLC; Notice of Filing**

Take notice that on December 31, 2015, the Connecticut Light and Power Company, Public Service Company of New Hampshire, and Western Massachusetts Electric Company submitted tariff filing per: Refund Report to be effective N/A, pursuant to the Commission's Opinion No. 531-A, issued on October 16, 2014.<sup>1</sup>

<sup>1</sup> *Martha Coakley, Mass. Attorney Gen., et al. v. Bangor Hydro-Elec. Co., et al.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014) (Opinion No. 531), *order on paper hearing*, Opinion No. 531-A, 149 FERC ¶ 61,032 (2014) (Opinion No. 531-A).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 p.m. Eastern Time on January 21, 2016.

Dated: January 4, 2016.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

[FR Doc. 2016-00121 Filed 1-7-16; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL11-66-000]

**Martha Coakley, Massachusetts Attorney General; Connecticut Public Utilities Regulatory Authority; Massachusetts Department of Public Utilities; New Hampshire Public Utilities Commission; Connecticut Office of Consumer Counsel; Maine Office of the Public Advocate; George Jepsen, Connecticut Attorney General; New Hampshire Office of Consumer Advocate; Rhode Island Division of Public Utilities and Carriers; Vermont Department of Public Service; Massachusetts Municipal Wholesale Electric Company; Associated Industries of Massachusetts; The Energy Consortium; Power Options, Inc.; and the Industrial Energy Consumer Group, v. Bangor Hydro-Electric Company; Central Maine Power Company; New England Power Company d/b/a National Grid; New Hampshire Transmission LLC d/b/a NextEra; NSTAR Electric and Gas Corporation; Northeast Utilities Service Company; The United Illuminating Company; Unitil Energy Systems, Inc. and Fitchburg Gas and Electric Light Company; Vermont Transco, LLC; Notice of Filing**

Take notice that on December 31, 2015, New Hampshire Transmission, LLC submitted tariff filing per: Refund Report to be effective N/A, pursuant to the Commission's Opinion No. 531-A, issued on October 16, 2014.<sup>1</sup>

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion

<sup>1</sup> *Martha Coakley, Mass. Attorney Gen., et al. v. Bangor Hydro-Elec. Co., et al.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014) (Opinion No. 531), *order on paper hearing*, Opinion No. 531-A, 149 FERC ¶ 61,032 (2014) (Opinion No. 531-A).

to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible online at <http://www.ferc.gov>, using the “eLibrary” link and is available for electronic review in the Commission’s Public Reference Room in Washington, DC. There is an “eSubscription” link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 p.m. Eastern Time on January 21, 2016.

Dated: January 4, 2016.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

[FR Doc. 2016-00124 Filed 1-7-16; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL11-66-000]

**Martha Coakley, Massachusetts Attorney General; Connecticut Public Utilities Regulatory Authority; Massachusetts Department of Public Utilities; New Hampshire Public Utilities Commission; Connecticut Office of Consumer Counsel; Maine Office of the Public Advocate; George Jepsen, Connecticut Attorney General; New Hampshire Office of Consumer Advocate; Rhode Island Division of Public Utilities and Carriers; Vermont Department of Public Service; Massachusetts Municipal Wholesale Electric Company; Associated Industries of Massachusetts; The Energy Consortium; Power Options, Inc.; and the Industrial Energy Consumer Group, v. Bangor Hydro-Electric Company; Central Maine Power Company; New England Power Company d/b/a National Grid; New Hampshire Transmission LLC d/b/a NextEra; NSTAR Electric and Gas Corporation; Northeast Utilities Service Company; The United Illuminating Company; Unil Energy Systems, Inc. and Fitchburg Gas and Electric Light Company; Vermont Transco, LLC; Notice of Filing**

Take notice that on December 31, 2015, The United Illuminating Company submitted tariff filing per: Refund Report to be effective N/A, pursuant to the Commission’s Opinion No. 531-A, issued on October 16, 2014.<sup>1</sup>

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the

<sup>1</sup> *Martha Coakley, Mass. Attorney Gen., et al. v. Bangor Hydro-Elec. Co., et al.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014) (Opinion No. 531), *order on paper hearing*, Opinion No. 531-A, 149 FERC ¶ 61,032 (2014) (Opinion No. 531-A).

“eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible online at <http://www.ferc.gov>, using the “eLibrary” link and is available for electronic review in the Commission’s Public Reference Room in Washington, DC. There is an “eSubscription” link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 p.m. Eastern Time on January 21, 2016.

Dated: January 4, 2016.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

[FR Doc. 2016-00123 Filed 1-7-16; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

#### Filings Instituting Proceedings

*Docket Numbers:* RP16-326-000.  
*Applicants:* Tres Palacios Gas Storage LLC.

*Description:* Compliance filing per 154.203: Tres Palacios Gas Storage LLC—Compliance with Order in Docket No. RP15-1225 to be effective 1/29/2016.

*Filed Date:* 12/29/15.

*Accession Number:* 20151229-5101.

*Comments Due:* 5 p.m. ET 1/11/16.

*Docket Numbers:* RP16-327-000.  
*Applicants:* Transcontinental Gas Pipe Line Company,

*Description:* Section 4(d) rate filing per 154.204: Negotiated Rates—Cherokee AGL—Replacement Shippers—Jan 2016 to be effective 1/1/2016.

*Filed Date:* 12/29/15.

*Accession Number:* 20151229-5110.

*Comments Due:* 5 p.m. ET 1/11/16.

*Docket Numbers:* RP16-328-000.  
*Applicants:* Texas Eastern Transmission, LP.

*Description:* Section 4(d) rate filing per 154.204: Negotiated Rates—Chevron

TEAM 2014 Releases for 1–2016 to be effective 1/1/2016.

*Filed Date:* 12/29/15.

*Accession Number:* 20151229–5204.

*Comments Due:* 5 p.m. ET 1/11/16.

*Docket Numbers:* RP16–329–000.

*Applicants:* Transwestern Pipeline Company, LLC.

*Description:* Section 4(d) rate filing per 154.204: Btu Provision to be effective 2/1/2016.

*Filed Date:* 12/30/15.

*Accession Number:* 20151230–5068.

*Comments Due:* 5 p.m. ET 1/11/16.

*Docket Numbers:* RP16–330–000.

*Applicants:* Transwestern Pipeline Company, LLC.

*Description:* Section 4(d) rate filing per 154.204: Flow Control Provision to be effective 2/1/2016.

*Filed Date:* 12/30/15.

*Accession Number:* 20151230–5077.

*Comments Due:* 5 p.m. ET 1/11/16.

*Docket Numbers:* RP16–331–000.

*Applicants:* Transwestern Pipeline Company, LLC.

*Description:* Compliance filing per 154.203: Baseline Filing Volume No. 1–A to be effective 1/1/2016.

*Filed Date:* 12/30/15.

*Accession Number:* 20151230–5087.

*Comments Due:* 5 p.m. ET 1/11/16

*Docket Numbers:* RP16–332–000.

*Applicants:* Transwestern Pipeline Company, LLC.

*Description:* Section 4(d) rate filing per 154.204: Update Non-Conforming Agreements List to be effective 1/1/2016.

*Filed Date:* 12/30/15.

*Accession Number:* 20151230–5089.

*Comments Due:* 5 p.m. ET 1/11/16.

*Docket Numbers:* RP16–333–000.

*Applicants:* Iroquois Gas Transmission System, L.P.

*Description:* Section 4(d) rate filing per 154.204: 12/30/15 Negotiated Rates—MMGS Inc. (RTS) 7625–02 & –03 Amd 1 to be effective 12/1/2015.

*Filed Date:* 12/30/15.

*Accession Number:* 20151230–5097.

*Comments Due:* 5 p.m. ET 1/11/16.

*Docket Numbers:* RP16–334–000.

*Applicants:* Texas Eastern Transmission, LP.

*Description:* Section 4(d) rate filing per 154.403: EPC FEB 2016 FILING to be effective 2/1/2016.

*Filed Date:* 12/30/15.

*Accession Number:* 20151230–5135.

*Comments Due:* 5 p.m. ET 1/11/16.

*Docket Numbers:* RP16–335–000.

*Applicants:* Colorado Interstate Gas Company, L.L.C.

*Description:* Section 4(d) rate filing per 154.601: Negotiated Rate TSA (High Plains Gathering) to be effective 1/1/2016.

*Filed Date:* 12/30/15.

*Accession Number:* 20151230–5307.

*Comments Due:* 5 p.m. ET 1/11/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 31, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary*

[FR Doc. 2016–00096 Filed 1–7–16; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL16–1–000]

#### Heartland Consumers Power District; Notice of Filing

Take notice that on December 29, 2015, Heartland Consumers Power District submitted a response to the December 11, 2015 Deficiency Letter.

Any person desiring to intervene or to protest in this proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the 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 proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern time on January 19, 2016.

Dated: January 4, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016–00125 Filed 1–7–16; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2400–006.

*Applicants:* Blue Canyon Windpower LLC.

*Description:* Updated Market Power Analysis for the Southwest Power Pool Region of Blue Canyon Windpower LLC.

*Filed Date:* 12/31/15.

*Accession Number:* 20151231–5391.

*Comments Due:* 5 p.m. ET 2/29/16.

*Docket Numbers:* ER10–3232–004; ER14–2871–007; ER16–182–002; ER10–3244–009; ER10–3251–007; ER14–2382–007; ER15–621–006; ER15–622–006; ER15–463–006; ER16–72–002; ER15–110–006; ER13–1586–008; ER10–1992–014.

*Applicants:* Wheelabrator Shasta Energy Company Inc., Cameron Ridge, LLC, Cameron Ridge II, LLC, Coso Geothermal Power Holdings, LLC, Oak

Creek Wind Power, LLC, ON Wind Energy LLC, Pacific Crest Power, LLC, Ridgetop Energy, LLC, San Geronio Westwinds II, LLC, San Geronio Westwinds II—Windustries., Terra-Gen Energy Services, LLC, TGP Energy Management, LLC, Victory Garden Phase IV, LLC.

*Description:* Triennial Market Power Analysis of the ECP MBR Sellers.

*Filed Date:* 12/31/15.

*Accession Number:* 20151231-5387.

*Comments Due:* 5 p.m. ET 2/29/16.

*Docket Numbers:* ER15-1332-003; ER10-2401-004; ER10-2402-004; ER11-2414-001; ER10-2403-004; ER13-1816-003; ER15-1333-002.

*Applicants:* Arbuckle Mountain Wind Farm LLC, Blue Canyon Windpower II LLC, Blue Canyon Windpower V LLC, Blue Canyon Windpower VI LLC, Cloud County Wind Farm, LLC, Sustaining Power Solutions LLC, Waverly Wind Farm LLC.

*Description:* Updated Market Power Analysis for the Southwest Power Pool Region of Arbuckle Mountain Wind Farm LLC, et al.

*Filed Date:* 12/31/15.

*Accession Number:* 20151231-5400.

*Comments Due:* 5 p.m. ET 2/29/16.

*Docket Numbers:* ER16-674-000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Section 205(d) Rate Filing: Original Service Agreement No. 4320; Queue AA1-109 (ISA) to be effective 12/3/2015.

*Filed Date:* 12/31/15.

*Accession Number:* 20151231-5169.

*Comments Due:* 5 p.m. ET 1/21/16.

*Docket Numbers:* ER16-675-000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* Section 205(d) Rate Filing: 2015-12-31\_Queue Reform Attachment X Filing to be effective 3/30/2016.

*Filed Date:* 12/31/15.

*Accession Number:* 20151231-5238.

*Comments Due:* 5 p.m. ET 1/29/16.

*Docket Numbers:* ER16-676-000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Section 205(d) Rate Filing: Revisions to Schedule 12-Appdx & Appdx A re: 2016 RTEP Annual Cost Allocations to be effective 1/1/2016.

*Filed Date:* 12/31/15.

*Accession Number:* 20151231-5261.

*Comments Due:* 5 p.m. ET 1/21/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211

and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: January 4, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016-00117 Filed 1-7-16; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10-1585-009; ER10-1594-009; ER10-1597-005; ER10-1617-009; ER10-1624-005; ER12-60-011; ER10-1632-011; ER10-1628-009.

*Applicants:* Alabama Electric Marketing, LLC, California Electric Marketing, LLC, Kiowa Power Partners, L.L.C., New Mexico Electric Marketing, LLC, Tenaska Power Management, LLC, Tenaska Power Services Co., Texas Electric Marketing, LLC, Tenaska Gateway Partners, Ltd.

*Description:* Updated Market Power Analysis in the Southwest Power Pool region of the Tenaska MBR Sellers.

*Filed Date:* 12/31/15

*Accession Number:* 20151231-5404.

*Comments Due:* 5 p.m. ET 2/29/16.

*Docket Numbers:* ER10-2507-007.

*Applicants:* Westar Energy, Inc.

*Description:* Notice of Non-Material Change in Status of Westar Energy, Inc.

*Filed Date:* 1/4/16.

*Accession Number:* 20160104-5264.

*Comments Due:* 5 p.m. ET 1/25/16.

*Docket Numbers:* ER13-415-003.

*Applicants:* Anahau Energy, LLC.

*Description:* Triennial market power update of Anahau Energy, LLC for SPP region.

*Filed Date:* 12/31/15.

*Accession Number:* 20151231-5406.

*Comments Due:* 5 p.m. ET 2/29/16.

*Docket Numbers:* ER15-710-004.

*Applicants:* Arizona Public Service Company.

*Description:* Compliance filing: Service Agreement No. 341—NITS with ED3 to be effective 5/31/2015.

*Filed Date:* 1/4/16.

*Accession Number:* 20160104-5339.

*Comments Due:* 5 p.m. ET 1/25/16.

*Docket Numbers:* ER16-677-000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Section 205(d) Rate Filing: Original Service Agreement No. 4322; Queue Z1-036 (ISA) to be effective 12/3/2015.

*Filed Date:* 1/4/16.

*Accession Number:* 20160104-5077.

*Comments Due:* 5 p.m. ET 1/25/16.

*Docket Numbers:* ER16-679-000.

*Applicants:* Northern States Power Company, a Wisconsin corporation.

*Description:* Section 205(d) Rate Filing: 2016-1-4\_DPC Switching Agrmt-0.0.0-Filing to be effective 3/5/2016.

*Filed Date:* 1/4/16

*Accession Number:* 20160104-5346.

*Comments Due:* 5 p.m. ET 1/25/16.

*Docket Numbers:* ER16-680-000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Tariff Cancellation: Notice of Cancellation of WMPA SA No. 3356, Queue No. W4-033 to be effective 12/8/2015.

*Filed Date:* 1/4/16.

*Accession Number:* 20160104-5386.

*Comments Due:* 5 p.m. ET 1/25/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: January 4, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016-00118 Filed 1-7-16; 8:45 am]

**BILLING CODE 6717-01-P**



**DEPARTMENT OF ENERGY****Federal Energy Regulatory  
Commission**

[Docket No. CP15-503-000]

**Comanche Trail Pipeline, LLC; Notice  
of Availability of the Environmental  
Assessment for the Proposed San  
Elizario Crossing Project**

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the San Elizario Crossing Project (Project), proposed by Comanche Trail Pipeline, LLC (Comanche Trail) in the above-referenced docket. Comanche Trail requests authorization to construct new border crossing pipeline facilities to export up to 1.1 billion cubic feet per day of natural gas at the International Boundary between the United States and Mexico. The pipeline would be installed via horizontal directional drill beneath the Rio Grande River.

The EA assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The proposed Project includes the installation of approximately 1,086 feet of 42-inch-diameter pipeline. The new pipeline would transport gas to a new delivery interconnect with pipeline facilities owned by an affiliate of Comanche Trail at the United States-Mexico border for expanding electric generation and industrial market needs in Mexico.

The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. In addition, the EA is available for public viewing on the FERC's Web site ([www.ferc.gov](http://www.ferc.gov)) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502-8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before February 4, 2016.

For your convenience, there are three methods you can use to file your comments to the Commission. In all instances, please reference the project docket number (CP15-503-000 with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502-8258 or [efiling@ferc.gov](mailto:efiling@ferc.gov).

(1) You can file your comments electronically using the eComment feature on the Commission's Web site ([www.ferc.gov](http://www.ferc.gov)) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's Web site ([www.ferc.gov](http://www.ferc.gov)) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You must select the type of filing you are making. If you are filing a comment on a particular project, please select "Comment on a Filing"; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).<sup>1</sup> Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments

<sup>1</sup> See the previous discussion on the methods for filing comments.

will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC Web site ([www.ferc.gov](http://www.ferc.gov)) using the eLibrary link. Click on the eLibrary link, click on "General Search," and enter the docket number excluding the last three digits in the Docket Number field (*i.e.*, CP15-503). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov) or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to [www.ferc.gov/docs-filing/esubscription.asp](http://www.ferc.gov/docs-filing/esubscription.asp).

Dated: January 4, 2016.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

[FR Doc. 2016-00120 Filed 1-7-16; 8:45 am]

**BILLING CODE 6717-01-P**

**ENVIRONMENTAL PROTECTION  
AGENCY**

[FRL-9941-12-Region 5]

**Notification of a Public Meeting of the  
Great Lakes Advisory Board**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) announces a public meeting of the Great Lakes Advisory Board (Board). The purpose of this meeting is to discuss the Great Lakes Restoration Initiative (GLRI) covering FY15-19 and other relevant matters.

**DATES:** The meeting will be held on Wednesday, January 27, 2016 from 10 a.m. to 3 p.m. Central Time, 11 a.m. to 4 p.m. Eastern Time. An opportunity will be provided to the public to comment.

**ADDRESSES:** The meeting will be held at 77 W. Jackson, 19th Floor, Chicago, Illinois. For those unable to attend in

person, this meeting will also be available telephonically. The teleconference number is 877-226-9607 and the conference ID number is 4218582837.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information regarding this meeting may contact Rita Cestaric, Designated Federal Officer (DFO), by email at [cestaric.rita@epa.gov](mailto:cestaric.rita@epa.gov). General information on the GLRI and the Board can be found at <http://glri.us/public.html>.

**SUPPLEMENTARY INFORMATION:**

*Background:* The Board is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92-463. EPA established the Board in 2013 to provide independent advice to the EPA Administrator in her capacity as Chair of the federal Great Lakes Interagency Task Force (IATF). The Board conducts business in accordance with FACA and related regulations.

The Board consists of 16 members appointed by EPA's Administrator in her capacity as IATF Chair. Members serve as representatives of state, local and tribal government, environmental groups, agriculture, business, transportation, educational institutions, and as technical experts.

*Availability of Meeting Materials:* The agenda and other materials in support of the meeting will be available at <http://glri.us/advisory/index.html>.

*Procedures for Providing Public Input:* Federal advisory committees provide independent advice to federal agencies. Members of the public can submit relevant comments for consideration by the Board. Input from the public to the Board will have the most impact if it provides specific information for the Board to consider. Members of the public wishing to provide comments should contact the DFO directly.

*Oral Statements:* In general, individuals or groups requesting an oral presentation at this public meeting will be limited to three minutes per speaker, subject to the number of people wanting to comment. Interested parties should contact the DFO in writing (preferably via email) at the contact information noted above by January 25, 2016 to be placed on the list of public speakers for the meeting.

*Written Statements:* Written statements must be received by January 25, 2016 so that the information may be made available to the Board for consideration. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature and one electronic

copy via email. Commenters are requested to provide two versions of each document submitted: One each with and without signatures because only documents without signatures may be published on the GLRI Web page.

*Accessibility:* For information on access or services for individuals with disabilities, please contact the DFO at the phone number or email address noted above, preferably at least seven days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: December 15, 2015.

**Cameron Davis,**

*Senior Advisor to the Administrator.*

[FR Doc. 2016-00186 Filed 1-7-16; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-9024-8]

### Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564-7146 or <http://www2.epa.gov/nepa>.

Weekly receipt of Environmental Impact Statements (EISs)

Filed 12/28/2015 Through 12/31/2015 Pursuant to 40 CFR 1506.9.

#### Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <https://cdxnodengn.epa.gov/cdx-nepa-public/action/eis/search>.

EIS No. 20150367, Final, NPS, NY, Fire Island National Seashore Final White-tailed Deer Management Plan, *Review Period Ends:* 02/08/2016, *Contact:* Morgan Elmer 303-969-2317.

EIS No. 20150368, Draft, TVA, TN, PROGRAMMATIC—Ash Impoundment Closure, *Comment Period Ends:* 02/24/2016, *Contact:* Ashley Farless 423-751-2361.

#### Amended Notices

EIS No. 20150304, Draft, VA, SD, NHPA Section 106 Consultation: Reconfiguration of VA Black Hills Health Care System, *Comment Period Ends:* 02/05/2016, *Contact:* Luke Epperson 605-720-7170. Revision to FR Notice Published 11/06/2015; Correction to Comment Period Ends should be 02/05/2016.

Dated: January 5, 2016.

**Dawn Roberts,**

*Management Analyst, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 2016-00165 Filed 1-7-16; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 4, 2016.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *Frandsen Financial Corporation*, Arden Hills, Minnesota; to acquire 100 percent of the voting shares of Provincial Corp., and thereby indirectly acquire Provincial Bank, both in Lakeville, Minnesota.

2. *Great Western Bancorp, Inc.*, Sioux Falls, South Dakota; to merge with HF Financial Corp., and thereby indirectly acquire Home Federal Bank, both in Sioux Falls, South Dakota.

Board of Governors of the Federal Reserve System, January 5, 2016.

**Michael J. Lewandowski,**

*Associate Secretary of the Board.*

[FR Doc. 2016-00153 Filed 1-7-16; 8:45 am]

BILLING CODE 6210-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

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 aforementioned meeting for the initial review of applications in response to Funding Opportunity Announcement (FOA) PAR15-352, Occupational Safety and Health Training Project Grants.

*Time and Date:* 8:00 a.m.–7:00 p.m., January 26–28, 2016 (Closed).

*Place:* Internet Assisted Meeting (IAM)/Virtual Meeting.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

*Matters for Discussion:* The meeting will include the initial review, discussion, and evaluation of applications received in response to Occupational Safety and Health Training Project Grants, FOA PAR15-352, initial review.

*Contact Person For More Information:* Donald Blackman, Ph.D., Scientific Review Officer, CDC, 2400 Century Center Parkway NE., 4th Floor, Room 4204, Mailstop E-74, Atlanta, Georgia 30345, Telephone: (404) 498-6185, [DYB7@CDC.GOV](mailto:DYB7@CDC.GOV).

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Catherine Ramadei,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2016-00113 Filed 1-7-16; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2015-D-5073]

#### Use of Nucleic Acid Tests To Reduce the Risk of Transmission of Hepatitis B Virus From Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products; Draft Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft document entitled “Use of Nucleic Acid Tests to Reduce the Risk of Transmission of Hepatitis B Virus from Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products; Draft Guidance for Industry.” The draft guidance document provides establishments that make donor eligibility determinations for donors of human cells, tissues, and tissue-based products (HCT/Ps), with recommendations concerning the use of FDA-licensed nucleic acid tests (NAT) in donor testing for hepatitis B virus (HBV) deoxyribonucleic acid (DNA). The draft guidance, when finalized, is intended to supplement previous FDA recommendations to HCT/P establishments concerning donor testing for hepatitis B surface antigen (HBsAg) and total antibody to hepatitis B core antigen (anti-HBc), in the document entitled “Guidance for Industry: Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)” dated August 2007 (2007 Donor Eligibility Guidance).

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by April 7, 2016.

**ADDRESSES:** You may submit comments as follows:

#### Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <http://www.regulations.gov> will be posted to

the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <http://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

#### Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

*Instructions:* All submissions received must include the Docket No. FDA-2015-D-5073 for “Use of Nucleic Acid Tests to Reduce the Risk of Transmission of Hepatitis B Virus from Donors of Human Cells, Tissues, and Cellular and Tissue Based Products; Draft Guidance for Industry.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <http://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the

claimed confidential information redacted/blacked out, will be available for public viewing and posted on <http://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <http://www.fda.gov/regulatoryinformation/dockets/default.htm>.

**Docket:** For access to the docket to read background documents or the electronic and written/paper comments received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 240-402-8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:** Jessica T. Walker, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

FDA is announcing the availability of a draft document entitled "Use of Nucleic Acid Tests to Reduce the Risk of Transmission of Hepatitis B Virus from Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products; Draft Guidance for Industry." The draft guidance document provides establishments that make donor

eligibility determinations for donors of HCT/Ps, with recommendations concerning the use of FDA-licensed NAT in donor testing for HBV DNA. FDA considers the use of FDA-licensed HBV NAT in testing HCT/Ps donors to be necessary to adequately and appropriately reduce the risk of transmission of HBV. The FDA-licensed HBV NAT can detect evidence of the viral infection at an earlier stage than the HBsAg and total anti-HBc tests. Therefore, FDA recommends the use of FDA-licensed HBV NAT for testing donors of HCT/Ps for evidence of infection with HBV.

HBV is a major global public health concern and has been transmitted by blood transfusions and tissue transplantation. Available literature has indicated possible transmissions of HBV by hematopoietic stem cells and blood with HBV NAT positive/hepatitis B surface antigen (anti-HBs) positive/HBsAg negative blood, irrespective of anti-HBc test results. In blood donors, adding the HBV NAT testing for HBV reduces the residual risk of transmission of HBV infection beyond that which can be achieved by screening donors using only HBsAg and total anti-HBc tests. In addition, it can detect breakthrough infections in previously vaccinated individuals who are exposed to the virus, and HBV mutants appear to be more likely detected by HBV NAT than by HBsAg assays.

In the United States, there are currently FDA-licensed HBV NAT assays with an indication for screening donor blood samples for Whole Blood and Blood components, other living donors (individual organ donors when specimens are obtained while the donor's heart is still beating), and blood specimens from cadaveric (non-heart-beating) donors. Some of these are multiplex assays that can simultaneously detect HIV, HCV, and HBV in a single blood specimen, thus improving the feasibility of routine NAT testing for HBV. By analogy to the experience in the blood donor setting, it is reasonable to expect that the residual risk of transmission of HBV infection would be reduced by adding HBV NAT to the testing strategy for HCT/P donors. HBV NAT's potential utility in further reducing risk of HBV transmission by transplantation is mainly restricted to the early HBsAg-negative phase of infection. In summary, the available scientific data and the availability of FDA-licensed assays support a recommendation that all HCT/Ps donors should be tested using an FDA-licensed HBV NAT. The draft guidance, when finalized, is intended to supplement previous FDA recommendations to

HCT/P establishments concerning donor testing for HBsAg and total anti-HBc, in the 2007 Donor Eligibility Guidance.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on the "Use of Nucleic Acid Tests to Reduce the Risk of Transmission of Hepatitis B Virus from Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products." It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

##### **II. Electronic Access**

Persons with access to the Internet may obtain the draft guidance at either <http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm> or <http://www.regulations.gov>.

Dated: January 5, 2016.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2016-00149 Filed 1-7-16; 8:45 am]

**BILLING CODE 4164-01-P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Food and Drug Administration**

[Docket No. FDA-2015-N-0001]

#### **Gastroenterology and Urology 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:* Gastroenterology and Urology 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 February 25, 2016, from 8 a.m. to 6 p.m. and February 26, 2016, from 8 a.m. to 1 p.m.

*Location:* Hilton Washington DC North/Gaithersburg, Salons A, B, and C, 620 Perry Pkwy., Gaithersburg, MD 20877. The hotel's telephone number is 301-977-8900.

*Contact Person:* Patricio G. Garcia, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1611, Silver Spring, MD 20993-0002, *Patricio.Garcia@fda.hhs.gov*, 301-796-6875, 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:* On February 25, 2016, the committee will discuss, make recommendations, and vote on information regarding the premarket approval application (PMA) for "TOPAS Treatment for Fecal Incontinence," by ASTORA Women's Health, LLC. The "TOPAS Treatment for Fecal Incontinence" device is a sling device (mesh) to be implanted around the puborectalis muscle (a muscle that contributes towards the maintenance of fecal continence). The proposed Indication for Use (IFU) for the "TOPAS Treatment for Fecal Incontinence" device, as stated in the PMA, is as follows:

The "TOPAS Treatment for Fecal Incontinence" is intended to treat women with fecal incontinence (also referred to as accidental bowel leakage) who have failed more conservative therapies.

On February 26, 2016, during session I, the committee will discuss and make recommendations regarding the reclassification of urogynecologic surgical mesh instrumentation from class I to class II. The applicable product codes are those related to urogynecologic surgical mesh as follows:

- OTN and the associated device classification name, "mesh, surgical, synthetic, urogynecologic, for stress urinary incontinence, female, multi-incision;"
- PAG and the associated device classification name, "mesh, surgical, non-synthetic, urogynecologic, for stress urinary incontinence, female, multi-incision;"
- PAH and the associated device classification name, "mesh, surgical, synthetic, urogynecologic, for stress

urinary incontinence, female, single-incision mini-sling;"

- OTO and the associated device classification name, "mesh, surgical, synthetic, urogynecologic, for apical vaginal and uterine prolapse, transabdominally placed;"
- PAJ and the associated device classification name, "mesh, surgical, non-synthetic, urogynecologic, for apical vaginal and uterine prolapse, transabdominally placed;"
- OTP and the associated device classification name, "mesh, surgical, synthetic, urogynecologic, for pelvic organ prolapse, transvaginally placed" and
- PAI and the associated device classification name, "mesh, surgical, non-synthetic, urogynecologic, for pelvic organ prolapse, transvaginally placed."

Some examples of the means by which these devices perform these functions and their respective IFU/Intended Use (IU) statements are:

- Urogynecologic surgical mesh instrumentation is used:
  - IFU/IU: To aid in insertion, placement, fixation, or anchoring of surgical mesh for procedures including transvaginal pelvic organ prolapse repair, sacrocolpopexy (transabdominal pelvic organ prolapse repair), treatment of female stress urinary incontinence. Examples of such surgical instrumentation include needle passers and trocars, needle guides, fixation tools, and tissue anchors.

The committee, during session II, will discuss and make recommendations regarding the classification of the product code "LKX" and the associated device classification name, "Device, Thermal, Hemorrhoids." The product code LKX represents a category of devices intended to apply controlled cooling and conductive heating to hemorrhoids. These devices are considered preamendments devices since they were in commercial distribution prior to May 28, 1976, when the Medical Devices Amendments became effective. Some examples of the means by which these devices perform these functions and their respective IFU/IU statements are:

- Uses an aluminum probe that contains a temperature sensitive element to regulate temperature within 2 degrees (between 37 and 46 degrees centigrade).
  - IFU/IU: The apparatus is intended to apply controlled, conductive heating to hemorrhoids.
- Uses a heat applicator inserted into the rectum, applicator contains a battery operated heater, and a sensor which provides temperature control/feedback.

- IFU/IU: Intended to provide temporary relief of the symptoms of hemorrhoids through the application of mild heating.

- Uses speculum-like plastic container containing liquid to cool hemorrhoidal veins.

- IFU/IU: Treatment of external hemorrhoids by applying cold therapy (cryotherapy) directly to swollen hemorrhoidal veins.

The committee, during session III, will discuss and make recommendations regarding the classification of the product code "LRL" and the associated device classification name, "Cushion, Hemorrhoid." The product code LRL represents a category of devices intended to temporarily relieve pain and pressure caused by hemorrhoids. These devices are considered preamendments devices since they were in commercial distribution prior to May 28, 1976, when the Medical Devices Amendments became effective. Some examples of the means by which these devices perform these functions and their respective IFU/IU statements are:

- Uses an injection molded polypropylene copolymer plastic seat attached to a toilet seat (the product is adjustable and is available in round and elongated versions).

- IFU/IU: For the temporary relief from the pain and pressure of hemorrhoids. The device is for external use only.

- Uses a cushion with an inflatable vinyl exterior and a foam center. An air chamber, when filled, prevents the cushion from compressing the foam. A urethane foam center adds comfort.

- IFU/IU: Intended for the home convalescent patient with perineal discomfort.

- Uses a cushion that contains two internal molded structures that conform to the patient's shape. Exerts "slight" pressure on hemorrhoid. IFU/IU not required at the time of clearance.

The committee, during session IV, will discuss and make recommendations regarding the classification of the product code "LKN" and the associated device classification name, "Separator, automated, blood cell and plasma, therapeutic." The product code LKN represents a category of centrifuge-type devices intended to separate blood components and perform therapeutic plasma exchange for the management of serious medical conditions in adults and children. These devices are considered preamendments devices since they were in commercial distribution prior to May 28, 1976, when the Medical Devices Amendments

became effective. Some examples of the means by which these devices perform these functions and their respective IFU/IU statements are:

- Utilizes a continuous flow centrifuge (max speed 3000 revolutions per minute) to separate source blood from a subject into blood components.
- IFU/IU: May be used to perform therapeutic plasma exchange.
- IFU/IU: May be used to perform Red Blood Cell Exchange procedures for the transfusion management of Sickle Cell Disease in adults and children.
- Uses continuous flow access to a rotating centrifuge to separate blood components.
- IFU/IU: May be used to harvest cellular components from the blood of certain patients where the attending physician feels the removal of such component may benefit the patient.
- IFU/IU: May be used to remove plasma components and/or fluid selected by the attending physicians.

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> and then by scrolling 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 17, 2016. Oral presentations from the public will be scheduled on February 25, 2016, between approximately 1 p.m. and 2 p.m. and on February 26, 2016, between approximately 8:30 a.m. and 9:30 a.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 9, 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 10, 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 AnnMarie Williams at [annmarie.williams@fda.hhs.gov](mailto:annmarie.williams@fda.hhs.gov), 301-796-5966, 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: January 4, 2016.

**Jill Hartzler Warner,**

*Associate Commissioner for Special Medical Programs.*

[FR Doc. 2016-00111 Filed 1-7-16; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2015-D-4021]

#### Over-the-Counter Sunscreens: Safety and Effectiveness Data; Draft Guidance for Industry; Extension of Comment Period

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; extension of the comment period.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is extending the comment period provided in the notice entitled "Over-the-Counter Sunscreens: Safety and Effectiveness Data; Draft Guidance for Industry; Availability" that appeared in the **Federal Register** on November 23, 2015 (80 FR 72975). That notice announced the availability of a draft guidance for industry and requested comments to that draft guidance by January 22, 2016. FDA is extending the draft guidance's comment period by 30 days (to February 22, 2016) in response to a request for an

extension to allow interested persons additional time to submit comments.

**DATES:** FDA is extending the comment period for the draft guidance by an additional 30 days. Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to permit the Agency to consider your comments before issuing the final version of the guidance, submit either electronic or written comments on the draft guidance by February 22, 2016.

**ADDRESSES:** You may submit comments as follows:

#### Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <http://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <http://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

#### Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand delivery/Courier (for written/paper submissions):** Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

**Instructions:** All submissions received must include the Docket No. FDA-2015-D-4021 for "Over-the-Counter Sunscreens: Safety and Effectiveness Data; Draft Guidance for Industry."

Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <http://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <http://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <http://www.fda.gov/regulatoryinformation/dockets/default.htm>.

**Docket:** For access to the docket to read background documents or the electronic and written/paper comments received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:** Kristen Hardin, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5443, Silver Spring, MD 20993-0002, 240-402-4246.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In the **Federal Register** of November 23, 2015 (80 FR 72975), FDA published a notice of availability with a 60-day comment period for the draft guidance for industry entitled "Over-the-Counter Sunscreens: Safety and Effectiveness Data." Publication of that draft guidance was mandated by the Sunscreen Innovation Act (SIA), which also requires FDA to publish the final guidance no later than November 26, 2016.

The Agency has received a request for a 30-day extension of the comment period to provide more time for regulated industry to prepare a detailed and meaningful response to the draft guidance. FDA has considered the request and is extending the comment period for 30 days, until February 22, 2016. The Agency believes that a 30-day extension will allow adequate time for interested persons to submit comments without compromising timely publication of the final guidance as mandated by the SIA.

**II. Electronic Access**

Persons with access to the Internet may obtain the draft guidance at either <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm> or <http://www.regulations.gov>.

Dated: January 4, 2016.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2016-00128 Filed 1-7-16; 8:45 am]

**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute of Mental Health: Notice of Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Mental Health Council.

*Date:* February 4, 2016.

*Closed:* 8:00 a.m. to 9:00 a.m.

*Agenda:* To review and evaluate the NIMH Division of Intramural Research Programs.

*Place:* National Institutes of Health, Neuroscience Center, Conference Rooms C/D/E, 6001 Executive Boulevard, Rockville, MD 20852.

*Open:* 9:15 a.m. to 1:00 p.m.

*Agenda:* Presentation of the NIMH Director's Report and discussion of NIMH program and policy issues.

*Place:* National Institutes of Health, Neuroscience Center, Conference Rooms C/D/E, 6001 Executive Boulevard, Rockville, MD 20852.

*Closed:* 2:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, Conference Rooms C/D/E, 6001 Executive Boulevard, Rockville, MD 20852.

*Contact Person:* Jean G. Noronha, Ph.D., Director, Division of Extramural Activities National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6147, MSC 9609, Bethesda, MD 20892-9609, 301-443-3367, [jnoronha@mail.nih.gov](mailto:jnoronha@mail.nih.gov).

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee

by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: [www.nimh.nih.gov/about/advisory-boards-and-groups/namhc/index.shtml](http://www.nimh.nih.gov/about/advisory-boards-and-groups/namhc/index.shtml), where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: January 4, 2016.

**Carolyn A. Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016-00196 Filed 1-7-16; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review: Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR 13-374: Modeling Social Behavior.

*Date:* January 25, 2016.

*Time:* 8:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at DC Convention Center, 900 10th Street NW., Washington, DC 20001.

*Contact Person:* Gabriel B Fosu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, MSC 7808, Bethesda, MD 20892, (301) 435-3562, [fosug@csr.nih.gov](mailto:fosug@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: Systems Science and Health in the Behavioral and Social Sciences.

*Date:* January 25, 2016.

*Time:* 12:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at DC Convention Center, 900 10th Street NW., Washington, DC 20001.

*Contact Person:* Gabriel B Fosu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, MSC 7808, Bethesda, MD 20892, (301) 435-3562, [fosug@csr.nih.gov](mailto:fosug@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 5, 2016.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016-00195 Filed 1-7-16; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Alcohol Abuse and Alcoholism: Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA PAR15-154 and Fellowship Applications.

*Date:* January 26, 2016.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIAAA, NIH, 5635 Fishers Lane, CR 2098, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Ranga Srinivas, Ph.D., Chief, Scientific Review Officer, Extramural Project Review Branch, National Institutes of Health, 5365 Fishers Lane, Room 2085, Rockville, MD 20852, (301) 451-2067, [srinivar@mail.nih.gov](mailto:srinivar@mail.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: January 5, 2016.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016-00194 Filed 1-7-16; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Biological Chemistry and Macromolecular Biophysics Integrated Review Group Macromolecular Structure and Function C Study Section.

*Date:* February 4-5, 2016.



*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

*Contact Person:* William A Greenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435-1726, [greenbergwa@csr.nih.gov](mailto:greenbergwa@csr.nih.gov).

*Name of Committee:* Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Clinical and Integrative Diabetes and Obesity Study Section.

*Date:* February 4–5, 2016.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

*Contact Person:* Hui Chen, MD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301-435-1044, [chenhui@csr.nih.gov](mailto:chenhui@csr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 4, 2016.

**Carolyn Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016-00106 Filed 1-7-16; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID FEMA-2013-0006]

#### Tribal Declarations Pilot Guidance

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) is accepting comments on the *Tribal Declarations Pilot Guidance*.

**DATES:** Comments must be received by April 7, 2016.

**ADDRESSES:** Comments must be identified by docket ID FEMA-2013-0006 and may be submitted by one of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Please note that this proposed policy is

not a rulemaking and the Federal Rulemaking Portal is being utilized only as a mechanism for receiving comments.

*Mail:* Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, 8NE, 500 C Street SW., Washington, DC 20472-3100.

#### FOR FURTHER INFORMATION CONTACT:

Jessica Specht, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, 202-212-2288.

#### SUPPLEMENTARY INFORMATION:

##### I. Public Participation

*Instructions:* All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice, which can be viewed by clicking on the “Privacy Notice” link in the footer of [www.regulations.gov](http://www.regulations.gov).

You may submit your comments and material by the methods specified in the **ADDRESSES** section. Please submit your comments and any supporting material by only one means to avoid the receipt and review of duplicate submissions.

*Docket:* The proposed guidance is available in docket ID FEMA-2013-0006. For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at <http://www.regulations.gov> and search for the docket ID. Submitted comments may also be inspected at FEMA, Office of Chief Counsel, 8NE, 500 C Street SW., Washington, DC 20472.

##### II. Background

The Sandy Recovery Improvement Act of 2013 amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. 5121 *et seq.* (Stafford Act), to provide federally-recognized Indian Tribal governments the option to request a Presidential emergency or major disaster declaration.<sup>1</sup> FEMA is proposing to establish a pilot program to manage declaration requests from Indian Tribal governments, and is seeking comment on its proposed *Tribal Declarations Pilot Guidance* to implement such a program.

The proposed guidance does not have the force or effect of law.

FEMA seeks comment on the proposed guidance, which is available

online at <http://www.regulations.gov> in docket ID FEMA-2013-0006. Based on the comments received, FEMA may make appropriate revisions to the proposed guidance. Although FEMA will consider any comments received in the drafting of the final policy, FEMA will not provide a response to comments document. When or if FEMA issues a final policy, FEMA will publish a notice of availability in the **Federal Register** and make the final guidance available at <http://www.regulations.gov>. The final guidance will not have the force or effect of law.

**Authority:** Pub. L. 113-2.

Dated: December 30, 2015.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2016-00173 Filed 1-7-16; 8:45 am]

**BILLING CODE 9111-23-P**

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

[Docket No. TSA-2005-21866]

#### Intent To Request Renewal From OMB of One Current Public Collection of Information: Enhanced Security Procedures at Ronald Reagan Washington National Airport

**AGENCY:** Transportation Security Administration (TSA), DHS.

**ACTION:** 60-Day notice.

**SUMMARY:** The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652-0035, abstracted below, that we will submit to the OMB for renewal in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection requires General Aviation (GA) aircraft operators who wish to fly into and out of Ronald Reagan Washington National Airport (DCA) to designate a security coordinator and adopt a DCA Access Standard Security Program (DASSP).

**DATES:** Send your comments by March 8, 2016.

**ADDRESSES:** Comments may be emailed to [TSAPRA@dhs.gov](mailto:TSAPRA@dhs.gov) or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA-11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6011.

<sup>1</sup>Public Law 113-2, § 1110.

**FOR FURTHER INFORMATION CONTACT:** Christina A. Walsh at the above address, or by telephone (571) 227-2062.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), 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. The ICR documentation is available at <http://www.reginfo.gov>. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Information Collection Requirement**

*OMB Control No. 1652-0035; Enhanced Security Procedures at Ronald Reagan Washington National Airport (DCA).* TSA is seeking approval to renew this collection of information.

TSA requires GA aircraft operators who wish to fly into and out of DCA to designate a security coordinator and adopt the DASSP. Once aircraft operators have adopted the DASSP, the operators must request a tentative slot reservation from the Federal Aviation Administration (FAA) and request authorization from TSA to fly into or out of DCA. This information is collected under OMB control number 1652-0033 TSA Airspace Waiver Program. If TSA approves the flight, TSA will transmit that information to FAA.

The DASSP application collects basic information about the applicant, the aircraft operator, and the security coordinator that the operator wishes to designate, as well as the identifier of the airport used as a base of operation and whether the operator presently complies with a TSA Standard Security Program.

TSA also requires individuals designated as security coordinators and flight crewmembers assigned to duty on a GA aircraft into and out of DCA to

submit fingerprints for a Criminal History Records Check (CHRC). In addition, GA aircraft operator must also maintain CHRC records of all employees and authorized representative for which a CHRC has been completed. These records must be made available to TSA upon request.

TSA estimates a total of 4,887 respondents annually. The total number of annual burden hours is estimated to be 5,547 hours per year.

Dated: January 4, 2016.

**Christina A. Walsh,**

*TSA Paperwork Reduction Act Officer, Office of Information Technology.*

[FR Doc. 2016-00175 Filed 1-7-16; 8:45 am]

**BILLING CODE 9110-05-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Transportation Security Administration**

**Extension of Agency Information Collection Activity Under OMB Review: Office of Law Enforcement/Federal Air Marshal Service Mental Health Certification**

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** 30-Day notice.

**SUMMARY:** This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652-0043, abstracted below to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on October 26, 2015, 80 FR 65237. The collection involves a certification form that applicants for the Federal Air Marshal positions are required to complete regarding their mental health history.

**DATES:** Send your comments by February 8, 2016. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via

electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-6974.

**FOR FURTHER INFORMATION CONTACT:** Christina A. Walsh, TSA PRA Officer, Office of Information Technology (OIT), TSA-11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6011; telephone (571) 227-2062; email [TSAPRA@dhs.gov](mailto:TSAPRA@dhs.gov).

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), 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. The ICR documentation is available at <http://www.reginfo.gov>. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Information Collection Requirement**

*Title:* Office of Law Enforcement/Federal Air Marshal Service Mental Health Certification.

*Type of Request:* Extension of a currently approved collection.

*OMB Control Number:* 1652-0043.

*Form(s):* TSA Form 1164.

*Affected Public:* Law Enforcement Officers/Air Marshal Applicants.

*Abstract:* TSA policy requires that applicants for Federal Air Marshal (FAM) positions meet certain medical standards, including whether the individual has an established medical history or clinical diagnosis of psychosis, neurosis, or any other personality or mental disorder that clearly demonstrates a potential hazard to the performance of FAM duties or the safety of self or others. Information collected would be used to assess the eligibility and suitability of FAM applicants.

*Number of Respondents:* 600.

*Estimated Annual Burden Hours: An estimated 600 hours annually.*

Dated: January 4, 2016.

**Christina A. Walsh,**

*TSA Paperwork Reduction Act Officer, Office of Information Technology.*

[FR Doc. 2016-00154 Filed 1-7-16; 8:45 am]

**BILLING CODE 9110-05-P**

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

#### Extension of Agency Information Collection Activity Under OMB Review: TSA Airspace Waiver Program

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** 30-day Notice.

**SUMMARY:** This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652-0033, abstracted below to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on September 1, 2015, 80 FR 52780. This collection of information allows TSA to conduct security threat assessments on individuals who are included in requests to operate in restricted airspace pursuant to an airspace waiver.

**DATES:** Send your comments by February 8, 2016. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-6974.

**FOR FURTHER INFORMATION CONTACT:** Christina A. Walsh, TSA PRA Officer, Office of Information Technology (OIT), TSA-11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6011; telephone (571) 227-2062; email [TSAPRA@tsa.dhs.gov](mailto:TSAPRA@tsa.dhs.gov).

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), 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. The ICR documentation is available at <http://www.reginfo.gov>. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

### Information Collection Requirement

*Title:* TSA Airspace Waiver Program.

*Type of Request:* Extension of a currently approved collection.

*OMB Control Number:* 1652-0033.

*Form(s):* N/A.

*Affected Public:* Aircraft operators, passengers, and crewmembers.

*Abstract:* The airspace waiver program allows U.S. and foreign general aviation aircraft operators to apply for approval to operate in U.S. restricted airspace, including over flying the United States and its territories. TSA collects certain information from the aircraft operator concerning the proposed flight and aircraft as well as identifying information for all pilots, crewmembers and passengers, who will be onboard the aircraft operated in restricted airspace in order to perform a security threat assessment on each individual.

*Number of Respondents:* 9,134.

*Estimated Annual Burden Hours:* An estimated 7,099 hours annually.

Dated: January 4, 2016.

**Christina A. Walsh,**

*TSA Paperwork Reduction Act Officer, Office of Information Technology.*

[FR Doc. 2016-00155 Filed 1-7-16; 8:45 am]

**BILLING CODE 9110-05-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5907-N-02]

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402-3970; TTY number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800-927-7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where

property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to: Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B-17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301)-443-2265 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AGRICULTURE: Ms. Debra Kerr, Department of Agriculture, Reporters Building, 300 7th Street SW., Room 300, Washington, DC 20024, (202)- 720-8873; COE: Mr. Scott

Whiteford, Army Corps of Engineers, Real Estate, CEMP-CR, 441 G Street NW., Washington, DC 20314; (202) 761-5542; INTERIOR: Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 3960 N. 56th Ave. #104, Hollywood, FL. 33021; (443) 223-4639 (These are not toll-free numbers).

Dated: December 30, 2015.

**Brian P. Fitzmaurice,**

*Director, Division of Community Assistance, Office of Special Needs Assistance Programs.*

**TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 01/08/2016**

**Suitable/Available Properties**

*Building*

Arkansas

2 Structures  
Blue Mountain Lake Field Office  
CESWL-OP-NB-B  
Havana AR 72842  
Landholding Agency: COE  
Property Number: 31201540004  
Status: Underutilized  
Directions: Waveland Park Vault Toilet, BLUMTN-43365, 16'x10'8" Tower Heights Park, Vault Toilet, BLUMTN-43347, 10'8"x24'

Comments: Deteriorated/decay; will require substantial repairs; contact COE for more information

2 Structures  
Blue Mountain Lake Field Office  
CESWL-OP-NB-B  
Plainview AR 72842  
Landholding Agency: COE  
Property Number: 31201540005  
Status: Underutilized  
Directions: Fish Cleaning Station with canopy, NIMROD-44953, 144 sq. ft.; Fish Cleaning Station with canopy, NIMROD-44942

Comments: Deteriorated/decay; will require substantial repairs; contact COE for more information

Louisiana

Cooler Building (29-0007-John)  
255 Turnage Rd.  
(31\*10'46.0"N92\*40'38.1"W)  
Elmer LA 71424  
Landholding Agency: Agriculture  
Property Number: 15201540005  
Status: Excess  
Comments: off-site removal only; 384 sq. ft.; storage; new roofing/siding needed; contact Agriculture for more information

Oil House Building  
(29-0003-John); 255 Turnage Rd  
(31\*10'46.0"N92\*40'38.1"W)  
Elmer LA 71424  
Landholding Agency: Agriculture  
Property Number: 15201540006  
Status: Excess  
Comments: off-site removal only; 384 sq. ft.; storage; new roofing/siding needed; contact Agriculture for more information

Pesticide Storage  
(29-0026-John); 255 Turnage Rd.  
(31\*10'46.0N92\*40'38.1"W)

Elmer LA 71424  
Landholding Agency: Agriculture  
Property Number: 15201540007  
Status: Excess  
Comments: off-site removal only; 192 sq. ft.; new roofing/siding needed; contact Agriculture for more information

Mississippi

FHA Insect Study Housing  
(20-0018-HAR); 23332 Success Rd.  
(30\*37'38"N89\*02'54"W)  
Saucier MS 39547  
Landholding Agency: Agriculture  
Property Number: 15201540008  
Status: Excess  
Comments: off-site removal only; 3,200 sq. ft.; removal difficult due to size/type; inadequately insulated; no heating source; contact Agriculture for more information

Vermont

Tract #1-205-30,  
Bartlett House; Appalachian National Scenic Trail; 563 Bartlett Brook Rd.  
Pomfret VT 05067  
Landholding Agency: Interior  
Property Number: 61201540005  
Status: Excess  
Comments: off-site removal only; 900 sq. ft.; structurally sound; boarded up; contact Interior for more information

**Unsuitable Properties**

*Building*

California

Vogelsang Backpacker's Camp  
Composting Toilet  
Yosemite National Park  
Yosemite CA 95389  
Landholding Agency: Interior  
Property Number: 61201540007  
Status: Unutilized  
Directions: The Vogelsang High Sierra Camp is a 7 mile hike from Tuolumne Meadows near Tioga Pass CA State Rte. 120  
Comments: Documented deficiencies: Severe rodent infestation and transmission of the hantavirus is significantly probable; clear threat to physical safety  
Reasons: Extensive deterioration

Emergency Services Shed  
Yosemite National Park  
9034 Village Dr.  
Yosemite Valley CA 95389  
Landholding Agency: Interior  
Property Number: 61201540008  
Status: Excess  
Comments: Documented deficiencies: Significant rot to the foundation posts and framing; clear threat to physical safety  
Reasons: Extensive deterioration

Minnesota

Marshland Visitor Center  
Saint Croix National Scenic Riverway; 15975 State Highway 70  
Pine City MN 55063  
Landholding Agency: Interior  
Property Number: 61201540009  
Status: Unutilized  
Comments: Documented deficiencies: Severe rodent infestation and transmission of hantavirus is probable; clear threat to physical safety  
Reasons: Extensive deterioration

Vermont  
 4 Buildings  
 Appalachian National Scenic Trail  
 563 Bartlett Brook Rd.  
 Pomfret VT 05067  
 Landholding Agency: Interior  
 Property Number: 61201540006  
 Status: Excess  
 Directions: Bartlett Barn, Bartlett Calf House,  
 Milkhouse, Bartlett Sugarhouse  
 Comments: Documented deficiencies:  
 Structurally unsound; extremely  
 dilapidated conditions; clear threat to  
 physical safety  
 Reasons: Extensive deterioration  
 [FR Doc. 2015-33189 Filed 1-7-16; 8:45 am]  
**BILLING CODE 4210-67-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R5-R-2015-N216; BAC-4333-99]

#### Chincoteague National Wildlife Refuge and Wallops Island National Wildlife Refuge, Accomack County, VA; Record of Decision for Final Environmental Impact Statement

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; final comprehensive conservation plan and record of decision.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of the final comprehensive conservation plan (CCP) and record of decision (ROD) for Chincoteague National Wildlife Refuge (NWR) and Wallops Island NWR. We prepared this ROD pursuant to the National Environmental Policy Act of 1969 (NEPA) and its implementing regulations. The Service is furnishing this notice to advise the public and other agencies of our decision and of the availability of the ROD.

**DATES:** The ROD was signed on November 6, 2015.

**ADDRESSES:** You may view or obtain copies of the final CCP and ROD by any of the following methods.

*Agency Web site:* Download a copy of the document at [http://www.fws.gov/refuge/Chincoteague/what\\_we\\_do/conservation.html](http://www.fws.gov/refuge/Chincoteague/what_we_do/conservation.html).

*Email:* Send requests to [northeastplanning@fws.gov](mailto:northeastplanning@fws.gov). Include "Chincoteague NWR" in the subject line of your email.

*U.S. Mail:* Thomas Bonetti, Natural Resource Planner, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035.

*In-Person Viewing or Pickup:* Visit during regular business hours at refuge

headquarters, 8231 Beach Road, Chincoteague Island, VA 23336.

**FOR FURTHER INFORMATION CONTACT:** Thomas Bonetti, Natural Resource Planner, 413-253-8307 (phone); [northeastplanning@fws.gov](mailto:northeastplanning@fws.gov) (email).

#### SUPPLEMENTARY INFORMATION:

##### Introduction

With this notice, we finalize the CCP process for Chincoteague NWR and Wallops Island NWR. We began this process through a notice of intent in the **Federal Register** (75 FR 57056) on September 17, 2010. For more about the initial process and the history of the refuges, see that notice. On May 15, 2014, we announced the release of the draft CCP/Environmental Impact Statement (EIS) to the public and requested comments in a notice of availability in the **Federal Register** (79 FR 27906). We subsequently extended the public comment period in another notice in the **Federal Register** (79 FR 41300) on July 15, 2014. We released the final CCP/EIS for public review on September 11, 2015 (80 FR 54799).

In the draft and final CCP/EIS, we evaluated three alternatives for managing the refuge and completed a thorough analysis of the environmental, social, and economic considerations of each alternative. Based on comments received on the draft CCP/EIS, we made minor modifications to alternative B, the Service's preferred alternative in the final CCP/EIS. During the public review period for the final CCP/EIS, we did not receive any comments that raised significant new issues, resulted in changes to our analysis, or warranted any further changes to alternative B.

In accordance with NEPA (40 CFR 1506.6(b)) requirements, this notice announces our decision to select alternative B for implementation and the availability of the ROD and final CCP for Chincoteague NWR and Wallops Island NWR. The final CCP will guide our management and administration of the refuges over the next 15 years.

##### Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each NWR. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and goals and contributing to the mission of the National Wildlife Refuge System (Refuge System). CCPs should be

consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies, as well as respond to key issues and public concerns. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years, in accordance with the Refuge Administration Act.

##### CCP Alternatives

During the scoping phase of the planning process, we identified issues and concerns based on input from the public, State or Federal agencies, other Service programs, and our planning team. We developed refuge management alternatives to address issues; help achieve refuge goals, objectives, and purposes; and support the Refuge System mission. Our draft CCP/EIS (79 FR 27906) and final CCP/EIS (80 FR 54799) fully analyze three alternatives for the future management of the refuge: (1) Alternative A, Current Management; (2) Alternative B, Balanced Approach; and (3) Alternative C, Reduced Disturbance. Alternative A satisfies the NEPA requirement of a "No Action" alternative. Both the draft and final plans identify alternative B as the Service-preferred alternative. Please refer to the final CCP/EIS for more details on each of the alternatives.

##### Basis for Selected Alternative

Our decision is to adopt alternative B, as described in the final CCP. We provide a brief summary of our decision below. For the full basis of our decision, please see the ROD (see **ADDRESSES**).

The decision to adopt alternative B for implementation was made after considering the follow factors: (1) The impacts identified in Chapter 4, Environmental Consequences, of the draft and final CCP/EIS; (2) The results of public and agency comments; (3) How well the alternative achieves the stated purpose and need for a CCP and the seven goals presented in the final CCP/EIS chapter 1; (4) How well the alternative addresses the relevant issues, concerns, and opportunities identified in the planning process; and (5) Other relevant factors, including fulfilling the purposes for which the refuge was established, contributing to the mission and goals of the Refuge System, and statutory and regulatory guidance.

Compared to the other two alternatives, alternative B includes the

suite of actions that best meet the factors above using the most balanced and integrated approach, and with due consideration for both the biological and human environment. Alternative B will best fulfill the CCP's biological goals, by managing for particular Federal trust species and habitats that are of regional conservation concern. It clearly defines which Federal trust species and habitat will be a management priority in both uplands and wetlands, and details specific objectives and strategies for their management. The refuge's establishment purposes emphasize the conservation of migratory birds; thus, protecting the biological integrity, diversity, and environmental health of Chincoteague NWR and its habitat and wildlife, particularly migratory birds, is paramount.

In summary, we selected alternative B for implementation because it best meets the factors identified above when compared to alternatives A and C. Alternative B provides the greatest number of opportunities for Chincoteague NWR and Wallops Island NWR to contribute to the conservation of fish, wildlife, and habitat in the Region, will increase the capacity of the refuges to meet their purposes and contribute to the Refuge System mission, and will provide the means to better respond to changing ecological conditions within the surrounding environment.

#### Public Availability of Documents

You can view or obtain the final CCP and ROD as indicated under **ADDRESSES**.

Dated: December 9, 2015.

**Wendi Weber,**

*Regional Director, Northeast Region, U.S. Fish and Wildlife Service.*

[FR Doc. 2016-00176 Filed 1-7-16; 8:45 am]

**BILLING CODE 4333-15-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

[156A2100DD/AAKC001030/  
A0A501010.999900 253G]

#### Proclaiming Certain Lands as Reservation for the Mashpee Wampanoag

**AGENCY:** Bureau of Indian Affairs.

**ACTION:** Notice of Reservation Proclamation.

**SUMMARY:** This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 321.34 acres, more or less, as the initial reservation of the Mashpee Wampanoag Tribe on December 30, 2015.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, MS-4642-MIB, 1849 C Street NW., Washington, DC 20240, at (202) 208-3615.

**SUPPLEMENTARY INFORMATION:** This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 467) for the lands described below. The land was proclaimed to be the Mashpee Wampanoag Reservation of the Mashpee Wampanoag Tribe. The approximate acreages described below are those identified in Attachment I of the Record of Decision signed by the Assistant Secretary—Indian Affairs on September 18, 2015.

#### Parcel 1—213 Sampsons Mill Road (Assessor's Parcel 63-10-0-R)

Description of land in the Commonwealth of Massachusetts, County of Barnstable, Town of Mashpee on the east side of Quippish Road, and the south side of Sampsons Mill Road more particularly shown as Lot 6 on a plan entitled "Plan of Land in Mashpee, Mass. Jill Slaymaker in Mashpee, Ma. Scale 1" = 100', Date March 22, 1985" prepared by Edward E. Kelley Reg. Land Surveyor and recorded in Barnstable County Registry of Deeds, Plan Book 401 Page 97. Bounded and described as follows:

Beginning at a concrete bound at the intersection of Quippish Road and Linwood Street and the southwesterly corner of the parcel herein described;

Thence N 01°28'19" W along the easterly sideline of Quippish Road a distance of 258.98 feet to a concrete bound;

Thence N 14°02'10" W along the easterly sideline of Quippish Road on a distance of 209.57 feet to a concrete bound;

Thence N 20°57'57" W along the easterly sideline of Quippish Road a distance of 266.53 feet to a point near a concrete bound disturbed at the land now or formerly of Willowbend Community Trust;

Thence N 68°19'49" E along land now or formerly of Willowbend Community Trust a distance of 335.86 feet to a concrete bound;

Thence N 18°23'09" W along land now or formerly of Willowbend Community Trust a distance of 391.81 feet to a concrete bound at the easterly sideline of Quippish Road;

Thence N 18°23'09" W along the easterly sideline of Quippish Road a

distance of 355.84 feet to a mag nail set at the southerly sideline of Sampsons Mill Road;

Thence S 70°51'50" E along the southerly sideline of Sampsons Mill Road a distance of 528.32 feet to a concrete bound at the point of curvature;

Thence easterly along the southerly sideline of Sampsons Mill Road a curve to the left having a radius of 191.36 feet, an arc distance of 132.25 feet, a chord bearing N 89°20'15" E and a chord length of 129.63 feet to point of tangency;

Thence N 69°32'13" E along the southerly sideline of Sampsons Mill Road a distance of 195.68 feet to a point of curvature;

Thence easterly along the southerly sideline of Sampsons Mill Road a curve to the right having a radius of 171.59 feet, an arc distance of 120.46 feet, a chord bearing N 89°38'54" E and a chord length of 118.00 feet to point of tangency;

Thence S 70°14'27" E along the southerly sideline of Sampsons Mill Road a distance of 114.00 feet to the medial line of the Santuit River;

Thence numerous courses along the medial line of Santuit River;

Thence S 26°12'29" W along the medial line of the Santuit River a distance of 21.27 feet to a point;

Thence S 06°37'27" E along the medial line of the Santuit River a distance of 98.31 feet to a point;

Thence S 49°39'30" W along the medial line of the Santuit River a distance of 40.85 feet to a point;

Thence S 38°48'36" W along the medial line of the Santuit River a distance of 43.45 feet to point;

Thence S 30°48'45" E along the medial line of the Santuit River a distance of 27.64 feet to a point;

Thence S 53°29'40" E along the medial line of the Santuit River a distance of 31.73 feet to a point;

Thence S 29°39'25" E along the medial line of the Santuit River a distance of 73.97 feet to a point;

Thence S 05°07'08" W along the medial line of the Santuit River a distance of 81.61 feet to a point;

Thence S 19°19'45" W along the medial line of the Santuit River a distance of 55.78 feet to a point;

Thence S 14°31'54" E along the medial line of the Santuit River a distance of 146.35 feet to a point;

Thence S 27°27'03" E along the medial line of the Santuit River a distance of 94.14 feet to a point;

Thence S 51°23'03" E along the medial line of the Santuit River a distance of 56.47 feet to a point;

Thence S 08°58'54" E along the medial line of the Santuit River a distance of 48.95 feet to a point;

Thence S 01°59'19" E along the medial line of the Santuit River a distance of 49.82 feet to a point;

Thence S 20°26'08" E along the medial line of the Santuit River a distance of 34.79 feet to a point;

Thence S 07°02'20" E along the medial line of the Santuit River a distance of 34.79 feet to a point;

Thence S 11°59'37" W along the medial line of the Santuit River a distance of 65.43 feet to a point;

Thence S 56°08'09" W along the medial line of the Santuit River a distance of 88.60 feet to a point;

Thence S 13°17'42" W along the medial line of the Santuit River a distance of 102.68 feet to a point;

Thence S 49°39'30" W along the medial line of the Santuit River a distance of 18.15 feet to a point;

Thence S 02°26'46"

Thence S 30°57'53" E along the medial line of the Santuit River a distance of 33.53 feet to a point at the land now or formerly of the Town of Mashpee Conservation Commission;

Thence S 75°43'36" W along land now or formerly of the Town of Mashpee Conservation Commission a distance of 314.40 feet to a concrete bound;

Thence S 75°43'36" W along land now or formerly of the Town of Mashpee Conservation Commission and along an undeveloped way know as Linwood Street, all being land of the Town of Mashpee Conservation Commission, a distance of 300.03 feet to a concrete bound at the sideline of Linwood Street;

Thence S 75°43'36" W along the northerly sideline of Linwood Street a distance of 417.21 feet to a concrete bound at the easterly sideline of Quippish Road, being the Point of Beginning.

The above parcel contains 29.92 +/- acres.

For Grantor's title see deed dated February 7, 2013 from Maushop L.L.C. and recorded in the Barnstable Registry of Deeds in Book 27116, Page 35.

**Parcel 2—17 Mizzenmast (Assessor's Parcel 125-238-0-E)**

Description of land in the Commonwealth of Massachusetts, County of Barnstable, Town of Mashpee, on the east side of Mizzenmast more particularly shown as shown as Lot 80 Land Court Plan 35464-b (Sheet 7) filed in Land Registration Office, Barnstable County Registry of Deeds with a Certificate of Title Number 165381 bounded and described as follows:

Beginning at a concrete bound at the southwesterly corner of the parcel

herein described and the land now or formerly of new Seabury Properties, LLC;

Thence N 09°08'29" E along land now or formerly of new Seabury Properties, LLC a distance of 57.00 feet to a bound at the land now or formerly of Paul;

Thence N 59°24'39" E along land now or formerly of Paul a distance of 188.63 feet to a concrete bound at the easterly sideline of Mizzenmast;

Thence southerly along the easterly sideline of Mizzenmast a curve to the right, having a radius of 547.59 feet, an arc distance of 118.00 feet, with a chord bearing S 8°45'36" E and a chord length of 117.77 feet to a concrete bound at the land now or formerly of Garber;

Thence S 79°16'28" W along land now or formerly of Garber a distance of 192.74 feet to the Point of Beginning.

The above described parcel contains 15,727 +/- s.f. or 0.3610 +/- acres.

**Parcel 3—56 Uncle Percy's Road (Assessor's Parcel 117-173-0-R)**

Description of land in the Commonwealth of Massachusetts, County of Barnstable, Town of Mashpee, on the south side of Uncle Percy's Road more particularly shown as Lot 15 (Block 10) Land Court Plan 11408-I filed in Land Registration Office, Barnstable County Registry of Deeds with a Certificate of Title Number 157612. Bounded and described as follows:

Beginning at a concrete bound along the southerly sideline of Uncle Percy's Road at the westerly corner of the parcel herein described and at the land now or formerly of Tucchio;

Thence N 45°15'00" E along the southerly sideline of Uncle Percy's Road a distance 65.00 feet to a concrete bound at the land now or formerly of Mainberger, Trustee;

Thence S 44°45'00" E along land now or formerly of Mainberger, Trustee a distance of 100.00 feet to a concrete bound at the land now or formerly of Romanski;

Thence S 45°15'00" W along land now or formerly of Romanski and Brossi a distance of 65.00 feet to a point at the land now or formerly of Tucchio;

Thence N 44°45'00" W along land now or formerly of Tucchio a distance of 100.00 feet to the southerly sideline of Uncle Percy's Road and the Point of Beginning.

The above described parcel contains 6,500 s.f. or 0.1492 +/- acres.

**Parcel 4—Great Neck Road South (Assessor's Parcel 99-38-0-R)**

Description of land in the Commonwealth of Massachusetts, County of Barnstable, Town of Mashpee

on the west side of Great Neck Road South more particularly shown on a plan entitled "Plan of Land in Mashpee, Mass. Prepared for Duck Pond Limited Partnership. Scale 1" = 50', dated February 13, 2007" prepared by Holmes and McGrath, Inc. and recorded in Barnstable County Registry of Deeds, Plan Book 618 Page 13. Bounded and described as follows:

Beginning at a concrete bound at the northeasterly corner of the parcel herein described and at the land now or formerly of the Mashpee Wampanoag Tribal Council, Inc.;

Thence S 70°00'00" E along the land now or formerly of the Mashpee Wampanoag Tribal Council, Inc. A distance of 180.00 feet to a point;

Thence S 24°54'00" E along the land now or formerly of the Mashpee Wampanoag Tribal Council, Inc. A distance of 93.07 feet to a point;

Thence S 01°00'00" W along the land now or formerly of the Mashpee Wampanoag Tribal Council, Inc. A distance of 75.00 feet to a concrete bound;

Thence S 13°55'00" W along the land now or formerly of the Mashpee Wampanoag Tribal Council, Inc. A distance of 190.01 feet to a point at the land now or formerly of Mashpee Commons LP;

Thence N 84°57'25" W along the land now or formerly of Mashpee Commons LP a distance of 282.36 feet to a concrete bound;

Thence N 84°57'25" W along the land now or formerly of Mashpee Commons LP a distance of 500.11 feet to a concrete bound;

Thence N 84°57'25" W along the land now or formerly of Mashpee Commons LP a distance of 244.03 feet to a point near a concrete bound at land now or formerly of the Mashpee Wampanoag Tribal Council, Inc.;

Thence N 14°32'19" E along the land now or formerly of the Mashpee Wampanoag Tribal Council, Inc.; a distance of 395.00 feet to a concrete bound;

Thence S 84°57'43" E along the land now or formerly of the Mashpee Wampanoag Tribal Council, Inc. a distance of 765.00 feet to a concrete bound being the Point of Beginning.

The above parcel contains 8.88 +/- acres

For Grantor's title see deed dated June 12, 2007 from Duck Pond Limited Partnership and recorded in the Barnstable Registry of Deeds in Book 22104, Page 110.

**Parcel 5—483 Great Neck Road South (Assessor's Parcel 95-7-0-R)**

Description of land in the Commonwealth of Massachusetts, County of Barnstable, Town of Mashpee on the west side of Great Neck Road South more particularly shown on a plan entitled "Plan of Land in Mashpee, Mass. Prepared for the Mashpee Wampanoag Indian Tribal Council, Inc. Scale 1" = 100', dated June 6/3/15" prepared by Cape & Islands Engineering, Inc. To be recorded in Barnstable County Registry of Deeds; bounded and described as follows:

Beginning at a Mashpee road bound along the westerly sideline of Great Neck Road South;

Thence S 19°26'15" W along the westerly sideline of Great Neck Road South a distance of 220.76 feet to a point of curvature near a disturbed concrete bound;

Thence southerly along the westerly sideline of Great Neck Road South a curve to the left having a radius of 4055.79 feet, an arc distance of 249.01 feet, a chord bearing S 17°40'43" W and a chord length of 248.97 feet to a point at the land now or formerly of Mashpee Commons LP;

Thence N 84°57'25" W along land now or formerly Mashpee Commons LP a distance of 265.00 feet to a point at land now or formerly of the Mashpee Wampanoag Tribal Council;

Thence N 13°55'00" E along land now or formerly of the Mashpee Wampanoag Tribal Council, Inc. a distance of 190.01 feet to a concrete bound;

Thence N 01°00'00" E along land now or formerly of the Mashpee Wampanoag Tribal Council, Inc. a distance of 75.00 feet to a point;

Thence N 24°54'00" W along land now or formerly of the Mashpee Wampanoag Tribal Council, Inc. a distance of 93.07 feet to a point;

Thence N 70°00'00" W along land now or formerly of the Mashpee Wampanoag Tribal Council, Inc. a distance of 180.00 feet to a concrete bound;

Thence N 84°57'43" W along land now or formerly of the Mashpee Wampanoag Tribal Council, Inc. a distance of 765.00 feet to a concrete bound;

Thence S 14°32'19" W along land now or formerly of the Mashpee Wampanoag Tribal Council, Inc. a distance of 395.00 feet to a point near a concrete bound at the land now or formerly of Mashpee Commons LP;

Thence N 84°57'25" W along land now or formerly of the Mashpee Commons LP a distance of 256.07 feet to a broken concrete bound;

Thence N 84°57'25" W along land now or formerly of the Mashpee Commons LP a distance of 499.97 feet to a concrete bound;

Thence N 84°57'25" W along land now or formerly of the Mashpee Commons LP a distance of 500.00 feet to a concrete bound at the northerly sideline of Holland Mill Road;

Thence N 6°32'16" E along Holland Mill Road so called a distance of 8.04 feet to a point;

Thence N 58°32'13" W along the northerly sideline of Holland Mill Road a distance of 342.16 feet to a concrete bound;

Thence N 75°30'32" W along the northerly sideline of Holland Mill Road a distance of 95.19 feet to a concrete bound;

Thence N 83°41'49" W along the northerly sideline of Holland Mill Road a distance of 90.76 feet to a concrete bound online and thence continuing 12.90 feet to a point at the easterly sideline of Great Hay Road;

Thence N 10°25'26" E along the easterly sideline of Great Hay Road a distance of 96.00 feet to a point;

Thence N 12°38'07" E along the easterly sideline of Great Hay Road a distance of 149.30 feet to a point;

Thence N 10°23'37" E along the easterly sideline of Great Hay Road a distance of 98.12 feet to a point of curvature;

Thence northerly along the easterly sideline of Great Hay Road a curve to the left having a radius of 412.75 feet, an arc distance of 98.07 feet, a chord bearing N 3°53'22" E and a chord length of 97.84 feet to a point of tangency;

Thence N 2°55'03" W along the easterly sideline of Great Hay Road a distance of 125.15 feet to a point;

Thence N 0°35'42" E along the easterly sideline of Great Hay Road a distance of 49.42 feet to a point of curvature;

Thence northerly along the easterly sideline of Great Hay Road a curve to the left having a radius of 404.20 feet, an arc distance of 208.01 feet, a chord bearing N 14°08'53" W and a chord length of 205.72 feet to a point of tangency;

Thence N 28°53'28" W along the easterly sideline of Great Hay Road a distance of 49.10 feet to a point at the land now or formerly (n/f) of the Town of Mashpee Conservation Commission;

Thence S 82°18'33" E along land n/f of the Town of Mashpee Conservation Commission a distance of 10.11 feet to a broken concrete bound;

Thence S 82°18'33" E along land n/f of the Town of Mashpee Conservation Commission a distance of 1216.01 feet to a broken concrete bound;

Thence S 82°18'33" E along land n/f of the Town of Mashpee Conservation Commission a distance of 352.06 feet to a concrete bound;

Thence S 82°18'33" E along land n/f of the Town of Mashpee Conservation Commission a distance of 125.83 feet to a concrete bound;

Thence S 82°18'33" E along land n/f of the Town of Mashpee Conservation Commission a distance of 484.05 feet to a concrete bound;

Thence S 82°18'33" E along land n/f of the Town of Mashpee Conservation Commission a distance of 405.76 feet to a concrete bound;

Thence S 82°18'33" E along land n/f of the Town of Mashpee Conservation Commission a distance of 500.19 feet to a concrete bound;

Thence S 82°18'33" E along land now or formerly of the Town of Mashpee Conservation Commission a distance of 159.99 feet to a point near a concrete bound at the westerly sideline of Great Neck Road South;

Thence S 04°15'00" E along the westerly sideline of Great Neck Road South a distance of 43.97 feet to a point of curvature;

Thence southerly along the westerly sideline of Great Neck Road South a curve to the right having a radius of 914.51 feet, an arc distance of 378.08 feet, a chord bearing S 7°35'38" W and a chord length of 375.39 feet to a Mashpee Road bound being the Point of Beginning

The above parcel contains 57.94 +/- acres

**Parcel 6—414 Main Street (Assessor's Parcel 35-30-0-R)**

Description of land in the Commonwealth of Massachusetts, County of Barnstable, Town of Mashpee on the south side of Main Street more particularly shown as shown as parcel 35 30 0 on the Town of Mashpee Assessors Maps, and is shown as parcel labeled Town of Mashpee on a plan entitled "Plan of Land in Mashpee, Mass. As surveyed for Bonnie MacCarthy, Scale 1 in. = 40 ft., May 11, 1973, Nickerson & Berger, Inc. Engineers," recorded with the Barnstable County Registry of Deeds at Plan Book 273, Page 2. Bounded and described as follows:

Beginning on the southerly sideline of Main Street at a concrete bound at the northwesterly corner of the parcel herein described and at the land now or formerly of the Commonwealth of Massachusetts;

Thence S 74°26'15" E by said Main Street a distance of 230.95 feet to a point on the westerly bank of the Mashpee River;



Thence S 11°57'41" W along the westerly bank of the Mashpee River a distance of 20.35 feet to a point;

Thence S 11°35'07" W along the westerly bank of the Mashpee River a distance of 18.16 feet to a point;

Thence N 79°14'07" W along the westerly bank of the Mashpee River a distance of 3.28 feet to a point;

Thence S 06°00'37" W along the westerly bank of the Mashpee River a distance of 34.71 feet to a point;

Thence S 04°19'12" W along the westerly bank of the Mashpee River a distance of 39.78 feet to a point;

Thence S 56°36'27" W along the westerly bank of the Mashpee River a distance of 3.97 feet to a point;

Thence S 16°22'26" E along the westerly bank of the Mashpee River a distance of 19.51 feet to a point;

Thence S 01°45'28" E along the westerly bank of the Mashpee River a distance of 10.40 feet to a point at the land now or formerly of the

Commonwealth of Massachusetts;

Thence N 65°57'45" W along land now or formerly of the Commonwealth of Massachusetts a distance of 40.08 feet to a concrete bound;

Thence N 65°57'45" W along land now or formerly of the Commonwealth of Massachusetts a distance of 234.92 feet to a concrete bound;

Thence N 25°22'55" E along land now or formerly of the Commonwealth of Massachusetts a distance of 102.38 feet to the southerly sideline of Main Street and the Point of Beginning.

The above described parcel contains 29,708 +/- s.f. or 0.6820 +/- acres.

**Parcel 7—41 Hollow Road (Assessor's Parcel 45—73—A—R)**

That certain parcel of land together with the buildings thereon located on the southerly side of Hollow Road in Mashpee, Barnstable County, Massachusetts, now known and numbered as 41 Hollow Road, described as follows:

Beginning at a Point (P.O.B. "A") at the southerly side of Hollow Road and the easterly side of Goodspeed's Meeting House Road. Said Point (P.O.B. "A") lies N 54°53'10" E a distance of 39.89 feet from a concrete bound with a drill hole found, thence:

By the southerly line of Hollow Road S 54°11'06" E a distance of 160.52 feet to a point, thence;

By the southerly line of Hollow Road S 58°08'17" E a distance of 267.94 feet to a concrete bound with a drill hole set at land of Mashpee Water District, thence;

By land of Mashpee Water District along a non-tangent curve to the left, having a radius of 400.00 feet, an arc

length of 1758.49 feet, and whose long chord bears S 78°30'33" E a distance of 647.68 feet to a concrete bound with a drill hole set in the southerly line of Hollow Road, thence;

By the southerly line of Hollow Road along a curve to the right, having a radius of 230.06 feet, an arc length of 207.20 feet, and whose long chord bears S 67°36'33" E a distance of 200.27 feet to a point, thence;

By the southerly line of Hollow Road S 41°48'27" E a distance of 14.34 feet to a concrete bound with a drill hole set at land of Town of Mashpee Conservation Commission, thence;

By land of Town of Mashpee Conservation Commission S 18°18'01" W a distance of 665.60 feet to a concrete bound with a drill hole set at land of Mashpee Old Indian Meeting House Authority, Inc., thence;

By land of Mashpee Old Indian Meeting House Authority, Inc. S 72°07'25" W a distance of 411.20 feet to a point, thence;

By land of Mashpee Old Indian Meeting House Authority, Inc. N 73°07'23" W a distance of 301.99 feet to a point, thence;

By land of Mashpee Old Indian Meeting House Authority, Inc. N 18°56'33" W a distance of 614.52 feet to a point, thence;

By land of Mashpee Old Indian Meeting House Authority, Inc. N 68°19'57" W a distance of 287.36 feet to a point in the easterly line of Goodspeed's Meetinghouse Road, thence;

By the easterly line of Goodspeed's Meetinghouse Road N 17°54'20" E a distance of 217.36 feet to a point, thence;

By the easterly line of Goodspeed's Meetinghouse Road N 24°06'17" E a distance of 249.44 feet to the Point of Beginning.

Parcel 73A contains 10.81 +/- acres.

**Parcel 8—410 Meetinghouse Road (Assessor's Parcel 61—58a—0—R)**

Description of land in the Commonwealth of Massachusetts, County of Barnstable, Town of Mashpee on the east side of Meetinghouse Road more particularly shown as Parcel 58A on a plan entitled "Plan of Land Prepared For Old Indian Meeting House Authority, Inc. Scale 1" = 10', date March 29, 2007" prepared by Holmes and McGrath Inc. and recorded in Barnstable County Registry of Deeds, Plan Book 625 page 8. Bounded and described as follows:

Beginning at a concrete bound with nail located along the easterly sideline of Meetinghouse Road at the northeasterly corner of the parcel herein

described and at the land now or formerly of the Mashpee Wampanoag Tribal Council Inc.;

Thence S 5°22'15" W along the easterly sideline of Meetinghouse Road a distance of 10.17 feet to a concrete bound with disk located on the easterly sideline of Meeting House Road;

Thence easterly along the sideline of Meetinghouse Road on a curve to the left having a radius of 996.84 feet, an arc distance of 59.85 feet, a chord bearing S 3°39'02" W and a chord length of 59.84 feet to a point located at the southwest corner of the parcel herein described;

Thence S 73°12'45" E along land now or formerly of Mashpee Wampanoag Tribal Council Inc. A distance of 86.92 feet to a point;

Thence N 13°42'06" E along land now or formerly of Mashpee Wampanoag Tribal Council Inc. A distance of 70.00 feet to a point marked by a concrete bound with a nail;

Thence N 74°10'05" W along land now or formerly of Mashpee Wampanoag Tribal Council Inc. A distance of 98.78 feet to a point marked by a concrete bound with a nail at the easterly sideline of Meetinghouse Road, being the Point of Beginning;

The above parcel contains 6,447 +/- s.f. or 0.1480 +/- acres.

For grantor's title see deed dated April 28, 2008 from the Town of Mashpee, acting by and through its Board of Selectmen, and recorded in the Barnstable Registry of Deeds in Book 22867, Page 31.

**Parcel 9—414 Meetinghouse Road (Assessor's Parcel 68—13a—0—E)**

Description of land in the Commonwealth of Massachusetts, County of Barnstable, Town of Mashpee on the west side of Falmouth Road, and the east side of Meetinghouse Road more particularly shown as Parcel 13B on a plan entitled "Plan of Land Prepared For Mashpee Wampanoag Tribe in Mashpee, MA. Scale 1" = 80', date May 16, 2008" prepared by Holmes and McGrath Inc. and recorded in Barnstable County Registry of Deeds, Plan Book 626 Page 4. Bounded and described as follows:

Beginning near a concrete bound along the westerly sideline of Falmouth Road at the southeasterly corner of the parcel herein described and at the land now or formerly of the Town of Mashpee;

Thence N 64°23'33" W along land now or formerly of the Town of Mashpee a distance of 375.00 feet to a concrete bound on the easterly sideline of Meeting House Road;

Thence easterly along the sideline of Meetinghouse Road on a curve to the right having a radius of 996.84 feet, an arc distance of 158.50 feet, a chord bearing N 2°37'29" W and a chord length of 158.33 feet to a point;

Thence S 73°12'45" E along land now or formerly of Mashpee Wampanoag Tribal Council Inc. A distance of 86.92 feet to a point;

Thence N 13°42'06" E along land now or formerly of Mashpee Wampanoag Tribal Council Inc. A distance of 70.00 feet to a point marked by a concrete bound with a nail;

Thence N 74°10'05" W along land now or formerly of Mashpee Wampanoag Tribal Council Inc. a distance of 98.78 feet to a point marked by a concrete bound with a nail at the easterly sideline of Meetinghouse Road,

Thence N 05°22'15" E along the easterly sideline of Meetinghouse Road a distance of 186.63 feet to the a point of curvature;

Thence along the easterly sideline of Meetinghouse Road a curve to the left having a radius of 1050.00 feet, an arc distance of 233.86 feet, a chord bearing N 1°00'35" W and a chord length of 233.38 feet to a concrete bound at the land now or formerly of the Town of Mashpee;

Thence N 73°02'52" E along land of now or formerly Town of Mashpee a distance of 720.70 feet to a point marked by a concrete bound at the land now or formerly of Nancy D. Ellison and at the land of now or formerly of Scott Greenwood;

Thence S 11°40'13" E along lands of now or formerly of Greenwood, of Ainsworth and of Draggoo a distance of 381.13 feet to a rod with cap at the centerline of the way and at the land now or formerly Michael G. Miller;

Thence S 60°17'07" W along land now or formerly of Miller a distance 44.94 feet to a rod with cap;

Thence S 50°37'58" W along land now or formerly of Miller a distance of 44.45 feet to a rod with cap;

Thence S 43°49'11" W along land now or formerly of Miller a distance of 56.00 feet to a rod with cap;

Thence S 41°13'45" W along land now or formerly of Miller a distance of 44.85 feet to a rod with cap;

Thence S 38°24'16" W along land now or formerly of Miller a distance of 56.58 feet to a rod with cap;

Thence S 23°27'46" W along land now or formerly of Miller a distance of 113.79 feet to a rod with cap at the westerly sideline of Falmouth Road;

Thence westerly along the sideline of Falmouth Road a curve to the left, radius of 2030.00 feet, an arc distance of 329.65 feet, a chord bearing S 31°18'19"

W and a chord length of 329.29 feet to a concrete bound at a point of tangency;

Thence S 26°39'12" W along the westerly sideline of Falmouth Road a distance of 102.33 feet to the Point of Beginning.

The above parcel contains 501,486 +/- s.f. or 11.5125 +/- acres.

For Grantor's title see deed dated May 19, 2008 from the Town of Mashpee, acting by and through its Board of Selectmen, and recorded in the Barnstable Registry of Deeds in Book 23010, Page 37.

**Parcel 10—431 Main Street (Assessor's Parcel 27-42-0-R)**

Description of the land in the Commonwealth of Massachusetts, County of Barnstable, Town of Mashpee, on the northerly side of Main Street more particularly shown as parcel 27 42 0 on the Town of Mashpee Assessors Maps, bounded and described as follows:

Beginning at a broken concrete bound on the northerly sideline of Main Street at the southwesterly corner of the parcel herein described and at the land now or formerly of Mauro;

Thence N 20°15'55" E along land now or formerly of Mauro & Aselbekian a distance of 150.00 feet to a rod with a cap at the land now or formerly of Mashpee Shores Realty Trust;

Thence N 20°15'55" E along land now or formerly of Mashpee Shores Realty Trust a distance of 207.89 feet to a point at the land now or formerly of Wolf;

Thence N 20°15'55" E along land now or formerly of Wolf a distance of 70.00 feet to a concrete bound at the land now or formerly of Bortolotti;

Thence S 76°03'10" E along land now or formerly of Bortolotti a distance of 264.65 feet to a concrete bound at the land now or formerly of Peters;

Thence S 29°16'14" W along land of now or formerly of Peters a distance of 477.51 feet to a concrete bound at the northerly sideline of Main Street;

Thence westerly along the northerly sideline of Main Street, on a curve to the right having a radius of 594.62 feet, an arc distance of 189.67 feet with a chord bearing N 65°17'58" W and a chord length of 188.87 feet, to a broken concrete bound being the Point of Beginning.

Above described parcel contains 102,177 s.f. or 2.3456 +/- acres.

For Grantor's title see deed dated April 28, 2008 from the Town of Mashpee, acting by and through its Board of Selectmen, and recorded in the Barnstable Registry of Deeds in Book 22867, Page 26.

**Parcel 11—184 Meetinghouse Road (Assessor's Parcel 45-75-0-R)**

That certain parcel of land together with the buildings thereon located on the easterly side of Meetinghouse Road in Mashpee, Barnstable County, Massachusetts, now known and numbered as #184 Meetinghouse Road, described as follows:

Beginning at a point (P.O.B. "B") at the easterly side of Goodspeed's Meetinghouse Road and the easterly side of Meetinghouse Road. Said point (P.O.B. "B") lies S 06°34'23" E a distance of 64.36 feet from a concrete bound with a drill hole found, thence:

By the easterly line of Goodspeed's Meetinghouse Road N 7°50'42" E a distance of 157.70 feet to a point, thence;

By the easterly line of Goodspeed's Meetinghouse Road N 22°53'12" E a distance of 196.84 feet to a point, thence;

By the easterly line of Goodspeed's Meetinghouse Road N 29°49'31" E a distance of 257.97 feet to a point, thence;

By the easterly line of Goodspeed's Meetinghouse Road N 17°54'20" E a distance of 11.49 feet to a point at land of Mashpee Wampanoag Indian Tribal Council, Inc., thence;

By land of Mashpee Wampanoag Indian Tribal Council, Inc. S 68°19'57" E a distance of 287.36 feet to a point, thence;

By land of Mashpee Wampanoag Indian Tribal Council, Inc. S 18°56'33" E a distance of 614.52 feet to a point, thence;

By land of Mashpee Wampanoag Indian Tribal Council, Inc. S 73°07'23" E a distance of 301.99 feet to a point, thence;

By land of Mashpee Wampanoag Indian Tribal Council, Inc. N 72°07'25" E a distance of 411.20 feet to a concrete bound with a drill hole set at land of Town of Mashpee Conservation Commission, thence;

By land of Town of Mashpee Conservation Commission N 53°00'36" E a distance of 567.12 feet to a concrete bound with a drill hole set in the westerly line of Noisy Hole Road, thence;

By westerly line of Noisy Hole Road along a non-tangent curve to the RIGHT, having a radius of 1095.10 feet, an arc length of 145.55 feet, and whose long chord bears S 30°06'07" E a distance of 145.44 feet to a point, thence;

By westerly line of Noisy Hole Road along a curve to the LEFT, having a radius of 2636.04 feet, an arc length of 435.63 feet, and whose long chord bears S 31°01'44" E a distance of 435.13 feet to a point, thence;

By westerly line of Noisy Hole Road along a curve to the RIGHT, having a radius of 2823.63 feet, an arc length of 197.19 feet, and whose long chord bears S 33°45'45" E a distance of 197.15 feet to a point, thence;

By westerly line of Noisy Hole Road S 31°45'43" E a distance of 145.38 feet to a concrete bound with a drill hole set at land of Town of Mashpee Conservation Commission, thence;

By land of Town of Mashpee Conservation Commission S 69°37'19" W a distance of 2045.48 feet to a concrete bound with a drill hole set, thence;

By land of Town of Mashpee Conservation Commission N 55°19'03" W a distance of 34.35 feet to a concrete bound with a drill hole set in the easterly line of Meetinghouse Road, thence;

By the easterly line of Meetinghouse Road along a non-tangent curve to the LEFT, having a radius of 1075.46 feet, an arc length of 342.37 feet, and whose long chord bears N 10°09'22" W a distance of 340.93 feet to a concrete bound with a drill hole found, thence;

By the easterly line of Meetinghouse Road N 19°16'34" W a distance of 930.78 feet to the Point of Beginning.

Parcel 75 contains 46.83 +/- acres.

#### City of Taunton

#### Bristol County, State of Massachusetts

##### Tract 1—TDC—Lot 9

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton, on the west side of O'Connell Way off of Stevens Street owned by the Taunton Development Corporation and shown as Assessor's Parcel 49 on Assessor's Map 118 and as Lot 9 on a plan by Field Engineering Co., Inc. entitled "Definitive Subdivision Plan of Land, Liberty and Union Industrial Park—Phase II" and revised dated 3/08/2006, recorded in Plan Book 446, Pages 34–36, bounded and described as follows:

Beginning on the westerly sideline of O'Connell Way, at the most southeasterly corner of the lot to be described; said point being N 13°10'38" W and 321.23 feet from a point of tangency in the westerly side line of O'Connell Way;

THENCE S 76°49'22" W along land now or formerly of Two Stevens LLC a distance of 225.11 feet to a point;

THENCE N 20°56'02" W along land now or formerly of Two Stevens LLC a distance of 547.76 feet to a point at Lot 14 and land now or formerly of Taunton Development Corporation (TDC);

THENCE N 87°34'23" E along land now or formerly of TDC a distance of

186.89 feet to a point on a curve on the westerly side line of O'Connell Way;

THENCE southerly along the westerly sideline of O'Connell Way on a curve to the left having a radius of 230.00 feet, an arc distance of 92.90 feet, a chord bearing S 30°45'02" E and a chord length of 92.27 feet to a point of tangency;

THENCE S 42°19'18" E along the westerly sideline of O'Connell Way a distance of 135.62 feet to a point of curvature;

THENCE southerly along the westerly sideline of O'Connell Way on a curve to the right having a radius of 170.00 feet, an arc distance of 86.47 feet, a chord bearing S 27°44'58" E and a chord length of 85.54 feet to a point of tangency;

THENCE S 13°10'38" E along the westerly side line of O'Connell Way a distance of 218.68 feet to the Point of Beginning;

The above described lot contains 2.726 +/- acres.

##### Tract 1—TDC—Lot 13

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton, on the west side of O'Connell Way off of Stevens Street owned by the Taunton Development Corporation and shown as Assessor's Parcel 27 on Assessor's Map 108 and as Lot 13 on a plan by Field Engineering Co., Inc. entitled "Definitive Subdivision Plan of Land, Liberty and Union Industrial Park—Phase II" and revised dated 3/08/2006, recorded in Plan Book 458, Page 21, bounded and described as follows. (For the purposes of these drawings, the portion of the property boundary defined by the centerline of the Cotley River has been approximated by line segments with bearings and distances).

Beginning on the westerly sideline of O'Connell Way, at the southerly corner of the lot to be described and point being the easterly corner of Lot 14 owned by Taunton Development Corporation (TDC);

THENCE N 69°59'17" W along land now or formerly of TDC (Lot 14) a distance of 749.99 feet to a point;

THENCE S 19°57'56" W along land now or formerly of TDC (Lot 14) a distance of 301.44 feet to a point and at land now or formerly of Two Stevens LLC;

THENCE N 69°49'06" W along land now or formerly of Two Stevens LLC a distance of 200.62 feet to a point also being the end point of a tie line;

THENCE continuing in the same N 69°49'06" W direction along land now or formerly of Two Stevens LLC a

distance of 30.00 feet to the approximate centerline of the Cotley River;

THENCE S 10°39'46" W along the approximate centerline of Cotley River a distance of 110.86 feet;

THENCE S 05°31'51" E along the approximate centerline of Cotley River a distance of 43.77 feet;

THENCE S 54°00'16" E along the approximate centerline of Cotley River a distance of 31.07 feet;

THENCE S 58°48'35" E along the approximate centerline of Cotley River a distance of 35.99 feet;

THENCE S 22°35'20" E along the approximate centerline of Cotley River a distance of 27.33 feet;

THENCE S 15°02'05" E along the approximate centerline of Cotley River a distance of 115.27 feet;

THENCE S 07°35'17" W along the approximate centerline of Cotley River a distance of 30.90 feet;

THENCE S 36°31'36" W along the approximate centerline of Cotley River a distance of 36.78 feet;

THENCE S 22°05'23" W along the approximate centerline of Cotley River a distance of 37.53 feet;

THENCE S 00°51'38" E along the approximate centerline of Cotley River a distance of 102.63 feet;

THENCE S 10°19'41" E along the approximate centerline of Cotley River a distance of 132.84 feet to a point at land now or formerly of Douglas Porter Trustee;

THENCE S 79°40'32" W along land now or formerly of Douglas Porter Trustee a distance of 21.00 feet to a point also being the end point of a tie line;

THENCE continuing in the same S 79°40'32" W direction along land now or formerly of Douglas Porter Trustee a distance of 190.04 feet to a point on the easterly sideline of Massachusetts State Highway Route 24, Layout #3719;

THENCE N 01°00'57" E along said easterly sideline of Route 24 a distance of 438.59 feet to a Massachusetts Highway bound;

THENCE N 45°35'25" W along said easterly sideline of Route 24 a distance of 463.25 feet to a Massachusetts Highway bound;

THENCE N 11°44'56" E along said easterly sideline of Route 24 a distance of 862.24 feet to the southerly sideline of a railroad right of way owned now or formerly by the Commonwealth of Massachusetts;

THENCE N 59°53'38" E along the southerly sideline of the railroad right of way a distance of 239.15 feet to a point;

THENCE S 68°51'04" E along land now or formerly of James L. Read, Trustee a distance of 235.00 feet to a point at the land now or formerly of PR-Crossroads Commerce Center LLC;

THENCE S 24°15'25" E along land now or formerly of PR-Crossroads Commerce Center LLC a distance of 500.20 feet to a point;

THENCE S 62°44'24" E along land now or formerly of PR-Crossroads Commerce Center LLC a distance of 203.55 feet to a point;

THENCE N 78°08'37" E along land now or formerly of PR-Crossroads Commerce Center LLC a distance of 227.00 feet to a point;

THENCE S 14°16'09" E along land now or formerly of PR-Crossroads Commerce Center LLC a distance of 77.84 feet to a point on the cul-de-sac sideline of O'Connell Way;

THENCE westerly and southerly along the sideline of O'Connell Way on a curve to the left having a radius 75.00 feet, an arc distance of 190.17 feet, a chord bearing S 21°30'01" E and a chord length of 143.17 feet to a point of reverse curvature;

THENCE easterly and southerly along the sideline of O'Connell Way on a curve to the right having a radius of 40.00 feet, an arc distance of 49.33 feet, a chord bearing S 58°48'43" E and a chord length of 46.26 feet to a point of reverse curvature;

THENCE southerly along the westerly sideline of O'Connell Way on a curve to the left having a radius of 330.00 feet, an arc distance of 93.55 feet, a chord bearing S 31°36'18" E and a chord length of 93.23 feet to a point of tangency;

THENCE S 39°43'33" E along the westerly sideline of O'Connell Way a distance of 100.06 feet to a point of curvature;

THENCE southerly along the westerly sideline of O'Connell Way on a curve to the right having a radius of 270.00 feet, an arc distance of 125.40 feet, a chord bearing S 26°25'15" E and a chord length of 124.27 feet to the Point of Beginning.

The above described lot contains 22.238 +/- acres.

#### Tract 1—TDC—Lot 14

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton, on the west side of O'Connell Way off of Stevens Street owned by the Taunton Development Corporation and shown as Assessor's Parcel 26 on Assessor's Map 108 and as Lot 14 on a plan by Field Engineering Co., Inc. entitled "Definitive Subdivision Plan of Land, Liberty and Union Industrial Park—Phase II" and revised dated 3/08/2006, recorded in Plan Book 446, Pages 34–36, bounded and described as follows:

Beginning on the westerly sideline of O'Connell Way, at the most

southeasterly corner of the lot to be described and point being the northeasterly corner of Lot 9 owned by Taunton Development Corporation (TDC);

THENCE S 87°34'23" W along land now or formerly of TDC (Lot 9), a distance of 186.89 feet to a point at land now or formerly of Two Stevens LLC;

THENCE N 70°07'42" W along land now or formerly of Two Stevens LLC a distance of 636.23 feet to a point;

THENCE N 69°49'06" W along land now or formerly of Two Stevens LLC a distance of 46.27 feet to a point at land now or formerly of TDC (Lot 13);

THENCE N 19°57'56" E along land now or formerly of TDC (Lot 13) a distance of 301.44 feet to a point;

THENCE S 69°59'17" E along land now or formerly of TDC (Lot 13) a distance of 749.99 feet to a point on the westerly sideline of O'Connell Way;

THENCE southerly along the westerly sideline of O'Connell Way on a curve to the right having a radius of 270.00 feet, an arc distance of 59.38 feet, a chord bearing S 06°48'53" E and a chord length of 59.27 feet to a point of tangency;

THENCE S 00°30'50" E along the westerly sideline of O'Connell Way a distance of 118.63 feet to a point of curvature;

THENCE southerly along the westerly sideline of O'Connell Way on a curve to the left having a radius of 230.00 feet, an arc distance of 74.93 feet, a chord bearing S 09°50'48" E and a chord length of 74.60 feet to the Point of Beginning.

The above described lot contains 5.473 +/- acres.

#### Tract 1—TDC—North side Railroad 45 acres

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton, on the south side of Middleboro Avenue and west side of Stevens Street owned by the Taunton Development Corporation and shown as Assessor's Parcel 156 on Assessor's Map 94 and as shown on a plan by Tibbetts Engineering Corp. entitled "Plan of Land", Prepared for Taunton Development Corporation (TDC) dated 4/25/2002, recorded in Plan Book 406, Pages 66–68, bounded and described as follows. (For the purposes of these drawings, the portion of the property boundary defined by the centerline of the Cotley River or the westerly edge of Barstow's Pond has been approximated by line segments with bearings and distances).

Beginning on the southerly sideline of Middleboro Avenue at the

northwesterly corner of land now or formerly of Tracey and Troy Hixon;

THENCE S 01°02'56" W along land now or formerly of Hixon a distance of 166.30 feet to an angle point;

THENCE S 04°39'04" E along land now or formerly of Hixon a distance of 98.65 feet to a point;

THENCE S 76°07'35" E along land now or formerly of Hixon a distance of 106.06 feet to a point;

THENCE S 73°49'19" E along land now or formerly of Ray A. Nacaula and Donnelly a distance of 241.70 feet to a point at land now or formerly of Waterman;

THENCE S 18°49'20" W along land now or formerly of Waterman a distance of 151.72 feet to an iron pipe;

THENCE N 85°34'00" E along land now or formerly of Waterman a distance of 74.85 feet to an iron pipe at land now or formerly of Mora and Bell;

THENCE S 09°35'20" E along land now or formerly of Mora and Bell and land formerly of Oldfield but now of TDC a distance of 279.18 feet to a stone bound;

THENCE N 85°33'36" E along land formerly of Oldfield but now of TDC a distance of 304.45 feet to a point on the westerly sideline of Stevens Street;

THENCE S 09°01'27" E along the westerly sideline of Stevens Street a distance of 35.74 feet to a Massachusetts Highway bound;

THENCE S 59°54'40" W along the land now or formerly of the Commonwealth of Massachusetts a distance of 16.08 feet to a Massachusetts Highway bound;

THENCE S 04°25'09" E along the land now or formerly of the Commonwealth of Massachusetts a distance of 11.29 feet to a point along the northerly sideline of railroad right of way;

THENCE S 59°53'38" W along the northerly sideline of the railroad right of way a distance of 884.09 feet to an angle point;

THENCE S 54°50'33" W along the northerly sideline of the railroad right of way a distance of 187.40 feet to an angle point;

THENCE S 59°53'38" W along the northerly sideline of the railroad right of way a distance of 1299.46 feet to a point also being the end point of a tie line;

THENCE continuing in the same direction S 59°53'38" W along the northerly sideline of the railroad right of way a distance of 30.01 feet to the approximate centerline of the Cotley River channel;

THENCE N 03°10'26" E along the approximate centerline of the Cotley River channel a distance of 47.17 feet;

THENCE N 33°36'32" E along the approximate centerline of the Cotley River channel a distance of 113.25 feet;

THENCE N 52°39'30" E along the approximate centerline of the Cotley River channel a distance of 66.39 feet;

THENCE N 09°47'41" E along the approximate centerline of the Cotley River channel a distance of 173.55 feet;

THENCE N 18°32'41" W along the approximate centerline of the Cotley River channel a distance of 70.11 feet;

THENCE N 25°28'18" W along the approximate centerline of the Cotley River channel a distance of 105.43 feet;

THENCE N 07°01'49" W along the approximate centerline of the Cotley River channel a distance of 127.91 feet;

THENCE N 33°55'21" E along the approximate centerline of the Cotley River channel a distance of 103.89 feet;

THENCE N 07°23'01" W along the approximate centerline of the Cotley River channel a distance of 199.55 feet;

THENCE N 13°51'57" E along the approximate centerline of the Cotley River channel a distance of 64.35 feet;

THENCE N 31°51'07" E along the approximate centerline of the Cotley River channel a distance of 175.31 feet;

THENCE N 21°19'23" E along the approximate centerline of the Cotley River channel a distance of 142.74 feet;

THENCE N 38°11'09" E along the approximate centerline of the Cotley River channel a distance of 173.51 feet;

THENCE N 63°56'17" W a distance of 96.16 feet to the approximate westerly edge of Barstow's Pond;

THENCE N 51°45'07" E by the approximate westerly edge of Barstow's Pond a distance of 156.13 feet;

THENCE N 65°12'52" E by the approximate westerly edge of Barstow's Pond a distance of 162.77 feet;

THENCE N 82°19'48" E by the approximate westerly edge of Barstow's Pond a distance of 106.19 feet;

THENCE N 35°36'23" E by the approximate westerly edge of Barstow's Pond a distance of 22.65 feet;

THENCE N 08°39'34" W by the approximate westerly edge of Barstow's Pond a distance of 44.34 feet;

THENCE N 17°22'26" E by the approximate westerly edge of Barstow's Pond a distance of 48.53 feet;

THENCE N 17°23'37" W by the approximate westerly edge of Barstow's Pond a distance of 75.14 feet;

THENCE N 03°05'14" E by the approximate westerly edge of Barstow's Pond a distance of 41.87 feet;

THENCE N 76°36'55" E by the approximate westerly edge of Barstow's Pond a distance of 45.99 feet;

THENCE S 37°12'19" E by the approximate westerly edge of Barstow's Pond a distance of 46.41 feet;

THENCE S 10°11'37" E by the approximate westerly edge of Barstow's Pond a distance of 55.96 feet;

THENCE S 15°09'39" E by the approximate westerly edge of Barstow's Pond a distance of 35.95 feet;

THENCE S 05°46'00" E by the approximate westerly edge of Barstow's Pond a distance of 44.65 feet;

THENCE S 81°38'17" E by the approximate westerly edge of Barstow's Pond a distance of 27.39 feet;

THENCE N 54°43'56" E by the approximate westerly edge of Barstow's Pond a distance of 128.51 feet;

THENCE N 01°46'23" W by the approximate westerly edge of Barstow's Pond a distance of 113.99 feet;

THENCE N 25°38'16" E by the approximate westerly edge of Barstow's Pond a distance of 151.73 feet;

THENCE N 74°41'23" E by the approximate westerly edge of Barstow's Pond a distance of 106.65 feet;

THENCE N 27°43'59" E by the approximate westerly edge of Barstow's Pond a distance of 20.70 feet to a point near the dam;

THENCE N 32°19'00" E a distance of 110.00 feet to an iron pipe being the end point of a tie line and also being a point on a curve on the southerly sideline of Middleboro Avenue;

THENCE easterly along the southerly sideline of Middleboro Avenue on a curve to the right having a radius of 1975.00 feet, an arc distance of 131.00 feet, a chord bearing S 68°43'59" E and a chord length of 130.98 feet to a Massachusetts Highway bound;

THENCE S 43°35'26" E along the southerly sideline of Middleboro Avenue a distance of 17.94 feet to a Massachusetts Highway bound;

THENCE S 55°00'28" E along the southerly sideline of Middleboro Avenue a distance of 93.78 feet to at Massachusetts Highway bound;

THENCE S 64°48'14" E along the southerly sideline of Middleboro Avenue a distance of 35.92 feet to the Point of Beginning;

The above described lot contains 45.222 +/- acres.

*Tract 1—TDC—Stevens Street Single Lot, Oldfield*

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton, on the west side of Stevens Street owned by Taunton Development Corporation and shown as Assessor's Parcel 36 on Assessor's Map 95, bounded and described as follows:

Beginning at a stake on the westerly side of Stevens Street at the most north easterly corner of the lot to be described;

and point being the south easterly corner of land now or formerly of Mora and Bell;

THENCE S 07°47'36" E along the westerly sideline of Stevens Street a

distance of 183.57 feet to a corner of land now or formerly of Taunton Development Corporation (TDC);

THENCE S 85°33'36" W along land now or formerly of TDC (Assessor Map 94 Lot 156) a distance of 304.45 feet to a stone bound;

THENCE N 09°35'20" W along land now or formerly of TDC (Assessor Map 94 Lot 156) a distance of 184.00 feet to a point at land now or formerly of Mora and Bell;

THENCE N 85°33'36" E along land now or formerly of Mora and Bell a distance of 310.25 feet to the Point of Beginning.

The above described lot contains 1.293 +/- acres.

The above described parcel has taken into consideration the roadway taking by the Commonwealth of Massachusetts, Department of Highways, for the relocation of Stevens Street, by taking dated September 8, 1993, recorded with Bristol County North District Registry of Deeds in Deed Book 5683, Page 12.

*Tract 2—61R Stevens Street and O'Connell Way, Taunton, MA*

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton, on the west side of Stevens Street and the east side of O'Connell Way and more particularly shown as Lot 3A on a plan by Cullinan Engineering Co. Inc., entitled "Plan of Land Stevens Street, East Taunton, Massachusetts", revised dated May 31, 2005 recorded in Plan Book 437, Page 30. Also a portion of said property is shown on a plan by Field Engineering Co. Inc., entitled "Definitive Subdivision Plan of Land, Liberty and Union Industrial Park—Phase II, Taunton Development Corporation", revised dated March 8, 2006, recorded in Plan Book 446, Page 35 bounded and described as follows. Also see Tract 10 (Gap Parcel)

Beginning on the westerly sideline of Stevens Street at the most easterly corner of lot to be described; and point being the northeast corner of property now or formerly of Allen;

THENCE N 68°39'51" W along land now or formerly of Allen and land now or formerly of 71 Stevens Street, LLC a distance of 313.86 feet to a point;

THENCE N 69°12'22" W continuing along land now or formerly of 71 Stevens Street, LLC a distance of 225.17 feet to a point;

THENCE S 47°56'00" W along land now or formerly of 71 Stevens Street, LLC a distance of 87.00 feet to a point;

THENCE S 44°58'21" W continuing along land now or formerly of 71

Stevens Street, LLC a distance of 155.46 feet to a point;

THENCE N 13°10'38" W a distance of 349.05 feet along land now or formerly of Taunton Development Corp. (Gap Parcel, see Tract 10) to a point;

THENCE N 42°19'18" W a distance of 215.61 feet along land now or formerly of Taunton Development Corp. (Gap Parcel, see Tract 10) to a point at land now or formerly of Bellas, Trustee;

THENCE S 72°20'47" E a distance of 491.45 feet along land now or formerly of Bellas, Trustee and land now or formerly of DeBrum to a point;

THENCE continuing S 72°20'47" E along land now or formerly of DeBrum a distance of 20.32 feet to a point;

THENCE S 70°48'53" E a distance of 141.08 feet along land now or formerly of DeBrum to an iron pipe;

THENCE S 63°11'08" E along land now or formerly of DeBrum a distance of 211.40 feet to a point at the land now or formerly of Haskins;

THENCE S 26°48'58" W along land now or formerly of Haskins a distance of 134.62 feet to a point;

THENCE S 69°41'20" E along land now or formerly of Haskins a distance of 167.82 feet to a point at the westerly sideline of Stevens Street;

THENCE S 04°48'11" W along the westerly sideline of Stevens Street a distance of 50.00 feet to the Point of Beginning;

The above described parcel contains 3.895 +/- acres.

*Tract 3—71 Stevens Street, Taunton, MA*

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton on the west side of Stevens Street more particularly shown as Lot 2 on a plan by Cullinan Engineering Co. Inc., entitled "Plan of Land Stevens Street, County Street and Rte. 24 East Taunton, Massachusetts Prepared for Robert DiCrocce", dated March 23, 2005, recorded in Plan Book 436, Page 22, bounded and described as follows.

Beginning on the westerly sideline of Stevens Street at the southeast corner of property now or formerly of Williams;

THENCE S 19°18'52" W along the westerly sideline of Stevens Street a distance of 186.64 feet to a point of curvature at the beginning of the road layout for O'Connell Way;

THENCE southwesterly along the northerly sideline of O'Connell Way on a curve to the right having a radius of 75.00 feet, an arc distance of 130.78, feet a chord bearing S 69°16'13" W and a chord length of 114.83 feet to a point of tangency;

THENCE N 60°46'27" W along the northerly sideline of O'Connell Way a

distance of 325.24 feet to a point of curvature;

THENCE northwesterly along the easterly sideline of O'Connell Way on a curve to the right having a radius of 250.00 feet, an arc distance of 207.68 feet, a chord bearing N 36°58'32" W and a chord length of 201.76 feet to a point of tangency;

THENCE N 13°10'38" W along the easterly sideline of O'Connell Way a distance of 283.78 feet to a point at land now or formerly Taunton Development Corporation (TDC) (Gap Parcel, Tract 10);

THENCE S 41°25'18" E along land now or formerly of TDC (Gap Parcel, Tract 10) a distance of 28.35 feet to a point at land now or formerly DaRosa;

THENCE N 44°58'21" E along land now or formerly of DaRosa a distance of 155.46 feet to a point;

THENCE N 47°56'00" E along land now or formerly of DaRosa a distance of 87.00 feet to a point;

THENCE S 69°12'22" E along land now or formerly of DaRosa a distance of 225.17 feet to a point;

THENCE S 68°39'51" E along land now or formerly of DaRosa a distance of 192.94 feet to a point at land now or formerly of Allen;

THENCE S 14°26'52" W along land now or formerly of Allen and land now or formerly of Williams a distance of 324.60 feet to a point;

THENCE S 65°33'57" E along land now or formerly of Williams a distance of 150.00 feet to the Point of Beginning;

The above described parcel contains 6.875 +/- acres.

*Tract 4—73 Stevens Street, Taunton, MA*

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton on the west side of Stevens Street more particularly shown as Lot 2 on a plan by Cullinan Engineering Co. Inc., entitled "Plan of Land Stevens Street and O'Connell Way East Taunton, Massachusetts, prepared for One Stevens, LLC", dated August 13, 2007, recorded in Plan Book 459, Page 72, bounded and described as follows.

Beginning at the intersection of the westerly sideline of Stevens Street and the southerly sideline of O'Connell Way and being the most northeasterly corner of the property herein described;

THENCE S 19°26'59" W along the westerly sideline of Stevens Street a distance of 66.65 feet to a point;

THENCE S 29°25'10" W along the westerly sideline of Stevens Street a distance of 134.03 feet to a point;

THENCE S 77°25'54" W along Parcel E as shown on the above referenced plan a distance of 40.36 feet to a point;

THENCE S 46°27'27" W along Parcel B-R as shown on the above referenced plan a distance of 53.00 feet to a point at the land now or formerly of One Stevens LLC;

THENCE N 73°40'17" W along land now or formerly of One Stevens LLC a distance of 73.36 feet to a point;

THENCE N 04°17'52" W along land now or formerly of One Stevens LLC a distance of 281.12 feet to a point of curvature;

THENCE northwesterly along a curve to the left having a radius of 110.00 feet, an arc distance of 108.43 feet, a chord bearing N 32°32'10" W and a chord length of 104.09 feet to a point of tangency;

THENCE N 60°46'27" W along land now or formerly of One Stevens LLC a distance of 50.91 feet to a point;

THENCE S 85°42'06" W along land now or formerly of One Stevens LLC a distance of 60.47 feet to a point of curvature;

THENCE northerly along a curve to the right having a radius of 51.00 feet, an arc distance of 110.83 feet, a chord bearing N 32°02'26" W and a chord length of 90.28 feet to a point of non-tangency;

THENCE S 60°46'27" E along land now or formerly of One Stevens LLC a distance of 112.61 feet to a point on the southerly sideline of O'Connell Way;

THENCE S 60°46'27" E along the southerly sideline of O'Connell Way a distance of 421.27 feet to the Point of Beginning.

The above described parcel contains 1.502 +/- acres.

*Tract 5—Lot 11 O'Connell Way Taunton, MA*

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton on the east side of O'Connell Way off Stevens Street, more particularly shown as Lot 11 on a plan by Cullinan Engineering Co. Inc., entitled "Definitive Subdivision Modification Plan of Land Liberty and Union Industrial Park—Phase II Taunton Development Corporation", dated March 23, 2007, recorded in Plan Book 458, Page 21, bounded and described as follows.

Beginning at a point along a curve on the easterly sideline of O'Connell Way and said point being the northwesterly corner of land now or formerly of Taunton Development Corporation (Gap Parcel, Tract 10);

THENCE northwesterly along the easterly sideline of O'Connell Way on a curve to the right having a radius of 170.00 feet, an arc distance of 94.29 feet, a chord bearing N 16°24'14" W and a

chord length of 93.09 feet to a point of tangency;

THENCE N 00°30'50" W along the easterly sideline of O'Connell Way a distance of 118.63 feet to a point of curvature;

THENCE northwesterly along the easterly sideline of O'Connell Way on a curve to the left having a radius of 330.00 feet, an arc distance of 225.84 feet, a chord bearing N 20°07'12" W and a chord length of 221.46 feet to a point of tangency;

THENCE N 39°43'33" W along the easterly sideline of O'Connell Way a distance of 100.06 feet to a point of curvature;

THENCE northwesterly along the easterly sideline of O'Connell Way on a curve to the right having a radius of 270.00 feet, an arc distance of 119.96 feet, a chord bearing N 26°59'51" W and a chord length of 118.98 feet to a point of tangency;

THENCE N 14°16'09" W along the easterly sideline of O'Connell Way and land now or formerly PR-Crossroads Commerce Center LLC a distance of 153.52 feet to a point;

THENCE N 28°14'17" E along land now or formerly PR-Crossroads Commerce Center LLC a distance of 220.00 feet to a point;

THENCE N 68°59'27" E along land now or formerly PR-Crossroads Commerce Center LLC a distance of 100.00 feet to a point;

THENCE N 89°40'32" E along land now or formerly PR-Crossroads Commerce Center LLC a distance of 602.55 feet to a point at the land now or formerly of Christ Community Church, Inc.;

THENCE S 13°44'43" E along land now or formerly of Christ Community Church, Inc. a distance of 223.37 feet to a point;

THENCE S 08°06'20" W along land now or formerly of Christ Community Church, Inc. a distance of 70.79 feet to a point;

THENCE S 01°38'59" E along land now or formerly of Christ Community Church, Inc. and land now or formerly of Bellas, Trustee a distance of 214.50 feet to a point;

THENCE S 23°51'01" W along land now or formerly of Bellas, Trustee a distance of 311.52 feet to a point;

THENCE S 67°36'01" W along land now or formerly of Bellas, Trustee a distance of 486.60 feet to a point at land now or formerly of DaRosa and land now or formerly of Taunton Development Corporation (Gap Parcel, Tract 10);

THENCE S 57°42'31" W along land now or formerly of Taunton Development Corporation (Gap Parcel,

Tract 10) a distance of 16.65 feet to the Point of Beginning.

The above described parcel contains 14.021 +/- acres.

*Tract 6—50 O'Connell Way*

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton on the west side of Stevens Street and the west side on O'Connell Way more particularly shown as Lot 1A–R on a plan by Cullinan Engineering Co. Inc., entitled "Plan of Land Stevens Street and O'Connell Way East Taunton, Massachusetts prepared for One Stevens LLC", dated August 13, 2007, recorded in Plan Book 459, Page 72, bounded and described as follows.

Beginning on the southerly sideline of O'Connell Way at the land now or formerly of Jamins LLC;

THENCE N 60°46'27" W along land now or formerly of Jamins LLC a distance of 112.61 feet to a point at the beginning of a non-tangent curve;

THENCE southeasterly along land now or formerly Jamins LLC on a curve to the left having a radius of 51.00 feet, an arc distance of 110.83 feet, a chord bearing S 32°02'26" E and a chord length of 90.28 feet to a point of tangency;

THENCE N 85°42'06" E along land now or formerly of Jamins LLC a distance of 60.47 feet to a point;

THENCE S 60°46'27" E along land now or formerly of Jamins LLC a distance of 50.91 feet to a point of curvature;

THENCE southerly along land now or formerly of Jamins LLC on a curve to the right having a radius of 110.00 feet, an arc distance of 108.43 feet, a chord bearing S 32°32'10" E and a chord length of 104.09 feet to a point of tangency;

THENCE S 04°17'52" E along land now or formerly of Jamins LLC a distance of 281.12 feet to a point;

THENCE S 73°40'17" E along land now or formerly of Jamins LLC a distance of 73.36 feet to a point at the land now or formerly of Porter, Trustee;

THENCE S 46°27'27" W along land now or formerly of Porter, Trustee a distance of 235.54 feet to a point;

THENCE N 88°13'45" W along land now or formerly of Porter, Trustee a distance of 139.98 feet to a point;

THENCE N 70°55'10" W along land now or formerly of Porter, Trustee a distance of 530.08 feet to a point;

THENCE N 30°37'46" W along land now or formerly of Porter, Trustee a distance of 236.68 feet to a point at the land now or formerly of Two Stevens, LLC;

THENCE N 15°19'02" E along land now or formerly of Two Stevens, LLC a distance of 146.85 feet to a point;

THENCE N 85°42'06" E along land now or formerly of Two Stevens, LLC a distance of 414.39 feet to a point of curvature;

THENCE northeasterly along land now or formerly of Two Stevens, LLC on a curve to the left having a radius of 100.00 feet, an arc distance of 94.52 feet, a chord bearing N 58°37'25" E and a chord length of 91.04 feet to a point of tangency;

THENCE N 31°32'45" E along land now or formerly of Two Stevens, LLC a distance of 59.36 feet to a point;

THENCE N 03°58'05" W along land now or formerly of Two Stevens, LLC a distance of 73.82 feet to a point;

THENCE N 54°21'17" E along land now or formerly of Two Stevens, LLC a distance of 45.25 feet to a point on the curve of the westerly sideline of O'Connell Way;

THENCE southeasterly along the westerly sideline of O'Connell Way on a curve to the left having a radius of 310.00 feet, an arc distance of 214.85 feet, a chord bearing S 40°55'09" E and a chord length of 210.58 feet to a point of tangency and at the Point of Beginning.

The above described parcel contains 9.146 +/- acres.

*Tract 7—60 O'Connell Way, Taunton, MA*

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton on the west side of O'Connell Way off Stevens Street, more particularly shown as Lot 1B on plan by Cullinan Engineering Co. Inc., entitled "Plan of Land Stevens Street, County Street and Route 24 East Taunton, Massachusetts Prepared for the Maggiore Companies", dated May 29, 2007, rev. June 13, 2007, recorded in Plan Book 458, Page 22, bounded and described as follows. (For the purposes of these drawings, the portion of the property boundary defined by the centerline of the Cotley River has been approximated by line segments with defined bearings and distances).

Beginning on the westerly sideline of O'Connell Way at the most easterly corner of land now or formerly of Taunton Development Corporation (TDC) (Lot 9);

THENCE S 13°10'38" E along the westerly sideline of O'Connell Way a distance of 321.23 feet to a point of curvature;

THENCE southeasterly along the westerly sideline of O'Connell Way on a curve to the left having a radius of

310.00 feet, an arc distance of 42.67 feet, a chord bearing S 17°07'14" E and a chord length of 42.64 feet to a point at the land now or formerly of One Stevens LLC;

THENCE S 54°21'17" W along land now or formerly of One Stevens LLC a distance of 45.25 feet to a point;

THENCE S 03°58'05" E along land now or formerly of One Stevens LLC a distance of 73.82 feet to a point;

THENCE S 31°32'45" W along land now or formerly of One Stevens LLC a distance of 59.36 feet to a point of curvature;

THENCE southwesterly along land now or formerly of One Stevens LLC on a curve to the right having a radius of 100.00 feet, an arc distance of 94.52 feet, a chord bearing S 58°37'25" W and a chord length of 91.04 feet to a point of tangency;

THENCE S 85°42'06" W along land now or formerly of One Stevens LLC a distance of 414.39 feet to a point;

THENCE S 15°19'02" W along land now or formerly of One Stevens LLC a distance of 146.85 feet to a point at the land now or formerly of Porter, Trustee;

THENCE N 30°37'46" W along land now or formerly of Porter, Trustee a distance of 72.02 feet to a point;

THENCE N 60°57'07" W along land now or formerly of Porter, Trustee a distance of 554.83 feet to a point;

THENCE N 05°23'38" W along land now or formerly of Porter, Trustee a distance of 141.69 feet to a point;

THENCE N 75°19'32" W along land now or formerly of Porter, Trustee a distance of 66.89 feet to a point;

THENCE N 10°07'19" W along land now or formerly of Porter, Trustee a distance of 365.13 feet to a point;

THENCE S 79°40'32" W along land now or formerly of Porter, Trustee a distance of 37.82 feet to the approximate centerline of the Cotley River and at land now or formerly of TDC (Lot 13);

THENCE N 10°19'41" W along the approximate centerline of Cotley River a distance of 132.84 feet;

THENCE N 00°51'38" W along the approximate centerline of Cotley River a distance of 102.63 feet;

THENCE N 22°05'23" E along the approximate centerline of Cotley River a distance of 37.53 feet;

THENCE N 36°31'36" E along the approximate centerline of Cotley River a distance of 36.78 feet;

THENCE N 07°35'17" E along the approximate centerline of Cotley River a distance of 30.90 feet;

THENCE N 15°02'05" W along the approximate centerline of Cotley River a distance of 115.27 feet;

THENCE N 22°35'20" W along the approximate centerline of Cotley River a distance of 27.33 feet;

THENCE N 58°48'35" W along the approximate centerline of Cotley River a distance of 35.99 feet;

THENCE N 54°00'16" W along the approximate centerline of Cotley River a distance of 31.07 feet;

THENCE N 05°31'51" W along the approximate centerline of Cotley River a distance of 43.77 feet;

THENCE N 10°39'46" E along the approximate centerline of Cotley River a distance of 110.86 feet to a point;

THENCE S 69°49'06" E along land now or formerly of TDC (Lot 13) a distance of 30.00 feet to a point also being the end point of a tie line;

THENCE continuing S 69°49'06" E along land now or formerly of TDC (Lot 13 & Lot 14) a distance of 246.89 feet to a point;

THENCE S 70°07'42" E along land now or formerly of TDC (Lot 14) a distance of 636.23 feet to a point at the land of TDC (Lot 9);

THENCE S 20°56'02" E along land now or formerly of TDC (Lot 9) a distance of 547.76 feet to a point;

THENCE N 76°49'22" E along land now or formerly of TDC (Lot 9) a distance of 225.11 feet to the Point of Beginning.

The above described parcel contains 26.249 +/- acres.

*Tract 8—Stevens Street and O'Connell Way*

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton on Stevens Street and Route 140, more particularly shown as Parcels A and B on a plan by Cullinan Engineering Co. Inc., entitled "Plan of Land Stevens Street, County Street and Rte. 24 East Taunton, Massachusetts, prepared for the Maggiore Companies", dated May 29, 2007, recorded in Plan Book 458, Page 22 and as Parcel E on a plan by Cullinan Engineering Co. Inc., entitled "Plan of Land Stevens Street and O'Connell Way East Taunton, Massachusetts, Prepared for One Stevens LLC", dated August 13, 2007, recorded in Plan Book 459, Page 72, bounded and described as follows:

Beginning at a point on the westerly sideline of Stevens Street at the land now or formerly of 73 Stevens Street Jamins LLC;

THENCE S 29°25'10" W along the westerly sideline of Stevens Street a distance of 67.00 feet to a point.

THENCE N 56°43'22" W along the sideline of Stevens Street a distance of 8.25 feet to a Massachusetts Highway bound;

THENCE continuing S 36°03'59" W along the westerly sideline of Stevens

Street a distance of 45.36 feet to a concrete bound;

THENCE S 36°03'59" W along the westerly sideline of Stevens Street a distance of 69.00 feet to a point;

THENCE S 51°31'40" W along the westerly sideline of Stevens Street a distance of 178.97 feet to a point at land now or formerly of Silver City Galleria LLC;

THENCE N 88°13'45" W along land now or formerly of Silver City Galleria LLC a distance of 142.82 feet to a point;

THENCE N 72°05'20" W along land now or formerly of Silver City Galleria LLC a distance of 331.46 feet to a point;

THENCE N 70°46'43" W along land now or formerly of Silver City Galleria LLC a distance of 246.11 feet to a Massachusetts Highway bound;

THENCE S 41°20'14" W along land now or formerly of Silver City Galleria LLC a distance of 70.00 feet to a Massachusetts Highway bound and at the northerly sideline of County Street, State Highway Route 140, Layout #4865;

THENCE N 52°11'42" W along the northerly sideline of County Street, State Highway Route 140, Layout #4865 a distance of 200.37 feet to a Massachusetts Highway bound;

THENCE N 48°39'46" W along the northerly sideline of County Street, State Highway Route 140, Layout #4865 a distance of 1040.93 feet to a Massachusetts Highway bound and at the easterly sideline of State Highway Route 24, Layout #3719;

THENCE N 01°00'57" E along the easterly sideline of State Highway Route 24, Layout #3719 a distance of 290.43 feet to a point and at land now or formerly of the Taunton Development Corporation;

THENCE N 79°40'32" E along land now or formerly of Taunton Development Corporation a distance of 190.04 feet to a point also being the end point of a tie line;

THENCE continuing N 79°40'32" E along land now or formerly of Taunton Development Corporation a distance of 21.00 feet to the approximate centerline of the Cotley River and at land now or formerly of Two Stevens LLC;

THENCE N 79°40'32" E along land now or formerly of Two Stevens LLC a distance of 37.82 feet to a point;

THENCE S 10°07'19" E along land now or formerly of Two Stevens LLC a distance of 365.13 feet to a point;

THENCE S 75°19'32" E along land now or formerly of Two Stevens LLC a distance of 66.89 feet to a point;

THENCE S 05°23'38" E along land now or formerly of Two Stevens LLC a distance of 141.69 feet to a point;

THENCE S 60°57'07" E along land now or formerly of Two Stevens LLC a distance of 554.83 feet to a point;



THENCE S 30°37'46" E along land now or formerly of Two Stevens LLC a distance of 72.02 feet to a point and at land now or formerly of One Stevens LLC;

THENCE S 30°37'46" E along land now or formerly of One Stevens LLC a distance of 236.68 feet to a point;

THENCE S 70°55'10" E along land now or formerly of One Stevens LLC a distance of 530.08 feet to a point;

THENCE S 88°13'45" E along land now or formerly of One Stevens LLC a distance of 139.98 feet to a point;

THENCE N 46°27'27" E along land now or formerly of One Stevens LLC a distance of 235.54 feet to a point and at land now or formerly of Jamins LLC;

THENCE continuing N 46°27'27" E along land now or formerly of Jamins LLC a distance of 53.00 feet to a point;

THENCE N 77°25'54" E along land now or formerly of Jamins LLC a distance of 40.36 feet to a point on the westerly sideline of Stevens Street and the Point of Beginning; The above described parcel contains 7.966 +/- acres.

#### *Tract 9—O'Connell Way Layout*

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton on the west side of Stevens Street owned by the Taunton Development Corporation and shown as a proposed roadway layout on a plan by Field Engineering Co., Inc., entitled "Definitive Subdivision Plan of Land, Liberty and Union Industrial Park—Phase II" and revised dated 3/08/2006, recorded in Plan Book 446, Page 35, and a plan entitled, "Definitive Subdivision Modification Plan of Land, Liberty and Union Industrial Park—Phase II" and dated 3/23/2007, recorded in Plan Book 458, Page 21, bounded and described as follows.

Beginning on the westerly sideline of Stevens Street at the southeasterly corner of the parcel to be described;

THENCE S 19°18'52" W along the westerly sideline of Stevens Street a distance of 155.23 feet to a point at land now or formerly Jamins LLC;

THENCE N 60°46'27" W along the westerly sideline of O'Connell Way a distance of 421.27 feet to a point of curvature;

THENCE northwesterly along the westerly sideline of O'Connell Way on a curve to the right having a radius of 310.00 feet, an arc distance of 257.52 feet, a chord bearing N 36°58'32" W and a chord length of 250.18 feet to a point of tangency;

THENCE N 13°10'38" W along the westerly sideline of O'Connell Way a

distance of 539.91 feet to a point of curvature;

THENCE northwesterly along the westerly sideline of O'Connell Way on a curve to the left having a radius of 170.00 feet, an arc distance of 86.47 feet, a chord bearing N 27°44'58" W and a chord length of 85.54 feet to a point of tangency;

THENCE N 42°19'18" W along the westerly sideline of O'Connell Way a distance of 135.62 feet to a point of curvature;

THENCE northwesterly along the westerly sideline of O'Connell Way on a curve to the right having a radius of 230.00 feet, an arc distance of 167.83 feet, a chord bearing N 21°25'04" W and a chord length of 164.13 feet to a point of tangency;

THENCE N 00°30'50" W along the westerly sideline of O'Connell Way a distance of 118.63 feet to a point of curvature;

THENCE northerly along the westerly sideline of O'Connell Way on a curve to the left having a radius of 270.00 feet, an arc distance of 184.78 feet, a chord bearing N 20°07'11" W and a chord length of 181.20 feet to a point of tangency;

THENCE N 39°43'33" W along the westerly sideline of O'Connell Way a distance of 100.06 feet to a point of curvature;

THENCE northwesterly along the westerly sideline of O'Connell Way on a curve to the right having a radius of 330.00 feet, an arc distance of 93.55 feet, a chord bearing N 31°36'18" W and a chord length of 93.23 feet to a point of reverse curvature;

THENCE northwesterly along the westerly sideline of O'Connell Way on a curve to the left having a radius of 40.00 feet, an arc distance of 49.33 feet, a chord bearing N 58°48'43" W and a chord length of 46.26 feet to a point of reverse curvature;

THENCE northerly along the sideline of O'Connell Way on a curve to the right having a radius of 75.00 feet, an arc distance of 340.17 feet, a chord bearing N 35°47'44" E and a chord length of 115.02 feet to a point of tangency;

THENCE S 14°16'09" E along the easterly sideline of O'Connell Way a distance of 53.96 feet to a point of curvature;

THENCE southerly along the easterly sideline of O'Connell Way on a curve to the left having a radius of 270.00 feet, an arc distance of 119.96 feet, a chord bearing S 26°59'51" E and a chord length of 118.98 feet to a point of tangency;

THENCE S 39°43'33" E along the easterly sideline of O'Connell Way a

distance of 100.06 feet to a point of curvature;

THENCE southeasterly along the easterly sideline of O'Connell Way on a curve to the right having a radius of 330.00 feet, an arc distance of 225.84 feet, a chord bearing S 20°07'12" E and a chord length of 221.46 feet to a point of tangency;

THENCE S 00°30'50" E along the easterly sideline of O'Connell Way a distance of 118.63 feet to a point of curvature;

THENCE southeasterly along the easterly sideline of O'Connell Way on a curve to the left having a radius of 170.00 feet, an arc distance of 124.05 feet, a chord bearing S 21°25'04" E and a chord length of 121.31 feet to a point of tangency;

THENCE S 42°19'18" E along the easterly sideline of O'Connell Way a distance of 135.62 feet to a point of curvature;

THENCE southeasterly along the easterly sideline of O'Connell Way on a curve to the right having a radius of 230.00 feet, an arc distance of 116.99 feet, a chord bearing S 27°44'58" E and a chord length of 115.74 feet to a point of tangency;

THENCE S 13°10'38" E along the easterly sideline of O'Connell Way a distance of 533.14 feet to a point of curvature;

THENCE southeasterly along the easterly sideline of O'Connell Way on a curve to the left having a radius of 250.00 feet, an arc distance of 207.68 feet, a chord bearing S 36°58'32" E and a chord length of 201.76 feet to a point of tangency;

THENCE S 60°46'27" E along the easterly sideline of O'Connell Way a distance of 325.24 feet to a point of curvature;

THENCE northeasterly along the easterly sideline of O'Connell Way on a curve to the left having a radius of 75.00 feet, an arc distance of 130.78 feet, a chord bearing N 69°16'13" E and a chord length of 114.83 feet to the Point of Beginning;

The above described roadway parcel contains 3.442 +/- acres which, together with a 512 square foot easement on land now or formerly of Jamins LLC, constitute the O'Connell Way layout.

The 512 square foot easement description begins at a point on the northerly sideline of Stevens Street being S 19°18'52" W and 155.23 feet distant from the beginning point of O'Connell Way described above;

THENCE N 60°46'27" W along the westerly sideline of O'Connell Way a distance of 50.55 feet to a point of curvature;

THENCE southerly on a curve to the right having a radius of 60.00 feet, an arc distance of 84.01 feet, a chord bearing S 20°39'44" E and a chord length of 77.31 feet to a point on the northerly sideline of Stevens Street;

THENCE N 19°26'59" E along the northerly sideline of Stevens Street a distance of 50.55 feet to the Point of Beginning.

Said 512 square foot easement is on land now or formerly of Jamins LLC and is intended to be included with and for the use of O'Connell Way.

*Tract 10—Gap of Land Between Land of DaRosa and O'Connell Way*

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton, on the east side of O'Connell Way off Stevens Street being a land gap between the layout of O'Connell Way and Lot 10 in Plan Book 446, Page 35 and Parcel 2 described in a the deed from Taunton Development Corporation to Daniel G. DaRosa and Laurie B. DaRosa, dated July 18, 2005, recorded in Deed Book 15013, Page 42, bounded and described as follows.

Beginning on the easterly sideline of O'Connell Way at the most southwesterly corner of the parcel to be described;

THENCE N 13°10'38" W along the easterly sideline of O'Connell Way a distance of 249.36 feet to a point of curvature;

THENCE northwesterly along the easterly sideline of O'Connell Way on a curve to the left having a radius of 230.00 feet, an arc distance of 116.99 feet, a chord bearing N 27°44'58" W and a chord length of 115.74 feet to a point of tangency;

THENCE N 42°19'18" W along the easterly sideline of O'Connell Way a distance of 135.62 feet to a point of curvature;

THENCE northwesterly along the easterly sideline of O'Connell Way on a curve to the right having a radius of 170.00 feet an arc distance of 29.76 feet, a chord bearing N 37°18'28" W and a chord length of 29.72 feet to a point at land now or formerly L & U LLC;

THENCE N 57°42'31" E along land now or formerly L & U LLC distance of 16.65 feet to a point at land now or formerly of Darosa (Tract 2);

THENCE S 42°19'18" E along land now or formerly of DaRosa (Tract 2) a distance of 215.61 feet to a point;

THENCE S 13°10'38" E along land now or formerly of DaRosa (Tract 2) a distance of 349.05 feet to a point at land now or formerly of 71 Stevens Street LLC;

THENCE N 41°25'18" W along land now or formerly of 71 Stevens Street LLC a distance of 28.35 feet to the Point of Beginning.

The above described parcel contains 0.203 +/- acres.

*Tract 11—67 Stevens Street*

Description of parcel of land in Taunton, Massachusetts shown as Tax Parcel 119-2-0 on the City of Taunton Assessor's plans, bounded and described as follows:

Beginning on the westerly sideline of Stevens Street, at the most northeasterly corner of the lot to be herein described and at the southeasterly corner of land now or formerly John & Betty Jean Allen;

THENCE S 07°26'15" W along the westerly sideline of Stevens Street, a distance of 50.49 feet to an angle point in the westerly sideline of Stevens Street;

THENCE S 13°24'15" W along the westerly sideline of Stevens Street, a distance of 46.49 feet to an angle point in the westerly sideline of Stevens Street;

THENCE S 18°41'39" W along the westerly sideline of Stevens Street, a distance of 103.43 feet to land now or formerly of 71 Stevens Street LLC;

THENCE N 65°33'57" W along land now or formerly of 71 Stevens Street LLC, a distance of 150.00 feet to corner of land now or formerly of 71 Stevens Street LLC;

THENCE N 14°26'52" E along land now or formerly of 71 Stevens Street LLC, a distance of 200.00 feet to a concrete bound at the land of John & Betty Jean Allen;

THENCE S 65°30'42" E along land now or formerly of John & Betty Jean Allen, a distance of 150.68 feet to the Point of Beginning.

The above described lot contains 0.699 +/- acres.

Being the same premises conveyed to Kathleen Williams and Kenneth Williams by deed of Ernestina R. Torres and Nelson Henriquez, dated July 28, 2005 and recorded in Deed Book 15029, Page 189.

*Tract 12—65 Stevens Street*

Description of parcel of land in Taunton, Massachusetts shown as tax parcel 119-3-0 on the City of Taunton Assessor's plans, bounded and described as follows:

The land in Taunton, on the northwesterly side of Stevens Street, being shown as Lot #9A on a plan entitled "Property of Richard C. Tilton et ux Taunton, Mass. Scale 1" = 20' July 8, 1964 John P. Gonzals, Surveyor", which plan is recorded with Bristol

County Northern District Registry of Deeds, Plan Book 94, Page 9 and being more particularly described as follows:

Beginning on the westerly sideline of Stevens Street, at the most northeasterly corner of the lot to be herein described and at the southeasterly corner of land now or formerly Daniel & Laurie DaRosa;

THENCE S 02°11'22" W along the westerly sideline of Stevens Street, a distance of 116.64 feet to an angle point in the westerly sideline of Stevens Street;

THENCE S 05°24'21" W along the westerly sideline of Stevens Street, a distance of 22.67 feet to a point at the land now or formerly of Kathleen & Kenneth Williams;

THENCE N 65°30'42" W along land now or formerly of Kathleen & Kenneth Williams, a distance of 150.68 feet to a concrete bound at the land now or formerly of 71 Stevens Street LLC;

THENCE N 14°26'52" E along land now or formerly of 71 Stevens Street LLC, a distance of 124.60 feet to a concrete bound at the land of Daniel & Laurie DaRosa;

THENCE S 68°39'51" E along stonewall remains and land now or formerly of Daniel & Laurie DaRosa, a distance of 120.92 feet to the Point of Beginning.

The above described lot contains 0.396 +/- acres.

Being the same premises conveyed to John M. Allen by deed of John M. Allen and Betty Jean Allen dated June 4, 2011 and recorded in Deed Book 20376, page 275.

*Tract 13—61F Stevens Street*

Description of parcel of land in Taunton, Massachusetts shown as Tax Parcel 109-17-0 on the City of Taunton Assessors' Plans and being more particularly described as follows:

The land located on the westerly side of Stevens Street, East Taunton, Bristol County, Massachusetts shown as Lot 3B on a plan entitled, "Plan of Land Stevens Street, East Taunton, Massachusetts, prepared for Taunton Development Corporation", prepared by Cullinan Engineering, Scale 1" = 30' revised dated May 31, 2005 which plan is recorded with the Bristol County Northern District Registry of Deeds in Plan Book 437, Page 30, containing approximately 0.42 acres and known as and numbered 61F Stevens Street, bounded and described as follows:

Beginning on the westerly sideline of Stevens Street, at the most northeasterly corner of the lot to be herein described and at the southeasterly corner of land now or formerly Edwin DeBrum;

THENCE S 04°48'11" W along the westerly sideline of Stevens Street, a distance of 124.70 feet to a point at the land now or formerly of Daniel & Laurie DaRosa;

THENCE N 69°41'20" W along land now or formerly of Daniel & Laurie DaRosa, a distance of 167.82 feet to a point at the corner of land now or formerly of Daniel & Laurie DaRosa;

THENCE N 26°48'58" E along land now or formerly of Daniel & Laurie DaRosa, a distance of 134.62 feet to a point at the land of Edwin DeBrum;

THENCE S 63°11'08" E along land now or formerly of Edwin DeBrum, a distance of 120.00 feet to the Point of Beginning.

The above described lot contains 0.416 +/- acres.

Being the same premises conveyed to Edward A. Haskins, Jr. and Sheri L. Haskins by deed of Jeffrey D. Smith dated December 30, 2005, recorded in Deed Book 15519, Pa

The above-described lands contain a total of 321.34 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads, highways, public utilities, railroads, and pipelines or any other valid easements of rights-of-way or reservations of record.

Dated: December 30, 2015.

**Kevin K. Washburn,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2016-00310 Filed 1-6-16; 4:15 pm]

**BILLING CODE 4337-15-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLWY910000 L16100000 XX0000]

#### Notice of Public Meeting; Wyoming Resource Advisory Council

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Wyoming Resource Advisory Council (RAC) will meet as indicated below.

**DATES:** The meeting is scheduled for, Wednesday, February 3, 2016, from 1 p.m. to 5 p.m.; Thursday, February 4, 2016, from 8 a.m. to 5 p.m.; and Friday, February 5, 2016, from 8 a.m. to noon.

**ADDRESSES:** The meeting will be conducted at the BLM Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming.

**FOR FURTHER INFORMATION CONTACT:** Christian Venhuizen, Wyoming Resource Advisory Council Coordinator, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, WY 82009; telephone 307-775-6103; email [cvenhuizen@blm.gov](mailto:cvenhuizen@blm.gov). Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** This 10-member RAC advises the Secretary of the Interior on a variety of management issues associated with public land management in Wyoming. Planned agenda topics for the February meeting (see **DATES**) include discussions on fees for the National Historic Trails Interpretive Center, invasive species, and the Rock Springs RMP revision and follow-up to previous RAC meetings. On Friday, February 5, the meeting will begin with a public comment period, at 8 a.m. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. If there are no members of the public interested in speaking, the meeting will move promptly to the next agenda item. The public may also submit written comments to the RAC by emailing [cvenhuizen@blm.gov](mailto:cvenhuizen@blm.gov), with the subject line "RAC Public Comment" or by submitting comments during the meeting to the RAC coordinator. Typed or written comments will be provided to RAC members as part of the meeting's minutes.

Dated: December 31, 2015.

**Mary Jo Rugwell,**

*State Director (acting).*

[FR Doc. 2016-00001 Filed 1-7-16; 8:45 am]

**BILLING CODE 4310-22-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLNML00000 L12200000.DF0000 16XL1109AF]

#### Notice of Public Meeting, Las Cruces 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, the Bureau of Land Management's (BLM) Las Cruces District Resource Advisory Council (RAC) will meet as indicated below.

**DATES:** The RAC will meet on January 28, 2016.

**ADDRESSES:** The meeting will be conducted at the BLM Las Cruces District Office, 1800 Marquess Street, Las Cruces, New Mexico from 9:00 a.m.–12 p.m. Following the meeting, the BLM and RAC will tour the Peña Blanca Wilderness Study Area (WSA) located in the Organ Mountains-Desert Peaks National Monument. The field tour will depart from the BLM office at 1:30 p.m. and conclude at 5:00 p.m. Both the meeting and field tour is open to the public.

**FOR FURTHER INFORMATION CONTACT:** Deborah Stevens, BLM Las Cruces District, 1800 Marquess Street, Las Cruces, NM 88001, 575-525-4421. 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 Las Cruces 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 New Mexico.

Planned agenda items include updates on the proposed Organ Mountains-Desert Peaks Resource Management Plan and Environmental Impact Statement (EIS); the Afton Solar Energy Zone (SEZ) and Regional Mitigation Plan; and other major projects in the Las Cruces District.

A half-hour public comment period, during which the public may address the Council, will begin at 11:30 a.m. Depending on the number of individuals wishing to comment and time available, the time for individual oral comments may be limited. In addition, the public may send written comments to the RAC at the BLM Las

Cruces District Office, 1800 Marquess Street, Las Cruces, NM 88001.

**Melanie Barnes,**

*Acting Deputy State Director, Lands and Resources.*

[FR Doc. 2016-00177 Filed 1-7-16; 8:45 am]

**BILLING CODE 4310-FB-P**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**[NPS-WASO-DPOL-18874;  
PPWODIREPO][PPMPSPD1Y.YM0000]**

**National Park System Advisory Board;  
Charter Renewal**

**AGENCY:** National Park Service, Interior.

**ACTION:** Charter renewal.

**SUMMARY:** The Secretary of the Interior intends to renew the National Park System Advisory Board, in accordance with section 14(b) of the Federal Advisory Committee Act. This action is necessary and in the public interest in connection with the performance of statutory duties imposed upon the Department of the Interior and the National Park Service.

**FOR FURTHER INFORMATION CONTACT:** Shirley Sears, Office of Policy, National Park Service, 202-354-3955.

**SUPPLEMENTARY INFORMATION:** The Board is authorized by 54 U.S.C. 102303 (part of the 1935 Historic Sites, Buildings and Antiquities Act) and has been in existence almost continuously since 1935. Pursuant to 54 U.S.C. 102303, the legislative authorization for the Board expired January 1, 2010. However, due to the importance of the issues on which the Board advises, the Secretary of the Interior exercised the authority contained in 54 U.S.C. 100906 to re-establish and continue the Board as a discretionary committee from January 1, 2010, until such time as it may be legislatively reauthorized. If the Board is reauthorized legislatively within 2 years of the date of the renewal charter, the Board will revert to a legislative Board.

The advice and recommendations provided by the Board and its subcommittees fulfill an important need within the Department of the Interior and the National Park Service, and it is necessary to re-establish the Board to ensure its work is not disrupted. The Board's 12 members will be balanced to represent a cross-section of disciplines and expertise relevant to the National Park Service mission. The renewal of the Board comports with the requirements of the Federal Advisory Committee Act, as amended.

**CERTIFICATION:** I hereby certify that the renewal of the National Park System Advisory Board is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by the National Park Service Organic Act (54 U.S.C. 100101(a) *et seq.*), and other statutes relating to the administration of the National Park Service.

Dated: December 22, 2015.

**Sally Jewell,**

*Secretary of the Interior.*

[FR Doc. 2015-33277 Filed 1-7-16; 8:45 am]

**BILLING CODE 4310-EE-P**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**[NPS-WASO-NRNL-19984;  
PPWOCRADIO, PCU00RP14.R50000]**

**National Register of Historic Places;  
Notification of Pending Nominations  
and Related Actions**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The National Park Service is soliciting comments on the significance of properties nominated before December 12, 2015, for listing or related actions in the National Register of Historic Places.

**DATES:** Comments should be submitted by January 25, 2016.

**ADDRESSES:** Comments may be sent via U.S. Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202-371-6447.

**SUPPLEMENTARY INFORMATION:**

The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before December 12, 2015. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

**ALABAMA**

**Tuscaloosa County**

Downtown Tuscaloosa Historic District (Boundary Increase III and Boundary Decrease), Bounded by 3rd & 6th Sts., 21st & Lurleen Wallace South Aves., Tuscaloosa, 15000990

**ARKANSAS**

**Carroll County**

Crescent Hotel, 75 Prospect Ave., Eureka Springs, 15000991

**Columbia County**

Overstreet Hall, (New Deal Recovery Efforts in Arkansas MPS) NW. of jct. of E. University & N. Jackson Sts., Magnolia, 15000992

**Conway County**

Union Chapel School and Shop Building, (Public Schools in the Ozarks MPS) 298 Union Chapel Rd. & 28 Acker Ln., Springfield, 15000993

**Little River County**

Little River County Training School Historic District, 100 W. Hamilton St., Ashdown, 15000994

**Monroe County**

Monroe County Bank Building, 225-227 W. Cypress Sts., Brinkley, 15000995

**GEORGIA**

**Bibb County**

Levitt, William and Jane, House, 3720 Overlook Dr., Macon, 15000996

**IOWA**

**Sac County**

Perkins, George and Lola, House, 803 W. Main St., Sac City, 15000997  
Sac City Chicago and North Western Depot, (Advent & Development of Railroads in Iowa MPS) 103 N. 13th St., Sac City, 15000998

**LOUISIANA**

**Grant Parish**

Hotel Lesage, 101 Main St., Colfax, 15000999

**Iberville Parish**

Bayou Paul Colored School, 915 Bayou Paul Rd., St. Gabriel, 15001000

**Orleans Parish**

Bristow Tower, 4537 Magnolia St., New Orleans, 15001001  
Gem Theater, 3940 Thalia St., New Orleans, 15001002  
Lafitte Avenue Project Buildings C-47, E-45 and No. 46, (United States Housing Authority Funded Public Housing in Louisiana MPS) Corner of Lafitte Ave. & N. Johnson St., New Orleans, 15001003  
Louisiana Superdome, 1500 Sugar Bowl Dr., New Orleans, 15001004

**Rapides Parish**

Rapides Parish Library, 411 Washington St.,  
Alexandria, 15001005

**West Carroll Parish**

Oak Grove Community House, 414 James St.,  
Oak Grove, 15001006

**MASSACHUSETTS****Worcester County**

Barnes—Hill House, 12 N. Brookfield Rd.,  
Spencer, 15001007

**MISSOURI****St. Louis Independent city**

Gravois—Jefferson Streetcar Suburb Historic  
District (Boundary Increase), (South St.  
Louis Historic Working and Middle Class  
Streetcar Suburbs MPS) 2644–54 Gravois  
Ave., St. Louis (Independent City),  
15001008

**SOUTH CAROLINA****Spartanburg County**

Duncan Park Stadium, 0 W. Park Dr.,  
Spartanburg, 15001009

**Authority:** 60.13 of 36 CFR part 60.

**Dated:** December 15, 2015.

**J. Paul Loether,**

*Chief, National Register of Historic Places/  
National Historic Landmarks Program.*

[FR Doc. 2016–00101 Filed 1–7–16; 8:45 am]

**BILLING CODE 4312–51–P**

**DEPARTMENT OF THE INTERIOR****Bureau of Reclamation**

[RR02013000, XXXR5537F3,  
RX.19871110.1000000]

**National Park Service**

[PPIMIMRO3L, PPMRSNR1Y.AR0000,  
FPDEFAULT]

**Notice of Availability and Notice of  
Public Meetings for the Draft  
Environmental Impact Statement for  
the Long-Term Experimental and  
Management Plan for the Operation of  
Glen Canyon Dam, Page, Arizona**

**AGENCY:** Bureau of Reclamation and  
National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Department of the Interior, through the Bureau of Reclamation and National Park Service (NPS), has made available for public review and comment the Draft Environmental Impact Statement (DEIS) for the Long-Term Experimental and Management Plan for the Operation of Glen Canyon Dam (LTEMP). The LTEMP would determine specific options for dam operations (including hourly, daily, and monthly release patterns), non-flow actions, and

appropriate experimental and management actions that will meet the requirements of the Grand Canyon Protection Act, maintain or improve hydropower production, and minimize impacts on resources, including those of importance to American Indian Tribes.

**DATES:** Written comments on the DEIS should be submitted by April 7, 2016.

Public meetings and webinars to provide information and receive written comments will be held on:

- Webinar—Tuesday, February 16, 2016, at 6:30 p.m. MST;
- Meeting—Monday, February 22, 2016, at 6:00 p.m. MST, Flagstaff, Arizona;
- Meeting—Thursday, February 25, 2016, at 6:00 p.m. MST, Phoenix, Arizona; and
- Webinar—Tuesday, March 1, 2016, at 1:00 p.m. MST.

Staff will be available to take comments and answer questions during this time.

**ADDRESSES:** You may submit written comments by the following methods:

- Web site: <http://parkplanning.nps.gov/LTEMPEIS>.
- Mail: Glen Canyon Dam LTEMP Draft EIS, Argonne National Laboratory, 9700 South Cass Avenue—EVS/240, Argonne, Illinois 60439.

Comments will not be accepted by facsimile, email, or in any other way than those specified above. Bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted.

Public meetings will be held at the following locations:

- Flagstaff—USGS Grand Canyon Monitoring and Research Center, 2255 N. Gemini Road, Flagstaff, Arizona 86001.
- Phoenix—Embassy Suites Phoenix-Tempe, 4400 S. Rural Road, Tempe, Arizona 85282.

For specific information about the web-based meetings, please refer to the LTEMP EIS Web site at: <http://ltempeis.anl.gov/>.

The DEIS may be viewed at the LTEMP EIS Web site at: <http://ltempeis.anl.gov/>. Compact disc copies of the DEIS are available for public inspection at several libraries and government offices. To request a compact disc of the DEIS, please contact Argonne at the address cited above or call 630–252–3169.

See the **SUPPLEMENTARY INFORMATION** section for specific locations where the DEIS is available for public inspection.

**FOR FURTHER INFORMATION CONTACT:** Ms. Beverley Heffernan, EIS Project Manager, Bureau of Reclamation, [bheffernan@usbr.gov](mailto:bheffernan@usbr.gov), 801–524–3712; or

Mr. Rob Billerbeck, National Park Service, [Rob\\_P\\_Billerbeck@nps.gov](mailto:Rob_P_Billerbeck@nps.gov), 303–987–6789.

**SUPPLEMENTARY INFORMATION:** The purpose of the proposed action is to provide a comprehensive framework for adaptively managing Glen Canyon Dam over the next 20 years consistent with the Grand Canyon Protection Act and other provisions of applicable Federal law. The proposed action will help determine specific dam operations and actions that could be implemented to improve conditions and continue to meet the Grand Canyon Protection Act's requirements and to minimize—consistent with law—adverse impacts on the downstream natural, recreational, and cultural resources in Glen Canyon National Recreation Area and Grand Canyon National Park, including resources of importance to American Indian Tribes.

The need for the proposed action stems from the need to use scientific information developed since the 1996 Record of Decision (ROD) to better inform the public of Department of the Interior decisions on dam operations and other management and experimental actions so that the Secretary of the Interior may continue to meet statutory responsibilities for protecting downstream resources for future generations, conserving Endangered Species Act-listed species, avoiding or mitigating impacts on National Register of Historic Properties-eligible properties, and protecting the interests of American Indian Tribes, while meeting obligations for water delivery and the generation of hydroelectric power.

**The DEIS Analyzes Seven Alternatives**

The DEIS assesses the potential environmental effects of seven alternatives being considered: The No-Action Alternative (Alternative A) and six Action Alternatives (Alternatives B, C, D, E, F, and G), which are described below. There are a number of experimental and management actions that would be incorporated into all of the LTEMP Action Alternatives, except where noted:

- High-flow experimental releases for sediment conservation—Implementation of high-flow experiments (HFEs) under all alternatives are patterned after the current HFE protocol (adopted in 2012), but each alternative includes specific modifications related to the frequency of spring and fall HFEs, the triggers for HFEs, and the overall process for implementation of HFEs, including implementation considerations and

conditions that would result in discontinuing specific experiments.

- Nonnative fish control actions—Implementation of control actions for nonnative brown and rainbow trout are patterned after those identified in the Nonnative Fish Control Environmental Assessment (EA) and Finding of No Significant Impact (adopted in 2012). Nonnative fish control actions are not included in Alternative F.

- Conservation measures identified in the 2011 biological opinion on operations of Glen Canyon Dam—Potential measures include the establishment of a humpback chub refuge, evaluation of the suitability of habitat in the lower Grand Canyon for the razorback sucker, and establishment of an augmentation program for the razorback sucker, if appropriate. Other measures include humpback chub translocation, Bright Angel Creek brown trout control, Kanab ambersnail monitoring, determination of the feasibility of flow options to control trout including increasing daily down-ramp rates to strand or displace age-0 trout and high flow followed by low flow to strand or displace age-0 trout, assessments of the effects of actions on humpback chub populations, sediment research to determine effects of equalization flows, and Asian tapeworm monitoring. Most of these conservation measures are ongoing and are elements of existing management practices (*e.g.*, brown trout control, humpback chub translocation, and sediment research to determine the effects of equalization flows), while others are being considered for further action under the LTEMP (*e.g.*, trout management flows).

- Experimental and management actions at specific sites such as nonnative plant removal, revegetation with native species, and mitigation at specific and appropriate cultural sites—included are pilot experimental riparian vegetation restoration actions planned by the NPS. These actions would also have involvement from tribes to capture concerns regarding culturally significant native plants, and would provide an opportunity to integrate Traditional Ecological Knowledge in a more applied manner into the long-term adaptive management program (described in more detail below).

- Preservation of historic properties through a program of research, monitoring, and mitigation to address erosion and preservation of archeological and ethnographic sites and minimize loss of integrity at National Register historic properties.

- Continued adaptive management under the Glen Canyon Dam Adaptive

Management Program, including a research and monitoring component.

#### **Alternative A: The No-Action Alternative**

Alternative A represents continued operation of Glen Canyon Dam as guided by the 1996 ROD for operations of Glen Canyon Dam: Modified low fluctuating flow, as modified by recent Department of the Interior decisions, including those specified in the 2007 ROD on Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lakes Powell and Mead (Interim Guidelines) (until 2026), the HFE EA, and the Nonnative Fish Control EA (both expiring in 2020). As is the case for all alternatives, Alternative A also includes implementation of existing and planned NPS management activities, with durations as specified in NPS management documents.

Under Alternative A, daily flow fluctuations would continue to be determined according to monthly volume brackets as follows: 5,000 cubic feet per second (cfs) daily range for monthly volumes less than 600 thousand acre-feet (kaf); 6,000 cfs daily range for monthly volumes between 600 kaf and 800 kaf; and 8,000 cfs for monthly volumes greater than 800 kaf.

Under Alternative A, the current HFE protocol would be followed until it expired in 2020. Under this protocol, high-flow releases may be made in spring (March and April) or fall (October and November). HFE magnitude would range from 31,500 cfs to 45,000 cfs. The duration would range from less than 1 hour to 96 hours. Frequency of HFEs would be determined by tributary sediment inputs, resource conditions, and a decision process carried out by the Department of the Interior. The HFE protocol uses a “store and release” approach in which sediment inputs are tracked over two accounting periods, one for each seasonal HFE: Spring (December through June) and fall (July through November). Under the protocol, the maximum possible magnitude and duration of HFE that would achieve a positive sand mass balance in Marble Canyon, as determined by modeling, would be implemented.

Under Alternative A, the current nonnative fish control protocol would be followed until it expired in 2020. Mechanical removal would primarily consist of the use of boat-mounted electrofishing equipment to remove all nonnative fish captured. Captured nonnative fish would be removed alive and potentially stocked into areas that have an approved stocking plan, unless

live removal fails, in which case fish would be euthanized and used for later beneficial use.

#### **Alternative B**

The objective of Alternative B is to increase hydropower generation while limiting impacts on other resources and relying on flow and non-flow actions to the extent possible to mitigate impacts of higher fluctuations. Alternative B focuses on non-flow actions and experiments to address sediment resources, nonnative fish control, and on native and nonnative fish communities.

Under Alternative B, monthly volumes would be the same as under current operations, but daily flow fluctuations would be higher than under current operations in most months. Compared to current operations, the hourly up-ramp rate would remain unchanged at 4,000 cfs/hour, but the hourly down-ramp rate would be increased to 4,000 cfs/hour in November through March and 3,000 cfs/hour in other months.

Alternative B includes implementation of the nonnative fish control protocol and HFE protocol through the entire LTEMP period, but HFEs would be limited to a maximum of one in spring or fall every other year. In addition to these experimental actions, Alternative B would test trout management flows and hydropower improvement flows. With trout management flows, high flows (*e.g.*, 20,000 cfs) would be maintained for 2 or 3 days followed by a very sharp drop in flows to a minimum level (*e.g.*, 5,000 cfs) for the purpose of reducing annual recruitment of trout. Hydropower improvement experiments would test maximum powerplant capacity flows up to four times during the LTEMP period, but only in years with annual volumes  $\leq 8.23$  million acre-feet (maf).

#### **Alternative C**

The objective of Alternative C is to adaptively operate Glen Canyon Dam to achieve a balance of resource objectives with priorities placed on humpback chub, sediment, and minimizing impacts on hydropower. Alternative C features a number of condition-dependent flow and non-flow actions that would be triggered by resource conditions. The alternative uses decision trees to identify when experimental changes in base operations or other planned action is needed to protect resources. Operational changes or implementation of non-flow actions could be triggered by changes in sediment input, humpback chub

numbers and population structure, trout numbers, and water temperature.

Monthly release volumes under Alternative C in August through November would be lower than those under most other alternatives to reduce sediment transport rates during the monsoon period. Release volumes in the high power demand months of December, January, and July would be increased to compensate for water not released in August through November, and volumes in February through June would be patterned to follow the monthly hydropower demand as defined by the contract rate of delivery. Under Alternative C, the allowable within-day fluctuation range from Glen Canyon Dam would be proportional to monthly volume ( $7 \times$  monthly volume in kaf). The down-ramp rate would be increased to 2,500 cfs/hour, but the up-ramp rate would remain unchanged at 4,000 cfs/hour.

Experimentation under Alternative C includes testing the effects of the following actions: (1) Sediment-triggered spring and fall HFEs through the entire 20-year LTEMP period, (2) 24-hour proactive spring HFEs in high volume years ( $\geq 10$  maf release volume), (3) extension of the possible duration of fall HFEs while maintaining a maximum total volume of a 96-hour 45,000 cfs release, (4) reducing fluctuations before and after HFEs, (5) mechanical removal of trout near the Little Colorado River confluence, (6) trout management flows, and (7) low summer flows during the entire LTEMP period to allow greater warming.

#### **Alternative D: The Preferred Alternative**

Alternative D is the preferred alternative for the LTEMP. The objective of Alternative D is to adaptively operate Glen Canyon Dam to best meet the resource goals of the LTEMP. Like Alternative C, Alternative D features a number of condition-dependent flow and non-flow actions that would be triggered by resource conditions.

Under Alternative D, the total monthly release volume of October, November, and December would be equal to that under Alternative A to avoid the possibility of the operational tier differing from that of Alternative A, as established in the Interim Guidelines. The August volume was set to a moderate volume level (800 kaf in an 8.23 maf release year) to balance sediment conservation prior to a potential HFE and to address power production and capacity concerns. January through July monthly volumes were set at levels that roughly track Western Area Power Administration's

contract rate of delivery. This produced a redistribution of monthly release volumes under Alternative D that would result in the most even distribution of flows of any alternative except for Alternative G. The allowable within-day fluctuation range from Glen Canyon Dam would be proportional to the volume of water scheduled to be released during the month ( $10 \times$  monthly volume in kaf in the high-demand months of June, July, and August and  $9 \times$  monthly volume in kaf in other months). Up- and down-ramp rates would be the same as Alternative C.

Experimentation under Alternative D includes testing the effects of the following actions: (1) Sediment-triggered spring and fall HFEs through the entire 20-year LTEMP period, (2) 24-hour proactive spring HFEs in high volume years ( $\geq 10$  maf release volume), (3) extension of the duration of up to 45,000 cfs fall HFEs for as many as 250 hours depending on sediment availability, (4) reducing fluctuations after fall HFEs, (5) mechanical removal of trout near the Little Colorado River confluence, (6) trout management flows, (7) low summer flows in the second 10 years of the LTEMP period to allow greater warming, and (8) sustained low flows to improve the aquatic food base.

#### **Alternative E**

The objective of Alternative E is to provide for recovery of the humpback chub while protecting other important resources including sediment, the rainbow trout fishery at Lees Ferry, aquatic food base, and hydropower resources. Alternative E features a number of condition-dependent flow and non-flow actions that would be triggered by resource conditions.

Under Alternative E, monthly volumes would closely follow the monthly hydropower demand as defined by the contract rate of delivery. The total monthly release volume of October, November, and December, however, would be equal to that under Alternative A to minimize the possibility of the operational tier differing from that of Alternative A as established in the Interim Guidelines. In addition, lower monthly volumes (relative to Alternative A) would be targeted in August and September to reduce sediment transport during the monsoon period, when most sediment is delivered by the Paria River. The allowable within-day fluctuation range from Glen Canyon Dam would be proportional to the volume of water scheduled to be released during the month ( $12 \times$  monthly volume in kaf in high power demand months of June,

July, and August, and  $10 \times$  monthly volume in kaf in other months).

Experimentation under Alternative E includes testing the effects of the following actions: (1) Sediment-triggered fall HFEs through the entire 20-year LTEMP period, (2) sediment-triggered spring HFEs only in the second 10 years of the LTEMP period, (3) 24-hour proactive spring HFEs in high volume years ( $\geq 10$  maf release volume), (4) reducing fluctuations before fall HFEs, (5) mechanical removal of trout near the Little Colorado River confluence, (6) trout management flows, and (7) low summer flows in the second 10 years of the LTEMP period to allow greater warming.

#### **Alternative F**

The objective of Alternative F is to provide flows that follow a more natural pattern of high spring, and low summer, fall, and winter flows while limiting sediment transport and providing for warming in summer months. In keeping with this objective, Alternative F does not feature some of the flow and non-flow actions of the other alternatives.

Under Alternative F, peak flows would be lower than pre-dam magnitudes to reduce sediment transport and erosion given the reduced sand supply downstream of the dam. Peak flows would be provided in May and June, which corresponds well with the timing of the pre-dam peak. The overall peak flow in an 8.23 maf year would be 20,000 cfs (scaled proportionately in drier and wetter years), and would include a 24 hour 45,000 cfs flow at the beginning of the spring peak period (e.g., on May 1) if there was no triggered spring HFE in same year, and a 168 hour (7 day) 25,000 cfs flow at the end of June. Following this peak, there would be a rapid drop to the summer base flow. The initial annual 45,000 cfs flow would serve to store sediment above the flows of the remainder of the peak, thus limiting sand transport further downstream and helping to conserve sandbars. The variability in flows within the peak would also serve to water higher elevation vegetation. There would be no within-day fluctuations in flow under Alternative F.

Low base flows would be provided from July through January. These low flows would provide for warmer water temperatures, especially in years when releases are warm, and would also serve to reduce overall sand transport during the remainder of the year.

Other than testing the effectiveness of sediment-triggered HFEs, which would continue through the entire LTEMP period, there would be no explicit

experimental or condition-dependent triggered actions under Alternative F.

### Alternative G

The objective of Alternative G is to maximize the conservation of sediment, in order to maintain and increase sandbar size. Under Alternative G, flows would be delivered in a steady pattern throughout the year with no monthly differences in flow other than those needed to adjust operations in response to changes in forecast and other operating requirements such as equalization. In an 8.23 maf year, steady flow would be approximately 11,400 cfs.

Experimentation under Alternative G includes testing the effects of the following actions: (1) Sediment-triggered spring and fall HFEs through the entire 20-year LTEMP period, (2) 24-hour proactive spring HFEs in high volume years ( $\geq 10$  maf release volume), (3) extension of the duration of up to 45,000 cfs fall HFEs for as many as 250 hours depending on sediment availability, (4) mechanical removal of trout near the Little Colorado River confluence, and (5) trout management flows.

### Public Review and Where to Find Copies of the DEIS

The DEIS is available for reviewing on the internet at: <http://ltempeis.anl.gov/>. Compact disc copies of the DEIS are available for public review at the following locations:

- J. Willard Marriott Library, University of Utah, 295 South 1500 East, Salt Lake City, Utah 84112.
- Cline Library, Northern Arizona University, 1001 S. Knoles Drive, Flagstaff, Arizona 86011-6022.
- Burton Barr Central Library, 1221 North Central Avenue, Phoenix, Arizona 85004.
- Page Public Library, 479 South Lake Powell Boulevard, Page, Arizona 86040.
- Grand County Library, Moab Branch, 257 East Center Street, Moab, Utah 84532.
- Sunrise Library, 5400 East Harris Avenue, Las Vegas, Nevada 89110.
- Denver Public Library, 10 West 14th Avenue Parkway, Denver, Colorado 80204.
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW., Main Interior Building, Washington, DC 20240-0001.

### Special Assistance for Public Meetings

If special assistance is required to participate in the public meeting, please contact Ms. Jayne Kelleher at 801-524-3680 or via email at [jkelleher@usbr.gov](mailto:jkelleher@usbr.gov). Please contact Ms. Kelleher at least 10

working days prior to the meeting. A telephone device for the hearing impaired (TTY) is available at 1-800-877-8339.

### Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 21, 2015.

#### Jennifer Gimbel,

*Principal Deputy Assistant Secretary—Water and Science.*

#### Michael Bean,

*Principal Deputy Assistant Secretary—Fish and Wildlife and Parks.*

[FR Doc. 2015-33274 Filed 1-7-16; 8:45 am]

BILLING CODE 4332-90-P 4312-CB-P

## DEPARTMENT OF THE INTERIOR

### Office of the Special Trustee for American Indians

[15XD0120AF-DT21200000-DST000000-77AC00.241A]

### Notice of Proposed Renewal of Information Collection: OMB Control Number 1035-0003, Application to Withdraw Tribal Funds From Trust Status

**AGENCY:** Office of the Special Trustee for American Indians, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Special Trustee for American Indians, Department of the Interior, is announcing its intention to request renewal approval for the collection of information for Application to Withdraw Tribal Funds from Trust Status, OMB Control Number 1035-0003. This collection request has been forwarded to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) describes the nature of the information collection and the expected burden and cost.

**DATES:** OMB has up to 60 days to approve or disapprove the information collection request, but may respond after 30 days; therefore, public

comments should be submitted to OMB by February 8, 2016, in order to be assured of consideration.

**ADDRESSES:** Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior (1035-0003), by telefax at (202) 395-5806 or via email to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov).

Also, please send a copy of your comments to the Office of the Special Trustee, Office of External Affairs, Attn: Roberson D. Becenti, 4400 Masthead St. NE., Room 259A, Albuquerque, New Mexico 87109. You may also email comments to [roberson\\_becenti@ost.doi.gov](mailto:roberson_becenti@ost.doi.gov).

Individuals providing comments should reference OMB control number 1035-0003, "Application to Withdraw Tribal Funds from Trust Status, 25 CFR 1200."

**FOR FURTHER INFORMATION CONTACT:** To request more information on this information collection or to obtain a copy of the collection instrument, see the contact information provided in the **ADDRESSES** section above. To see a copy of the entire ICR submitted to OMB, go to: <http://www.reginfo.gov> and select Information Collection Review, Currently Under Review.

### SUPPLEMENTARY INFORMATION:

#### I. Abstract

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement the Paperwork Reduction Act of 1995 (Pub. L. 104-131), require that interested members of the public and affected parties have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection activity that the Office of the Special Trustee for American Indians has submitted to OMB for renewal.

Public Law 103-412, The American Indian Trust Fund Management Reform Act of 1994 (Act), allows Indian tribes on a voluntary basis to take their funds out of trust status within the Department of the Interior (and the Federal Government) in order to manage and invest such funds on their own. 25 CFR part 1200, subpart B, Sec. 1200.13, "How does a tribe apply to withdraw funds?" describes the requirements for application for withdrawal. The Act covers all tribal trust funds including judgment funds as well as some settlements funds, but excludes funds held in Individual Indian Money accounts. Both the Act and the regulations state that upon withdrawal of the funds, the Department of the Interior (and the Federal Government)



have no further liability for such funds. Accompanying their application for withdrawal of trust funds, tribes are required to submit a Management Plan for managing the funds being withdrawn, to protect the funds once they are out of trust status.

This information collection allows the Office of the Special Trustee for American Indians to collect the tribes' applications for withdrawal of funds held in trust by the Department of the Interior. If this information were not collected, the Office of the Special Trustee for American Indians would not be able to comply with the American Indian Trust Fund Management Reform Act of 1994 (Pub. L. 103-412), and tribes would not be able to withdraw funds held for them in trust by the Department of the Interior.

## II. Data

(1) *Title:* Application to Withdraw Tribal Funds from Trust Status, 25 CFR 1200.

*OMB Control Number:* 1035-0003.

*Current Expiration Date:* January 31, 2016

*Type of Review:* Extension without change of a currently approved collection.

*Affected Entities:* Tribal Governments.

*Estimated annual number of respondents:* One respondent per year.

*Frequency of response:* Once per tribe per trust fund withdrawal application.

(2) *Annual reporting and record keeping burden:*

*Total annualized reporting per respondent:* 1.

*Total annualized reporting:* 750 hours.

(3) *Description of the need and use of the information:* The statutorily-required information is needed to approve tribal applications to withdraw funds from accounts held in trust for tribes by the United States Government, for self-management.

(4) As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on the information collection was published on October 19, 2015 (80 FR 63253). No comments were received. This notice provides the public with an additional 30 days in which to comment on the proposed information collection activity.

## III. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection

and the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information techniques.

"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.

It is our policy to make all comments available to the public for review. Before including Personally Identifiable Information (PII), such as your address, phone number, email address, or other personal information in your comments(s), you should be aware that your entire comment (including PII) may be made available to the public at any time. While you may ask us in your comment to withhold PII from public view, we cannot guarantee that we will be able to do so. If you wish to view any comments received, you may do so by scheduling an appointment with the Office of the Special Trustee for American Indians by using the contact information in the **ADDRESSES** section above. A valid picture identification is required for entry into the Department of the Interior.

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 Office of Management and Budget control number.

Dated: December 30, 2015.

**David Beeksmas,**

*Director, Office of External Affairs, Office of the Special Trustee for American Indians.*

[FR Doc. 2016-00109 Filed 1-7-16; 8:45 am]

**BILLING CODE 4334-63-P**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Request for Information; Comment Request; Department of Labor Research and Evaluation Plan for 2016

**AGENCY:** Office of the Assistant Secretary for Policy, Chief Evaluation Office.

**ACTION:** Request for information.

**SUMMARY:** The Department of Labor (DOL), as part of its continuing effort to improve the quality and use of research and evaluation, is requesting comments from the public on its 2016 Research and Evaluation Plan.

**DATES:** Written comments must be received by the office listed in the addressee section below on or before February 8, 2016.

**ADDRESSES:** A copy of this research and evaluation plan may be obtained free of charge by contacting Jonathan Simonetta, Chief Evaluation Office, U.S. Department of Labor, Room S-2312, 200 Constitution Avenue NW., Washington, DC 20210, *Email:*

*ChiefEvaluationOffice@dol.gov.*

You may submit comments by one of the following methods: *Email:* *ChiefEvaluationOffice@dol.gov;* *Mail or Courier:* Jonathan Simonetta, Chief Evaluation Office, U.S. Department of Labor, Room S-2312, 200 Constitution Avenue NW., Washington, DC 20210.

*Instructions:* Please submit one copy of your comments, preferably by email. We continue to experience delays in receiving mail in the Washington, DC area, therefore commenters are strongly encouraged to transmit their comments electronically via email or to submit them early by mail.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Simonetta, Chief Evaluation Office, U.S. Department of Labor, Room S-2312, 200 Constitution Avenue NW., Washington, DC, 20210, by telephone at 202-693-5959 (this is not a toll-free number), or by email at *ChiefEvaluationOffice@dol.gov.*

**SUPPLEMENTARY INFORMATION:** U.S. Department of Labor, Chief Evaluation Office, Fiscal Year 2016 Evaluation Plan Priorities and Themes.

The U.S. Department of Labor's Chief Evaluation Office (CEO) directly funds and sponsors evaluations and also collaborates with other DOL agencies and programs to design and conduct evaluations that those agencies sponsor. The Department's annual evaluation plan is based mainly on agencies' priorities, the Department's Strategic Plan priorities, statutory requirements for evaluations, and continuing

discussions with agency leadership and program staff.

In addition to funds appropriated for Departmental Program Evaluations (DPE), Division G, Title I, Section 107 of Public Law 113–235 of the Consolidated and Further Continuing Appropriations Act, 2015 (the Act) authorizes the Secretary of Labor to reserve not more than 0.5 percent from specific budget accounts for transfer to and use by the Office of the Chief Evaluation Officer for departmental program evaluation. The accounts referred to in subsection (a) of the Act are: Training and Employment Services, Job Corps, Community Service Employment for Older Americans, State Unemployment Insurance and Employment Service Operations, Employee Benefits Security Administration, Office of Workers' Compensation Programs, Wage and Hour Division, Office of Federal Contract Compliance Programs, Office of Labor-Management Standards, Occupational Safety and Health Administration, Mine Safety and Health Administration, funding made available to the Bureau of International Affairs and Women's Bureau within the Departmental Management, Salaries and Expenses account, and Veterans Employment and Training. Set-aside funds are transferred to CEO and are available for evaluations of programs administered by the agencies responsible for those budget accounts.

Evaluation funding (core and set-aside) must be obligated within two years. The following sections present principles followed in developing the evaluation plan and a summary of the priorities and themes for potential evaluation projects expected to be initiated in FY 2016. Of particular note is that the Workforce Innovation and Opportunity Act (WIOA) of 2014 requires several specific evaluations, which will be carried out collaboratively by CEO and the Employment and Training Administration (ETA); some WIOA-specific studies are included in this plan and others will be included in subsequent years' plans.

### Guiding Principles

Three principles guide the Department's overall evaluation plan and all studies initiated by the CEO:

1. Prioritize studies that focus on measuring the effectiveness of key program outputs and outcomes consistent with Departmental priorities, the Departmental Strategic Plan, Agency Learning Agendas, and Agency Operating Plans.

2. Encourage the most rigorous evaluation designs possible to address

the evaluation question of interest, particularly experimental designs, but also non-experimental designs, in a manner that is realistic given the programmatic missions/goals, programmatic maturity, data availability, and analytic capability.

3. Expand the capacity, knowledge, and utilization of high quality evaluation designs and methods department-wide; and improve the quality of data that can be used for evaluations.

Agency Learning Agendas identify priorities for evaluations that can help agencies measure their effectiveness, their progress towards goals and outcomes, continuous improvement, and, in some cases, meet Congressional requirements for reports and evaluations. Evaluations focus on program performance and outcomes, measuring the impacts of core programs and services, evaluating new programs and initiatives, and testing the relative effectiveness of alternative program practices, using the most rigorous methodologies possible.

### Evaluation Priorities and Themes for FY 2016

These themes reflect a diverse mix of potential activities designed to build evidence about what works and the factors that influence or are related to Departmental programs. Broadly, four types of projects are considered in pursuing the priorities:

- Statistical Analyses of Trends in Programs, Labor Supply and Demand, Economic Conditions, and the Labor Market as they Relate to DOL Programs;
- Exploratory, Formative and Implementation Evaluations, and Designs and Evaluability Assessments for Pilots and Demonstrations;
- Formal Evaluations of Programs and Demonstrations; and
- Research and Evaluation Capacity Building Activities.

#### A. Statistical Analysis of Trends and Surveys

In FY 2016, CEO is exploring the following themes, possibly through statistical analyses using agency administrative data, surveys or statistical databases:

- Labor Market and Occupational Trends in Selected Industry Sectors;
- Gender Patterns and Pay in Occupations and Industries;
- Caregiving and Women's Retirement Security;
- Unemployment and Unemployment Insurance;
- Labor Enforcement Program Data (OSHA, WHD, OFCCP);
- Immigration, Immigrants, and Work Visas;

- Employment of Veterans; and
- Analysis of Adult Skills and Competencies.

#### B. Exploratory, Formative and Implementation Evaluations, Evaluability Assessments, Feasibility Studies, and Structured Evidence/Literature Reviews

In FY 2016, CEO is exploring the following priorities and types of studies, possibly through exploratory evaluations using formative and implementation analysis methods, and evidence reviews.

- Evidence and Literature Reviews
  - CLEAR Reviews. Structured literature and evidence reviews will be conducted using the review standards and guidelines established for the Clearinghouse for Labor Evaluation and Research (CLEAR);
  - Active Labor Market Policies and Livelihood Services in Developing Countries;
  - Policies and Strategies to Address Child Labor and Forced Labor; and
  - Education, Training and Certification Pathways.
- Job Driven Skills and Training
  - Models for Improving Basic Skills and Career Preparation (e.g., GED and new testing mode, career education);
  - Occupational Credentialing and Training Program Practices;
  - Characteristics of, Services to, and Employment Outcomes for Unemployed and Dislocated Workers;
  - Employment Effects of Soft Skills Training and Job Search Strategies for Adults and Youth; and
  - Models of Engagement with, and Effect of Programs on, Businesses and Employers (e.g., Job Corps and other youth programs, adult workforce programs, job training programs, veterans programs).
- WIOA Implementation
  - Implementation of WIOA; and
  - Strategies and Services Delivery in One Stop Centers/American Job Centers.
- Veterans
  - Strategies and Models of Employment Services for Serving Veterans and Alternative Models; and
  - Models for Improving the Transition of Individuals from Active Military Duty to Civilian Employment.
- Other Special Populations
  - DOL Programs and Services in Native American, Tribal, and Pacific Islander Urban and Rural Communities;
  - Employer Practices Regarding Accommodation and Talent-development of Employees with Disabilities; and
  - Role of Intermediaries, including Non-Farm Labor Contractors, in the Hiring of Farmworkers.

- Labor Standards, Worker Safety and Health, Compliance, and Compliance Assistance

- Worker Rights in Developing Countries;

- Child Labor Information and Technical Assistance Efforts in Developing Countries; and

- Labor Standards in Supply Chains in Selected Industries.

### C. Formal Evaluations of Programs and Demonstrations

In FY 2016, CEO is exploring the following themes, possibly through formal evaluations to test promising strategies, replicate proven models, and estimate the effectiveness of program components and service delivery approaches:

- Youth
  - National Guard Youth ChalleNge Job ChalleNge Demonstration;

- Performance Partnership Pilots (P3) for Disconnected Youth;

- Job Corps Innovations Pilots; and
- Youth Build.

- Job-Driven Skills and Training
  - American Apprenticeship Initiative Grants;

- Employment and Training Services for Adults, Dislocated Workers, Out of School Youth, and Foster Youth;

- Innovative Career Pathways Models; and

- Subsidized Employment and Tax Credit Strategies to Increase Employment.

- Employment and Reemployment
  - Innovative Strategies for Improving Employment Outcomes for Incarcerated and Formerly Incarcerated Individuals and

- Effective Reemployment Strategies for Unemployed Workers and Recipients of Unemployment Insurance.

- Behavioral Economics and Insights
  - Evaluations Using Behavioral

- Insights to Improve Program Outcomes in DOL Employment and Training and Worker Protection Programs.

- Labor Standards, Worker Health and Safety, Compliance and Compliance Assistance
  - Deterrence Strategies for Improving Compliance with Labor Standards Laws and Regulations;

- Evaluation of Voluntary Compliance with Labor Standards Laws and Regulations;

- Effectiveness of Various Methods and Strategies for Inspection, Compliance, and Enforcement; and

- Improving Injury and Illness Reporting.

- Worker Security, Benefits, and Tax Strategies
  - Effectiveness of Financial Literacy Strategies;

- Effectiveness of Financial Literacy Strategies;

- Effect of Worker Benefits on Family, Worker, and Child Well-being; and

- Effectiveness of Tax Credits and Wage Subsidy Strategies on Employment Outcomes.

- Outreach, Information, Training, and Technical Assistance

- Effective Translation and Adoption of Federal Policies by States and Localities;

- Effectiveness of Inspector Training Programs; and

- Effectiveness of Technical Assistance and Outreach.

### D. Research and Evaluation Capacity Building Activities

It is important to complement evaluation studies with other activities designed to continuously reinforce the role of evaluation at DOL: The importance of evaluation for achieving performance goals and objectives; the integration of evaluation into ongoing management; and the expectation of high quality products and reports. Dissemination of evaluation reports and access to accumulating evidence is also essential, as is the commitment to developing a pipeline of labor-focused young evaluators/scholars. This category includes various activities to continue to build DOL's evaluation capacity, such as:

- DOL Scholars Research Program (with priority given to young scholars);

- Collaborative Cross-Agency Statistical Analysis; and

- Wage Record Data Exchanges for Evaluations.

### Acronyms

BLS, Bureau of Labor Statistics

CEO, Chief Evaluation Office

EBSA, Employee Benefits Security Administration

ETA, Employment and Training Administration

ILAB, Bureau of International Labor Affairs

MSHA, Mine Safety and Health Administration

OASP, Office of the Assistant Secretary for Policy

ODEP, Office of Disability Employment Policy

OFCCP, Office of Federal Contract Compliance Programs

OLMS, Office of Labor-Management Standards

OSEC, Office of the Secretary

OSHA, Occupational Safety and Health Administration

OWCP, Office of Workers' Compensation Programs

SOL, Office of the Solicitor

UI, Unemployment Insurance

VETS, Veterans' Employment & Training Service

WHD, Wage and Hour Division

WB, Women's Bureau

### Instructions, Who Should Respond:

We invite practitioners, policy makers, program directors, business and industry associations, nonprofit organizations, and researchers to provide feedback on the priorities, the themes and the types of studies and approaches included in the 2016 plan, and suggestions for related evaluation areas topics, for example:

- Are there other themes or topics that should be considered for inclusion in the evaluation plan?

- What types of evaluations or topics would be of most relevance to program practitioners?

- Are there any particular data or resource constraints that should be considered?

### Guidance for Submitting Documents

On page one of your submission, please indicate your name, the name of your organization (if applicable), and your contact information (including phone number, postal address, and email address). While not required, it would assist us in reviewing your information if you also included the type of organization you represent (public, private, not-for-profit, or philanthropic), the field(s) in which you work and the level at which you operate (national, state, regional, local or tribal).

*Rights to Materials:* By submitting material in response to this RFI, the respondent is agreeing to grant the Department a worldwide, royalty-free, perpetual, irrevocable, non-exclusive license to use the material and to make it publicly available. Further, the respondent agrees that it owns, has a valid license, or is otherwise authorized to provide the material to the Department. The Department will not provide any compensation for material submitted in response to this RFI.

### Electronic Access to This Document:

The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the *Code of Federal Regulations* is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other documents of the Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit

your search to documents published by the Department.

Signed: at Washington, DC this 17th day of December, 2015.

**Sharon I. Block,**

*Principal Deputy Assistant Secretary for Policy, U.S. Department of Labor.*

[FR Doc. 2016-00170 Filed 1-7-16; 8:45 am]

**BILLING CODE 4510-HX-P**

## DEPARTMENT OF LABOR

### Office of the Assistant Secretary for Veterans' Employment and Training (OASVET); Agency Information Collection Activities; Comment Request; VETS' Competitive Grant Programs Reporting

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is soliciting comments concerning a proposed approval for the authority to conduct the information collection request (ICR) titled, "VETS' Competitive Grant Programs Reporting Data Collection." This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq.

**DATES:** Consideration will be given to all written comments received by March 8, 2016.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained for free by contacting Bradley Sickles by telephone at (202) 693-4741 (this is not a toll-free number) or by email at [bradley.sickles.a@dol.gov](mailto:bradley.sickles.a@dol.gov). Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Veterans' Employment and Training Service, Room S1325, 200 Constitution Avenue NW., Washington, DC 20210; by email: [bradley.sickles.a@dol.gov](mailto:bradley.sickles.a@dol.gov); or by fax (202-693-4755).

**FOR FURTHER INFORMATION CONTACT:** Bradley Sickles, by telephone at (202) 693-4741 (this is not a toll-free number) or by email at [bradley.sickles.a@dol.gov](mailto:bradley.sickles.a@dol.gov).

**SUPPLEMENTARY INFORMATION:** The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final

approval. This program helps to ensure requested data will be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The forms and formats contained in this information collection request apply to the following competitive grants (CG): Homeless Veterans' Reintegration Program (HVRP) and the Stand Down Grants Program (38 U.S.C. 2021); Homeless Female Veterans and Homeless Veterans with Families (HFVHVF) reintegration grant program (38 U.S.C. 2021A); Incarcerated Veterans' Transition Program (IVTP) (38 U.S.C. 2023); and the Veterans' Workforce Investment Program (VWIP), (29 U.S.C. 2913). This information collection is authorized by the provisions at 38 U.S.C. 2021(b); 38 U.S.C. 2021A(c); 29 U.S.C. 2913(b)(2); and section 200.328, title II, Code of Federal Regulations (2 CFR 200.328).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it under the PRA and it displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the addresses section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention "VETS' CG Programs Reporting Data Collection."

Submitted comments will also be a matter of public record for this ICR and posted on the Internet without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

*Agency:* DOL—VETS.

*Type of Review:* New.

*Title of Collection:* VETS' Competitive Grant Programs Reporting.

*Forms:*

1. VETS-700, Competitive Grants (CG) Planned Goals Chart;
2. VETS-701, CG Technical Performance Report (TPR);
3. VETS-702, CG Technical Performance Narrative (TPN);
4. VETS-703, Stand Down After Action Report (SDAAR)

*OMB Control Number:* 1293-0NEW.

*Affected Public:* State, Local, and Tribal Governments; Private Sector—businesses or other for-profits and not-for-profit institutions.

*Estimated Number of Respondents:* 325.

*Frequency:* Quarterly.

*Total Estimated Annual Responses:* 1,300.

*Estimated Average Time per Response:* 12 Hours.

*Estimated Total Annual Burden Hours:* 15,600 hours.

*Total Estimated Annual Other Cost Burden:* \$0.

**Authority:** 44 U.S.C. 3506(c)(2)(A).

Dated: Signed in Washington, DC, this 4th day of January, 2016.

**Teresa W. Gerton,**

*Deputy Assistant Secretary for Veterans' Employment and Training.*

[FR Doc. 2016-00164 Filed 1-7-16; 8:45 am]

**BILLING CODE 4510-79-P**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Agreement Approval Process for Use of Functional Affirmative Action Programs

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Office of Federal Contract Compliance Programs (OFCCP) sponsored information collection request (ICR) revision titled, "Agreement Approval Process for Use of Functional Affirmative Action Programs," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before February 8, 2016.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201511-1250-001](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201511-1250-001) (this link will only become active on the day following publication of this notice) or by contacting Seleda Perryman by telephone at 202-693-4131, TTY 202-693-8064, (these are not toll-free numbers) or sending an email to [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-OFCCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202-395-5806 (this is not a toll-free number); or by email: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**FOR FURTHER INFORMATION:** Contact Seleda Perryman by telephone at 202-693-4131, TTY 202-693-8064, (these are not toll-free numbers) or sending an email to [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov). Authority: 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** This ICR seeks approval under the PRA for revisions to the Agreement Approval Process for Use of Functional Affirmative Action Programs. The regulations implementing Executive Order 11246 permit Federal supply and service contractors to develop affirmative action programs (AAPs) that are based on business functions or

business units rather than AAPs based on establishments. Functional affirmative action programs (FAAPs) are designed to provide contractors with the option of creating AAPs that better fit their business needs. To develop and implement a FAAP, Federal contractors must receive written approval from the Director of OFCCP. This Information Collection Request (ICR) addresses the collection of information associated with the process for obtaining, modifying, updating, and renewing an agreement that allows contractors to develop and use functional AAPs. This information collection has been classified as a revision, because OFCCP is requesting Office of Management and Budget (OMB) approval of 1,427 hours (9.5 hour per contractor) in reporting burden for its approval process to allow contractors to develop function based affirmative action programs. This is an increase over the previous request of 926 hours (7.6 hours per contractor). The increase is primarily attributed to the addition of a certification requirement. Additionally, in response to contractor comments, OFCCP removed the requirement in the previous directive that contractors requesting to use functional or business unit affirmative action programs provide a copy of a Federal contract. There are no recordkeeping or third party disclosure burdens associated with this Information Collection Request. Those requirements are accounted for under 1250-0003. 41 CFR 60-2.1(d)(4) authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1250-0006. The current approval is scheduled to expire on December 31, 2015, however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice

published in the **Federal Register** on July 16, 2015 (80 FR 42127).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1250-0006. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL-OFCCP.

Title of Collection: Agreement Approval Process for Use of Functional Affirmative Action Programs.

OMB Control Number: 1250-0006.

Affected Public: Private Sector.

Total Estimated Number of Respondents: 150.

Total Estimated Number of Responses: 150.

Total Estimated Annual Time Burden: 1,427 hours.

Total Estimated Annual Other Costs Burden: \$89.

Dated: December 31, 2015.

**Linda Watts Thomas,**

Acting Departmental Clearance Officer.

[FR Doc. 2016-00168 Filed 1-7-16; 8:45 am]

**BILLING CODE 4510-CM-P**

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## OFFICE OF MANAGEMENT AND BUDGET

### OMB Final Sequestration Report to the President and Congress for Fiscal Year 2016

**AGENCY:** Executive Office of the President, Office of Management and Budget.

**ACTION:** Notice of availability of the OMB Final Sequestration Report to the President and Congress for FY 2016.

**SUMMARY:** OMB is issuing its Final Sequestration Report to the President and Congress for FY 2016 to report on compliance of enacted 2016 discretionary appropriations legislation with the discretionary caps. The report finds that enacted appropriations are within the current law defense and non-defense discretionary limits for 2016; therefore, a sequestration of discretionary budget authority is not required.

**DATES:** *Effective Date:* January 4, 2016. Section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, requires the Office of Management and Budget (OMB) to issue its Final Sequestration Report 15 calendar days after the end of a congressional session. With regard to this final report and to each of the three required sequestration reports, section 254(b) specifically states the following:

**SUBMISSION AND AVAILABILITY OF REPORTS.**—Each report required by this section shall be submitted, in the case of CBO, to the House of Representatives, the Senate and OMB and, in the case of OMB, to the House of Representatives, the Senate, and the President on the day it is issued. On the following day a notice of the report shall be printed in the **Federal Register**.

**ADDRESSES:** The OMB Sequestration Reports to the President and Congress is available on-line on the OMB home page at: [http://www.whitehouse.gov/omb/legislative\\_reports/sequestration](http://www.whitehouse.gov/omb/legislative_reports/sequestration)

**FOR FURTHER INFORMATION CONTACT:** Thomas Tobasko, 6202 New Executive Office Building, Washington, DC 20503, Email address: [ttobasko@omb.eop.gov](mailto:ttobasko@omb.eop.gov), telephone number: (202) 395-5745, FAX number: (202) 395-4768. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use electronic communications.

**Shaun Donovan,**  
*Director.*

[FR Doc. 2016-00087 Filed 1-7-16; 8:45 am]

**BILLING CODE P**

## NATIONAL SCIENCE FOUNDATION

### Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** National Science Foundation.

**ACTION:** Notice.

**SUMMARY:** Under the Paperwork Reduction Act of 1995, Public Law 104-

13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed information collection.

**DATES:** Written comments on this notice must be received by March 8, 2016 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, VA 22230, or by email to [splimpto@nsf.gov](mailto:splimpto@nsf.gov).

**FOR FURTHER INFORMATION CONTACT:** Suzanne Plimpton on (703) 292-7556 or send email to [splimpto@nsf.gov](mailto:splimpto@nsf.gov).

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Antarctic emergency response plan and environmental protection information.

*OMB Approval Number:* 3145-0180.  
*Expiration Date of Approval:* June 30, 2016.

**Abstract:** The NSF, pursuant to the Antarctic Conservation Act of 1978 (16 U.S.C. 2401 *et seq.*) (“ACA”) regulates certain non-governmental activities in Antarctica. The ACA was amended in 1996 by the Antarctic Science, Tourism, and Conservation Act. On September 7, 2001, NSF published a final rule in the **Federal Register** (66 FR 46739) implementing certain of these statutory amendments. The rule requires non-governmental Antarctic expeditions using non-U.S. flagged vessels to ensure that the vessel owner has an emergency response plan. The rule also requires persons organizing a non-governmental expedition to provide expedition members with information on their environmental protection obligations under the Antarctic Conservation Act.

*Expected Respondents.* Respondents may include non-profit organizations and small and large businesses. The majority of respondents are anticipated to be U.S. tour operators, currently estimated to number fifteen.

*Burden on the Public.* The Foundation estimates that a one-time paperwork and recordkeeping burden of 40 hours or less, at a cost of \$500 to \$1400 per

respondent, will result from the emergency response plan requirement contained in the rule. Presently, all respondents have been providing expedition members with a copy of the Guidance for Visitors to the Antarctic (prepared and adopted at the Eighteenth Antarctic Treaty Consultative Meeting as Recommendation XVIII-1). Because this Antarctic Treaty System document satisfies the environmental protection information requirements of the rule, no additional burden shall result from the environmental information requirements in the proposed rule.

Dated: January 5, 2016.

**Suzanne H. Plimpton,**  
*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2016-00137 Filed 1-7-16; 8:45 am]

**BILLING CODE 7555-01-P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by February 8, 2016. This application may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Nature McGinn, ACA Permit Officer, at the above address or [ACApermits@nsf.gov](mailto:ACApermits@nsf.gov).

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the

establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

### Application Details

1. Applicant Permit Application: 2016–018

Michael Gooseff, INSTAAR, 1560 30th Street, Boulder, CO 80309

### Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Areas. The applicant plans to enter Canada Glacier, Lake Fryxell, to continue operation of a previously installed, continuously recording stream gauge station, perform maintenance, conduct stream flow measurements and collect water quality samples near the stream gauge site. The applicant will also collect water quality samples of the melt-water of the Canada Glacier and along the length of the stream to study in-stream biogeochemical processes. The applicant plans to collect a maximum of five moss samples per year using a 3 cm corer to a depth of about 3 cm and a maximum of five soil samples of approximately 200 g per year from which to extract nematodes. Photography, LIDAR, and other survey and monitoring techniques may be used to detect changes in the stream bed and algal mat distribution over time, and/or to monitor the change in the stream gauge system through time.

The applicant also plans to enter Lower Taylor Glacier and Blood Falls to continue measurements of the Santa Fe Stream including: Stream-flow using velocity meters; pH, temperature, and conductivity via meters; and collection of water quality samples. The collection of water from the Blood Falls area occurs on the glacial moraine, not the glacier itself, and the sample is small (< 1 L) and comprised of both brine reservoir discharge (when present) and surface ice melt-water.

### Location

ASPA no. 131, Canada Glacier, Lake Fryxell, Taylor Valley, Victoria Land; ASPA No. 172, Lower Taylor Glacier and Blood Falls, Taylor Valley, McMurdo Dry Valleys, Victoria Land.

### Dates

February 29, 2016 to February 28, 2021.

**Nadene G. Kennedy,**

*Polar Coordination Specialist, Division of Polar Programs.*

[FR Doc. 2016–00085 Filed 1–7–16; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2016–0001]**

### Sunshine Act Meeting Notice

**DATE:** January 11, 18, 25, February 1, 8, 15, 2016.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

#### Week of January 11, 2016

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.

#### Week of January 25, 2016—Tentative

There are no meetings scheduled for the week of January 25, 2016.

#### Week of February 1, 2016—Tentative

There are no meetings scheduled for the week of February 1, 2016.

#### Week of February 8, 2016—Tentative

There are no meetings scheduled for the week of February 8, 2016.

#### Week of February 15, 2016—Tentative

There are no meetings scheduled for the week of February 15, 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](mailto: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](mailto: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](mailto:Brenda.Akstulewicz@nrc.gov) or [Patricia.Jimenez@nrc.gov](mailto:Patricia.Jimenez@nrc.gov).

Dated: January 6, 2016.

**Denise L. McGovern,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2016–00306 Filed 1–6–16; 4:15 pm]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Request To Amend a License To Import Radioactive Waste

Pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 110.70(b) “Public Notice of Receipt of an Application,” please take notice that the U.S. Nuclear Regulatory Commission (NRC) has received the following requests for import and export license amendments. Copies of the requests are available electronically through the Agencywide Documents Access and Management System (ADAMS) and can be accessed through the Public Electronic Reading Room (PERR) link <http://www.nrc.gov/reading-rm.html> at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 FR. 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at <http://www.nrc.gov/>

[site-help/e-submittals.html](#). To ensure timely electronic filing, at least five days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by email at [HEARINGDOCKET@NRC.GOV](mailto:HEARINGDOCKET@NRC.GOV), or by calling (301) 415-1677, to request a

digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within 30 days after publication of this notice in the **Federal Register** to Office of the

Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications.

The information concerning this import license amendment application follows.

#### NRC IMPORT LICENSE AMENDMENT APPLICATION DESCRIPTION OF MATERIAL

Name of applicant, date of application, date received, application No., docket No.	Material type	Total quantity	End use	Country from
EnergySolutions ..... November 2, 2015 November 6, 2015 XW010/03 11005620	Class A radioactive waste. All materials subject to this authorization are materials imported under EnergySolutions Import license XW010/03.	Increase (up from 5,500 tons to a new maximum total of 10,000 tons of low-level waste).	Amend to add three domestic suppliers located in Tennessee, and to extend the expiration date from December 31, 2017 to December 31, 2020. Amend to remove the restriction that the imported radioactive material cannot exceed the Class A definition as defined in 10 CFR 61.55. The attributed Canadian waste will be returned under XW010 (and subsequent amendments).	Canada.

For the Nuclear Regulatory Commission.

Dated this 28th day of December 2015, at Rockville, Maryland.

**Elizabeth Smirardo,**

*Acting Director, Office of International Programs.*

[FR Doc. 2016-00162 Filed 1-7-16; 8:45 am]

**BILLING CODE 7590-01-P**

#### POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016-75 and CP2016-93; Order No. 2974]

#### 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 13 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:* January 11, 2016.

**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 Parcel Select Contract 13 to the competitive product list.<sup>1</sup>

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. MC2016-75 and CP2016-93 to consider the Request pertaining to the proposed Parcel Select Contract 13 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in

<sup>1</sup> Request of the United States Postal Service to Add Parcel Select Contract 13 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 31, 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 January 11, 2016. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Nina Yeh to serve as Public Representative in these dockets.

#### III. Ordering Paragraphs

##### *It is ordered:*

1. The Commission establishes Docket Nos. MC2016-75 and CP2016-93 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Nina Yeh 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 January 11, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Stacy L. Ruble,**

*Secretary.*

[FR Doc. 2016-00132 Filed 1-7-16; 8:45 am]

**BILLING CODE 7710-FW-P**

#### POSTAL REGULATORY COMMISSION

[Docket No. CP2014-75; Order No. 2972]

#### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.



**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning an amendment to First-Class Package Service Contract 37 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* January 11, 2016.

**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 Filings
- III. Ordering Paragraphs

**I. Introduction**

On December 31, 2015, the Postal Service filed notice that it has agreed to an Amendment to the existing First-Class Package Service Contract 37 negotiated service agreement approved in this docket.<sup>1</sup> In support of its Notice, the Postal Service includes a redacted copy of the Amendment Notice, Attachment A. Because it states that the Amendment will not materially affect the cost coverage of the existing agreement, it asserts the original financial documentation and certification of compliance with 39 U.S.C. 3633(a) remain applicable. Notice at 1.

The Postal Service also filed the unredacted Amendment under seal. The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of information that it has filed under seal. *Id.*

The Amendment modifies the Annual Adjustment provision in section II. 1 of the existing agreement. Notice, Attachment A at 1.

The Postal Service intends for the Amendment to become effective two business days after the date that the Commission completes its review of the Notice. Notice at 1. The Postal Service asserts that the Amendment will not

impair the ability of the contract to comply with 39 U.S.C. 3633. *Id.*

**II. Notice of Filings**

The Commission invites comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than January 11, 2016. 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 represent the interests of the general public (Public Representative) in this docket.

**III. Ordering Paragraphs**

*It is ordered:*

1. The Commission reopens Docket No. CP2014-75 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Kenneth R. Moeller to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than January 11, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Stacy L. Ruble,**

*Secretary.*

[FR Doc. 2016-00130 Filed 1-7-16; 8:45 am]

**BILLING CODE 7710-FW-P**

**POSTAL REGULATORY COMMISSION**

**[Docket Nos. MC2016-74 and CP2016-91; Order No. 2976]**

**New Postal Product**

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning the addition of First-Class Package Service Contract 42 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:* January 11, 2016.

**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 First-Class Package Service Contract 42 to the competitive product list.<sup>1</sup>

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. MC2016-74 and CP2016-91 to consider the Request pertaining to the proposed First-Class Package Service Contract 42 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 January 11, 2016. 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. MC2016-74 and CP2016-91 to

<sup>1</sup> Request of the United States Postal Service to Add First-Class Package Service Contract 42 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 30, 2015 (Request).

<sup>1</sup> Notice of United States Postal Service of Amendment to First-Class Package Service Contract 37, with Portions Filed Under Seal, December 31, 2015 (Notice).

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 January 11, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Stacy L. Ruble,**

*Secretary.*

[FR Doc. 2016-00134 Filed 1-7-16; 8:45 am]

**BILLING CODE 7710-FW-P**

## POSTAL REGULATORY COMMISSION

[Docket No. CP2012-47; Order No. 2971]

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning an amendment to Priority Mail Contract 41 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* January 11, 2016.

**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 Filings
- III. Ordering Paragraphs

#### I. Introduction

On December 31, 2015, the Postal Service filed notice that it has agreed to an Amendment to the existing Priority Mail Contract 41 negotiated service agreement approved in this docket.<sup>1</sup> In support of its Notice, the Postal Service includes a redacted copy of the

Amendment and a certification of compliance with 39 U.S.C. 3633(a), as required by 39 CFR 3015.5.

The Postal Service also filed the unredacted Amendment and supporting financial information under seal. The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of information that it has filed under seal. *Id.* at 1. The Amendment changes prices under Priority Mail Contract 41. *Id.*

The Postal Service intends for the Amendment to become effective one business day after the date that the Commission completes its review of the Notice. *Id.* The Postal Service asserts that the Amendment will not impair the ability of the contract to comply with 39 U.S.C. 3633. *Id.*, Attachment B.

#### II. Notice of Filings

The Commission invites comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than January 11, 2016. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Nina Yeh to represent the interests of the general public (Public Representative) in this docket.

#### III. Ordering Paragraphs

*It is ordered:*

1. The Commission reopens Docket No. CP2012-47 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Nina Yeh to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than January 11, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Stacy L. Ruble,**

*Secretary.*

[FR Doc. 2016-00129 Filed 1-7-16; 8:45 am]

**BILLING CODE 7710-FW-P**

## POSTAL REGULATORY COMMISSION

[Docket No. CP2016-92; Order No. 2975]

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning an additional Global Reseller Expedited Package Services 2 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* January 11, 2016.

**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

On December 31, 2015, the Postal Service filed notice that it has entered into an additional Global Reseller Expedited Package Services 2 (GREPS 2) negotiated service agreement (Agreement).<sup>1</sup>

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, and an application for non-public treatment of certain materials. It also filed supporting financial workpapers under seal. Pursuant to 39 CFR 3015.5(c)(2), a certification of compliance with 39 U.S.C. 3633(a) was filed with the Commission on January 4, 2016.<sup>2</sup>

#### II. Notice of Commission Action

The Commission establishes Docket No. CP2016-92 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than January 11, 2016. The public portions of the filing can be

<sup>1</sup> Notice of United States Postal Service of Filing a Functionally Equivalent Global Reseller Expedited Package 2 Negotiated Service Agreement, December 31, 2015 (Notice).

<sup>2</sup> Notice of the United States Postal Service of Filing Financial Workpapers and Certified Statement, January 4, 2016.

<sup>1</sup> Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Contract 41, December 31, 2015 (Notice).

accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Kenneth R. Moeller to serve as Public Representative in this docket.

### III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket No. CP2016-92 for consideration of the matters raised by the Postal Service's Notice.

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 this proceeding (Public Representative).

3. Comments are due no later than January 11, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Stacy L. Ruble,**

*Secretary.*

[FR Doc. 2016-00133 Filed 1-7-16; 8:45 am]

**BILLING CODE 7710-FW-P**

## POSTAL REGULATORY COMMISSION

[Docket No. CP2015-112; Order No. 2973]

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning an amendment to Priority Mail Contract 138 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* January 11, 2016.

**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 Filings
- III. Ordering Paragraphs

#### I. Introduction

On December 31, 2015, the Postal Service filed notice that it has agreed to

an Amendment to the existing Priority Mail Contract 138 negotiated service agreement approved in this docket.<sup>1</sup> In support of its Notice, the Postal Service includes a redacted copy of the Amendment and a certification of compliance with 39 U.S.C. 3633(a), as required by 39 CFR 3015.5.

The Postal Service also filed the unredacted Amendment and supporting financial information under seal. *Id.* at 1. The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of information that it has filed under seal. *Id.* The Amendment changes prices under Priority Mail Contract 138 as contemplated by the contract's terms. *Id.*

The Postal Service intends for the Amendment to become effective one business day after the date that the Commission completes its review of the Notice. *Id.* The Postal Service asserts that the Amendment will not impair the ability of the contract to comply with 39 U.S.C. 3633. *Id.*, Attachment B.

### II. Notice of Filings

The Commission invites comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than January 11, 2016. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Curtis E. Kidd to represent the interests of the general public (Public Representative) in this docket.

### III. Ordering Paragraphs

*It is ordered:*

1. The Commission reopens Docket No. CP2015-112 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Curtis E. Kidd to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than January 11, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

<sup>1</sup> Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Contract 138, December 31, 2015 (Notice).

By the Commission.

**Stacy L. Ruble,**

*Secretary.*

[FR Doc. 2016-00131 Filed 1-7-16; 8:45 am]

**BILLING CODE 7710-FW-P**

## POSTAL REGULATORY COMMISSION

[Docket No. CP2015-55; Order No. 2970]

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning an amendment to Parcel Select Contract 9 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* January 11, 2016.

**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 Filings
- III. Ordering Paragraphs

#### I. Introduction

On December 31, 2015, the Postal Service filed notice that it has agreed to an Amendment to the existing Parcel Select Contract 9 negotiated service agreement approved in this docket.<sup>1</sup> In support of its Notice, the Postal Service includes a redacted copy of the Amendment and a certification of compliance with 39 U.S.C. 3633(a), as required by 39 CFR 3015.5.

The Postal Service also filed the unredacted Amendment and supporting financial information under seal. The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of information that it has filed under seal. Notice at 1.

The Amendment seeks to adjust the prices listed in Table 2 of section I.E.3,

<sup>1</sup> Notice of United States Postal Service of Amendment to Parcel Select Contract 9, with Portions Filed Under Seal, December 31, 2015 (Notice).

as contemplated by the original contract terms. *Id.* Attachment A.

The Postal Service intends for the Amendment to become effective one business day after the date that the Commission completes its review of the Notice. Notice at 1.

## II. Notice of Filings

The Commission invites comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than January 11, 2016. 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 represent the interests of the general public (Public Representative) in this docket.

## III. Ordering Paragraphs

*It is ordered:*

1. The Commission reopens Docket No. CP2015-55 for consideration of matters raised by the Postal Service's Notice.
2. Pursuant to 39 U.S.C. 505, the Commission appoints Derrick D. Dennis to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Comments are due no later than January 11, 2016.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Stacy L. Ruble,**  
Secretary.

[FR Doc. 2016-00093 Filed 1-7-16; 8:45 am]

**BILLING CODE 7710-FW-P**

## POSTAL SERVICE

### Product Change—First-Class Package Service Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* January 8, 2016.

**FOR FURTHER INFORMATION CONTACT:** Valerie J. Pelton, 202-268-3049.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby

gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 30, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 42 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2016-74, CP2016-91.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2016-00090 Filed 1-7-16; 8:45 am]

**BILLING CODE 7710-12-P**

## POSTAL SERVICE

### Product Change—Parcel Select Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* January 8, 2016.

**FOR FURTHER INFORMATION CONTACT:**

Maria W. Votsch, 202-268-6525.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 31, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Parcel Select Contract 13 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2016-75, CP2016-93.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2016-00091 Filed 1-7-16; 8:45 am]

**BILLING CODE 7710-12-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76817; File No. SR-NASDAQ-2015-161]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the Shares of the First Trust RiverFront Dynamic Europe ETF, First Trust RiverFront Dynamic Asia Pacific ETF, First Trust RiverFront Dynamic Emerging Markets ETF, and the First Trust RiverFront Dynamic Developed International ETF of First Trust Exchange-Traded Fund III

January 4, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 22, 2015, The NASDAQ Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to list and trade the shares of the following under Nasdaq Rule 5735 ("Managed Fund Shares");<sup>3</sup> First Trust RiverFront Dynamic Europe ETF (the "Europe Fund"); First Trust RiverFront Dynamic Asia Pacific ETF (the "Asia Pacific Fund"); First Trust RiverFront Dynamic Emerging Markets ETF (the "Emerging Markets Fund"); and First Trust RiverFront Dynamic Developed International ETF (the "Developed International Fund"). The Europe Fund, Asia Pacific Fund, Emerging Markets Fund and Developed

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR-NASDAQ-2008-039). There are already multiple actively managed funds listed on the Exchange; *see, e.g.*, Securities Exchange Act Release Nos. 72506 (July 1, 2014), 79 FR 38631 (July 8, 2014) (SR-NASDAQ-2014-050) (order approving listing and trading of First Trust Strategic Income ETF); 69464 (April 26, 2013), 78 FR 25774 (May 2, 2013) (SR-NASDAQ-2013-036) (order approving listing and trading of First Trust Senior Loan Fund); and 66489 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR-NASDAQ-2012-004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

International Fund are each a “Fund” and collectively, the “Funds.” Each Fund is a series of First Trust Exchange-Traded Fund III (the “Trust”). The shares of each Fund are collectively referred to herein as the “Shares.”

The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at Nasdaq’s principal office, and at the Commission’s Public Reference Room.

## II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange proposes to list and trade the Shares of each Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares<sup>4</sup> on the Exchange. Each Fund will be an actively managed exchange-traded fund (“ETF”). The Shares will be offered by the Trust, which was established as a Massachusetts business trust on January 9, 2008.<sup>5</sup> The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N-1A (“Registration Statement”) with the Commission.<sup>6</sup> Each Fund will be a series of the Trust.

<sup>4</sup> 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) (the “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 Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, 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.

<sup>5</sup> The Commission has issued an order, upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. See Investment Company Act Release No. 28468 (October 27, 2008) (File No. 812-13477) (the “Exemptive Relief”).

<sup>6</sup> See Post-Effective Amendment No. 29 to Registration Statement on Form N-1A for the Trust, dated November 19, 2015 (File Nos. 333-176976

First Trust Advisors L.P. will be the investment adviser (“Adviser”) to the Funds. RiverFront Investment Group, LLC will serve as investment sub-adviser (“Sub-Adviser”) to the Funds and provide day-to-day portfolio management. First Trust Portfolios L.P. (the “Distributor”) will be the principal underwriter and distributor of each Fund’s Shares. Brown Brothers Harriman & Co. (“BBH”) will act as the administrator, accounting agent, custodian and transfer agent to the Funds.

Paragraph (g) of Rule 5735 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.<sup>7</sup> In addition, paragraph (g) 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, non-public information regarding the open-end fund’s portfolio. Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i); however, paragraph (g) in connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer reflects the applicable open-end fund’s portfolio, not an underlying benchmark index, as is the case with index-based funds. Neither the Adviser nor the Sub-

and 811-22245). The descriptions of the Funds and the Shares contained herein are based, in part, on information in the Registration Statement.

<sup>7</sup> 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, the 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.

Adviser is a broker-dealer, although the Adviser is affiliated with the Distributor, a broker-dealer, and the Sub-Adviser is affiliated with Robert W. Baird & Co. Incorporated, a broker-dealer, and each has implemented a fire wall with respect to its respective broker-dealer affiliate regarding access to information concerning the composition and/or changes to a portfolio.

In addition, personnel who make decisions on each Fund’s portfolio composition will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such Fund’s portfolio. In the event (a) the Adviser or the Sub-Adviser registers as a broker-dealer, or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with another broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to a portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Each Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

#### Principal Investment Strategies Applicable to Each Fund

Each Fund’s investment objective will be to provide capital appreciation. Under normal market conditions,<sup>8</sup> each Fund will seek to achieve its investment objective by investing at least 80% of its net assets (including investment borrowings) in a combination of (i)

<sup>8</sup> The term “under normal market conditions” as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the securities 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. On a temporary basis, including for defensive purposes, during the initial invest-up period and during periods of high cash inflows or outflows, a Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, a Fund may not be able to achieve its investment objective. A Fund may adopt a defensive strategy when the Adviser and/or the Sub-Adviser believes securities in which such Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

“Principal Fund Equity Securities” (as defined below), (ii) forward currency contracts and non-deliverable forward currency contracts<sup>9</sup> (collectively, “Forward Contracts”), and (iii) currency transactions on a spot (*i.e.*, cash) basis.<sup>10</sup>

For each Fund, (a) “Principal Equity Securities” will consist of the following U.S. and non-U.S. exchange-listed securities: (i) Common stocks; (ii) common and preferred shares of real estate investment trusts (“REITs”);<sup>11</sup> and (iii) American Depositary Receipts (“ADRs”), European Depositary Receipts (“EDRs”), and Global Depositary Receipts (“GDRs” and, together with ADRs and EDRs, “Depositary Receipts”<sup>12</sup>), and (b) “Principal Fund Equity Securities” will consist of Principal Equity Securities that are suggested by such Fund’s name.<sup>13</sup> Accordingly:

(i) For the Europe Fund, Principal Fund Equity Securities will be Principal Equity Securities of European companies;<sup>14</sup>

(ii) for the Asia Pacific Fund, Principal Fund Equity Securities will be Principal Equity Securities of Asian Pacific companies;<sup>15</sup>

(iii) for the Emerging Markets Fund, Principal Fund Equity Securities will be

<sup>9</sup> A non-deliverable forward currency contract is a forward currency contract where there is no physical settlement of the two currencies at maturity. Instead, a net cash payment is made by one party to another based on the movement of the two currencies.

<sup>10</sup> A Fund would enter into Forward Contracts and/or currency spot transactions for hedging purposes.

<sup>11</sup> A REIT is a company that owns and typically operates income-producing real estate or related assets.

<sup>12</sup> Depositary Receipts are receipts, typically issued by a bank or trust company, which evidence ownership of underlying securities issued by a foreign entity. The Funds will not invest in any unsponsored Depositary Receipts.

<sup>13</sup> For the avoidance of doubt, with respect to Depositary Receipts, whether such Principal Equity Securities are Principal Fund Equity Securities is based on the underlying securities, the ownership of which is represented by the Depositary Receipts (*i.e.*, whether, as described below, the relevant underlying security is a security of a European company, an Asian Pacific company, an emerging market company or a developed market company, as applicable).

<sup>14</sup> European companies are those companies (i) whose securities are traded principally on a stock exchange in a European country, (ii) that are organized under the laws of or have a principal office in a European country, or (iii) that have at least 50% of their assets in, or derive at least 50% of their revenues or profits from, a European country.

<sup>15</sup> Asian Pacific companies are those companies (i) whose securities are traded principally on a stock exchange in an Asian Pacific country, (ii) that are organized under the laws of or have a principal office in an Asian Pacific country, or (iii) that have at least 50% of their assets in, or derive at least 50% of their revenues or profits from, an Asian Pacific country.

Principal Equity Securities of emerging market companies;<sup>16</sup> and

(iv) for the Developed International Fund, Principal Fund Equity Securities will be Principal Equity Securities of developed market companies.<sup>17</sup>

In selecting securities for a Fund, the Sub-Adviser will score individual securities from a portfolio of eligible securities according to several core attributes, including, but not limited to, value, quality and momentum, using multiple proprietary factors within each core attribute.<sup>18</sup> The Sub-Adviser will then rank each qualifying security based on its core attribute score, and the highest scoring securities will be considered for inclusion in the Fund’s portfolio. The Sub-Adviser will utilize its proprietary optimization process to maximize the percentage of high-scoring securities included in each Fund’s portfolio.

In addition, for each Fund, by entering into Forward Contracts and currency spot transactions, the Sub-Adviser will deploy a dynamic currency hedge (hedging up to 100% of such Fund’s foreign currency exposure) based on its proprietary hedging methodology. The Sub-Adviser’s hedging methodology will be constructed from a combination of quantitative measures, such as interest-rate differentials, central bank balance sheet expansion/contraction, and price momentum, and qualitative measures, such as formal and informal guidance from central bankers. Each Fund will only enter into transactions in Forward Contracts with counterparties that the Adviser and/or the Sub-Adviser reasonably believe are capable of performing under the applicable Forward Contract.<sup>19</sup>

<sup>16</sup> An emerging market company is one (i) domiciled or with a principal place of business or primary securities trading market in an emerging market country, or (ii) that derives a substantial portion of its total revenues or profits from emerging market countries.

<sup>17</sup> Developed market companies are those companies (i) whose securities are traded principally on a stock exchange in a developed market country, (ii) that are organized under the laws of or have a principal office in a developed market country, or (iii) that have at least 50% of their assets in, or derive at least 50% of their revenues or profits from, a developed market country.

<sup>18</sup> An example of a value factor would be price-to-book value and an example of a quality factor would be cash as a percentage of market capitalization.

<sup>19</sup> Each Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser and/or the Sub-Adviser will evaluate the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, the Adviser’s and/or Sub-Adviser’s analysis will evaluate each approved counterparty using various methods of analysis and

Other Investments for the Funds

Each Fund may invest (in the aggregate) up to 20% of its net assets in the following securities and instruments:

Each Fund may invest in the following U.S. and non-U.S. exchange-listed securities (other than Principal Fund Equity Securities): (i) Common stocks; (ii) common and preferred shares of REITs; (iii) Depositary Receipts; and (iv) equity securities of business development companies (“BDCs”) (collectively, “Other Equity Securities”).<sup>20</sup>

Each Fund may invest in short-term debt securities and other short-term debt instruments (described below), as well as cash equivalents, or it may hold cash. The percentage of each Fund invested in such holdings or held in cash will vary and will depend on several factors, including market conditions. Each Fund may invest in the following short-term debt instruments:<sup>21</sup> (1) Fixed rate and floating rate U.S. government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. government agencies or instrumentalities; (2) certificates of deposit issued against funds deposited in a bank or savings and loan association; (3) bankers’ acceptances, which are short-term credit instruments used to finance commercial transactions; (4) repurchase agreements,<sup>22</sup> which involve purchases of debt securities; (5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (6) commercial paper, which is short-term unsecured

may consider the Adviser’s and/or Sub-Adviser’s past experience with the counterparty, its known disciplinary history and its share of market participation.

<sup>20</sup> For each Fund, Other Equity Securities and Principal Fund Equity Securities are referred to collectively as “Equity Securities.”

<sup>21</sup> Short-term debt instruments will be issued by issuers having a long-term debt rating of at least A by Standard & Poor’s Ratings Services, a Division of The McGraw-Hill Companies, Inc. (“S&P Ratings”), Moody’s Investors Service, Inc. (“Moody’s”) or Fitch Ratings (“Fitch”) and have a maturity of one year or less.

<sup>22</sup> Each Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser and/or the Sub-Adviser to present minimal credit risks in accordance with criteria approved by the Board of Trustees of the Trust (“Trust Board”). The Adviser and/or the Sub-Adviser will review and monitor the creditworthiness of such institutions. The Adviser and/or the Sub-Adviser will monitor the value of the collateral at the time the transaction is entered into and at all times during the term of the repurchase agreement. The Funds will not enter into reverse repurchase agreements.

promissory notes;<sup>23</sup> and (7) short-term debt obligations issued or guaranteed by non-U.S. governments or by their agencies or instrumentalities.

Each Fund may invest (but only up to 5% of its net assets) in exchange-listed equity index futures contracts.

#### The Funds' Equity Securities

Under normal market conditions, each Fund will invest in at least 20 Equity Securities. Each Fund will satisfy the "ISG Criteria" (as described below) and/or the "Alternative Criteria" (as described below).

A Fund will satisfy the ISG Criteria if at least 90% of such Fund's net assets that are invested (in the aggregate) in Equity Securities will be invested in Equity Securities that trade in markets that are members of the Intermarket Surveillance Group ("ISG")<sup>24</sup> or are parties to a comprehensive surveillance sharing agreement with the Exchange.

A Fund will satisfy the Alternative Criteria if, under normal market conditions, its Equity Securities meet the following criteria at the time of purchase: (1) Non-U.S. Equity Securities<sup>25</sup> each shall have a minimum market value of at least \$100 million; (2) non-U.S. Equity Securities each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of \$25,000,000, averaged over the last six months; (3) the most heavily weighted non-U.S. Equity Security shall not exceed 25% of the weight of the Fund's entire portfolio and, to the extent applicable, the five most heavily weighted non-U.S. Equity Securities shall not exceed 60% of the weight of the Fund's entire portfolio; (4) each non-U.S. Equity Security shall be listed and traded on an exchange that has last-sale reporting; and (5) all of such Fund's net assets that are invested (in the aggregate) in Equity Securities other than non-U.S. Equity Securities shall be invested in Equity Securities that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.<sup>26</sup>

<sup>23</sup> Each Fund may only invest in commercial paper rated A-1 or higher by S&P Ratings, Prime-1 or higher by Moody's or F1 or higher by Fitch.

<sup>24</sup> See note 41, *infra*.

<sup>25</sup> For purposes of this filing, the term "non-U.S. Equity Securities" means Equity Securities that are not listed on a U.S. exchange.

<sup>26</sup> Criteria (1) through (4) are similar to certain "generic" listing criteria in Nasdaq Rule 5705(b)(3)(A)(ii), which relate to criteria applicable to an index or portfolio of (a) non-U.S. stocks or (b) both U.S. and non-U.S. stocks underlying a series of Index Fund Shares to be listed and traded on the Exchange pursuant to Rule 19b-4(e) under the Act. In addition, the Commission recently issued an order approving a proposed rule change relating to the listing and trading under NYSE Arca Equities

The Funds' Transactions in Forward Contracts and Exchange-Listed Equity Index Futures Contracts

Each Fund's transactions in Forward Contracts and exchange-listed equity index futures contracts will be consistent with its investment objective and the 1940 Act and will not be used to seek to achieve a multiple or inverse multiple of an index. Each Fund will comply with the regulatory requirements of the Commission with respect to coverage in connection with its transactions in Forward Contracts and exchange-listed equity index futures contracts. If the applicable guidelines prescribed under the 1940 Act so require, a Fund will earmark cash, U.S. government securities and/or other liquid assets permitted by the Commission in the amount prescribed.<sup>27</sup>

#### Investment Restrictions

Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), deemed illiquid by the Adviser and/or the Sub-Adviser.<sup>28</sup> Each 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 such Fund's net assets are held in

Rule 8.600 based, in part, on a representation that the non-U.S. equity securities in the applicable ETF's portfolio would meet criteria similar to certain "generic" listing criteria in NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(a)(B), which relate to criteria applicable to an index or portfolio of (a) non-U.S. stocks or (b) both U.S. and non-U.S. stocks underlying a series of Investment Company Units to be listed and traded on NYSE Arca, Inc. pursuant to Rule 19b-4(e) under the Act. See Securities Exchange Act Release No. 75023 (May 21, 2015), 80 FR 30519 (May 28, 2015) (SR-NYSEArca-2014-100) (order approving listing and trading of SPDR SSGA Global Managed Volatility ETF).

<sup>27</sup> With respect to guidance under the 1940 Act, see 15 U.S.C. 80a-18; Investment Company Act Release No. 10666 (April 18, 1979), 44 FR 25128 (April 27, 1979); *Dreyfus Strategic Investing*, Commission No-Action Letter (June 22, 1987); *Merrill Lynch Asset Management, L.P.*, Commission No-Action Letter (July 2, 1996).

<sup>28</sup> In reaching liquidity decisions, the Adviser and/or the Sub-Adviser may consider the following factors: The frequency of trades and quotes for the security or other instrument; the number of dealers wishing to purchase or sell the security or other instrument and the number of other potential purchasers; dealer undertakings to make a market in the security or other instrument; and the nature of the security or other instrument and the nature of the marketplace in which it trades (*e.g.*, the time needed to dispose of the security or other instrument, the method of soliciting offers and the mechanics of transfer).

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.<sup>29</sup>

The Funds may not invest 25% or more of the value of their respective total assets in securities of issuers in any one industry. This restriction does not apply to (a) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities or (b) securities of other investment companies.<sup>30</sup>

#### Creation and Redemption of Shares

Each Fund will issue and redeem Shares on a continuous basis at net asset value ("NAV")<sup>31</sup> only in large blocks of Shares ("Creation Units") in transactions with authorized participants, generally including broker-dealers and large institutional investors ("Authorized Participants"). Creation Units generally will consist of 50,000 Shares, although this may change from time to time. Creation Units, however, are not expected to consist of less than 50,000 Shares. The Fund will issue and redeem Creation Units in exchange for an in-kind portfolio of securities and/or cash in lieu of such securities (the "Creation Basket").<sup>32</sup> In addition, if

<sup>29</sup> 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 Securities Act of 1933).

<sup>30</sup> See Form N-1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. See, *e.g.*, Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

<sup>31</sup> The NAV of each Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange ("NYSE"), generally 4:00 p.m., Eastern Time (the "NAV Calculation Time"). NAV per Share will be calculated by dividing a Fund's net assets by the number of Fund Shares outstanding.

<sup>32</sup> It is expected that each Fund will typically issue and redeem Creation Units on an in-kind basis; however, subject to, and in accordance with, the provisions of the Exemptive Relief, a Fund may,

there is a difference between the NAV attributable to a Creation Unit and the market value of the Creation Basket exchanged for the Creation Unit, the party conveying securities with the lower value will pay to the other an amount in cash equal to the difference (referred to as the "Cash Component").

Creations and redemptions must be made by or through an Authorized Participant that has executed an agreement that has been agreed to by the Distributor and BBH with respect to creations and redemptions of Creation Units. All standard orders to create Creation Units must be received by the transfer agent no later than the closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m., Eastern Time) (the "Closing 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 as next determined on such date after receipt of the order in proper form. Shares may be redeemed only in Creation Units at their NAV next determined after receipt not later than the Closing Time of a redemption request in proper form by a Fund through the transfer agent and only on a business day.

The Funds' custodian, through the National Securities Clearing Corporation, will make available on each business day, prior to the opening of business of the Exchange, the list of the names and quantities of the securities comprising the Creation Basket, as well as the estimated Cash Component (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following business day prior to commencement of trading in the Shares.

#### Net Asset Value

Each Fund's NAV will be determined as of the close of regular trading on the NYSE on each day the NYSE is open for trading. If the NYSE closes early on a valuation day, the NAV will be determined as of that time. NAV per Share will be calculated for each Fund by taking the value of such Fund's total assets, including interest or dividends accrued but not yet collected, less all liabilities, including accrued expenses and dividends declared but unpaid, and dividing such amount by the total number of Shares outstanding. The result, rounded to the nearest cent, will be the NAV per Share. All valuations will be subject to review by the Trust Board or its delegate.

at times, issue and redeem Creation Units on a cash (or partially cash) basis.

The Funds' investments will be valued daily. As described more specifically below, investments traded on an exchange (*i.e.*, a regulated market), will generally be valued at market value prices that represent last sale or official closing prices. In addition, as described more specifically below, non-exchange traded investments will generally be valued using prices obtained from third-party pricing services (each, a "Pricing Service").<sup>33</sup> If, however, valuations for any of the Funds' investments cannot be readily obtained as provided in the preceding manner, or the Pricing Committee of the Adviser (the "Pricing Committee")<sup>34</sup> questions the accuracy or reliability of valuations that are so obtained, such investments will be valued at fair value, as determined by the Pricing Committee, in accordance with valuation procedures (which may be revised from time to time) adopted by the Trust Board (the "Valuation Procedures"), and in accordance with provisions of the 1940 Act. The Pricing Committee's fair value determinations may require subjective judgments about the value of an investment. The fair valuations attempt to estimate the value at which an investment could be sold at the time of pricing, although actual sales could result in price differences, which could be material. Valuing the Fund's investments using fair value pricing can result in using prices for those investments (particularly investments that trade in foreign markets) that may differ from current market valuations.

Certain securities in which a Fund may invest will not be listed on any securities exchange or board of trade. Such securities will typically be bought and sold by institutional investors in individually negotiated private transactions that function in many respects like an over-the-counter secondary market, although typically no formal market makers will exist. Certain securities, particularly debt securities, will have few or no trades, or trade infrequently, and information regarding a specific security may not be widely available or may be incomplete. Accordingly, determinations of the value of debt securities may be based on infrequent and dated information. Because there is less reliable, objective data available, elements of judgment may play a greater role in valuation of

<sup>33</sup> The Adviser may use various Pricing Services or discontinue the use of any Pricing Services, as approved by the Trust Board from time to time.

<sup>34</sup> The Pricing Committee will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding each Fund's portfolio.

debt securities than for other types of securities.

The information summarized below is based on the Valuation Procedures as currently in effect; however, as noted above, the Valuation Procedures are amended from time to time and, therefore, such information is subject to change.

The following investments will typically be valued using information provided by a Pricing Service: (a) Except as provided below, short-term U.S. government securities, commercial paper, bankers' acceptances and short-term debt obligations issued or guaranteed by non-U.S. governments or by their agencies or instrumentalities, all as set forth under "Other Investments for the Funds" (collectively, "Short-Term Debt Instruments") and (b) currency spot transactions. Debt instruments may be valued at evaluated mean prices, as provided by Pricing Services. Pricing Services typically value non-exchange-traded instruments utilizing a range of market-based inputs and assumptions, including readily available market quotations obtained from broker-dealers making markets in such instruments, cash flows, and transactions for comparable instruments. In pricing certain instruments, the Pricing Services may consider information about an instrument's issuer or market activity provided by the Adviser and/or the Sub-Adviser.

Short-Term Debt Instruments having a remaining maturity of 60 days or less when purchased will typically be valued at cost adjusted for amortization of premiums and accretion of discounts, provided the Pricing Committee has determined that the use of amortized cost is an appropriate reflection of value given market and issuer-specific conditions existing at the time of the determination.

Repurchase agreements will typically be valued as follows:

Overnight repurchase agreements will be valued at amortized cost when it represents the best estimate of value. Term repurchase agreements (*i.e.*, those whose maturity exceeds seven days) will be valued at the average of the bid quotations obtained daily from at least two recognized dealers.

Certificates of deposit and bank time deposits will typically be valued at cost.

Equity Securities that are listed on any exchange other than the Exchange and the London Stock Exchange Alternative Investment Market ("AIM") will typically be valued at the last sale price on the exchange on which they are principally traded on the business day as of which such value is being



determined. Equity Securities listed on the Exchange or the AIM will typically be valued at the official closing price on the business day as of which such value is being determined. If there has been no sale on such day, or no official closing price in the case of securities traded on the Exchange or the AIM, such securities will typically be valued using fair value pricing. Equity Securities traded on more than one securities exchange will be valued at the last sale price or official closing price, as applicable, on the business day as of which such value is being determined at the close of the exchange representing the principal market for such securities.

Exchange-listed equity index futures contracts will typically be valued at the closing price in the market where such instruments are principally traded.

Forward Contracts will typically be valued at the current day's interpolated foreign exchange rate, as calculated using the current day's spot rate, and the thirty, sixty, ninety and one-hundred-eighty day forward rates provided by a Pricing Service or by certain independent dealers in such contracts.

Because foreign exchanges may be open on different days than the days during which an investor may purchase or sell Shares, the value of the Funds' assets may change on days when investors are not able to purchase or sell Shares. Assets denominated in foreign currencies will be translated into U.S. dollars at the exchange rate of such currencies against the U.S. dollar as provided by a Pricing Service. The value of assets denominated in foreign currencies will be converted into U.S. dollars at the exchange rates in effect at the time of valuation.

#### Availability of Information

The Funds' Web site ([www.ftportfolios.com](http://www.ftportfolios.com)), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Funds that may be downloaded. The Web site will include the Shares' ticker, CUSIP and exchange information along with additional quantitative information updated on a daily basis, including, for each Fund: (1) Daily trading volume, the prior business day's reported NAV and closing price, mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),<sup>35</sup> 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 Regular Market Session<sup>36</sup> on the Exchange, each Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the "Disclosed Portfolio" as defined in Nasdaq Rule 5735(c)(2)) held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>37</sup>

Each Fund's disclosure of derivative positions in the Disclosed Portfolio will include sufficient information for market participants to use to value these positions intraday. On a daily basis, each Fund will disclose on its 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; 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 percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

In addition, for each Fund, an estimated value, defined in Rule 5735(c)(3) as the "Intraday Indicative Value," that reflects an estimated intraday value of the Fund's Disclosed Portfolio, will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service,<sup>38</sup> will be based upon the current

<sup>36</sup> See Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m., Eastern Time; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m., Eastern Time; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m., Eastern Time).

<sup>37</sup> Under accounting procedures to be followed by the Funds, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, a 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.

<sup>38</sup> Currently, the NASDAQ OMX Global Index Data Service ("GIDS") is the Nasdaq global index data feed service, offering real-time updates, daily summary messages, and access to widely followed

value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. The Intraday Indicative Value will be based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close. Premiums and discounts between the Intraday Indicative Value and the market price may occur. This should not be viewed as a "real time" update of the NAV per Share of a Fund, which is calculated only once a day.

The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of a Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Investors will also be able to obtain each Fund's Statement of Additional Information ("SAI"), annual and semi-annual reports (together, "Shareholder Reports"), and Form N-CSR and Form N-SAR, filed twice a year. Each Fund's SAI and Shareholder Reports will be available free upon request from such Fund, 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](http://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 will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association ("CTA") plans for the Shares. Quotation and last sale information for the Equity Securities (to the extent traded on a U.S. exchange) will be available from the exchanges on which they are traded as well as in accordance with any applicable CTA plans.

Pricing information for Short-Term Debt Instruments, repurchase agreements, Forward Contracts, bank time deposits, certificates of deposit and currency spot transactions will be

indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade Nasdaq indexes, listed ETFs, or third-party partner indexes and ETFs.

<sup>35</sup> The Bid/Ask Price of each Fund 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 each Fund and its service providers.

available from major broker-dealer firms and/or major market data vendors and/or Pricing Services. Pricing information for exchange-listed equity index futures contracts and non-U.S. Equity Securities will be available from the applicable listing exchange and from major market data vendors.

#### Initial and Continued Listing

The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and continued listing, each Fund must be in compliance with Rule 10A-3<sup>39</sup> under the Act. 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 will be made available to all market participants at the same time.

#### 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 a Fund. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading 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 other assets constituting the Disclosed Portfolio of a 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 also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted.

#### Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m., Eastern Time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5735(b)(3), the minimum price variation for quoting and entry of orders

in Managed Fund Shares traded on the Exchange is \$0.01.

#### Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>40</sup> 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 applicable federal securities laws.

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.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and certain of the Equity Securities and exchange-listed equity index futures contracts held by the Funds with other markets and other entities that are members of ISG,<sup>41</sup> and FINRA may obtain trading information regarding trading in the Shares and such securities and instruments held by the Funds from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and certain of the Equity Securities and exchange-listed equity index futures contracts held by the Funds from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Funds reported to FINRA's Trade Reporting and Compliance Engine ("TRACE").

For each Fund, at least 90% of such Fund's net assets that are invested (in

the aggregate) in exchange-listed equity index futures contracts will be invested in instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

#### Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular for each Fund will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

Additionally, the Information Circular for each Fund will reference that such Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular for each Fund will also disclose the trading hours of the Shares of such Fund and the applicable NAV Calculation Time for the Shares. The Information Circular for each Fund will disclose that information about the Shares of such Fund will be publicly available on such Fund's Web site.

#### 2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) of the Act 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

<sup>39</sup> See 17 CFR 240.10A-3.

<sup>40</sup> 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.

<sup>41</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Disclosed Portfolio for a Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

transactions in securities, and 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 Nasdaq Rule 5735. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.

Neither the Adviser nor the Sub-Adviser is a broker-dealer, but each is affiliated with a broker-dealer, and is required to implement a "fire wall" with respect to its respective broker-dealer affiliate regarding access to information concerning the composition and/or changes to each Fund's portfolio. In addition, paragraph (g) of Nasdaq Rule 5735 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 non-public information regarding the open-end fund's portfolio.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and certain of the Equity Securities and exchange-listed equity index futures contracts held by the Funds with other markets and other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the Shares and such securities and instruments held by the Funds from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and certain of the Equity Securities and exchange-listed equity index futures contracts held by the Funds from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Funds reported to FINRA's TRACE. For each Fund, at least 90% of such Fund's net assets that are invested (in the aggregate) in exchange-listed equity index futures contracts will be invested in instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. Under

normal market conditions, each Fund will invest in at least 20 Equity Securities. Moreover, each Fund will satisfy the ISG Criteria and/or the Alternative Criteria.

The investment objective of each Fund will be to provide capital appreciation. Under normal market conditions, each Fund will seek to achieve its investment objective by investing at least 80% of its net assets (including investment borrowings) in Principal Fund Equity Securities, Forward Contracts and currency transactions entered into on a spot (*i.e.*, cash) basis. Each Fund may also invest up to 5% of its net assets in exchange-listed equity index futures contracts. Each Fund's transactions in Forward Contracts and exchange-listed equity index futures contracts will be consistent with its investment objective and the 1940 Act and will not be used to seek to achieve a multiple or inverse multiple of an index. Each Fund will comply with the regulatory requirements of the Commission with respect to coverage in connection with its transactions in Forward Contracts and exchange-listed equity index futures contracts. If the applicable guidelines prescribed under the 1940 Act so require, a Fund will earmark cash, U.S. government securities and/or other liquid assets permitted by the Commission in the amount prescribed. Also, each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), deemed illiquid by the Adviser and/or the Sub-Adviser. Each 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.

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 will be publicly available regarding the

Funds and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service, will be widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, each Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the CTA plans for the Shares. Quotation and last sale information for the Equity Securities (to the extent traded on a U.S. exchange) will be available from the exchanges on which they are traded as well as in accordance with any applicable CTA plans.

Pricing information for Short-Term Debt Instruments, repurchase agreements, Forward Contracts, bank time deposits, certificates of deposit and currency spot transactions will be available from major broker-dealer firms and/or major market data vendors and/or Pricing Services. Pricing information for exchange-listed equity index futures contracts and non-U.S. Equity Securities will be available from the applicable listing exchange and from major market data vendors.

Each Fund's Web site will include a form of the prospectus for such Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Funds will be halted under the conditions specified in Nasdaq Rules 4120 and 4121 or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted. In addition, as noted above, investors will have ready access to information regarding each Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

Each Fund's investments will be valued daily. Investments traded on an exchange (*i.e.*, a regulated market), will generally be valued at market value prices that represent last sale or official closing prices. Non-exchange traded investments will generally be valued using prices obtained from a Pricing Service. If, however, valuations for any of the Funds' investments cannot be readily obtained as provided in the preceding manner, or the Pricing Committee questions the accuracy or reliability of valuations that are so obtained, such investments will be valued at fair value, as determined by the Pricing Committee, in accordance with the Valuation Procedures and in accordance with provisions of the 1940 Act.

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 additional types of actively managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and certain of the Equity Securities and exchange-listed equity index futures contracts held by the Funds with other markets and other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the Shares and such securities and instruments held by the Funds from such markets and other entities.

In addition, the Exchange may obtain information regarding trading in the Shares and certain of the Equity Securities and exchange-listed equity index futures contracts held by the Funds from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Funds reported to FINRA's TRACE. Furthermore, as noted above, investors will have ready access to information regarding the Funds' holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares. For each Fund, at least 90% of such Fund's net assets that are invested (in the aggregate) in exchange-listed equity index futures contracts will be invested in instruments that trade in markets that are members of ISG or are parties to a

comprehensive surveillance sharing agreement with the Exchange. Under normal market conditions, each Fund will invest in at least 20 Equity Securities. Moreover, each Fund will satisfy the ISG Criteria and/or the Alternative Criteria.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded fund [sic] 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*

Written comments were neither solicited nor 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 Exchange consents, the Commission shall: (a) By order approve or disapprove such 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2015-161 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-NASDAQ-2015-161. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2015-161 and should be submitted on or before January 29, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>42</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016-00103 Filed 1-7-16; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>42</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76819; File No. SR-NYSEArca-2015-110]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Adopt Generic Listing Standards for Managed Fund Shares

January 4, 2016.

On November 6, 2015, NYSE Arca, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend NYSE Arca Equities Rule 8.600 and to adopt generic listing standards for Managed Fund Shares. The proposed rule change was published for comment in the *Federal Register* on November 27, 2015.<sup>3</sup> On November 23, 2015, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the original proposal in its entirety. The Commission has received one comment letter on the proposal.<sup>4</sup>

Section 19(b)(2) of the Act<sup>5</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is January 11, 2016. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to section 19(b)(2) of the Act,<sup>6</sup>

designates February 25, 2016, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-NYSEArca-2015-110).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-00104 Filed 1-7-16; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76816; File No. SR-EDGX-2015-67]

### Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of EDGX Exchange, Inc.

January 4, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 22, 2015, EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members<sup>5</sup> and non-members of the Exchange pursuant to EDGX Rules 15.1(a) and (c) (“Fee Schedule”) to

adopt a new tier called the Investor Depth Tier under footnote 1.

The text of the proposed rule change is available at the Exchange’s Web site at [www.batstrading.com](http://www.batstrading.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Currently, the Exchange determines the liquidity adding rebate that it will provide to Members using the Exchange’s tiered pricing structure. Under such pricing structure, a Member will receive a rebate of anywhere between \$0.0025 and \$0.0035 per share executed, depending on the volume tier for which such Member qualifies. The Exchange proposes to adopt a new tier called the Investor Depth Tier under footnote 1 of the Fee Schedule. Members who would qualify for the Investor Depth Tier would receive a rebate of \$0.0033 per share where they: (i) Add an ADV<sup>6</sup> of at least 0.15% of the TCV;<sup>7</sup> (ii) have an “added liquidity” as a percentage of “added plus removed liquidity” of at least 85%; and (3) add an ADV of at least 500,000 share as Non-displayed<sup>8</sup> orders that yield fee code HA.<sup>9</sup> The Exchange proposes to implement this amendment to its Fee Schedule on January 4, 2016.<sup>10</sup>

<sup>6</sup> As defined in the Exchange’s Fee Schedule available at [http://batstrading.com/support/fee\\_schedule/edgx/](http://batstrading.com/support/fee_schedule/edgx/).

<sup>7</sup> *Id.*

<sup>8</sup> See Exchange Rule 11.6(e)(2).

<sup>9</sup> Fee code HA is appended to Non-displayed orders that add liquidity on the Exchange. See the Exchange’s Fee Schedule available at [http://batstrading.com/support/fee\\_schedule/edgx/](http://batstrading.com/support/fee_schedule/edgx/).

<sup>10</sup> The Exchange notes that the Fee Schedule’s date was amended to January 4, 2016 in file no. SR-EDGX-2015-62. See Securities Exchange Act Release No. 76713 (December 21, 2015).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 76486 (Nov. 20, 2015), 80 FR 74169.

<sup>4</sup> See Letter from Rob Ivanoff to the Commission dated Nov. 22, 2015. All comments on the proposed rule change are available on the Commission’s Web site at: <http://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110.shtml>.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> 17 CFR 200.30-3(a)(31).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> The term “Member” is defined as “any registered broker or dealer that has been admitted

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>12</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed tier is equitable and non-discriminatory in it would apply uniformly to all Members. The Exchange believes the rates remain competitive with those charged by other venues and, therefore, reasonable and equitably allocated to Members.

Volume-based rebates such as that proposed herein have been widely adopted by equities and options exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to: (i) The value to an exchange's market quality; (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns; and (iii) introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes that the proposed tier is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because they will provide Members with an additional incentive to reach certain thresholds on the Exchange.

In particular, the Exchange believes the addition of the Investor Depth Tier is a reasonable means to encourage Members to increase their liquidity on the Exchange. The Exchange further believes that the proposed Investor Depth Tier represents an equitable allocation of reasonable dues, fees, and other charges because the thresholds necessary to achieve the tier encourages Members to add displayed liquidity to the EDGX Book<sup>13</sup> each month, as only the displayed liquidity in this tier is awarded the rebate of \$0.0033 per share. This tier also recognizes the contribution that non-displayed

liquidity provides to the marketplace, including: (i) Adding needed depth to the EDGX market; (ii) providing price support/depth of liquidity; and (iii) increasing diversity of liquidity to EDGX. The increased liquidity benefits all investors by deepening EDGX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The Exchange also notes that the criteria and rebate under the Investor Depth Tier is equitable and reasonable as compared to other tiers offered by the Exchange. For example, under the Investor Tier Members may receive a rebate of \$0.0032 per share where they (i) add an ADV of at least 0.15% of the TCV; and (ii) have an "added liquidity" as a percentage of "added plus removed liquidity" of at least 85%. These thresholds mirror the first two thresholds required to meet the proposed Investor Depth Tier. However, in order to achieve the higher rebate of \$0.0033 per share provided by the proposed Investor Depth Tier, Members must also add an ADV of at least 500,000 share as Non-displayed orders that yield fee code HA.<sup>14</sup> Therefore, the Exchange believes the proposed Investor Depth Tier is consistent with Section 6(b)(4)<sup>15</sup> of the Act as the more stringent criteria correlates with the tier's higher rebate.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe its proposed amendment to its Fee Schedule would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

The Exchange does not believe that the proposed new tier would burden

competition, but instead, enhances competition, as it is intended to increase the competitiveness of and draw additional volume to the Exchange. As stated above, the Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee structures to be unreasonable or excessive. The proposed change is generally intended to enhance the rebates for liquidity added to the Exchange, which is intended to draw additional liquidity to the Exchange. The Exchange does not believe the proposed tier would burden intramarket competition as it would apply to all Members uniformly.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>17</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-EDGX-2015-67 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f).

<sup>14</sup> The Exchange notes that Market Depth Tiers 1 and 2 under footnote 1 also require that Members add an ADV of certain number of shares as Non-displayed orders that yield fee code HA, in addition other added ADV requirements.

<sup>15</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> The EDGX Book is the System's electronic file of orders. See Exchange Rule 1.5(d).

Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-EDGX-2015-67. 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 will also 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 No. SR-EDGX-2015-67 and should be submitted on or before January 29, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2016-00102 Filed 1-7-16; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76820; File No. SR-BATS-2015-100]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Amend BATS Rule 14.11(i) To Adopt Generic Listing Standards for Managed Fund Shares

January 4, 2016.

On November 18, 2015, BATS Exchange, Inc. ("Exchange") filed with

the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend BATS Rule 14.11(i) and to adopt generic listing standards for Managed Fund Shares. The proposed rule change was published for comment in the **Federal Register** on November 25, 2015.<sup>3</sup> The Commission has not received any comments on the proposal.

Section 19(b)(2) of the Act<sup>4</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is January 9, 2016. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to section 19(b)(2) of the Act,<sup>5</sup> designates February 23, 2016, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-BATS-2015-100)

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2016-00105 Filed 1-7-16; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 76478 (Nov. 19, 2015), 80 FR 73841.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> *Id.*

<sup>6</sup> 17 CFR 200.30-3(a)(31).

## SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2015-0042]

### Privacy Act of 1974, as Amended; Computer Matching Program (SSA/Railroad Retirement Board (RRB))—Match Number 1006

**AGENCY:** Social Security Administration (SSA)

**ACTION:** Notice of a renewal of an existing computer matching program that will expire on March 1, 2016.

**SUMMARY:** In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with RRB.

**DATES:** We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

**ADDRESSES:** Interested parties may comment on this notice by either telefaxing to (410) 966-0869 or writing to the Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401. All comments received will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** The Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, as shown above.

#### SUPPLEMENTARY INFORMATION:

##### A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100-503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government

<sup>18</sup> 17 CFR 200.30-3(a)(12).

records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

#### **B. SSA Computer Matches Subject to the Privacy Act**

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

**Mary Ann Zimmerman,**

*Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.*

#### **Notice of Computer Matching Program, SSA with the Railroad Retirement Board (RRB)**

##### *A. Participating Agencies*

SSA and RRB

##### *B. Purpose of the Matching Program*

The purpose of this matching program is to set forth the terms, safeguards, and procedures under which RRB, as the source agency, will disclose RRB annuity payment data to us, the recipient agency. We will use the information to verify Supplemental Security Income (SSI) and Special Veterans Benefits (SVB) eligibility and benefit payment amounts. We will also record the railroad annuity amounts RRB paid to SSI and SVB recipients in the Supplemental Security Income Record (SSR).

##### *C. Authority for Conducting the Matching Program*

The legal authority for this agreement is executed in compliance with the Privacy Act of 1974, 5 U.S.C. 552a, as amended by the Computer Matching and Privacy Protection Act of 1988, the regulations and guidance promulgated thereunder.

Legal authority for the disclosure under this agreement for the SSI portion are sections 1631(e)(1)(A) and (B) and 1631(f) of the Social Security Act (Act)

(42 U.S.C. 1383(e)(1)(A) and (B) and 1383(f)). The legal authority for the disclosure under this agreement for the SVB portion is section 806(b) of the Act (42 U.S.C. 1006(b)).

##### *D. Categories of Records and Persons Covered by the Matching Program*

RRB will provide us with an electronic data file containing annuity payment data from RRB's system of records, RRB-22 Railroad Retirement, Survivor, and Pensioner Benefits System, last published on December 1, 2014 (79 FR 58890). We will match RRB's data with data maintained in the SSR, Supplemental Security Income Record and Special Veterans Benefits, SSA/ODSSIS, 60-0103, published on January 11, 2006 (71 FR 1830) and December 10, 2007 (72 FR 69723). SVB data also resides on the SSR.

##### *E. Inclusive Dates of the Matching Program*

The effective date of this matching program is March 2, 2016, provided that the following notice periods have lapsed: 30 days after publication of this notice in the **Federal Register** and 40 days after notice of the matching program is sent to Congress and OMB. The matching program will continue for 18 months from the effective date and, if both agencies meet certain conditions, it may extend for an additional 12 months thereafter.

[FR Doc. 2016-00183 Filed 1-7-16; 8:45 am]

**BILLING CODE 4191-02-P**

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **Twenty Five Meeting: RTCA Special Committee 214/EUROCAE WG-78: Standards for Air Traffic Data Communication Services**

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

**ACTION:** RTCA Special Committee 214 held jointly with EUROCAE WG-78: Standards for Air Traffic Data Communication Services meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of twenty five meeting of RTCA Special Committee 214 to be held jointly with EUROCAE WG-78: Standards for Air Traffic Data Communication Services.

**DATES:** The meeting will be held January 13th, 2016 from 10:00 a.m. to 12:00 p.m.

**ADDRESSES:** The meeting will be held on WebEx Primary at 1150 18th Street NW., Suite 910. **Note:** This is intended to be

a Short WebEx session versus a full in place session.

#### **FOR FURTHER INFORMATION CONTACT:**

Karen Hofmann, 202-330-0680, [khofmann@rtca.org](mailto:khofmann@rtca.org) or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833-9339, fax at (202) 833-9434, or Web site at <http://www.rtca.org>.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 214/EUROCAE WG-78: Standards for Air Traffic Data Communication Services. The meeting objectives are to resolve issue that came up after last plenary resolution and approval of comments received during FRAC/Open consultation of Revision A to Baseline 2 Standards SPR and INTEROPS and approve the documents for submission to RTCA PMC and EUROCAE Council for publication.

The agenda will include the following:

#### **January 13th**

- Welcome/Introduction/ Administrative Remarks
- Approval of the Agenda of Plenary 25
- Approval of the Minutes of Plenary 24
- Description of new finding and approach to resolve
- Approval of resolution and submission of documents to RTCA PMC and EUROCAE Council for publication
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 4, 2016.

**Mohannad Dawoud,**

*Management Analyst, Procurement Division, ANG-A1, Federal Aviation Administration.*

[FR Doc. 2016-00181 Filed 1-7-16; 8:45 am]

**BILLING CODE 4910-13-P**



**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Notice of Extension for the Final Environmental Impact Statement for the Proposed Airport, Angoon, Alaska**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Extension as required by ANILCA title XI.

**SUMMARY:** The Alaska Department of Transportation and Public Facilities filed a title XI ANILCA application with the FAA, U.S. Forest Service, and U.S. Army Corps of Engineers on January 9, 2015. ANILCA section 1104(e), states that “the final environmental impact statement shall be completed within one year from the date of such filing. Such nine-month and one-year periods may be extended for good cause by the Federal agency head assigned lead responsibility for the preparation of such statement if he determines that additional time is necessary for such preparation, notifies the applicant in writing of such determination and publishes notice of such determination, together with the reasons therefore, in the **Federal Register**”. Due to complexities of the project, the FAA has determined that additional time is necessary to complete the final environmental impact statement.

**FOR FURTHER INFORMATION CONTACT:** Leslie Grey, AAL-611, Federal Aviation Administration, Alaskan Region, Airports Division, 222 W. 7th Avenue Box #14, Anchorage, AK 99513. Ms. Grey may be contacted during business hours at (907) 271-5453 (telephone) and (907) 271-2851 (fax), or by email at [Leslie.Grey@faa.gov](mailto:Leslie.Grey@faa.gov).

**SUPPLEMENTARY INFORMATION:**

Additional details regarding the project can be found on the project Web site at [www.angoonairports.com](http://www.angoonairports.com).

Issued in Anchorage, Alaska, on December 23, 2015.

**Byron K. Huffman,**

*Manager, Airports Division, AAL-600.*

[FR Doc. 2016-00092 Filed 1-7-16; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Surface Transportation Board****Notice and Request for Comments**

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** 30-day notice of intent to seek extension of approval: Waybill Compliance Survey.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3521 (PRA), the Surface Transportation Board (Board) gives notice that it is requesting from the Office of Management and Budget (OMB) approval for an extension of the Waybill Compliance Survey, which is further described below. The Board previously published a notice about this collection in the **Federal Register**, 80 FR 66,968 (Oct. 30, 2015). That notice allowed for a 60-day public review and comment period. No comments were received.

Comments are requested concerning: (1) The accuracy of the Board’s burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility.

**Description of Collection**

*Title:* Waybill Compliance Survey.

*OMB Control Number:* 2140-0010.

*STB Form Number:* None.

*Type of Review:* Extension without change.

*Respondents:* Regulated railroads that did not submit carload waybill sample information to the STB in the previous year.

*Number of Respondents:* 523.

*Estimated Time per Response:* .5 hours.

*Frequency:* Annually.

*Total Burden Hours* (annually including all respondents): 261.5.

*Total “Non-hour Burden” Cost:* None identified. This information may be submitted electronically to the Board (through its contractor).

*Needs and Uses:* Under the Interstate Commerce Act, as amended by the ICC Termination Act of 1995, Public Law 104-88, 109 Stat. 803 (1995), the Board is responsible for the economic regulation of common carrier rail transportation, including the collection and administration of the Carload Waybill Sample. The information in the Waybill Sample is used to monitor traffic flows and rate trends in the industry. Under 49 CFR 1244, a railroad terminating 4,500 or more carloads, or terminating at least 5% of the total revenue carloads that terminate in a particular state, in any of the three

preceding years is required to file carload waybill sample information (Waybill Sample) for all line-haul revenue waybills terminating on its lines. (The Waybill Sample collection is approved under OMB Control Number 2140-0015, which expires on June 30, 2017.)

In order to determine whether any of the surveyed railroads should be filing a Waybill Sample, the Board needs to collect the information in the Waybill Compliance Survey—information on the number of carloads of traffic terminated each year by U.S. railroads—from railroads that are not filing a Waybill Sample. The Board has authority to collect this information under 49 U.S.C. 11144-45, and under 49 CFR 1244.2.

**DATES:** Comments on this information collection should be submitted by February 8, 2016.

**ADDRESSES:** Written comments should be identified as “Paperwork Reduction Act Comments, Surface Transportation Board, Annual Waybill Compliance Survey.” These comments should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Chandana L. Achanta, Surface Transportation Board Desk Officer, by email at [OIRA\\_SUBMISSION@OMB.EOP.GOV](mailto:OIRA_SUBMISSION@OMB.EOP.GOV); by fax at (202) 395-6974; or by mail to Room 10235, 725 17th Street NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding the “Annual Waybill Compliance Survey,” contact Pedro Ramirez at (202) 245-0333 or at [pedro.ramirez@stb.dot.gov](mailto:pedro.ramirez@stb.dot.gov). [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

**SUPPLEMENTARY INFORMATION:** Under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under § 3507(b) of the PRA, federal agencies are required to provide, prior to an agency’s submitting a collection to OMB for approval, a 30-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: January 5, 2016.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2016-00174 Filed 1-7-16; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. FD 35982]

#### Jackson County, Mo.—Acquisition and Operation Exemption—Union Pacific Railroad Company

Jackson County, Mo. (Jackson County), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Union Pacific Railroad Company and to operate, approximately 17.7 miles of rail line between milepost 288.3 and milepost 270.6, in Jackson County, Mo.<sup>1</sup>

The transaction may not be consummated until January 22, 2016 (30 days after the notice of exemption was filed).

Jackson County certifies that its projected annual revenues as a result of this transaction will not result in its becoming a Class II or Class I rail carrier and will not exceed \$5 million.

Jackson County states that the agreement between the parties does not contain any provision that prohibits it from interchanging traffic with a third party or limits its ability to interchange with a third party.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than January 15, 2016 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35982, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, 1666 K St. NW., Suite 500, Washington, DC 20006.

According to Jackson County, this action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available on our Web site at [WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).

<sup>1</sup>Jackson County, doing business as Rock Island Rail Corridor Authority, will be the operator on the line.

Decided: December 30, 2015.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

**Tia Delano,**

*Clearance Clerk.*

[FR Doc. 2016-00139 Filed 1-7-16; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Docket No. DOT-OST-2015-0211]

#### 30-Day Notice of Request for Renewal of a Previously Approved Collection

**AGENCY:** Office of the Secretary (OST), Department of Transportation (Department) or (DOT).

**ACTION:** Notice and request for comments.

**SUMMARY:** The Office of the Secretary, Office of Small and Disadvantaged Business Utilization (OSDBU), invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew a collection. This collection renewal request includes one Short Term Lending Program (STLP) application used for both new loan guarantee applicants and renewal loan guarantee applicants. The information collected in the STLP application will determine the applicant's eligibility and is necessary to approve or deny a loan. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995, Public Law 104-13.

**DATES:** Comments must be submitted on or before February 8, 2016.

**ADDRESSES:** You may submit your comments identified by DOT-OST-2015-0211 by any of the following methods:

- *Office of Management and Budget, Attention: Desk Officer for U.S. Department of Transportation, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.*

- *email:*

*oira\_submission@omb.eop.gov.*

- *Fax: (202) 395-5806. Attention: DOT/OST Desk Officer.*

**FOR FURTHER INFORMATION CONTACT:** John Ralston, Manager, Financial Assistance Division, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, Routing Symbol S-40, 202-366-5577 (phone) or [john.ralston@dot.gov](mailto:john.ralston@dot.gov) (email).

#### SUPPLEMENTARY INFORMATION:

*Title:* Short Term Lending Program Application for a Loan Guarantee.

*OMB Control No.:* 2105-0555.

*Background:* OSDBU's Short Term Lending Program (STLP) offers certified Disadvantaged Business Enterprises (DBEs) and other certified Small Businesses (8a, women-owned, small disadvantaged, HUBZone, veteran owned, and service disabled veteran owned) the opportunity to obtain short term working capital at variable interest rates for transportation-related projects. The STLP provides Participating Lenders (PLs) a guarantee, up to 75%, on a revolving line of credit up to a \$750,000 maximum. These loans are provided through lenders that serve as STLP PLs. The term on the line of credit is up to one (1) year, which may be renewed for five (5) years. A potential or renewal STLP participant must submit a guaranteed loan application package. The guaranteed loan application includes the STLP application, checklist, and instructions. Respondents: Certified Disadvantaged Business Enterprises (DBEs) and other certified Small Businesses (8a, women-owned, small disadvantaged, HUBZone, veteran owned, and service disabled veteran owned) interested in financing their transportation-related contracts.

*DOT Form 2301-1(REV.1): Short Term Lending Program Application for Loan Guarantee:* A potential or renewal STLP participant must submit a guaranteed loan application package. The guaranteed loan application includes the STLP application and supporting documentation to be collected from the checklist in the application. The application may be obtained directly from OSDBU, the Regional Small Business Transportation Resource Centers, from a PL, or online from the agency's Web site, currently at <http://www.transportation.gov/osdbu/financial-assistance/short-term-lending-program>.

*Respondents:* Small Businesses, 100.

*Frequency:* Once.

*Estimated Average Burden per Response:* 2 hours.

*Estimated Total Annual Burden Hours:* 200 hours.

*Supporting documentation:* Required documentation shall include, but is not limited to, the following items:

- a. Business, trade, or job performance reference letters;
- b. DBE or other eligible certification letters;
- c. Aging report of receivables and payables;
- d. Business tax returns;
- e. Business financial statements;
- f. Personal income tax returns;

g. Personal financial statements;  
h. Schedule of work in progress (WIP);

i. Signed and dated copy of transportation-related contracts;  
j. Business debt schedule;  
k. Cash flow projections;  
l. Owner(s) and key management resumes.

*Respondents:* Small Businesses, 100.  
*Frequency:* Once.  
*Estimated Average Burden per Response:* 12 hours.  
*Estimated Total Annual Burden Hours:* 1200 hours.

**SUMMARY:** The Office of the Secretary, Office of Small and Disadvantaged Business Utilization (OSDBU), invites public comments on our intention to request the Office of Management and Budget's (OMB) approval to renew a collection of the STLP Participating Lender (PL) forms. The collection involves the use of the "Short Term Lending Program Bank Verification Loan Activation Form"; "Short Term Lending Program Bank Acknowledgement Extension Request Form"; "Short Term Lending Program Bank Acknowledgement Loan Close-Out Form"; "Guaranty Loan Status Report"; "Pending Loan Status Report"; "Drug-Free Workplace Act Certification for a Grantee Other than an Individual"; "Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements"; "Office of Small and Disadvantaged Business Utilization U.S. Department of Transportation Short Term Lending Program Certification Regarding Debarment, Suspension"; "Cooperative Agreement between the U.S. Department of Transportation and the Participating Lender"; and "U.S. Department of Transportation Office of Small and Disadvantaged Utilization Short Term Lending Program Guarantee Agreement". The information collected administers the loans guaranteed under the STLP. The information collected keeps the Participating Lender's (PLs) in compliance with the terms established in the Cooperative Agreement between DOT and the PLs. OMB Control No: 2105-0555.

*Background:* STLP loans are provided through lenders that serve as STLP participating Lenders (PL). The STLP provides PLs a guarantee, up to 75%, on a revolving line of credit up to a \$750,000 maximum. As part of the requirements for approval as a PL, lenders must submit the following certifications: Drug-Free Workplace Act Certification for a Grantee Other Than An Individual; Certification Regarding Lobbying for Contracts, Grants, Loans, &

Cooperative Agreement; Office of Small and Disadvantaged Business Utilization U.S. Department of Transportation Short Term Lending Program Certification Regarding Debarment, Suspension. The STLP is subject to budgeting and accounting requirements of the Federal Credit Reform Act of 1990 (FCRA). The PL must carry out processes to activate, monitor, service and close out STLP loans. To fulfill the requirements of FCRA, the PL submits reports and the following forms to OSDBU.

*Respondents:* Participating Lenders that are in the process or have entered into cooperative agreements with DOT's OSDBU under 49 CFR part 22 DOT-OST-2008-0236 entitled, "Short Term Lending Program".

*DOT Form 2303-1:* Short Term Lending Program Bank Verification Loan Activation Form. The PL must submit a Loan Activation Form to OSDBU that indicates the date in which the loan has been activated.

*Respondents:* 100.  
*Frequency:* Annually, up to five years.  
*Estimated Average Burden per Response:* ½ hour.  
*Estimated Total Annual Burden Hours:* 50 hours.

*DOT Form 2310-1:* Short Term Lending Program Bank Acknowledgement Extension Request Form. An extension of the original loan guarantee for a maximum period of ninety (90) days may be requested, in writing, by the PL using the STLP Extension Request Form.

*Respondents:* 100.  
*Frequency:* Annually.  
*Estimated Average Burden per Response:* ½ hour.  
*Estimated Total Annual Burden Hours:* 50 hours.

*DOT Form 2304-1:* Short Term Lending Program Bank Acknowledgement Loan Close-Out Form. The PL must submit the Loan Close-Out Form to OSDBU upon full repayment of the STLP loan or when the loan guarantee expires.

*Respondents:* 100.  
*Frequency:* Annually.  
*Estimated Average Burden per Response:* ½ hour.  
*Estimated Total Annual Burden Hours:* 50 hours.

*DOT Form 2305-1:* Guaranty Loan Status Report. The PL submits a monthly status of active guaranteed loans to OSDBU.

*Respondents:* 100.  
*Frequency:* Monthly.  
*Estimated Average Burden per Response:* 1 hour.  
*Estimated Total Annual Burden Hours:* 100 hours.

*DOT Form 2306-1:* Pending Loan Status Report. The PL submits a

monthly loan(s) in process report to OSDBU.

*Respondents:* 100.  
*Frequency:* Monthly.  
*Estimated Average Burden per Response:* 1 hour.  
*Estimated Total Annual Burden Hours:* 100 hours.

*DOT Form 2307-1:* Drug-Free Workplace Act Certification for a Grantee Other than an Individual. The PL certifies it is a drug-free workplace by executing this certification.

*Respondents:* 100.  
*Frequency:* Once.  
*Estimated Average Burden per Response:* 15 minutes.  
*Estimated Total Annual Burden Hours:* 25 hours.

*DOT Form 2308-1:* Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreement. The PL certifies that no Federal funds will be utilized for lobbying by executing this form.

*Respondents:* 100.  
*Frequency:* Once.  
*Estimated Average Burden per Response:* 15 minutes.  
*Estimated Total Annual Burden Hours:* 25 hours.

*DOT Form 2309-1:* Office of Small and Disadvantaged Business Utilization U.S. Department of Transportation Short Term Lending Program Certification Regarding Debarment, Suspension. The PL must not currently be debarred or suspended from participation in a government contract or delinquent on a government debt by submitting this form.

*Respondents:* 100.  
*Frequency:* Once.  
*Estimated Average Burden per Response:* 15 minutes.  
*Estimated Total Annual Burden Hours:* 25 hours.

*Grand Total Annual Estimation of Burden Hours:* 1825.

Issued in Washington, DC, on December 30, 2015.

**Habib Azarsina,**

*OST Privacy and PRA Officer.*

[FR Doc. 2015-33272 Filed 1-7-16; 8:45 am]

**BILLING CODE 4910-9X-P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Docket No. DOT-OST-2015-0153]

### 30-Day Notice of Application for New Information Collection Request

**AGENCY:** Office of the Secretary (OST), Department of Transportation (Department) or (DOT).

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on Aug 5, 2015 (80 FR 46646).

**DATES:** Comments must be submitted on or before February 8, 2016.

**ADDRESSES:** Your comments should be identified by Docket No. DOT–OST–2015–0153 and may be submitted through one of the following methods:

- *Office of Management and Budget, Attention: Desk Officer for U.S. Department of Transportation, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.*
- *email: oira\_submission@omb.eop.gov.*
- *Fax: (202) 395–5806. Attention: DOT/OST Desk Officer.*

**FOR FURTHER INFORMATION CONTACT:** Anthony Burton, Office of Policy, Office of the Secretary, W84–230, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–2278 or [anthony.burton@dot.gov](mailto:anthony.burton@dot.gov) (Email).

**SUPPLEMENTARY INFORMATION:**

*Title:* Mayors’ Challenge for Safer People and Safer Streets Survey.  
*Type of Request:* Application for New Information Collection Request.  
*Abstract:* Approximately 260 cities are voluntarily participating in the “Mayors’ Challenge” and through locally-driven efforts they are improving bike/ped safety policies, infrastructure, and awareness. This survey will collect

information on the accomplishments of the Mayors’ Challenge, and will be used to identify best practices and to improve future DOT outreach to cities. Each city has already identified a point-of-contact for the Mayors’ Challenge. This survey will be distributed electronically to these POCs through an online survey tool, and the proposed questions are attached.

*Affected Public:* The 260 cities that voluntarily signed up to Mayor’s Challenge.

*Estimated Number of Respondents:* 260.

*Estimated Number of Responses:* 260.

*Estimated Total Annual Burden*

*Hours:* 30 minutes/respondent;

*Cumulative 130 hours.*

*Frequency of Collection:* Once.

*Comments are invited on:* whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department’s estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC on December 23, 2015.

**Habib Azarsina,**  
*OST Privacy and PRA Officer.*

**Mayors’ Challenge for Safer People and Safer Streets Survey**

*Abstract:* Approximately 260 cities are voluntarily participating in the “Mayors’ Challenge” and through locally-driven efforts they are improving bike/ped safety policies, infrastructure, and awareness. This survey will collect information on the accomplishments of

the Mayors’ Challenge, and will be used to identify best practices and to improve future DOT outreach to cities. Each city has already identified a point-of-contact for the Mayors’ Challenge. This survey will be distributed electronically to these POCs through an online survey tool.

*Estimated Total Annual Burden*

*Hours:* 30 minutes/respondent;

*Cumulative 130 hours.*

*Frequency of Collection:* Once.

*For Further Information Contact:* Anthony Burton, Office of Policy, Office of the Secretary, W84–230, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–2278 or [anthony.burton@dot.gov](mailto:anthony.burton@dot.gov) (Email).

1. Which of the seven goals have you adopted, and what activities have you undertaken to meet those goals? For reference, the seven goals are:

- (1) Take a Complete Streets approach;
- (2) Identify and address barriers;
- (3) Gather and track data;
- (4) Use context-sensitive designs;
- (5) Complete bike-ped networks;
- (6) Improve laws and regulations; and
- (7) Educate and enforce proper road use.

2. What have been the primary challenges and obstacles to bicycle and pedestrian safety in your community, and what if any actions have you taken to address these challenges and obstacles?

3. What if any changes have resulted from the challenge activities?

- (1) Changes to physical infrastructure,
- (2) Decision-making processes,
- (3) Policies or procedures,
- (4) Enforcement,
- (5) Education and awareness of your community
- (6) Other:

4. Please use the following table to indicate whether you have data on the impact of the Mayors’ Challenge activities, and what the extent of that impact is.

	Data available? (E.g. yes/no, and if yes, type of data)	Extent of impact (E.g. number of bicyclists, compared to previous years)
event attendance .....	.....	.....
survey results .....	.....	.....
crash data .....	.....	.....
walking and bicycle counts .....	.....	.....
bike lanes, sidewalks, other infrastructure .....	.....	.....
new plans, policies, laws, or campaigns .....	.....	.....
other indications of political and community support .....	.....	.....

5. Which DOT resources, tools, and data have been most useful in your challenge?

6. Which non-DOT resources, tools, and data have been most useful in your challenge?

7. What resources, tools, and data do you wish were available?

8. What are the most useful formats for receiving information from USDOT, and why (e.g. webinars, in-person meetings, conference calls, etc.)?

9. What efforts in your city to improve bicycle and pedestrian safety in your community were already underway at the time of the Mayors' Challenge? How has the Mayors' Challenge added value and/or helped to fill any gaps in your city's efforts to improve bicycle and pedestrian safety?

10. In planning and project delivery of pedestrian and/or bicycle infrastructure projects, to what extent has your city coordinated with your Metropolitan Planning Organization (MPO), Regional Planning Organization (RPO), State Department of Transportation (DOT), and Federal Regional/Division office partners? Please note type of outreach and coordination, and outcomes it led to.

11. What have been the key benefits and lessons learned as a result of the Mayors' Challenge?

12. Do you think the Mayors' challenge has helped make any permanent changes in pedestrian and bike safety and accommodation in your city/town?

[FR Doc. 2016-00159 Filed 1-7-16; 8:45 am]

BILLING CODE 4910-9X-P

## DEPARTMENT OF VETERANS AFFAIRS

[OMB Control Nos., 2900-0782., 2900-0770, 2900-0609, 2900-0701, 2900-0712, 2900-0773, 2900-0838, 2900-0834, 2900-0836, 2900-0837, 2900-0835]

**Proposed Information Collection (Voice of Veteran Surveys, Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (National Cemetery Administration, Veterans Benefits Administration, Veterans Health Administration), Survey of Veteran Enrollees' Health and Reliance Upon VA, Bereaved Family Member Satisfaction Survey, Nation-Wide Customer Satisfaction Surveys (Survey of Healthcare Experiences of Patients), Veterans Health Benefits Handbook Satisfaction Survey, Veterans Transportation Service Data Collection, Center for Verification and Evaluation Site Inspections, Post Engagement, Awards & Return on Investment, Center for Verification and Evaluation Verification Survey) Activity: Comment Request**

**AGENCY:** Veteran's Experience Office, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veteran's Experience Office, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed non-substantive change request of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on 11 Information collections for the Veteran's Experience Agency Priority Goal, which specifies that four survey questions will be incorporated into existing customer experience surveys by Q1 FY2016. The information collected will be used by VA departmental leadership to track enterprise performance improvements as experienced by our Veterans. This notice will serve as notification for any future Non-substantive Change Information Collection Request adding these four customer service questions in the Information Collection Requests.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before March 8, 2016.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at [www.Regulations.gov](http://www.Regulations.gov) or to Thomas Pasakarnis, Veteran's Experience Office (008VE), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to [Thomas.pasakarnis@va.gov](mailto:Thomas.pasakarnis@va.gov). Please refer to "OMB Control No. 2900-VE" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

**FOR FURTHER INFORMATION CONTACT:** Thomas Pasakarnis at (202) 461-5869 or FAX (202) 495-5401.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, Veteran's Experience invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VA's estimate of the burden of the

proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Type of Review:* Non-Substantive Change of currently approved collections.

*Abstract:* For FY16-17, VA set Veterans Experience as an agency priority goal to improve Veterans Experience with VA. Because this is a new measure, VA developed one brand and three experience measures to support the Veterans Experience Agency Priority Goal (APG). VA will add four APG questions to each survey identified below. One question deals with VA brand, and three questions deal with Veterans experience.

"I got the service I needed."

"It was easy to get what I needed."

"I felt like a valued customer."

"I trust VA to fulfill our country's commitment to veterans."

Strongly agree

Agree

Neither Agree nor Disagree

Disagree

Strongly disagree

Adding these questions is necessary to establish an enterprise measure of VA's performance as experienced by our Veterans, as is needed to support VA's Veterans Experience FY16-17 APG. VA's goal is to incorporate these four survey questions into VA's existing customer experience by Q1 FY2016. The information collected will be used by VA departmental leadership to track enterprise performance improvements as experienced by our Veterans.

VA expects that it will take approximately one minute for each survey respondent to answer these new questions. As set forth below, this change is expected to affect approximately 132 instruments approved under eleven different OMB control numbers. Together, these instruments are nearly 1.5 million times per year. The cumulative annual burden of this change is more than 24,000 hours ((1 minute per submission \* 1,462,937 submissions)/60 minutes per hour = 24,382.28 hours). There is also some annual cost burden associated with this request. Specifically, some of these instruments are administered by third-party contractors, who will need to revise the instruments.

VA has provided a table detailing the full burden information for each information collection located at [http://www.oprm.va.gov/ers/ers\\_reports.aspx](http://www.oprm.va.gov/ers/ers_reports.aspx).

Please note, additional instruments approved under these or additional control numbers may be included in the Veteran's Experience initiative in the future. Therefore, this online table detailing burden information will be updated periodically.

#### Titles of Affected Collections and Instruments

- (1) 2900-0782—Voice of Veteran Surveys
  - (1) Compensation Access
  - (2) Compensation Servicing
  - (3) Pension Access
  - (4) Pension Servicing
  - (5) Education Access
  - (6) Education Servicing
  - (7) VR&E Access
  - (8) VR&E Servicing
  - (9) VR&E Non-Participant
  - (10) Loan Guarantee Home Loan Process
  - (11) Specialty Adapted Housing Grant Process, mail
- (2) 2900-0770—Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (National Cemetery Administration, Veterans Benefits Affairs, Veterans Health Administration)
  - (1) CFM Supplier Satisfaction Survey, form 10-10163
  - (2) VLER Program Survey, Undecided Vet Interview, form 10-0457
  - (3) Veterans Choice Program Survey, form 10-0450
  - (4) Nationwide Dialysis Contracts Program Veterans Survey, form 10-0455
  - (5) VA Courtesy Standards—The Golden Rule Approach Veteran Feedback Form, 10-0497
  - (6) Phone Apps Focus Group Demographic Questionnaire, form 10-0496a
  - (7) PTSD Coach App Survey, form 10-0496
  - (8) Understanding PTSD for Family Caregivers: Feedback Survey, form 10-0495
  - (9) Building Better Caregivers Satisfaction Survey, form 10-0499
  - (10) Building Better Caregiver Phone Survey, form 10-0499
  - (11) Clinical Video Telehealth (CVT) Patient Satisfaction Survey, form 10-0481a
  - (12) Compensation and Pension Examination Program (CPEP) Veterans Satisfaction Survey, form 10-0480
  - (13) Michael E. DeBakey Patient Satisfaction Survey, form 10-0476
  - (14) Food and Nutrition Satisfaction Survey, form 10-0498
  - (15) Veterans Transportation Service (VTS) Satisfaction Questionnaire, form 10-0517
- (16) Patient Satisfaction Questionnaire: Laboratory P&LMS VA New England Healthcare System, form 10-0516
- (17) Project ARCH (Access Received Closer to Home) Patient Satisfaction Survey, form 10-0522
- (18) PVAMC Low Vision Patient Satisfaction Survey, form 10-0527
- (19) Vendor Application for Fair, form 10-0528
- (20) Notice Your Nurse: Notice Your Nurse Thank you card, form 10-0519
- (21) The Continuity of Medication Management Patient Survey, form 10-0526
- (22) Caribbean Healthcare System Pathology and Laboratory Medicine, form 10-0526
- (23) Tele-Retinal Patient Satisfaction Survey, form 10-0540
- (24) Purchased Care Patient Satisfaction Survey, form 10-0538
- (25) Spinal Cord Home Care Survey, form 10-0542
- (26) Childcare Services Satisfaction Survey, form 10-0531
- (27) Neurology/Rehabilitation Inpatient Program Satisfaction Survey, form 10-0546
- (28) Non-VA Care Coordination Veteran Satisfaction Survey, form 10-0545
- (29) Survey of Veterans' Satisfaction with Income Verification, form 10-0541
- (30) Spinal Cord Injury Patient Survey, form 10-0515
- (31) National Family Caregiver Participant Training Feedback Form 10-0520
- (32) Psychiatric Patient Satisfaction Survey, form 10-0550
- (33) Cardiac Cath Lab Customer Satisfaction Survey, form 10-0547
- (34) Community Living Center (CLC) Satisfaction Survey, form 10-0548
- (35) Survey of Veterans Perceptions of an Enhanced VA Outpatient Prescription Label, form 10-0549
- (36) Dental Service Customer Satisfaction Survey, form 10-0553
- (37) Dental Satisfaction Survey (Spanish version), form 10-0553s
- (38) Office of Mental Health Veteran Satisfaction Survey, form 10-0554
- (39) Patient Experience of Care Survey, form 10-0552
- (40) VCS Patriot Store and VCS Patriot Cafe Customer Satisfaction Survey, form 10-0551
- (41) Epilepsy Centers of Excellence (ECoE) Patient Survey, form 10-0558
- (42) Fraud, Waste and Abuse Complaint Form, 10-0500
- (43) Sodium Dichromate Exposure Exam Feedback Survey, form 10-0559
- (44) Patient Satisfaction Survey-Radiation Oncology WEB survey, form 10-10063
- (45) Hem-Oncology Telehealth Satisfaction WEB Survey, form 10-10054
- (46) Vet Appointment Mobile App Survey, form 10-10057
- (47) Telephone Care Services Patient Satisfaction Survey, form 10-10058
- (48) VISN 20 Telephone Customer Service Experience Satisfaction Survey, form 10-10059
- (49) Prosthetics Customer Service Survey, form 10-10125
- (50) Customer Patient Satisfaction Monthly Survey, form 10-10126
- (51) HME Vendor Performance Survey 2014, form 10-10122
- (52) SOU-SORCC Patient Survey, form 10-10145
- (53) Audiology Hearing Aid Questionnaire, form 10-10128
- (54) Advanced Education Veteran Survey -SORCC-Patient, form 10-10128
- (55) VoV OSI Primary Care Survey—Conjoint Analysis, form 10-10147
- (56) Women's Health Research Network, form 10-10142
- (57) Telehealth Master Preceptor, form 10-10127
- (58) Mental Health Survey, form 10-10129
- (59) Extended Hours Program Evaluation—Non-Users Survey, form 10-10129
- (60) VISN 1 Extended Hours Evaluation—Users, form 10-10132
- (61) Maternity Care Coordination Experiences of Pregnant Veterans Survey, form 10-10131
- (62) State Veterans Home Admin Survey, form 10-10136
- (63) Tobacco and Smoking Cessation Survey, form 10-10136
- (64) Voice of the Veteran (VOV) Satisfaction Survey Office of Strategic Integration (OSI) Conjoint Analysis, form 10-10144
- (65) VISN 1 NCL Patient Satisfaction Questionnaire, form 10-10133
- (66) Interview and Discussion Group Protocols for the Institute of Medicine: 09-IOM VA MH Services Eval Non-VA Service Users Discussion Protocol, form 10-10130
- (67) Battlecreek Urgent Care Survey, form 10-10135
- (68) MEC Notification Survey, form 10-10155
- (69) Caregiver Feedback form. Self-Care Course, form 10-10119
- (70) VISN20 Cancer Care Survey—Veteran Satisfaction, form 10-10164
- (71) Customer Satisfaction Survey on VA Research Communication, VA

- Research Currents, form 10–10167
- (72) Patient Satisfaction Survey Boston VAMC Ophthalmology, form 10–211001NR
- (73) Anticoagulation (warfarin/ Coumadin) Patient Satisfaction Survey, form 10–211002
- (74) Patient Survey: Waiting Room Television Video Patient Education, form 10–211005
- (75) MSCoE Patient Survey, form 10–211003
- (76) PROJECT ARCH (Access Received Closer to Home) Non-Participating Veterans Survey, form 10–211004
- (77) Outpatient Pharmacy Customer Satisfaction Survey, form 10–211006NR
- (78) National Patient Centered Community Care Veterans Survey Question, form 10–211009
- (79) OKC Dental (Ambulatory) Patient Satisfaction Survey, form 10–211008
- (80) HEC Enrollment Survey, form 10–211013
- (81) Non-VA-Purchased Care Veteran Survey, form 10–211013
- (82) Survey of Rehabilitation Care, form 10–211010
- (83) Tele-Dermatology Imaging Patient Satisfaction Survey, form 10–211016
- (84) Home Based Primary Care Survey, Lawton CBOC, form 10–211014
- (85) Dental Insurance Program Survey, form 10–211011
- (86) Survey of Patient Satisfaction at Surgical Service, form 10–211015
- (87) Survey of Patient Satisfaction at Surgical Service -Spanish, form 10–211015SP
- (88) Oklahoma City VAMC Home Based Primary Care (HBPC) Survey, form 10–211014a
- (89) Telephone Survey on User Experience with VLER Health Exchange
- (90) Provider Interview Guide, form 2900–0770
- (91) Veteran (Patient) Interview-Guide, form 2900–0770
- (92)
- (93) Online Survey—VHA Customer Value Survey, form 2900–0770
- (94) State Veterans Home Patient Satisfaction, form 2900–0770
- (95) VISN 1 Call Center Telephone Survey Script (Veteran Women), form 2900–0770
- (96) Gulf War Newsletter Survey—Office of Public Health, form 2900–0770
- (97) My HealtheVet (MHV) Web site Redesign Veteran and Family Caregiver Demographic Survey, form 2900–0770
- (98) 2014 Post-911CommunicationSurvey-Questionnaire, form 2900–0770
- (99) Claims Clinic Satisfaction Survey (VBA), form 2900–0770
- (100) Feedback US Survey
- (101) Feedback USA Survey Button—KIOSK, form 2900–0770
- (102) Feedback USA Survey Button—Internet Web site, form 2900–0770
- (103) Business Requirements Sessions
- (104) Awards and ROI–2013NVSB (Small Business), form 2900–0770
- (105) Awards and ROI–2013NVSB (Large Business), form 2900–0770
- (106) 2014 National Veterans Small Business Engagement (NVSBE) Events Satisfaction, form 2900–0770
- (107) Business Sessions Satisfaction Survey, form?
- (108) CVE Booth Satisfaction, form 2900–0770
- (109) Exhibitor Satisfaction 2900–0770
- (110) Learning Sessions 2900–0770
- (111) NRT Satisfaction 2900–0770
- (112) Senior Leaders Roundtables, 2900–0770
- (113) 2014 NVSBE Post-Engagement Attendees Survey, 2900–0770
- (114) OSDDBU Post-Event Evaluation, 2900–0770
- (115) NAC Customer Response Survey—WEB
- (3) 2900–0609—Survey of Veteran Enrollees' Health and Reliance Upon VA
- (1) (CATI) Survey of Veteran Enrollees' Health and Reliance Upon VA, form 10–21034G
- (4) 2900–0701—Bereaved Family Member Satisfaction Survey
- (1) Bereaved Family Member Satisfaction Survey Administered by Facility Staff, form 10–21081
- (5) 2900–0712—Nation-wide Customer Satisfaction Surveys (Survey of Healthcare Experiences of Patients)
- (1) Recently Discharged Patient, form 10–1465–1
- (2) Recently Discharged Inpatient, form 10–1465–2
- (3) Ambulatory Care, form 10–1465–3
- (4) Ambulatory Care, form 10–1465–4
- (5) Ambulatory Care, form 10–1465–5
- (6) Ambulatory Care, form 10–1465–6
- (7) Home Health Care Survey, form 10–1465–7
- (8) In-Center Hemodialysis Care, form 10–1465–8
- (6) 2900–0773—Veterans Health Benefits Handbook Satisfaction Survey
- (1) Veterans Health Benefits Handbook Satisfaction Survey, form 10–0507
- (7) 2900–0838—Veterans Transportation Service Data Collection
- (1) Veterans Transportation Service Data Collection Telephonic Script
- (8) 2900–0834—Center for Verification and Evaluation Site Inspections
- (1) CVE Site Inspection Survey, Historical
- (2) CVE Site Inspection Survey, Regular
- (9) 2900–0836—Post Engagement
- (1) 2015 National Veterans Small Business Engagement Post Engagement Survey
- (10) 2900–0837—Awards & Return on Investment
- (1) Awards and Return on Investment after 2015 National Veterans Small Business Engagement (Small Business)
- (2) Awards and Return on Investment after 2015 National Veterans Small Business Engagement (Large Business)
- (11) 2900–0835—Center for Verification and Evaluation Verification Survey
- (1) CVE Pre-Application Survey
- (2) CVE Exit Survey
- (3) CVE Post-Determination Letter
- By direction of the Secretary.

**Crystal Rennie,**

*Department Clearance Officer, Office of Privacy and Records Management, Department of Veterans Affairs.*

[FR Doc. 2016–00075 Filed 1–7–16; 8:45 am]

**BILLING CODE 8320–01–P**

**DEPARTMENT OF VETERANS AFFAIRS****Reimbursement for Caskets and Urns for Burial of Unclaimed Remains in a National Cemetery**

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Notice.

**SUMMARY:** The Department of Veterans Affairs (VA) is updating the monetary reimbursement rates for caskets and urns purchased for the interment in a VA national cemetery of Veterans who die with no known next of kin and where there are insufficient resources for furnishing a burial container. The purpose of this notice is to notify interested parties of the rates that will apply to reimbursement claims that occur during calendar year (CY) 2016.

**FOR FURTHER INFORMATION CONTACT:** Tamula Jones, Budget Operations and Field Support Division, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. Telephone: 202–461–6688 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Title 38, United States Code, Section 2306(f) authorizes VA National Cemetery

Administration to furnish a casket or urn for interment in a VA national cemetery of the unclaimed remains of Veterans for whom VA cannot identify a next of kin and determines that sufficient financial resources for the furnishing of a casket or urn for burial are not available. VA implemented regulations to administer this authority as a reimbursement benefit in Title 38, Code of Federal Regulations, Section 38.628.

Reimbursement for a claim received in any CY will not exceed the average cost of a 20-gauge metal casket or a durable plastic urn during the fiscal year (FY) preceding the CY of the claim. Average costs are determined by market analysis for 20-gauge metal caskets, designed to contain human remains, with a gasketed seal, and external rails or handles. The same analysis is completed for durable plastic urns, designed to contain cremated human remains, which include a secure closure to contain the cremated remains.

Using this method of computation, in FY 2015, the average costs for caskets were determined to be \$2,421.00, and \$244.00 for urns. Accordingly, the reimbursement rates payable for qualifying interments occurring during CY 2016 is \$2,421.00 for caskets and \$244 for urns.

Request approval to publish in the **Federal Register**, VA's notice on the rates of reimbursement for caskets and urns for CY2016.

#### 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 January 5, 2016 for publication.

Dated: January 5, 2016.

**Michael Shores,**

*Chief Impact Analyst, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.*

[FR Doc. 2016-00143 Filed 1-7-16; 8:45 am]

**BILLING CODE 8320-01-P**

## DEPARTMENT OF VETERANS AFFAIRS

### MyVA Federal Advisory Committee; Notice of Meeting: Amended

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App.2., that the MyVA Advisory Committee (MVAC) will meet February 1-2, 2016, at the Marriott Crystal Gateway, 1700 Jefferson Davis Highway, Arlington, VA 22202.

The purpose of the Committee is to advise the Secretary, through the Executive Director, MyVA Task Force Office regarding the My VA initiative and VA's ability to rebuild trust with Veterans and other stakeholders, improve service delivery with a focus on Veteran outcomes, and set the course for longer-term excellence and reform of VA.

On February 1, from 9:00 a.m. to 5:30 p.m., the Committee will meet to discuss the progress on, and the integration of, the work in the five key MyVA work streams—Veteran

Experience (explaining the efforts conducted to improve the Veteran's experience), Employees Experience, Support Services Excellence (such as information technology, human resources, and finance), Performance Improvement (projects undertaken to date and those upcoming), and VA Strategic Partnerships.

On February 2, from 8:00 a.m. to 3:30 p.m., the Committee will meet to discuss and recommend areas for improvement on VA's work to date, plans for the future, and integration of the MyVA efforts. This session is open to the public. No time will be allocated at this meeting for receiving oral presentations from the public. However, the public may submit written statements for the Committee's review to Debra Walker, Designated Federal Officer, MyVA Program Management Office, Department of Veterans Affairs, 1800 G Street NW., Room 880-40, Washington, DC, 20420, or email at [Debra.Walker3@va.gov](mailto:Debra.Walker3@va.gov). Any member of the public wishing to attend the meeting or seeking additional information should contact Ms. Walker.

Because the meeting will be held in a Government building, anyone attending must be prepared to show a valid photo government issued ID. Please allow a minimum of one hour to move through the security process, which includes a metal detector, prior to the start of the meeting.

Dated: January 5, 2016.

**Jelessa Burney,**

*Federal Advisory Committee Management Officer.*

[FR Doc. 2016-00178 Filed 1-7-16; 8:45 am]

**BILLING CODE P**





# FEDERAL REGISTER

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Part II

## Department of the Interior

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Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To Downlist the West Indian Manatee, and Proposed Rule To Reclassify the West Indian Manatee as Threatened; Proposed Rule

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS-R4-ES-2015-0178;  
FXES1113090000C2-156-FF009E32000]

RIN 1018-AY84

**Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To Downlist the West Indian Manatee, and Proposed Rule To Reclassify the West Indian Manatee as Threatened**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule and notice of 12-month petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to reclassify the West Indian manatee from endangered to threatened under the Endangered Species Act of 1973, as amended (Act) due to substantial improvements in the species' overall status since the original listing in 1967 as endangered under the Endangered Species Conservation Act of 1966. This proposed action is based on a thorough review of the best scientific and commercial data available, which indicate that the West Indian manatee no longer meets the definition of endangered under the Act. If this proposal is finalized, the West Indian manatee including its subspecies would remain protected as a threatened species under the Act. This document also constitutes our 12-month finding on the petition received to reclassify this species.

**DATES:** *Comment submission:* To allow us adequate time to consider your comments on this proposed rule, we must receive your comments on or before April 8, 2015.

*Public Hearing:* An informational open house and public hearing are scheduled for Saturday, February 20, 2016 (see the **ADDRESSES** section and the Public Hearing section of **SUPPLEMENTARY INFORMATION** for more information).

**ADDRESSES:** You may submit comments on this proposed rule by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R4-ES-2015-0178.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS-R4-ES-2015-0178; U.S. Fish and Wildlife Service Headquarters, MS:

BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We request that you send comments only by the methods described in this section. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section of **SUPPLEMENTARY INFORMATION** for more information).

*Public Hearing*

We will hold a public hearing in Orlando, Florida on Saturday, February 20, 2016, from 3:00 p.m. to 6:00 p.m. at the Buena Vista Palace Conference Center, 1900 Buena Vista Drive, Orlando, Florida 32830 in the Center's Great Hall; (see the Public Hearing section of **SUPPLEMENTARY INFORMATION**).

Comments will be accepted orally or in writing at the public hearings. See the Public Hearing section of **SUPPLEMENTARY INFORMATION**. Comments will be accepted orally or in writing at the public hearings.

**FOR FURTHER INFORMATION CONTACT:** Jay Herrington, Field Supervisor, North Florida Ecological Services Office, by telephone at 904-731-3191, or by facsimile at 904-731-3045; or at the following address: 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256; Edwin Muñiz, Field Supervisor, Caribbean Ecological Services Office, by telephone at 787-851-7297, or by facsimile at 787-851-7441; or at the following address: Road 301, Km. 5.1, P.O. Box 491, Boquerón, PR 00622. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339, 24 hours a day, 7 days a week.

**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

*Why We Need To Publish This Proposed Rule*

- In April 2007, we completed a 5-year status review, which included a recommendation to reclassify the West Indian manatee from endangered to threatened.

- In December 2012, we received a petition submitted by the Pacific Legal Foundation, on behalf of Save Crystal River, Inc., requesting that the West Indian manatee and subspecies thereof be reclassified from its current status as endangered to threatened, based primarily on the analysis and recommendation contained in our April 2007 5-year review.

- On July 2, 2014, we published a 90-day finding that the petition presented substantial information indicating that

reclassifying the West Indian manatee may be warranted (79 FR 37706).

- This proposed rule, in accordance with section 4(b)(3)(B) of the Endangered Species Act (Act), also constitutes our 12-month finding that the petitioned action is warranted.

Summary of the Major Provisions of This Proposed Rule

- We propose to reclassify the West Indian manatee from endangered to threatened.

- This proposed rule also constitutes our 12-month petition finding.

The Basis for Our Action

- Castelblanco-Martínez *et al.*'s (2012, pp. 129-143) population viability analysis (PVA) model for the West Indian manatee describes a metapopulation with positive growth, and Runge *et al.*'s Core Biological Model (2015, p. 13) predicts that it is unlikely (<2.5 percent chance) that the southeastern U.S. population will fall below 4,000 total individuals over the next 100 years, assuming current threats remain constant indefinitely.

- Current population estimates are 6,350 manatees in the southeastern continental United States and 532 manatees in Puerto Rico. These numbers reflect a very low percentage chance of this animal going extinct in the next 100 years.

- Outside the United States, habitat fragmentation and loss is the main threat. Within the United States, watercraft collisions and the loss of winter warm-water habitat are the main threats. Our review of the best scientific and commercial information available and analyses of threats and demographics conclude that threats are being addressed and reduced throughout the species' range.

- Based on our review, we conclude that the West Indian manatee no longer meets the Act's definition of endangered and should be reclassified as threatened.

**Public Comments**

We intend that any final action resulting from this proposed rule will be as accurate and as effective as possible. Therefore, we request data, comments, and new information from concerned governmental agencies (including but not limited to State and Federal agencies and foreign governments), Native American Tribes, the scientific community, industry, or any other interested party concerning this proposed rule. The comments that will be most useful and likely to influence our decision are those that are supported by data or peer-reviewed studies and those that include citations

to, and analyses of, applicable laws and regulations. Please make your comments as specific as possible and explain the basis for them. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you reference or provide. We particularly seek comments concerning the following:

(1) The historical and current status and distribution of the West Indian manatee within and outside the United States (including both of its subspecies, the Florida manatee and Antillean manatee), data regarding its biology and ecology, and ongoing conservation measures for the species and its habitat.

(2) Relevant data concerning threats (or lack thereof) to West Indian manatees including any new data or models related to climate change, as well as the extent of regulatory protections and management that would continue to be provided to this species, if this rule were finalized and the West Indian manatee became a threatened species.

(3) Additional information concerning the range, distribution, population size, and trends for the West Indian manatee, including both of its subspecies.

(4) Current or planned activities within the geographic range of the West Indian manatee that may impact or benefit the species, including activities that affect aquatic plant communities, freshwater and warm-water sources, sheltered waterbodies, boat access projects, port expansion projects, and others.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that a determination as to whether any species is a threatened or endangered species must be made “solely on the basis of the best scientific and commercial data available.”

Prior to issuing a final rule on this proposed action, we will take into consideration all additional information and comments that we receive. Such information may lead to a final rule that differs from this proposal. All comments and recommendations, including names and addresses, will become part of the administrative record for the final rule.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. Before including your address, phone number, email address, or other personal identifying information in your comment, you

should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time.

If you submit a comment via <http://www.regulations.gov>, your entire comment, including any personal identifying information, will be posted on the Web site. 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. Please note that comments posted to this Web site are not immediately viewable. When you submit a comment, the system receives it immediately. However, the comment will not be publically viewable until we post it, which might not occur until several days after submission.

Similarly, if you mail or hand-deliver hardcopy comments that include personal identifying information, you may request at the top of your documents that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. To ensure that the electronic docket for this rulemaking is complete and all comments we receive are publicly available, we will post all hardcopy comments on <http://www.regulations.gov>.

#### Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three specialists in the field who were not involved in developing this proposed rule. The purpose of such review is to ensure that our determination is based on scientifically sound data, assumptions, and analysis. We will send peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment during the public comment period. We will consider all comments and information received from peer reviewers during the 90-day comment period on this proposed rule, as we prepare a final rule.

#### Public Hearing

Section 4(b)(5) of the Act (16 U.S.C. 1531 *et seq.*) provides for one or more public hearings on this proposal, if requested. Given the level of interest in this review, we have scheduled a formal public hearing to afford the public and all interested parties with an opportunity to make formal oral comments on the proposed reclassification of the West Indian manatee.

We will hold the public hearing at the location listed in **ADDRESSES** on the date

listed in **DATES**. The Public hearing will last from 3:00 p.m. to 6:00 p.m. We will hold a public informational open house prior to the hearing from 1:30 p.m. to 2:30 p.m. to provide an additional opportunity for the public to gain information and ask questions about the proposed rule. This open house session should assist interested parties in preparing substantive comments on the proposed rule.

Persons needing reasonable accommodations in order to attend and participate in the public hearings should contact Chuck Underwood of the North Florida Ecological Services Office at 904-731-3332 or via email to [chuck\\_underwood@fws.gov](mailto:chuck_underwood@fws.gov) as soon as possible. In order to allow sufficient time to process requests, please contact us for assistance no later than 1 week before the hearing.

Written comments submitted during the comment period receive equal consideration with oral comments presented at a public hearing. All comments we receive at the public hearing, both oral and written, will be considered in making our final decision.

#### Previous Federal Actions

The Florida manatee (*Trichechus manatus latirostris*), a subspecies of the West Indian manatee (*Trichechus manatus*), was listed as endangered in 1967 (32 FR 4001, March 11, 1967) under the Endangered Species Preservation Act of 1966 (Pub. L. 89-669; 80 Stat. 926). After adoption of the Endangered Species Conservation Act of 1969 (Pub. L. 91-135; 83 Stat. 275), the listing was amended in 1970 to expand the Florida manatee listing to include the West Indian manatee throughout its range, including in the Caribbean Sea and northern South America. This amendment added the Antillean manatee (*Trichechus manatus manatus*) to the listing (35 FR 18319, December 2, 1970). Species listed under the Endangered Species Conservation Act, including the West Indian manatee, were subsequently grandfathered into the List of Endangered and Threatened Wildlife under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), and the West Indian manatee remains listed as an endangered species under the Act. We originally issued a recovery plan for the West Indian manatee in 1980, which included both Florida and Antillean manatees. We completed a recovery plan for the Florida subspecies in 1989, revised it in 1996, and completed another in 2001 (USFWS 2001). In 1986, we completed a recovery plan for the Puerto Rico population of the Antillean manatee (USFWS 1986).

We published notices in the **Federal Register** on July 22, 1985, and on November 6, 1991 (50 FR 29901 and 56 FR 56882, respectively), stating that we were conducting 5-year reviews for all endangered and threatened species listed before January 1, 1991, including the West Indian manatee. In 2005 and 2006, we published notices in the **Federal Register** (70 FR 19780, April 14, 2005; 71 FR 14940, March 24, 2006) that we were initiating another 5-year status review for the West Indian manatee. In this 5-year review, which was completed on April 6, 2007, we recommended downlisting the species to threatened (USFWS 2007, p. 35). A copy of the 2007 5-year status review is available on our Web site ([http://ecos.fws.gov/docs/five\\_year\\_review/doc3771.pdf](http://ecos.fws.gov/docs/five_year_review/doc3771.pdf)).

On December 14, 2012, we received a petition from the Pacific Legal Foundation on behalf of Save Crystal River, Inc., requesting that the West Indian manatee and its subspecies be reclassified from endangered to threatened under the Act, based primarily on the analysis and recommendation presented in our 2007 5-year review for the species. We reviewed the petition and found that it presented substantial information indicating that reclassifying the West Indian manatee to threatened may be warranted. We published a notice announcing our 90-day finding and initiation of the species' status review in the **Federal Register** on July 2, 2014 (79 FR 37706).

**Current Federal Action**

Section 4(b)(3)(B) of the Act requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants (Lists) that presents substantial information, we make a finding within 12 months of the date of the receipt of the petition on whether the requested action is either (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal. This proposed rule constitutes our 12-month finding that

the action sought by the December 2012 petition is warranted. To ensure that our review is complete and based on the best available scientific and commercial information, in our July 2, 2014, **Federal Register** notice of the 90-day finding we solicited information from the public on the status of the West Indian manatee, threats to the species, conservation measures for the species, and other relevant information.

We received 49,571 comments from the public in response to our notice of status review. Most were in relation to the Florida manatee (*Trichechus manatus latirostris*), and most of those were emails or letters expressing either support for or opposition to the action being considered, with no supporting information. These comments were noted but are not being considered in preparation of this proposed rule. Several submittals, however, shared peer-reviewed literature, observations from State and Federal partners, and survey data, and these data were considered and are addressed as appropriate. Similarly, the few species-specific reports we received on the Antillean manatee (*Trichechus manatus manatus*) were also evaluated and incorporated as appropriate.

**Species Information**

*Distribution*

The range of the West Indian manatee includes the southeastern United States (primarily Florida), the east coast of Mexico and Central America, northeastern South America, the Greater Antilles (Cuba, Hispaniola, Puerto Rico, and Jamaica), and parts of the Lesser Antilles, including Trinidad and Tobago. Manatees in the southeastern United States are found in Florida year-round and occasionally in Georgia and Alabama during the warmer months, and vagrants can be found as far north as Massachusetts and as far west as Texas (Beck 2015, unpubl. data; Fertl *et al.* 2005, p. 74; Domning and Hayek 1986, p. 136; Lowery 1974, p. 481; Gunter 1941, p. 64). Florida vagrants are also known to occur in the Bahamas and

Cuba (Melillo-Sweeting *et al.* 2011, p. 505; Alvarez-Alemán *et al.* 2010, p. 148; Odell *et al.* 1978, p. 289).

Outside of the southeastern United States, the West Indian manatee has an extensive but fragmented distribution (Marsh *et al.* 2011, p. 384) and occurs in 20 countries (Table 1). Manatees are found in the Greater Antilles (*i.e.*, Cuba, Jamaica, Hispaniola, and Puerto Rico) and discontinuously along the Gulf coast of Mexico, the Caribbean coast of Central and South America, and along the Atlantic coast of South America as far south as Bahia, Brazil (Self-Sullivan and Mignucci-Giannoni 2012, p. 36). Except for rare sightings, manatees are no longer found in the Lesser Antilles (*i.e.*, those Caribbean islands extending from the Virgin Islands to Grenada) (Lefebvre *et al.* 2001, p. 425). The few individuals that have been reported for the U.S. and British Virgin Islands, Turks and Caicos, Cayman Islands, St. Maarten, Curacao, and Bonaire are considered vagrant from nearby populations (Self-Sullivan and Mignucci-Giannoni 2012, p. 40; USFWS 2007, p. 27).

In Puerto Rico, recent island-wide aerial surveys flown to characterize manatee distribution patterns (USFWS Manatee Aerial Surveys 2015, unpubl. data) confirm the observations of Powell *et al.* (1981, p. 644) and Rathbun *et al.* (1985, p. 9) that manatees are most frequently observed along the south-central and eastern coasts and not on the northwestern coast. The former Roosevelt Roads Naval Station (RRNS) area, the northwest coast of Vieques, Bahía de Jobos, and Guayanilla consistently presented a high number of observations (USFWS Manatee Aerial Surveys, 2015 unpubl. data). In localized aerial surveys on the southwestern coast, between Cabo Rojo and Ponce, sightings were common throughout the region, but concentrated at Cabo Rojo, Bahía Bioluminiscente and Montalva in Lajas, and Bahías de Guayanilla and Tallaboa in Guayanilla (Mignucci-Giannoni 2006, p. 13).

TABLE 1—WEST INDIAN MANATEES, RANGE COUNTRIES WHERE FOUND: TRENDS, POPULATION ESTIMATES, NATIONAL LISTING STATUS

[Abbreviations: U—Unknown; D—Declining; S—Stable; I—Increasing; En—Endangered; CrEn—Critically Endangered (adapted from UNEP 2010, p. 11 and Castelblanco-Martinez *et al.* 2012, p. 132, Martin *et al.* 2015, p. 44, unless otherwise cited).]

	Country	Trend <sup>1</sup>	Population estimate <sup>1</sup>	National listing status
<b>Greater Antilles (1,382)</b>				
1A <sup>2</sup> .....	United States (Puerto Rico) .....	S	<sup>3</sup> 532 (mean)	En (PRDNER 2004).
2 .....	Cuba .....	U/D	500	En (Álvarez-Alemán 2012).
3 .....	Haiti .....	U	100	No information.
4 .....	Dominican Republic .....	D	200	CrEn (MMARNRD 2011).

TABLE 1—WEST INDIAN MANATEES, RANGE COUNTRIES WHERE FOUND: TRENDS, POPULATION ESTIMATES, NATIONAL LISTING STATUS—Continued

[Abbreviations: U—Unknown; D—Declining; S—Stable; I—Increasing; En—Endangered; CrEn—Critically Endangered (adapted from UNEP 2010, p. 11 and Castelblanco-Martinez *et al.* 2012, p. 132, Martin *et al.* 2015, p. 44, unless otherwise cited).]

	Country	Trend <sup>1</sup>	Population estimate <sup>1</sup>	National listing status
5	Jamaica	U/D	50	No information.
<b>Mexico, Central America (3,600)</b>				
6	Mexico	U	1,500	En.
7	Belize	U/D	1,000	En.
8	Guatemala	U	150	CrEn (CONAP 2009).
9	Honduras	S	100	No information.
10	Costa Rica	D	200	En.
11	Panama	U	150	No information.
12	Nicaragua	D	500	No information.
<b>South America (1,800)</b>				
13	Colombia	U/D	500	CrEn (Rodríguez-Mahecha <i>et al.</i> 2006).
14	Venezuela	D	200	CrEn (Ojasti and Lacabana 2008).
15	Suriname	D	100	No information.
16	French Guiana	S	100	No information.
17	Guyana	D	100	No information.
18	Trinidad and Tobago	D	100	En (MCT 2002).
19	Brazil	U/D	700	CrEn (Barbosa <i>et al.</i> 2008).
<b>North America (6,360)</b>				
20	The Bahamas	I	10	No information.
21B <sup>2</sup>	United States (Southeast)	S/I	6,350	En (FAC 68A–27.0031).
Total Estimated Population			13,142	

<sup>1</sup> Trends and estimates described in Table 1 for manatee populations outside the United States are, in large part, based on the personal opinions of local experts and are not based on quantified analyses of trends in country population counts or demographics. Such data from these countries are limited or absent, making most of these assessments conjectural (UNEP 2010, p. xiv).

<sup>2</sup> Note that Locations 1A and 21B refer to manatee populations in the United States (in Puerto Rico and the southeastern United States, respectively).

<sup>3</sup> Based on adjusted aerial survey counts (Pollock *et al.* 2013, p. 8).

West Indian manatees are at the northern limit of their range in the southeastern United States. This limitation is based on the species' intolerance for cold. Prolonged exposure to cold water temperatures results in debilitation and/or death due to cold stress syndrome (Bossart *et al.* 2004, p. 435; Rommel *et al.* 2002, p. 4). At this northern reach of their range, manatees historically relied upon warm, temperate coastal and inshore waters in south Florida and on natural warm-water springs scattered throughout the area for warmth. Industrial outfalls, including power plant effluents, have expanded the manatees' range in Florida since their appearance in the 1940s. A majority of manatees now winter at these sites.

In Florida, manatees have been identified as occurring in four, relatively distinct, regional management units (formerly referred to as subpopulations): An Atlantic Coast unit that occupies the east coast of Florida, including the Florida Keys and the lower St. Johns River north of Palatka; an Upper St.

Johns River unit that occurs in the river south of Palatka; a Northwest unit that occupies the Florida Panhandle south to Hernando County; and a Southwest unit that occurs from Pasco County south to Whitewater Bay in Monroe County (USFWS 2001, p. 3 and 2007c, pp. 12–13; Figure 1). Each of these management units includes individual manatees that tend to return to the same warm-water site(s) each winter and have similar non-winter distribution patterns. The exchange of individuals between these units is limited during the winter months, based on data from telemetry studies (Rathbun *et al.* 1990, entire; Reid *et al.* 1991, pp. 180–181; Deutsch *et al.* 1998, entire; Weigle *et al.* 2001, entire; Deutsch *et al.* 2003, entire) and photo-identification studies (Rathbun *et al.* 1990, entire; USGS Sirenia Project Manatee Individual Photo-identification System (MIPS), 2015, unpubl. data; Florida Fish and Wildlife Conservation Commission (FWC) Fish and Wildlife Research Institute (FWRI) MIPS, 2015, unpubl. data).

#### Taxonomy and Species Description

The West Indian manatee, *Trichechus manatus*, is one of three living species of the genus *Trichechus* (Rice 1998, p. 129). The West Indian manatee includes two recognized subspecies, the Antillean manatee, *Trichechus manatus manatus*, and the Florida manatee, *Trichechus manatus latirostris* (Rice 1998, p. 129). Each subspecies has distinctive morphological features and occurs in discrete areas with rare overlap between ranges (Hatt 1934, p. 538; Domning and Hayek 1986, p. 136; and Alvarez-Alemán *et al.* 2010, p. 148). Recent genetic studies substantiate the uniqueness of the Florida subspecies, as its genetic characteristics have been compared with other populations from the Antillean subspecies found in Puerto Rico and Belize (Hunter *et al.* 2010, p. 599; Hunter *et al.* 2012, p. 1631).

West Indian manatees are large, fusiform-shaped animals (wide in the middle and tapered at both ends) with skin that is uniformly dark grey, wrinkled, sparsely haired, and rubber-

like. Manatees possess paddle-like forelimbs, no hind limbs, and a round, beaver-like tail. Their bones are massive and heavy with no marrow cavities in the ribs or long bones of the forearms (Odell 1982, p. 829). Adults average about 3.0 meters (m) (9.8 feet [ft]) in length and 400 kilograms (kg) (900 pounds [lb]) in weight, but may reach lengths of up to 4.5 m (15 ft) (Husar 1978, p. 1) and weigh as much as 1,620 kg (3,570 lb) (Rathbun *et al.* 1990, p. 23). Newborns average 1.2 to 1.4 m (4 to 4.5 ft) in length and weigh about 30 kg (66 lb) (Odell 1981, p. 134). The nostrils, located on the upper snout, open and close by means of muscular valves as the animals surface and dive (Husar 1977, p. 2; Hartman 1979, p. 73). A muscular, flexible, upper lip is used with the forelimbs to manipulate food into the mouth (Hartman 1979, p. 85). Bristles are located on the upper and lower lip pads (Marshall *et al.* 2000, p. 649). Molars designed to crush vegetation form continuously at the back of the jaw and move forward as older ones wear down (Domning and Hayek 1984, p. 105). The eyes are very small, close with sphincter action, and are equipped with inner membranes that can be drawn across the eyeball for protection. Externally, the ears are minute with no pinnae (Husar 1977, p. 2).

#### *Lifespan, Mating, and Reproduction*

The lifespan of the manatee is not known with certainty. There is a record in Florida of a captive 67-year old manatee (South Florida Museum 2015), and there are documented longevity records of over 55 years in the wild. The average age of Florida manatees dying in Florida is 7.7 years (Pitchford 2009 p. 22). Manatee mortality records from Puerto Rico found adults aged from 22 to 28 years old (Mignucci-Giannoni *et al.* 2000, p. 194).

Manatees generally become sexually mature between 3 to 5 years of age (Boyd *et al.* 1999 and Glaser and Reynolds 1997, in UNEP 2010, p. 4), and female manatees continue reproducing in the wild into their thirties (Marmontel 1995, in UNEP 2010, p. 4). After a gestation period of between 11 and 14 months (Rathbun *et al.* 1995, Reynolds and Odell 1991, in UNEP 2010, p. 4), female manatees usually give birth to a single calf, although there are a few documented cases of twins (Marmontel 1995, Rathbun *et al.* 1995, SEMARNAT 2001, Wells *et al.* 1999, in UNEP 2010, p. 4).

#### *Habitat*

West Indian manatees use a wide variety of freshwater, estuarine, and

marine habitats for their life-history needs (*i.e.*, feeding and drinking, traveling, resting, thermoregulation, mating, and nursing) and survival. Manatees feed on freshwater and marine plants, including submergent, emergent, and shoreline vegetation. Significantly, manatees seek out sources of fresh drinking water, especially when in marine and estuarine habitats. Manatees tend to travel along the waterward edges of plant beds and in and near channels. Sheltered embayments and other such areas are used for resting and, for mothers with calves, as areas to nurse and nurture offspring. Mating activity takes place in all types of habitat; estrus females prefer shallow areas where they can rest from mating activity. In the inland and coastal waters of peninsular Florida, manatees use warm-water springs, warm industrial outfalls, and other warm-water sites as shelter during the winter months (Hartman, 1974, pp. 8–30, Lefebvre *et al.* 2001, pp. 451–453, Stith *et al.* 2006, pp. 4–5), several of which are designated manatee protection areas. In warmer months, manatees leave these sites and can disperse great distances.

Manatees in Central and South America are found in coastal rivers and estuaries, while those in the Antilles are found more often in coastal marine habitats (Lefebvre *et al.* 2001, p. 463). In Puerto Rico, Antillean manatees are mostly found in protected bays and shallow coves with seagrass beds for feeding and resting and utilize river mouths and estuaries when seeking freshwater for drinking. Seagrass, freshwater, and shelter are described as the three primary ecological attributes needed to ensure long-term manatee survival in Puerto Rico (Drew *et al.* 2012, p. 19). Outside the United States, manatees occur within estuaries, lagoons, and interconnected rivers, such as those found in Chetumal Bay between Mexico and Belize. Chetumal Bay is a specially designated manatee protection area and wildlife sanctuary (UNEP 2010, p. 60).

Several factors can affect the viability of manatee habitats. Human activities such as dredge and fill, soil runoff, propeller dredging, anchoring, etc., are known to result in the loss of seagrass and foraging habitat (Duarte 2002, p. 194; Orth *et al.* 2006, p. 991). For example, dredging will directly remove seagrass, and sediment, suspended in the water column during dredge and fill activities, may cover neighboring seagrass beds (Auil 1998, p. 9). A significant decrease of this resource could cause stress to the population by limiting manatee grazing habitats and range.

The loss of manatees from certain areas has been attributed to, among other factors, dam construction along rivers (Colmenero-Rolón and Hoz-Zavala 1986, in UNEP 2010, p. 59; Montoya-Ospina *et al.* 2001, in UNEP 2010, p. 29). Historically, anthropogenic influences (*i.e.*, dams, drainage of wetlands, mangrove destruction, etc.) have altered manatee habitat significantly and thus affected the number of animals along the coast and their movements between fresh and saltwater areas (Amour 1993, in Lefebvre *et al.* 2001, p. 447; Boyle and Khan 1993, in Lefebvre *et al.* 2001, p. 447; Correa-Viana 1995, in Lefebvre *et al.* 2001, p. 446; Montoya-Ospina *et al.* 2001, in UNEP 2010, p. 30; MCT 2002, p. 15; Serrano *et al.* 2007, p. 109). As discussed below, in Florida, warm-water natural spring areas essential for the manatee's survival are threatened by numerous factors, including diminishing spring flows, deteriorating water quality, and increasing human activities in and around spring areas (Taylor 2006, pp. 5–6).

#### *Population Size*

Within the southeastern United States, Martin *et al.* (2015 entire) provide an abundance estimate for the Florida subspecies of 6,350 manatees (with a 95 percent CI (confidence interval) between 5,310 and 7,390). Outside the southeastern United States, available population estimates are based on data of highly variable quality and should be considered only as crude approximations (UNEP 2010, p. xiv). Available population estimates suggest that there may be as many as 1,382 manatees in the Greater Antilles, 3,600 manatees in Mexico and Central America, and 1,800 manatees in South America (Table 1). This information reflects the broad distribution of the species and suggests a relatively medium to large range-wide population estimate. A sum of all estimates totals 13,142 manatees for the species throughout its range (See Table 1; UNEP 2010, p. 11; Castelblanco-Martínez *et al.* 2012, p. 132; Marsh *et al.* 2011, p. 385; Self-Sullivan and Mignucci 2012, p. 40; Martin *et al.* 2015, entire). Total estimates for manatees outside the southeastern United States and Puerto Rico alone range between approximately 3,000 and 6,700 individuals, including adults, subadults, and calves, of which fewer than 2,500 are estimated to be reproductively mature animals (Self-Sullivan and Mignucci-Giannoni 2012, p. 40). Castelblanco-Martínez *et al.* (2012, p. 132) adapted the UNEP (2010, p. 11) numbers and used an estimated initial size of 6,700 individuals in their

population viability analysis (PVA) model for the Antillean manatee population.

The Martin *et al.* (2015) study referenced above is the first quantified estimate of abundance for the Florida manatee in the southeastern United States. This estimate relied upon innovative survey techniques and multiple sources of information to estimate a Florida manatee population of 6,350 animals (Martin *et al.* 2015, p. 44). In Puerto Rico, the Service recently updated aerial survey methods to account for detection probability, which provides an improved population estimate. A total of six island-wide aerial surveys have been completed with this new method. These have resulted in the most robust counts available for the population, with an average direct minimum population count of 149 individuals (standard deviation (SD) 31). Calf numbers have also been documented with an average minimum direct calf count of 14 (SD 5) or approximately 10 percent of the direct minimum population count. A record high of 23 calves were counted in the December 2013 survey. The October 2010 survey count analysis resulted in an adjusted mean estimated population size of 532 individuals, with a 95 percent equal area confidence interval (CI) of 342–802 manatees (Pollock *et al.* 2013, p. 8).

*Population Trends*

In 2008, the International Union for the Conservation of Nature (IUCN) identified the West Indian manatee as a “Vulnerable” species throughout its range based on an estimate of less than 10,000 mature individuals (Deutsch *et al.* 2008, <http://www.iucnredlist.org/details/22103/0>). The population was expected to decline at a rate of 10 percent over the course of three generations (*i.e.*, 60 years; 1 generation = circa 20 years) due to habitat loss and

other anthropogenic factors (Deutsch *et al.* 2008, online). However, each of the subspecies (Antillean and Florida) by themselves was considered to be endangered and declining due to a variety of threats identified in the IUCN classification criteria (Deutsch *et al.* 2008, online). As we have noted above, our estimate of the total West Indian manatee population currently is 13,142 (Table 1).

To the extent that it can be measured with the best available data, the West Indian manatee population trend and status varies regionally (Table 1). In the southeastern United States, the manatee population has grown, based on updated adult survival rate estimates and estimated growth rates (Runge *et al.* 2015, p. 19). Historical and anecdotal accounts outside the southeastern United States suggest that manatees were once more common, leading scientists to hypothesize that significant declines have occurred (Lefebvre *et al.* 2001, p. 425; UNEP 2010, p. 11; Self-Sullivan and Mignucci-Giannoni 2012, p. 37). Based on expert and local opinion, population trends are declining or unknown in 84 percent of the countries where manatees are found (UNEP 2010, p. 11; Marsh *et al.* 2011, p. 385; Self-Sullivan and Mignucci-Giannoni 2012, p. 40; Table 1). The magnitude of decline is difficult to assess, given the qualitative nature of these accounts (see footnote Table 1). For example, Bertram and Bertram (1973, p. 318) noted that there were several thousand manatees in Guyana in 1963, but recent estimates suggest that there may be as few as 100 manatees remaining (UNEP 2010, p. 11). It is not known if this represents an actual decline or differences in expert opinion over time.

In the Castelblanco-Martínez *et al.* (2012, pp. 129–143) PVA model for the manatee metapopulation found outside the United States, discussed above, the

authors divided the metapopulation into six subpopulations identified by geographic features, local genetic structure, ranging behavior, and habitat use. Using an initial metapopulation size of 6,700 Antillean manatees, with low human pressure and a relatively low frequency of stochastic events, their baseline PVA model describes a metapopulation with positive growth. The authors explain that the model is limited due to a lack of certainty with regard to the estimated size of the population, it does not take into account trends in local populations, and it assumes that all threats have an equal effect on the different subpopulations. Castelblanco-Martínez *et al.* (2012, pp. 141–142) state that no quantitative information exists for manatees outside the southeastern United States and that “experts and local people throughout the region agree that the number of manatees sighted per year has decreased over time.” However, manatee populations in Puerto Rico, Honduras, and French Guiana, where an estimated 732 manatees are found, are thought to be stable (Table 1).

In the southeastern United States, new population growth rates for Florida’s Atlantic Coast, Upper St. Johns River, Northwest, and Southwest Regions describe growth in each region through the 2008–2009 winter season (Runge *et al.* 2015, p. 7). More recent data are unavailable at the present time. Regional adult survival rate estimates were also updated through the same period and are higher and more precise for all regions since the last estimates were provided (Runge *et al.* 2015, p. 7; USFWS 2007, p. 65). Because the updates are through the 2008–2009 winter, they do not capture recent severe cold events of 2009–2010 and 2010–2011, the 2012–present Indian River Lagoon (IRL) die-off event; or the 2013 red tide event (Runge *et al.* 2015, p. 20; Table 2).

TABLE 2—MANATEE DEATHS 2009–2014

[FWC FWRI Manatee Carcass Salvage Database 2015, unpubl. data]

Year	Number of cold-related deaths	Number of IRL event deaths <sup>1</sup>	Number of red tide-related deaths	Number of all die-off related deaths	Number of deaths due to all other causes	Deaths from all causes
2014 .....	26	2	2	30	341	371
2013 .....	36	118	276	430	400	830
2012 .....	28	15	33	76	316	392
2011 .....	113	0	23	136	327	463
2010 .....	<sup>2</sup> 288	0	0	<sup>2</sup> 288	478	766
Total .....	491	135	334	960	1,862	2,822

<sup>1</sup> Indian River Lagoon event, 2012 to present (ongoing).

<sup>2</sup> Confirmed cold-related deaths; an additional 197 cold-related deaths are suspected.

In Florida, FWC conducts a series of statewide aerial and ground surveys of warm-water sites known to be visited by manatees during cold-weather extremes to count numbers of manatees. These surveys are conducted from one to three times each winter, depending on weather conditions (FWC FWRI Manatee aerial surveys, 2015, unpubl. data). While the number of manatees has increased over the years, in and of themselves they are not considered to be reliable indicators of population trends, given concerns about detection probabilities. However, it is likely that a significant amount of the increase does reflect an actual increase in population size when this count is considered in the context of other positive demographic indicators, including the recently updated growth and survival rates (Runge *et al.* 2015, p. 19).

In January 2010, FWC counted 5,077 manatees during a statewide survey prior to the start of the 2010 die-off. From 2010 through 2014, at least 2,822 manatees died (Table 2). In February 2015, researchers counted 6,063 manatees during a statewide survey (FWC FWRI Manatee aerial surveys 2015, unpubl. data). These counts made before and after the die-offs, when considered in the context of positive demographic indicators (*i.e.*, growth rates and adult survival rate estimates), suggest a certain resiliency in the Florida population (FWC FWRI Manatee aerial surveys 2015, unpubl. data); Runge *et al.* 2015, p. 19).

### Recovery

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of listed species, unless we find that such a plan will not promote conservation of the species. Although the West Indian manatee is listed throughout its range, Service recovery planning efforts for the West Indian manatee focused mostly on those portions of the species' range within U.S. jurisdiction. We published an initial recovery plan for the West Indian manatee in 1980 (USFWS 1980) and subsequently published recovery plans at the subspecies level for manatees found within the United States. At present, approved plans include the Recovery Plan for the Puerto Rican Population of the Antillean manatee (USFWS 1986); the Florida Manatee Recovery Plan, Third Revision (USFWS 2001); and the South Florida Multi-Species Recovery Plan (USFWS 1999).

Section 4(f) of the Act directs that, to the maximum extent practicable, we incorporate into each recovery plan: (1)

Site-specific management actions that may be necessary to achieve the plan's goals for conservation and survival of the species; (2) objective, measurable criteria, which when met would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the list; and (3) estimates of the time required and cost to carry out the plan.

Revisions to the List (adding, removing, or reclassifying a species) must reflect determinations made in accordance with section 4(a)(1) and 4(b). Section 4(a)(1) requires that the Secretary determine whether a species is threatened or endangered (or not) because of one or more of five threat factors. Therefore, recovery criteria must indicate when a species is no longer threatened or endangered by any of these five factors. In other words, objective, measurable criteria contained in recovery plans (recovery criteria) must indicate when an analysis of the five factors under section 4(a)(1) would result in a determination that a species is no longer threatened or endangered. Section 4(b) requires that the determination made under section 4(a)(1) be based on the best available science.

Thus, while recovery plans are intended to provide guidance to the Service, States, and other partners on methods of minimizing threats to listed species and on criteria that may be used to determine when recovery is achieved, they are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under section 4(a)(1). Determinations to remove or reclassify a species from the list made under section 4(a)(1) must be based on the best scientific and commercial data available at the time of the determination, regardless of whether that information differs from the recovery plan.

In the course of implementing conservation actions for a species, new information is often gained that requires recovery efforts to be modified accordingly. There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met. For example, one or more criteria may have been exceeded while other criteria may not have been accomplished, yet the Service may judge that, overall, the threats have been minimized sufficiently, and the species is robust enough, to reclassify the species from endangered to threatened or perhaps even delist the species. In other cases, recovery opportunities may have been recognized that were not known at the time the recovery plan was finalized. These

opportunities may be used instead of methods identified in the recovery plan.

Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent that criteria need to be met for recognizing recovery of the species. Overall, recovery of species is a dynamic process requiring adaptive management, planning, implementing, and evaluating the degree of recovery of a species that may, or may not, fully follow the guidance provided in a recovery plan.

The following discussion provides a review of recovery planning and implementation for the West Indian manatee, as well as an analysis of the recovery criteria and goals as they relate to evaluating the status of the species.

### Recovery Actions

Recovery and conservation actions for the West Indian manatee are described in the "UNEP Caribbean Environment[al] Program's Regional Management Plan for the West Indian Manatee" (UNEP 2010, entire) and in national conservation plans for countries outside the United States. Within the United States, the Service's Recovery Plan for the Puerto Rico Population of the West Indian (Antillean) Manatee (USFWS 1986, entire), the South Florida Multi-Species Recovery Plan (USFWS 1999, entire), and the Florida Manatee Recovery Plan (USFWS 2001, entire) identify recovery and conservation actions for the species. Actions common to all plans include minimizing manatee mortality and injury, protecting manatee habitats, and monitoring manatee populations and habitat.

UNEP Caribbean Environment[al] Program's Regional Management Plan for the West Indian Manatee, National Conservation Plans (outside the United States)

The UNEP plan, published in 2010, identifies short- and long-term conservation and research measures that should be implemented to conserve the West Indian manatee. This plan also includes an overview of West Indian manatees within their range countries, including descriptions of regional and national conservation measures and research programs that have been implemented. Given the general lack of information about manatees in most range countries, the plan recommends that needed research and the development of common methodologies be prioritized in concert with coordinated manatee and manatee habitat protection efforts (UNEP 2010, entire).



Within the species' range, foundations for coordinated conservation and research activities are developing and a number of governments have designated manatee protection areas and have developed or are developing conservation plans (UNEP 2010, p. xiv). National legislation exists for manatees in all range countries, and many countries have ratified their participation in international conventions and protocols that protect manatees and their habitat (UNEP 2010, p. xv). See Supplemental Documents 1 and 3 in Docket No. FWS-R4-ES-2015-0178. Belize, Colombia, Costa Rica, Guatemala, Mexico, the United States, Puerto Rico, and Trinidad have developed country-specific manatee recovery plans (UNEP 2010, p. 92).

Efforts to conserve manatees outside the United States vary significantly from country to country. Some countries, including but not limited to Mexico, Belize, Brazil, and Cuba, are engaged in efforts to assess current status and distribution of manatees. Many countries, including Belize and Brazil, provide protections for manatees and their habitat. For example, the manatee in Belize is listed as endangered under Belize's Wildlife Protection Act of 1981. Belize protects manatees from overexploitation, and its recovery plan implements recovery actions similar to those identified in the Florida and Puerto Rico recovery plans. Efforts to protect manatees include education and outreach efforts, and countries are promoting cooperation and information exchanges through venues such as the recent Cartagena Convention meetings (UNEP 2014, entire). A successful cooperative initiative identified at the meetings includes the implementation of manatee bycatch surveys in the Dominican Republic, Belize, Colombia, and Mexico (Kiszka 2014, entire). We are encouraged by the progress that is being made in several portions of the Antillean manatee's range in protecting this mammal and the growing enthusiasm behind implementing recovery to better protect this important species. In the future, we would like to support and reach out to these countries to assist them with their efforts to further conserve manatees.

#### *Recovery Plan for the Puerto Rico Population of the West Indian (Antillean) Manatee*

We approved the Recovery Plan for the Puerto Rico population of the West Indian (Antillean) manatee on December 24, 1986 (USFWS 1986, entire). Although this plan is considered out of date (USFWS 2007, p. 26), we present the progress we have made under the

identified tasks. The 1986 plan included three major objectives: (1) To identify, assess, and reduce human-related mortalities, especially those related to gill-net entanglement; (2) to identify and minimize alteration, degradation, and destruction of important manatee habitats; and (3) to develop criteria and biological information necessary to determine whether and when to reclassify (either delist or downlist) the Puerto Rico population (USFWS 1986, p. 12). The Recovery Plan also includes a step-down outline that identifies two primary recovery actions for: (1) Population management and (2) habitat protection. Since the release of the 1986 Recovery Plan for the Puerto Rico population of the West Indian (Antillean) manatee, initiated recovery actions have provided substantial new knowledge about the species' ecology and threats. Some of these efforts apply to multiple tasks and are helping to update conservation information and tools that are applied towards adaptive management and education. Here we report on the current status of these actions.

*Recovery Task (1): Population management.* Recovery actions under this task include: (11) Reduce human-caused mortality, (12) determine manatee movement patterns and trends in abundance and distribution, (13) assess contaminant concentrations in manatees, (15) determine quantitative recovery criteria, and (16) develop manatee protection plans for areas of specific importance.

*Recovery Task (2): Habitat protection.* Recovery actions under this task include: (11) Radio-tag manatees to determine habitat utilization, (12) determine and map distribution of seagrass beds and sources of fresh water, and (13) monitor important habitat components and ensure protection.

A carcass salvage program was first implemented in the late 1970s and continues today. Mignucci-Giannoni *et al.* (2000, p. 189) provided an analysis of stranding data and identified sources of human-caused mortality. This summarization of data points indicates a shift in the nature of threats since the release of the 1986 Recovery Plan, which listed poaching, direct capture, and entanglement as the most significant threats to manatees. Watercraft collision is now considered the greatest threat to manatees in Puerto Rican waters (Mignucci *et al.* 2000, p. 189; Drew *et al.* 2012, p. 26). Currently, carcass salvage efforts are led by the Puerto Rico Department of Natural and Environmental Resources (PRDNER) with support from the Puerto Rico Manatee Conservation Center (PRMCC)

(the former Caribbean Stranding Network or CSN) and the Puerto Rico Zoo. There has not been a record of poaching since 1995 as a result of increased public awareness of the protected status of the manatee. The successful rehabilitation and release of the captive manatee "Moises" in 1994, a manatee calf stranded after the mother had been killed by poachers, served to incite a change of cultural values and increase awareness about threats to manatees (Marsh and Lefebvre 1994, p. 157).

Documented entanglement in fishing nets rarely occurs. However, in 2014, three adult manatees were entangled in large fishing nets; one of them was an adult female that died (PRDNER 2015, unpubl. data). Significant exposure was given to this case through the local and social media. Current PRDNER fishing regulations still allow the use of beach seine nets with certain prohibitions that need to be carefully monitored. Fisheries-related entanglements and debris ingestion are rarely documented but may occur and cause take of manatees. A recent instance was noticed in August 2014, where an adult female was confirmed to have both flippers severely entangled in monofilament line. Attempts to capture the female manatee from the shore were unsuccessful. This manatee has not been observed since that time. Agencies, community groups, and nongovernmental organizations in Puerto Rico consistently educate the public about proper waste disposal that can affect manatees.

In 2012, the Service completed a cooperative agreement with researchers from North Carolina State University (NCSU) to identify potential Manatee Protection Areas (MPAs) and address some of the core recommendations made by the most recent West Indian manatee 5-year review, such as the establishment of MPAs (USFWS 2007, p. 37). This collaboration led to the identification of several potential MPAs and serves to update the body of knowledge pertaining to key ecological resources used by manatees (*i.e.*, seagrass, shelter, freshwater) and the current status of threats to the Antillean manatee (Drew *et al.* 2012, pp. 1, 33–34). MPAs serve to prevent the take of one or more manatees (USFWS 1979). The MPA selection criteria considered key manatee resources (*i.e.*, seagrass, shelter, freshwater), manatee aerial surveys, and areas where take can be minimized. After expert elicitation and a thorough literature review, available data were spatially analyzed and described to reflect manatee use and habitat preference.

Federal MPAs have not been designated in Puerto Rico, and the PRDNER does not have a specific manatee area regulation like the State of Florida's Manatee Sanctuary Act of 1978 (FMSA), which allows for management and enforcement of boat speed restrictions and operations in areas where manatees are concentrated. Still, the PRDNER has the authority to establish boat speed regulatory areas marked with buoys wherever deemed necessary. For example, in 2014, the USFWS, PRDNER, and Reefscaping, Inc. finalized the installation of 100 manatee speed regulatory buoys throughout known important manatee use areas, and the PRDNER has a plan to install more buoys. In addition, the Navigation and Aquatic Safety Law for the Commonwealth of Puerto Rico (Law 430) was implemented in 2000. This law restricts boat speeds to 5 miles per hour within 150 feet (45 meters) from the coastline unless otherwise posted. However, the effectiveness of this law and State manatee speed regulatory buoys have not been appropriately assessed, and enforcement is limited (see Factor D).

In Puerto Rico, island-wide manatee aerial surveys have been conducted since the late 1970s. These aerial surveys provide the basis for island-wide distribution patterns and to determine minimum population direct counts in some areas or throughout the island. Not all surveys were equal in terms of the area covered and time of year in which they were done. These direct counts identify a number of animals observed at the time of the survey and suggest that there are at least a specified number of manatees in the population. The Service recognizes that these counts do not accurately represent the total number of manatees in the population. Weather, other environmental factors (e.g., water clarity), observer bias, and aerial survey space restrictions influence count conditions and affect detection probability and final count, thus likely the true number of individuals is underestimated. Furthermore, as in the Florida manatee aerial surveys, survey methods preclude any analysis of precision and variability in the counts, and do not allow for the estimation of the apparent detection probability. In spite of the high variability between and within surveys, the data can be used to specify a minimum population direct count within a time period (one island-wide survey).

The most consistent surveys were conducted from 1984 to 2002 (USFWS Manatee Aerial Surveys 2015, unpubl. data). However, methods used provided

only a direct count and did not allow for a more reliable estimate of population size with detection probabilities (Pollock *et al.* 2013, p. 2). Hence, estimates of population size are likely biased low, and inferences from trend analyses are unreliable. The Service again partnered with researchers from the NCSU to conduct a review of aerial survey protocols and implement a sampling protocol that allows the estimation of a detection probability (Pollock *et al.* 2013, pp. 2–4). In 2010, the Service partnered with Atkins (private consultant) to implement the new sampling protocol in order to provide for more reliable population estimates. A total of six aerial surveys were completed from 2010 to 2014 in order to test the new protocol and population estimate calculations. Data are still being reviewed, but results from the October 2010 survey derived an estimated average population size of 532 manatees in Puerto Rico, with a 95 percent equal area confidence interval of 342–802 manatees (Pollock *et al.* 2013, p. 8).

Recovery actions are also implemented during technical assistance and project review. Any action or project with a Federal nexus (e.g., Federal funds, permits, or actions) will require a consultation with the Service under section 7 of the Act. During the consultation process, the Service identifies conservation measures to avoid and minimize possible effects of proposed actions or projects. We review numerous projects each year pertaining to the manatee, for example, dredging, dock and marina construction, coastal development, marine events (i.e., high-speed boat races), and underwater and beach unexploded ordnance, among others. The Service has developed Antillean manatee conservation measures guidelines specific to Puerto Rico. For example, we have worked with the U.S. Coast Guard to develop and implement standard permit conditions for boat races, such as observer protocols.

#### *South Florida Multi-Species Recovery Plan, West Indian Manatee*

The South Florida Multi-Species Recovery Plan, West Indian Manatee element, was adopted on August 18, 1999, by the Service (USFWS 1999, entire). This ecosystem-based recovery plan is intended to recover listed species and to restore and maintain the biodiversity of native plants and animals in South Florida and is not intended to replace existing recovery plans but to enhance recovery efforts (USFWS 1999, p. 3). Inasmuch as manatees are a component of South

Florida ecosystems, this plan included species information and recovery tasks from the then-current Florida manatee recovery plan, the Service's 1996 Florida Manatee Recovery Plan (USFWS 1996, entire). Because the 1996 Florida Manatee Recovery Plan was revised in 2001, the South Florida Multi-Species Recovery Plan, West Indian Manatee element became obsolete. However, the 2001 Florida Manatee Recovery Plan includes tasks that address manatee conservation throughout this subspecies' range, including in South Florida.

Manatee recovery activities addressed in the south Florida region include a Comprehensive Everglades Restoration Plan (CERP) Task Force that addresses CERP tasks related to manatee conservation, an Interagency Task Force for Water Control Structures that minimizes manatee deaths associated with water control structures, and efforts to protect the manatees' south Florida winter habitat (FWC 2007, pp. 63, 196).

The CERP Task Force developed guidelines for manatee protection during CERP-related construction activities. The guidelines address culvert and water control structure installation, potential thermal effects of Aquifer Storage and Recovery wells, potential manatee entrapment in canal networks, and in-water construction effects. The Task Force evaluated proposed changes to existing canal systems and the construction of new structures planned for CERP implementation and recommended measures to minimize effects on manatees. The measures have been implemented and are in effect (FWC 2007, p. 196).

Water control structures are mostly found in south Florida and are a predominant means for controlling flooding in the region. Water control structures primarily include flood gates and navigation locks that allow vessel passage through dams and impoundments, such as those associated with Lake Okeechobee. Manatees travel through these structures and are occasionally killed in crushings and impingements. Manatee protection devices have been installed on most structures known to have killed manatees, and the number of deaths has been reduced (FWC 2007, p. 63). For the period 1998–2008, the average annual number of structure-related deaths was 6.5 deaths. This number was reduced to 4.2 deaths per year from 2009–2014 (FWC 2007, pp. 194–195; FWC FWRI Manatee Carcass Salvage Database 2015, unpubl. data).

Important warm-water wintering sites for manatees in south Florida include power plant discharges, springs, and passive warm-water sites (sites characterized by warm-water inversions and other features). State and Federal rules have been adopted for all power plant discharges in south Florida that limit public access during the winter (FWC 2007, pp. 235–238; USFWS 2007, pp. 71–79). Coincidentally, a majority of the significant power plants used by wintering manatees have been repowered and have projected lifespans of about 40 years (Laist *et al.* 2013, p. 10). The loss of a passive warm-water site due to restoration activities, the Port of the Islands warm-water basin, is being addressed through the construction of an alternate warm-water site downstream of the original site (Dryden 2015, pers. comm.).

#### *Florida Manatee Recovery Plan*

We published the current Florida Manatee Recovery Plan on October 30, 2001 (USFWS 2001). This recovery plan includes four principal objectives: (1) Minimize causes of manatee disturbance, harassment, injury, and mortality; (2) determine and monitor the status of manatee populations; (3) protect, identify, evaluate, and monitor manatee habitats; and (4) facilitate manatee recovery through public awareness and education. To help achieve these objectives, the plan identifies 118 recovery implementation tasks. Important tasks include those that address the reduction of watercraft collisions and the loss of warm-water habitat.

*Recovery Objective 1. Minimize causes of manatee disturbance, harassment, injury, and mortality.* Tasks identified under this objective include (1) Conducting reviews of permitted activities; (2) minimizing collisions between manatees and watercraft; (3) enforcing manatee protection regulations; (4) assessing and minimizing mortality caused by large vessels; (5) eliminating water control structure deaths; (6) minimizing public fisheries and marine debris entanglements; (7) rescuing and rehabilitating distressed manatees; and (8) implementing strategies to minimize manatee harassment.

*Task 1. Conduct reviews of permitted activities.* The Service conducts reviews of coastal construction permit applications to minimize impacts to manatees and their habitat, reviews high-speed marine event permit applications to minimize the effect of concentrated, high-speed watercraft events on manatees, and reviews National Pollution Elimination

Discharge Elimination System (NPDES) permits to insure that existing, significant discharges do not adversely affect manatees and insure that no new attractant discharges are created.

The State of Florida requires counties to develop manatee protection plans (MPPs). These are county-wide plans for the development of boat facilities (docks, piers, dry-storage areas, marinas, and boat ramps) that specify preferred locations for boat facility development based on an evaluation of natural resources, manatee protection needs, and recreation and economic demands. MPPs are reviewed by FWC and the Service and, when deemed adequate, are used to evaluate boat access projects. When proposed projects are consistent with MPPs, permitting agencies authorize the construction of facilities in waters used by manatees. Currently, all of the original 13 counties required to have MPPs have plans, as well as Clay and Levy Counties. Flagler and Charlotte Counties are also preparing plans.

The Service developed programmatic consultation procedures and permit conditions for new and expanding watercraft facilities (*e.g.*, docks, boat ramps, and marinas) as well as for dredging and other in-water activities through an effect determination key with the U.S. Army Corps of Engineers and State of Florida (the “Manatee Key”) (recently revised in 2013). The Manatee Key ensures that watercraft facility locations are consistent with MPP boat facility siting criteria and are built consistent with MPP construction conditions. The Service concluded that these procedures constitute appropriate and responsible steps to avoid and minimize adverse effects to the species and contribute to recovery of the species.

The Service has worked with the U.S. Coast Guard and State agencies to develop and implement standard permit conditions for high-speed marine event permits. These conditions require that events take place at locations and times when few manatees can be found at event locations and require event observer programs. Observer programs place observers in locations in and around event sites; these observers watch for manatees and shut events down when manatees enter event sites.

The Florida Department of Environmental Protection (FDEP) issues and renews NPDES permits for power plants, desalination plants, wastewater treatment plants, and other dischargers that affect manatees. The FWC, the Service, and others review these actions. These reviews insure that discharges identified as beneficial to manatees

continue to operate in a way that does not adversely affect manatees and seek to modify or eliminate those discharges that adversely affect manatees. In particular, these reviews prevent the creation of new sources of warm water and drinking water, known manatee attractants.

*Task 2. Minimize collisions between manatees and watercraft.* See discussion of watercraft collisions under Factor E, below.

Ongoing efforts to minimize collisions between manatees and watercraft include the adoption of manatee protection areas that require boat operators to slow down or avoid sensitive manatee use areas. By requiring boats to slow down, manatees are better able to evade oncoming boats and boat operators are better able to see manatees and prevent collisions. Protected areas minimize the take of manatees in manatee wintering areas, resting areas, feeding areas, travel corridors, and other important manatee use sites. Manatee protection areas have been adopted in 26 Florida counties by the State of Florida, local communities, and the Service. Manatee protection areas were first adopted in the late 1970s, and additional areas continue to be adopted, as needed. For example, FWC recently adopted new protection areas in western Pinellas County (68C–22.016).

*Task 3. Enforce manatee protection regulations.* Service and State efforts to reduce the number of watercraft collisions with manatees rely on enforced, well-defined, and designated MPAs. Integral to these efforts are an adequate number of law enforcement officers to patrol and enforce these areas. Federal, State, and local law enforcement officers enforce these measures; Federal officers can enforce State regulations, and State officers can enforce Federal regulations. Officers can only enforce areas that are properly marked by well-maintained signs and buoys. Maintenance of these markers requires significant, continuing funding to ensure the presence of enforceable protection areas.

It is difficult to ascertain the adequacy of enforcement efforts. Data concerning dedicated officer hours on the water and numbers of citations written are confounding. For example, many dedicated officer hours on the water address diverse missions, and it is not possible to identify how many of these hours are devoted to manatee enforcement and how many hours are dedicated to other missions. Boater compliance assessments provide another measure to assess adequacy. Boater compliance varies by waterway,

with some waterways experiencing 85 percent compliance rates and others as little as 14 percent (Gorzelay 2013, p. 63). Average boater compliance throughout Florida is 54 percent (Shapiro 2001, p. iii). An enforcement presence generally ensures a higher compliance rate (Gorzelay 2013, p. 34).

*Task 4. Eliminate water control structure deaths.* As discussed below, entrapment and crushing in water control structures was first recognized as a threat to manatees in the 1970s (Odell and Reynolds 1979, entire), and measures were immediately implemented to address manatee mortality. While initial measures were mostly ineffective, recent advances in protection/detection technology have nearly eliminated this threat to Florida manatees. In 2014, the 5-year average for manatee deaths at structures and locks was 4.2 manatee deaths per year as opposed to 6.5 manatee deaths per year during the preceding 20 years (FWC FWRI Manatee Carcass Salvage Database, 2015, unpubl. data).

*Task 5. Minimize fisheries and marine debris entanglements.* Fishing gear, including both gear in use and discarded gear (i.e., crab traps and monofilament fishing line), are a continuing problem for manatees. To reduce this threat, a manatee rescue program disentangles manatees, derelict-crab-trap removal programs and monofilament recycling programs remove gear from the water, and extensive education and outreach efforts increase awareness and promote sound gear disposal activities. See Factor E for additional information. Because of continued and ongoing fishing into the foreseeable future, it is unlikely that this threat will be eliminated.

*Task 6. Rescue and rehabilitate distressed manatees.* Distressed

manatees are rescued throughout the southeastern United States. Rescuers include the State of Florida, other range States, and numerous private organizations. Each year these rescuers assist dozens of manatees that present with a variety of stresses. Significant causes of distress include watercraft collisions, fishing gear entanglements, calf abandonment, and exposure to cold and brevetoxin. Many animals are treated and released in the field, and others with significant needs are taken to one of three critical care facilities for medical treatment. A majority of manatees rescued through this program are successfully released back into the wild (USFWS Captive Manatee Database, 2015, unpubl. data).

*Task 7. Implement strategies to minimize manatee harassment.* See discussion of harassment under Factor B, below.

Federal and State regulations prohibiting harm and harassment (including provisioning) are in effect and enforced (see Supplemental Document 2 in Docket No. FWS-R4-ES-2015-0178). Extensive outreach efforts encourage proper viewing practices and include the efforts of the Service, tour guides, and others and include various outreach materials. In areas with large aggregations of manatees, the Service and FWC have designated manatee sanctuaries and no-entry areas where waterborne activities known to take manatees are prohibited. When commercial manatee viewing activities occur on National Wildlife Refuges, businesses are required to obtain permits that restrict their activities to prevent harassment from occurring.

*Recovery Objective 2. Determine and monitor the status of manatee populations.* Tasks identified under this

objective include: (1) Conducting status reviews; (2) determining life-history parameters, population structure, distribution patterns, and population trends; (3) evaluating and monitoring causes of mortality and injury; and (4) defining factors that affect health, well-being, physiology, and ecology. Research projects that support this objective include aerial surveys, a carcass salvage program, a photo-identification program, telemetry studies and others.

A USGS-led status and threats analysis for the Florida manatee was updated in 2015 (Runge *et al.* 2015, entire). This effort updates adult survival rates, considers the demographic effects of the major threats to Florida manatees, and evaluates how those demographic effects influence the risk of extinction using the manatee Core Biological Model. Adult survival rates were updated through winter 2008–2009 (See Table 3); observations during the winter of 2008–2009 were included in the data analysis, but 1–2 annual estimates at the end of the time series were dropped because of concerns about end of time series bias (Runge *et al.* 2015, p. 8). Although the adult survival rate is less than one, in the Atlantic, Northwest, and Upper St. Johns regions, growth rates have been demonstrably greater than 1 (positive growth) over the recent past (1983–2007). In the Southwest, the growth rate has been greater than 1, but if the severe red-tide frequency increases, the growth rate could stabilize or begin to decline (Runge *et al.* 2015, p. 7). Although the new rates are higher, there is no evidence of a positive trend between the current analysis and the previous rates identified in the 2007 5-year review (Runge *et al.* 2015, 19; USFWS 2007, p. 65).

TABLE 3—UPDATED FLORIDA MANATEE ADULT SURVIVAL RATES

[Runge *et al.* 2015, p. 7]

Region	Mean	Standard error	Period
Atlantic .....	0.967	0.004	1983–2007
Upper St. John's .....	0.975	0.004	1986–2006
Northwest .....	0.977	0.004	1983–2007
Southwest .....	0.971	0.004	1996–2007

The analysis forecast the manatee population under different threat scenarios using the Manatee Core Biological Model. Data from the Manatee Carcass Salvage Program, 2001–2009 (FWC FWRI Manatee Carcass Salvage Program 2015, unpub. data) were used to estimate fractions of mortality due to each of six known

threats: watercraft, water control structures, marine debris, cold, red tide, and others (Runge *et al.* 2015, p. 4).

The model expressed the contribution of each threat as it affects manatee persistence, by removing them, one at a time, and comparing the results to the “status quo” scenario. The “status quo” represents the population status in the

continued presence of *all* of the threats, including the threat of the potential loss of warm water in the future due to power plant closures and the loss of springs and/or reduction in spring flows.

The threats due to watercraft, water-control structures, and entanglement were each “removed” by reducing the

regional mortality of adults and calves by the estimated fractions of mortality. The threat due to loss of warm water was removed by assuming that the winter warm-water capacity for manatees will remain at current levels for the indefinite future. The threat of red tide was removed by setting the probability of occurrence of a *major* red tide event to zero; low background levels of red tide mortality that occurs each year were already incorporated into the baseline. The various scenarios were considered as “all or nothing;” either a particular threat was present at its current level (and remained at that level indefinitely), or it was removed completely. Thus, this comparison provides a measure of the relative effect of each threat on the status of the Florida manatee population.

Under the *status quo* scenario, the statewide manatee population is expected to increase slowly, nearly doubling over 50 years, and then stabilize as the population reaches statewide carrying capacity. Under this scenario, the model predicts that it is unlikely (<2.5 percent chance) that the statewide population will fall below 4,000 total individuals over the next 100 years, assuming current threats remain constant indefinitely (Runge *et al.* 2015, p. 13).

Results for each threat scenario (*status quo*, plus removal of each of the five threats, one at a time) were evaluated over different timeframes and for different levels of effective population size (or its surrogate, adult population size) (Runge *et al.* 2015, p. 5). This analysis was conducted for two “coastal” regions of Florida—an East Coast (Upper St. Johns River and Atlantic Coast) Region and a Gulf Coast (Northwest and Southwest) Region. On the Gulf Coast there is a very low probability (0.24 percent) that the effective population size could fall below 500 animals under the *status quo* scenario (Runge *et al.* 2015, p. 14). The major threats here are watercraft-related mortality, loss of warm water, and red tide. On the East Coast, the probability that the effective population size would fall below 500 animals is 0.68 percent (Runge *et al.* 2015, p. 16). Watercraft-related mortality is the major threat to this population. The probability that the effective population size will fall below 500 animals on either coast within 150 years under the *status quo* scenario is 0.92 percent (Runge *et al.* 2015, p. 16).

*Recovery Objective 3. Protect, identify, evaluate, and monitor manatee habitats.* Tasks identified under this objective include: (1) Protecting, identifying, evaluating, and monitoring existing natural and industrial warm-water

refuges and investigate alternatives; (2) establishing, acquiring, managing, and monitoring regional protected-area networks and manatee habitat; (3) ensuring that minimum flows and levels are established for surface waters to protect resources of importance to manatees; and (4) assessing the need to revise critical habitat. Important habitats for the Florida manatee include winter sources of warm water, forage, drinking water, travel (or migratory) corridors, and sheltered areas for resting and calving. The most significant of these include winter warm water and winter foraging areas. Florida manatees are at the northern limit of the species’ range and require stable, long-term sources of warm water during cold weather and adjacent forage to persist through winter periods. Historically, manatees relied on the warm, temperate waters of south Florida and on natural warm-water springs scattered throughout their range as buffers to the lethal effects of cold winter temperatures. Absent warm water, prolonged exposure to cold water temperatures results in debilitation and/or death due to “cold stress syndrome” (Bossart *et al.* 2004, p. 435; Rommel *et al.* 2002, p. 4). Several spots in this recovery effort summary (like in Objective 1 above) show efforts that we are taking to protect these sites and continue to implement recovery for the West Indian manatee.

*Recovery Objective 4. Facilitate manatee recovery through public awareness and education.* Tasks include: (1) Developing, evaluating, and updating public education and outreach programs and materials; (2) coordinating the development of manatee awareness programs and materials to support recovery; and (3) developing consistent manatee viewing and approach guidelines, utilizing the rescue, rehabilitation, and release program to educate the public.

Manatee conservation relies on significant education and outreach efforts. While the Service and State of Florida engage in these efforts, many diverse stakeholders also participate in these activities. Counties, municipalities, boating organizations, manatee advocacy groups, environmental organizations, and others produce and distribute outreach materials through a variety of media. An active manatee rescue and rehabilitation program displays rehabilitating manatees and promotes conservation through display and educational programs.

Significant education and outreach efforts include Crystal River National Wildlife Refuge’s (NWR) manatee kiosks, located at all water access

facilities in Kings Bay, Florida, and adjoining waters. The kiosk panels provide the public with information about manatees and guidance addressing manatee viewing activities. The kiosks are supported by Refuge-linked web media that provide additional information about manatee harassment and user activities (Vicente 2015, pers. comm.). SeaWorld Orlando, through its permitted display of rehabilitating manatees, reaches out to unprecedented numbers of visitors. The display addresses the park’s rescue and rehabilitation program and informs the public about threats to manatees and what they can do to reduce the number of manatees affected by human activities (SeaWorld Parks and Entertainment, 2015. See: <http://seaworld.org/en/animal-info/animal-infobooks/manatee/>.)

*Recovery Plan for the Puerto Rican Population of the West Indian (Antillean manatee) (USFWS 1986, entire)*

The 1986 Recovery Plan does not establish quantitative recovery criteria to describe a sustainable population of manatees in Puerto Rico. It does, however, direct the Service to determine and satisfy the recovery criteria that are based on mortality and abundance trends and a minimum population size and ensure that adequate habitat protection and anti-poaching measures are implemented (USFWS 1986, Executive Summary). The Recovery Plan also specifies that delisting should occur when the population is large enough to maintain sufficient genetic variation to enable it to evolve and respond to natural changes and stochastic or catastrophic events. As previously explained, the Service has made substantial progress implementing a number of recovery actions, and some other actions are in progress.

In the absence of historic data (previous to the late 1970s) that identifies a clear goal for population size, and population parameters such as adult survival rates, which have the highest potential effect on growth rate (Marsh *et al.* 2011, p. 255), it is not possible to stipulate with precision the population size and vital rates that should characterize a recovered, self-sustaining population of manatees in Puerto Rico. Hunter *et al.* (2012, p. 1631) describes low genetic diversity for the Puerto Rico population of Antillean manatees, and cites other authors that suggest at least 50 genetically effective breeders (~500 individuals) are needed to prevent inbreeding depression for short-term population survival, while other researchers suggest population

levels in the upper hundreds to thousands to maintain evolutionary potential. The average estimate of 532 for the manatee population in Puerto Rico, ranging from a minimum of 342 to a maximum of 802 individuals (Pollock *et al.* 2013, p. 8), is just within the numbers of a viable population mentioned by Hunter *et al.* (2012, p. 1631). The Service still considers the Puerto Rico Antillean manatee population as stable, as it did in the previous status assessment (USFWS 2007, p. 33). Past and current aerial surveys have also served to demonstrate the island-wide distribution of the Puerto Rico population, which also does not seem to have changed. In the 45 years that have passed since the species was listed, it can be said that, according to the population numbers and maintenance of the population's island-wide distribution, the Puerto Rico manatee population is well represented and has shown resilient attributes for long-term persistence in spite of past and present natural and anthropogenic threats.

Major tasks for recovery include reduction of human-caused mortality, habitat protection, identification and control of any contaminant problems, and research into manatee behavior and requirements to direct future management (USFWS 1986, Executive Summary). The Service has already

identified important manatee habitat and will continue to use and pursue new strategies towards manatee habitat protection together with the PRDNER. Planned research in the near future will focus on manatee health assessment to gain baseline information into potential contaminant problems and disease.

*Florida Manatee Recovery Plan*

The Florida Manatee Recovery Plan (USFWS 2001, entire) identifies criteria for downlisting the Florida subspecies from endangered to threatened and criteria for removing the subspecies from the List of Endangered and Threatened Wildlife. Both downlisting and delisting criteria include Listing/Recovery Factor criteria and demographic criteria. Criteria can be found in Supplemental Document 1 in Docket No. FWS-R4-ES-2015-0178.

A 2004 review of the demographic criteria noted that these criteria are largely redundant and that (1) no population can grow at a fixed rate indefinitely as limiting resources will eventually prevent the population from continuing to grow at that rate and the population will ultimately reach stability; (2) the reproductive criterion is difficult to estimate and the modeling results are difficult to interpret; and (3) demographic recovery criteria should be linked to statistically rigorous field data, as well as to the specific population

models that are intended for their evaluation. See previous review of demographic data in *Florida Manatee Recovery Plan* Objective 3.

*Downlisting Criteria, Listing/Recovery Criterion A*

1. Identify Minimum Flow Levels for Important Springs Used by Wintering Manatees

Minimum spring discharge rates that consider estimated flow rates necessary to protect water supply and support overwintering manatees have been identified for some springs used by manatees. Minimum flows were established at Blue Spring, Fanning Spring, Manatee Spring, the Weeki Wachee River system and Weeki Wachee Springs, Homosassa Springs, and Chassahowitzka Spring. Florida water management districts have scheduled, or are in the process of scheduling, minimum flow requirements for the remaining springs. See Table 4. These regulations will ensure that adequate flows are met to support manatees. To date, minimum flows have been adopted for six springs, and efforts are under way to develop flows for two additional springs, including the Crystal River springs complex. The status of efforts to establish minimum flows for eight remaining springs are unknown.

TABLE 4—PROJECTED TIMEFRAMES FOR ESTABLISHING SPRING MINIMUM FLOWS  
[From water management districts]

Spring	Adopted/year proposed for adoption	Notes
<b>EAST COAST, FLORIDA</b> <b>Upper St. Johns River Region</b>		
Blue Spring (Volusia County) .....	ADOPTED.	To be initiated in 2016. Initiated in 2014.
Silver Glen Springs (Marion County) .....	UNKNOWN .....	
DeLeon Springs (Volusia County) .....	UNKNOWN .....	
Salt Springs (Marion County) .....	UNKNOWN.	
Silver Springs (Marion County) * .....	UNKNOWN.	
<b>Atlantic Region</b>		
No springs. ....	N/A.	
<b>WEST COAST, FLORIDA</b> <b>Northwest Region</b>		
Crystal River System and Kings Bay Springs (Citrus County) .....	2017.	Revision due 2019.
Homosassa River Springs (Citrus County) .....	ADOPTED .....	
Weeki Wachee/Mud/Jenkins Creek Springs (Hernando County) .....	ADOPTED.	
Manatee/Fanning Springs (Dixie County) .....	ADOPTED.	
Wakulla/St. Mark's Complex (Wakulla County) .....	2021.	
Ichetucknee Springs Group (Columbia County) .....	UNKNOWN .....	Initiated in 2013. Revision due 2019.
Chassahowitzka River Springs (Citrus County) .....	ADOPTED .....	
Rainbow Spring (Marion County) * .....	UNKNOWN.	
<b>Southwest Region</b>		
Warm Mineral Springs (Sarasota County) .....	UNKNOWN.	
Spring Bayou/Tarpon Springs (Pasco County) .....	UNKNOWN.	

TABLE 4—PROJECTED TIMEFRAMES FOR ESTABLISHING SPRING MINIMUM FLOWS—Continued  
[From water management districts]

Spring	Adopted/year proposed for adoption	Notes
Sulphur Springs (Hillsborough County) .....	ADOPTED.	

\* At present, largely inaccessible to manatees.

2. Protect a Network of Warm-Water Refuges as Manatee Sanctuaries, Refuges, or Safe Havens

A network of warm-water sanctuaries/no-entry areas and refuges exists throughout much of the Florida manatee’s range. Along the Atlantic Coast, all four of the primary power plant discharges have been designated as manatee protection areas and many lesser warm-water sites, such as the Coral Gables Waterway, are protected as well. In the St. Johns River region, Blue Springs is in public ownership, and the spring and run are protected. The four primary west Florida power plants are designated as sanctuaries/no-entry areas, and significant warm-water springs in Citrus County are designated as sanctuaries. Efforts are ongoing to improve conditions and management of southwest Florida’s Warm Mineral Springs. See Supplemental Document 2 in Docket No. FWS–R4–ES–2015–0178.

3. Identify Foraging Sites Associated With the Network of Warm-Water Sites for Protection (Addressed Below)

4. Identify for Protection a Network of Migratory Corridors, Feeding Areas, and Calving and Nursing Areas

Extensive research, including aerial surveys and field studies of tagged manatees, has identified many of the foraging sites associated with the Florida manatee’s warm-water network, as well as migratory corridors, resting areas, and calving and nursery areas. In many of these areas, manatee protection area measures are in place to protect manatees from watercraft collisions. State and Federal laws afford some protection against habitat loss in these areas (see Factor D discussion below). For example, the Clean Water Act insures that discharges into waterways used by manatees are not detrimental to grass beds and other habitat features used by manatees.

*Downlisting Criteria, Listing/Recovery Criterion B*

1. Address Harassment at Wintering and Other Sites to Achieve Compliance With the Marine Mammal Protection Act (MMPA) and the Act and as a Conservation Benefit to the Species

To address harassment at wintering and other sites, the Service and State have designated manatee sanctuaries and no-entry areas to keep people out of sensitive wintering sites. Federal, State, and local law enforcement officers enforce these restrictions and address any violations that occur outside of the protected areas.

Kings Bay, located in Crystal River, Florida, is a world-renowned destination for manatee viewing activities. Commercial viewing activities began in the early 1970s, and today’s activities generate millions in income to the region. Harassment associated with this activity has been addressed through the purchase of properties of sensitive manatee habitat, the designation of manatee sanctuaries and protected areas, the creation and operation of the Crystal River NWR in 1983, extensive outreach activities, and enforcement of regulations prohibiting manatee harassment. The Service adopted the Kings Bay Manatee Refuge rule in 2012 to expand existing sanctuary boundaries, better address manatee harassment occurring off refuge property, and minimize watercraft-related deaths in Kings Bay. The rule identifies specific prohibitions that can be enforced through the issuance of citations (USFWS 2012). Crystal River NWR recently adopted measures to help prevent any harassment in Three Sisters Springs and is considering further measures as the situation requires.

*Downlisting Criteria, Listing/Recovery Criterion C*

At the time the recovery plan was developed, there was no data indicating that this was a limiting factor, thus no reclassification (downlisting) criteria was deemed necessary, therefore, no delisting criteria were established.

*Downlisting Criteria, Listing/Recovery Criterion D*

Specific actions are needed to ensure the adequacy of existing regulatory mechanisms.

1. Establish Minimum Flows Consistent With Listing/Recovery Criterion A

See discussion under Listing/Recovery Criterion A, above.

2. Protect Important Manatee Habitats

Important manatee habitats have been identified and protected through a variety of means. Manatee habitat is protected through land acquisition and various Federal and State laws. Important acquisitions include Blue Spring in Volusia County and the Main Spring, Three Sisters Springs, and Homosassa Springs in Citrus County. Land managers for these sites manage habitat to benefit manatees. To insure that these habitats and habitat in public waterways are protected, regulatory agencies such as the Army Corps of Engineers, the Florida Department of Environmental Protection (FDEP), State water management districts, and others review permit applications for activities that could adversely modify or destroy habitat and require permittees to avoid or minimize impacts. Discharges and runoff that could affect habitat are addressed through the Clean Water Act’s NPDES permitting program, administered by FDEP with oversight from the EPA.

3. Reduce or Remove Unauthorized Take

To address harassment at wintering and other sites, the Service and State have designated manatee sanctuaries and no-entry areas to keep people out of sensitive wintering sites. Federal, State, and local law enforcement officers enforce these restrictions and address any violations that occur outside of the protected areas.

*Downlisting Criteria, Listing/Recovery Criterion E*

1. Create and Enforce Manatee Safe Havens and/or Federal Manatee Refuges

To date, the Service and State have created more than 50 manatee protection areas, and protection area

measures are enforced by the Service, U.S. Coast Guard, FWC, and local law enforcement officers.

## 2. Retrofit One Half of All Water Control Structures With Devices To Prevent Manatee Mortality

Water control structures are flood gates that control water movement and navigation locks that allow vessel passages through dams and impoundments, such as those associated with Lake Okeechobee. Manatees travel through these structures and are occasionally killed when structures are closed or opened. Manatee protection devices installed on these structures prevent manatee deaths. See discussion in “South Florida Multi-Species Recovery Plan, West Indian Manatee.”

To date, all but one water control structure has been retrofitted with manatee protection devices. Efforts are ongoing to complete installation at the remaining site. This action has significantly reduced the impacts of control structure related manatee injury and death; such injuries or deaths are now relatively rare.

## 3. Draft Guidelines To Reduce or Remove Threats of Injury or Mortality From Fishery Entanglements and Entrapment in Storm Water Pipes and Structures

Some measures have been developed to reduce or remove threats of injury or mortality from fishery entanglements, and steps are being taken to minimize entrapments in storm water pipes and structures. Measures to address fishery entanglements include monofilament recycling programs and derelict crab trap removals; these two programs address primary sources of manatee entanglement. Storm water pipes and structures large enough for manatees to enter are designed to include features that prohibit manatee access. Existing structures are re-fitted with bars or grates to keep manatees out. In the event of entanglements or entrapments, the manatee rescue program intervenes. There are very few serious injuries or deaths each year due to these causes. Guidelines to minimize gear-related entanglements associated with netting activities have been developed. Similarly, guidance has been developed to reduce entrapment in storm water pipes and structures. See Factor E for additional information.

Remaining tasks needed to recover Florida manatees include:

- Continue to address pending changes in the manatees’ warm-water network (develop and implement strategies).

- Support the adoption of minimum flow regulations for remaining important springs used by manatees.

- Protect and maintain important manatee habitat.

- Continue to maintain, adopt, and enforce manatee protection areas as appropriate (continue to fund law enforcement activities and manatee protection area marker maintenance).

- Continue to address instances of manatee harassment.

- Continue to review and address warm- and freshwater discharges and boat facility projects that affect manatees.

- Maintain and install manatee protection devices on existing and new water-control structures.

- Continue manatee rescue and rehabilitation efforts, including efforts to minimize the effect of manatee entanglements and entrapments.

- Continue to monitor manatee population status and trends.

- Continue manatee education and outreach efforts.

The Florida manatee population, estimated at about 6,350 manatees, is characterized by good adult survival rate estimates and positive breeding rates. The recently updated threats analysis continues to identify losses due to watercraft and projected losses of winter warm-water habitat as the greatest threats to this subspecies. The designation, marking, and enforcement of manatee protection areas in areas where manatees are at risk of watercraft collision, in addition to outreach efforts focused on minimizing this threat, addresses this concern. Numerous efforts have been made and are ongoing to protect and enhance natural warm-water sites used by wintering manatees. Addressing the pending loss of warm water habitat from power plant discharges remains a priority activity needed to achieve recovery.

### Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing, reclassifying, or removing a species from the Federal Lists of Endangered and Threatened Wildlife and Plants.

A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E)

other natural or manmade factors affecting its continued existence. We must consider these same five factors in reclassifying or delisting a species.

The following analysis examines all five factors currently affecting or that are likely to affect the West Indian manatee.

### A. *The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

West Indian manatees are found in coastal and riverine systems from the southeastern United States to northeastern Brazil, including freshwater, brackish, and marine habitats. Submerged, emergent, and floating vegetation is their preferred food. Important habitat components include foraging areas, freshwater sources, travel corridors, sheltered areas, and, in the southeastern United States, sources of warm water for wintering. Degradation and loss of manatee habitat occurs throughout (UNEP 2010, p. 12). Although the immediacy and the magnitude of this factor varies throughout the species’ range, available manatee foraging habitat does not seem to be a limiting factor in most of the range countries, including Florida and Puerto Rico (Orth *et al.* 2006, p. 994; Drew *et al.* 2012, p. 13; Lefebvre *et al.* 2001, entire; UNEP 2010, entire). Still, manatee habitat degradation and loss remains a threat in most countries, and ongoing efforts to address these threats remains a recovery priority (Castelblanco *et al.* 2012, p. 142).

Some countries have been able to document manatee habitat loss effects, while other countries do not have site-specific information available to quantify the severity and/or frequency of this threat on manatees. For example, in Mexico, loss of manatees from certain areas has been attributed to, among other factors, the construction of a dam along a river (Colmenero-Rolón and Hoz-Zavala 1986, in UNEP 2010, p. 59), while significant manatee habitat modification has affected the number of animals along the coast of Veracruz (Serrano *et al.* 2007, p. 109). Other important manatee habitat in Belize such as Turneffe atoll is also affected by unsustainable fishing, mangrove clearing, overdevelopment, and dredging (Edwards 2012, p. 72).

In Honduras, manatee abundance declined, in part, because of habitat degradation (Cerrato 1993, in Lefebvre *et al.* 2001, p. 440), while in Costa Rica, habitat modification activities such as logging and agriculture have increased sedimentation in rivers and lagoons, making it difficult for manatees to



access suitable habitat in the Tortuguero River system (Smethurst and Nietschmann 1999, in Lefebvre *et al.* 2001, p. 442). In Panama, manatee distribution is apparently fragmented by discontinuous and likely depleted habitat (Lefebvre *et al.* 2001, p. 442).

Although threats continue, there are positive recovery efforts being made for the West Indian manatee to protect against threats posed by habitat loss or modification in many range countries and in the areas of U.S. jurisdiction. In Belize, three protected areas were created specifically to protect critical manatee habitat, and more than 43 percent of the country's protected areas are within the coastal zone (UNEP 2010, p. 24). Mexico has designated significant special manatee protection areas (UNEP 2010, p. 60), and Trinidad protected the Nariva Swamp, the most important manatee habitat in that country (UNEP 2010, p. 77). Although most countries within the species' range outside the United States continue to provide suitable manatee habitat, habitat degradation and loss remains a threat requiring ongoing recovery efforts.

In Puerto Rico and the southeastern United States, threats to manatee habitat are well documented. The Service's 2007 5-year review identified specific threats including: Loss of seagrass due to marine construction activities (extent unknown), propeller scarring and anchoring (magnitude unknown), and oil spills; loss of freshwater due to damming and competing uses; and increasing coastal commercial and recreational activities (USFWS 2007, pp. 30–31). Human activities that result in the loss of seagrass include dredging, fishing, anchoring, eutrophication, siltation, and coastal development (Duarte 2002, p. 194; Orth *et al.* 2006, p. 991; PRDNER 2008, entire; PRDNER 2012, entire).

In the Service's 2007 5-year review, overall impacts to manatee habitat had not been quantitatively assessed in Puerto Rico. At that time, the Service did not believe there were significant threats to seagrass habitat and noted that the potential loss of fresh water sources may be the most limiting of the manatee habitat variables in the future. However, the 5-year review identified other habitat threats as identified in the previous paragraph. All of these threats still remain, in varying degrees and immediacy. For example, oil spills may always be considered a non-imminent threat to the manatee and its habitat. The Service forms part of the Caribbean Regional Response Team, who are responsible for preparedness activities including planning, training, and

exercising to ensure an effective response to releases of hazardous substances and oil spills. The Service developed a manatee specific response plan as part of the Puerto Rico and USVI Area Contingency Plan (<http://ocean.floridamarine.org/ACP/SJACP/Documents.html>), including a manatee specific response plan.

Since the 2007 5-year review, habitat effects including threats to seagrass habitat have been quantitatively assessed. The PRDNER has been gathering new relevant information documented in its two reports entitled *Evaluation of Recreational Boating Anchor Damage on Coral Reefs and Seagrass Beds* (PRDNER 2008, entire; PRDNER 2012, entire). The report identified the east, south, and west coasts of the island as the areas with major impacts on seagrass beds caused by vessel propellers, indiscriminate anchorage, and poor navigation skills. According to the reports, the areas with major impacts of severe magnitude were those on the south-central coast, including high manatee use areas in the municipalities of Guayama, Salinas and Guayanilla, among others. The PRDNER (2008, 2012, p. 6) also describes that seagrasses are being severely impacted by both the scarring actions of motor boat propellers and the scouring action of jet ski traffic in shallow waters. In addition, small to mid-size boat owners prefer to visit near-shore areas, which have contributed to the decrease in seagrass density and an increment in the fragmentation of this habitat (PRDNER 2008, 2012, p. 7).

Although anthropogenic activities that result in the loss of seagrass such as dredging, anchoring, effects from coastal development, propeller scarring, boat groundings, and inappropriate recreational activities occur in Puerto Rico, seagrass abundance is not considered a limiting factor for the current Antillean manatee population of the Island (Drew *et al.* 2012, p. 13). It would be expected that a significant decrease of this resource could cause stress to the manatee population. However, no data is available to support estimates of how much seagrass is needed to sustain a larger manatee population (Bonde *et al.* 2004, p. 258). Based on the present availability of seagrass habitat in Puerto Rico, the Service believes the severity of the threat of degraded and or decreased seagrass habitat is low.

To offset these threats in Puerto Rico, a wide range of conservation efforts are ongoing (see Recovery discussion above). These include the collective efforts of the Service, the U.S. Army Corps of Engineers, PRDNER, the

National Oceanic and Atmospheric Administration (NOAA), the U.S. Coast Guard, and others working to avoid, minimize, and mitigate project impacts on manatee habitat. The development and implementation of no-wake areas, marked navigation channels, boat exclusion areas, and standardized construction conditions for marinas and boat ramps are a few of the efforts making a positive impact on maintaining and protecting important manatee habitat (see Recovery sections).

Manatees require sources of fresh water for daily drinking and do not appear to exhibit a preference for natural over anthropogenic freshwater resources (Slone *et al.* 2006, p. 3). Sources of freshwater are currently not considered limiting in Puerto Rico and include the mouths of streams and rivers, coastal groundwater springs, and even industrial wastewater outflows (*e.g.*, wastewater treatment plants, hydroelectric power plants). At this time, the lack and/or degradation of fresh water is considered a low-level threat in Puerto Rico. There is no indication that manatees are being affected by a lack of freshwater sources, even during the 2015 severe drought and especially since it is possible for manatees to drink from several sources. On the other hand, the potential impact of poor water quality on the manatee population is unknown. In the same way as for other habitat threats, the Service will continue to assess and work with others towards maintenance and potential enhancement of manatee freshwater drinking sources.

Within the southeastern United States, the potential loss of warm water at power plants and natural, warm-water springs used by wintering manatees is identified as a significant threat (USFWS 2007, entire; Laist and Reynolds 2005 a, b, entire, and (USFWS 2001, entire). Natural springs are threatened by potential reductions in flow and water quality (due to unsustainable water withdrawals combined with severe droughts) and by factors such as siltation, disturbance caused by recreational activities, and others that affect manatee access and use of the springs (Florida Springs Task Force 2000, p. 13). Power plants, which provide winter refuges for a majority of the Florida manatee population, are not permanent reliable sources of warm water. In the past, some industrial sources of warm water have been eliminated due to plant obsolescence, environmental permitting requirements, economic pressures, and other factors (USFWS 2000, entire). Experience with disruptions at some sites has shown that some manatees can adapt to minor

changes at these sites; during temporary power plant shutdowns, manatees have been observed to use less preferred nearby sites. In other cases, manatees have died when thermal discharges have been eliminated due to behavioral persistence or site fidelity (USFWS 2000, entire).

The current network of power plant sites will likely endure for another 40 years or so (Laist *et al.* 2013, p. 9). We do not know for sure if the plants will be replaced or eliminated at the end of this time, but the likelihood is that the power plants will close (Laist and Reynolds 2005b, p. 281). We also do not know exactly how manatees would respond if some sites are lost, since past modifications or changes to power plant sites have resulted in variable response from manatees. If power plant outflows are lost, manatees would rely on remaining springs in the upper St. Johns River and northwest Florida regions and on Warm Mineral Springs in southwest Florida, passive thermal basins, and warm ambient waters in southernmost Florida. The loss of certain warm-water sites potentially could cause a change in Atlantic coast abundance and distribution because there are no natural springs on the Atlantic coast north of the St. John's River (Laist and Reynolds 2005b, p. 287).

Florida's springs have seen drastic declines in flows and water quality and many springs have been altered (dammed, silted in, and otherwise obstructed) to the point that they are no longer accessible to manatees (Taylor 2006, pp. 5–6; Laist and Reynolds 2005b, p. 287; Florida Springs Task Force 2001, p. 4). Flow declines are largely attributable to demands on aquifers (spring recharge areas) for potable water used for drinking, irrigation, and other uses (Marella 2014, pp. 1–2). Declining flows provide less usable water for wintering manatees. Declines in water quality (*e.g.*, increased nitrates) can promote the growth of undesirable algae, such as *Lyngbya* sp., which can cover and smother food plants used by wintering manatees (Florida Springs Task Force 2001, pp. 12, 26). Notable springs largely inaccessible to manatees due to damming include springs in the Ocklawaha and Withlacoochee river systems. Springs that have silted in include Manatee and Fanning springs, Warm Mineral Spring, Weeki Wachee Spring, and others (Taylor 2006, pp. 5, 8).

In the case of Manatee, Fanning, and Weeki Wachee springs, restoration efforts have removed sand bars and other obstructions, making these sites once again accessible to manatees (The

Nature Conservancy 2015). See: <http://www.nature.org/ourinitiatives/regions/northamerica/unitedstates/florida/howwehwork/saving-manatees-through-springs-restoration.xml>. Also, Marella (2014, p. 1) noted declining demands on central Florida aquifers due to increased rainfall, declining agricultural demands, use of re-use water, and other water conservation measures, suggesting that spring flows used by manatees can be maintained. Chapter 62–42, Florida Administrative Code, requires that minimum flow levels be set for Florida waterbodies. Set flow levels require that measures be taken should flows drop below statutorily adopted levels, thus insuring adequate flows. Minimum flows have been set for six springs that are important to wintering manatees. Flow levels must be identified for the Crystal River springs complex and other important springs.

In the southeastern United States, a wide range of conservation efforts identified in the 2007 5-year Review are continuing (USFWS 2007, pp. 17–18; see also Recovery discussion above). Service efforts in cooperation and coordination with State and industry partners are ongoing to minimize any future manatee losses from industrial site reductions or closures by seeking short-term alternatives and long-term sustainable options for supporting manatees without the reliance on industrial warm-water sources. Spring studies and on-the-ground restorations seek to restore flows and access to existing natural springs. Habitat degradation and loss from natural and human-related causes are being addressed through collective efforts to improve overall water quality, minimize construction-related impacts, and minimize loss of seagrass due to prop scarring. Efforts to replant areas devoid of seagrass are showing success in restoring lost manatee foraging habitat.

**Summary:** Based on the wide extent and combined threats discussed above, the Service considers activities identified under Factor A to be a moderate threat to the species. While there have been substantial improvements towards addressing habitat threats since listing, these activities still threaten the West Indian manatee but not to the magnitude that places the species in danger of extinction, especially given the availability of suitable habitat throughout the species' range. If this downlisting rule is finalized, we will continue to evaluate projects with a Federal nexus in areas of U.S. jurisdiction (Puerto Rico and areas of the continental United States) to benefit habitat for the West Indian manatee and

make recommendations to avoid and minimize impacts to manatee habitat. For West Indian manatees in the continental United States, ensuring the continued availability of warm-water refugia sites is a critical need related to this factor.

We describe above (and in supplemental documents) progress with local, county, city, and State partners to maintain minimum flows and restore habitat at sites where we believe it will help address this habitat need for the species. For areas outside U.S. jurisdiction, we have documented examples of habitat destruction, modification, and fragmentation that have impacted West Indian manatees, by damming rivers and destroying estuaries. There are also a number of positive examples of manatee protection areas that will continue to provide long-term suitable manatee habitat. The Service, in coordination with its International Affairs Program, will continue to enhance international relations in order to promote, and work together with other countries towards, manatee habitat conservation.

#### *B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

Throughout the range of the species, manatees are used for a variety of purposes. Outside the United States, manatees have been hunted and are poached to supply meat and other commodities. Recreationally, people seek out opportunities to view manatees through commercial ecotour operators or on their own. There are numerous scientific studies being conducted of captive and wild manatees, including studies of specimens salvaged from carcasses. The public is educated about manatees through a variety of media, such as videos and photographs, including rehabilitating manatees in captivity.

Poaching remains a major threat to the manatee population outside of the southeastern United States (Marsh *et al.* 2011, p. 265) and has been responsible for past declining numbers throughout much of the Antillean subspecies' range (Thornback and Jenkins 1982, in Lefebvre *et al.* 2001, p. 426) (in 17 of 20 range countries). For example, in Guadeloupe (French Antilles), the local manatee population was hunted to extinction by the early 1900s (Marsh *et al.* 2011, p. 429). In Honduras, manatees are still actively poached on an opportunistic basis in La Mosquita (González-Socoloske *et al.* 2011, p. 129). Manatee meat is a highly prized source of protein in some local markets in Central America, bringing up to \$100

per pound (Jiménez 2002, Quintana-Rizzo 1993; in UNEP 2010, p. 12). Depending on certain social and economic factors, current poaching rates in northern Nicaragua vary from year to year (Self-Sullivan and Mignucci-Giannoni 2012, p. 44). Other manatee products include oil, bones, and hide (Lefebvre *et al.* 2001, p. 426; Marsh *et al.* 2011, p. 264; Self-Sullivan and Mignucci-Giannoni 2012, pp. 42–45).

Manatees are particularly susceptible to overexploitation because of their low reproductive rates (Lefebvre *et al.* 2001, p. 12). Accordingly, poaching poses a serious threat to some manatee populations, especially in those areas where few manatees remain. Currently, poaching is hypothesized no longer to occur in a few regions, has been reduced in others, and is still common in others (UNEP 2010, entire; Marsh *et al.* 2011, p. 386). For example, although manatee poaching in Colombia still occurs in specific areas and seasons (Castelblanco-Martínez 2009, p. 239), it is much less common today than in the past (UNEP 2010, p. 30). It is also no longer believed to be a threat in Belize. Marsh (2011, p. 269) identifies poaching as a major threat to manatees in Brazil, Colombia, Costa Rica, Cuba, Dominican Republic, French Guiana, Guatemala, Honduras, Mexico, Suriname, Trinidad and Tobago, and Venezuela. It is no longer a threat in the mainland United States and Puerto Rico (Marsh 2011, p. 269). Poaching has not been observed in Puerto Rico since 1995. We continue to pursue initiatives with other countries that encourage a ban on poaching and hunting of manatees. Foreign governments have instituted regulations to address this threat (see Factor D).

Manatee viewing by commercial tour operators and private citizens occurs in the southeastern United States, Belize, Mexico, and, based on anecdotal accounts, possibly in Puerto Rico. People view manatees from the water; from boats, kayaks, and canoes; and from shoreline areas. These actions may disrupt manatee behaviors and cause them to leave important habitats. Large numbers of people may crowd manatees and also cause them to leave resting, calving or feeding sites.

In the southeastern United States and other areas where people view manatees, numerous measures are in place to prevent the take of manatees due to disturbance of viewing-related harassment. Well-enforced sanctuaries keep people out of sensitive manatee habitats (*i.e.*, warm-water sites), educated tour guides insure that their customers do not harass manatees, and many educational programs prescribe appropriate measures to take when in

the presence of manatees. For example, in 1992, manatees stopped visiting suitable manatee habitat (Swallow Caye, Belize) after swim-with-the-manatee programs were allowed without proper control (Auil 1998, p. 12). Community groups and a local conservation organization helped to declare the area a wildlife sanctuary in 2002. The area is currently co-managed between the Belize Forest Department and a local conservation organization (UNEP 2010, p. 23), and manatees have returned to the area.

In Puerto Rico, harassment of manatees by kayak users and swimmers has been reported in several popular beach and coastal recreational areas. In addition, harassment related to speedboat races in manatee areas has increased. In 2014 alone, the Service reviewed 12 permit applications for speed boat races in Puerto Rico, several of them in areas with high concentrations of manatees. However, to date there have been no reported injuries or deaths of manatees caused by speedboat races. Consultation with the Service under Section 7 of the Act has served to implement specific conservation measures during marine events such as boat races (see Recovery and Available Conservation Measures sections). The U.S. Coast Guard consistently consults with the Service on marine event applications and readily includes manatee conservation measures when applicable. In addition, government agencies and local nongovernmental organizations have implemented education and outreach strategies to insure that manatee harassment is avoided and minimized.

Education and research programs involving manatees are designed to insure that manatees are neither adversely affected nor overutilized. Examples include outreach efforts used to minimize manatee harassment in Crystal River, Florida, and the Service's ESA/MMPA marine mammal scientific research permitting program, which limits the effects that research activities have on manatees.

*Summary:* Based on the information discussed above, overutilization is considered a moderate threat to the West Indian manatee, with varying frequencies of occurrence from absent to common throughout the species' range. This threat is not severe enough to indicate the West Indian manatee is in danger of extinction because measures and efforts are in place to address concerns and are proving effective in a good portion of the West Indian manatee's range. The situation has improved, as poaching is not a threat in the southeastern United States

(including Puerto Rico) and has been reduced in other countries. However, it continues to occur in some range countries. We do not believe overutilization for research or education purposes is a threat at this time.

### C. Disease or Predation

While numerous infectious disease agents and parasites have been reported in sirenians, there have been no reports of major West Indian manatee mortality events caused by disease or parasites (Marsh *et al.* 2011, p. 294).

Disease-related deaths are known to occur in West Indian manatees. Recent cases of toxoplasmosis are a concern in Puerto Rico (Bossart *et al.* 2012, p. 139). However, until additional studies are concluded, the severity of this threat is unknown.

Marsh *et al.* (2011, p. 294) stated that the importance of disease as a threat to the manatee is unknown. In spite of concerns about the manatee's ability to rebound from a population crash should an epizootic event occur, the impact of disease on population viability remains unknown (Sulzner *et al.* 2012, p. 1). Marsh *et al.* 2011 (p. 294) speculated that the Florida subspecies appears to have a robust immune system that safeguards them from significant disease outbreaks. We suspect this to be also true for the Antillean subspecies because we have no documented disease outbreaks.

Mou Sue *et al.* (1990) described rare attacks by sharks on manatees in Panama (p. 239). Reported instances of sharks and alligators feeding on manatees are extremely rare (Marsh *et al.* 2011, p. 239).

*Summary:* Based on the above information, disease and predation are not considered to be a threat to the West Indian manatee at this time.

### D. The Inadequacy of Existing Regulatory Mechanisms

Regulatory mechanisms are in place throughout the West Indian manatee's range. These include, but are not limited to, specific laws and regulations that prohibit specific and general human activities that impact manatees and their habitat, and the establishment of long-term conservation protection measures at key locations throughout the range. In the United States, Florida county MPPs ensure consistent and effective protection throughout the State. Although regulatory mechanisms should be effective and consistent in all countries where manatees are found, the extent and overall effectiveness of these regulatory mechanisms varies widely from country to country. Despite this variability, our assessment of the best

available information leads us to believe these efforts are having an overall positive impact on manatee recovery and conservation. However, enforcement and compliance with these measures, as well as the need for additional efforts in some countries, continues to be a concern and will require additional cooperative efforts into the foreseeable future.

Outside the United States, West Indian manatees are protected in most countries by a combination of national and international treaties and agreements as listed in Table 4 in UNEP (2010, p. 14), in Lefebvre *et al.* (2001, entire), and Table 4.2 in Self-Sullivan and Mignucci-Giannoni (2012, p. 41). See Supplemental Document 3 in Docket No. FWS-R4-ES-2015-0178. Countries within the range of the Antillean manatee protect the manatee by national legislation (UNEP 2010, Table 4). For example, in The Bahamas, manatees are protected under the Wild Animals Protection Act (Chapter 248, 21 of 1968 E.L.A.O. 1974), which prohibits the taking or capture of any wild animal (Government of The Bahamas 2004). In 2005, the Bahamian Government also created the Marine Mammal Protection Act (No. 12), which monitors and regulates human interactions with marine mammals. The Act prohibits taking, selling, or harassing any marine mammal (The Government of The Bahamas 2006). As another example, the Manatee Protection Ordinance (1933–1936) provided the first protective legislation for the species in Belize. In 1981, manatees in Belize were included as an endangered species in the Wildlife Protection Act No. 4 of the Forest Department. The Act prohibits the killing, taking, or molesting of manatees, as well as possession and sale of any part of any manatee (Auil 1998, pp. 29–30).

The West Indian manatee is listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES (see [www.cites.org](http://www.cites.org)) is an international agreement through which member countries work together to protect against over-exploitation of animal and plant species found in international trade. Commercial trade in wild-caught specimens of these Appendix 1 species is illegal (permitted only in exceptional licensed circumstances). The Service reviewed the CITES trade database for the West Indian manatee, which currently has information from 1977 to 2013, and found that trade does not pose a threat to the West Indian manatee at this time. The manatee and its habitat are also protected by the Cartagena Convention

Protocol Concerning Specially Protected Areas and Wildlife for the protection and development of the marine environment of the Wider Caribbean Region (SPAW Protocol). The SPAW Protocol, approved in 1990, prohibits the possession, taking, killing, and commercial trade of any sirenian species (UNEP 2010, p. 14). It stresses the importance of establishing regional cooperation to protect and, as appropriate, to restore and improve the state of ecosystems, as well as threatened and endangered species and their habitats in the Wider Caribbean Region. The manatee is listed in Annex II of the SPAW Protocol. Annex II includes threatened or endangered animal species for which, again, any form of destructions or disruption (capture, possession, killing, trade, etc.) must be banned for their protection and recovery.

Although manatees outside of the southeastern United States are legally protected by these and other mechanisms, full implementation of these international and local laws is lacking, especially given limited funding and understaffed law enforcement agencies (UNEP 2010, p. 89).

Marsh *et al.* (2011, p. 387) indicated that enforcement remains a critical issue for West Indian manatees. Outside the United States, mechanisms are needed to allow existing West Indian manatee protection laws to work as intended. Despite all of the existing regulations for manatees, illegal poaching and destruction of habitat continue (Self-Sullivan and Mignucci-Giannoni 2012, p. 41). Enforcement of conservation policies varies in different coastal regions; in some regions, poaching is common and in areas with a government presence, enforcement efforts are thought to be significant (Self-Sullivan and Mignucci-Giannoni 2012, p. 45). Poaching occurs in areas where the presence of enforcement personnel is rare (UNEP 2010, p. 64). However, in other areas, like Costa Rica, it does not appear to be significant (UNEP 2010, p. 34). Although we cannot enforce Federal regulations in areas outside of U.S. jurisdiction, we continue to cooperate with other countries' governments under section 8 of the Act, as well as CITES and other international agreements.

In the southeastern United States, in addition to being listed as an endangered species, the West Indian manatee is further considered a depleted stock under the Marine Mammal Protection Act (see greater detail just below; MMPA, 16 U.S.C. 1361 *et seq.*; Previous Federal Actions

section, and Supplemental Document 2 in Docket No. FWS-R4-ES-2015-0178), as well as the Clean Water Act and the Fish and Wildlife Coordination Act. The MMPA was enacted in 1972 in response to growing concerns among scientists and the public that certain species and populations of marine mammals, including the West Indian manatee, were in danger of extinction or depletion as a result of human activities.

The goal of the MMPA is to protect and conserve marine mammals so that they continue to be significant functioning elements of the ecosystem of which they are a part. The MMPA includes a general moratorium on the taking and importation of marine mammals and their products, with some exemptions (*e.g.*, Alaska Native subsistence purposes) and exceptions to the prohibitions (*e.g.*, for scientific research, enhancement of the species, and unintentional incidental take coincident with conducting lawful activities).

“Take” is defined under the MMPA as “harass, hunt, capture, or kill, or attempt to harass, hunt, capture or kill.” The term “harassment” means “any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild” (Level A harassment), or “has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering” (Level B harassment).

By definition under the MMPA, any marine mammal species or population stock that is listed as an endangered or a threatened species under the Act is considered “depleted” and managed as such under the MMPA. Furthermore, a marine mammal stock that is listed under the Act is considered a “strategic stock” for purposes of commercial fishery considerations. Neither of these categorizations would change with the potential downlisting of the West Indian manatee from endangered to threatened. Both the Florida and Puerto Rico stocks will remain depleted and strategic under the MMPA.

Several additional prohibitions are provided in section 102 of the MMPA, including take of any marine mammal on the high seas; possession of a marine mammal or any product of that marine mammal taken in violation of the MMPA; transport, purchase, sell, export, or offer to purchase, sell, or export any marine mammal or marine mammal product that is taken in violation of the MMPA or for any purpose other than public display, scientific research, or

enhancing the survival of a species or stock; and import of illegally taken marine mammals and marine mammal products. Section 102 further prohibits the import of any marine mammal if the mammal was taken from a depleted species or population stock except under a permit for scientific research or for enhancing the survival or recovery of a species or stock.

U.S. citizens who engage in a specified activity other than commercial fishing (which is specifically and separately addressed under the MMPA) within a specified geographical region may petition the Secretary of the Interior to authorize the incidental, but not intentional, taking of small numbers of marine mammals within that region for a period of not more than 5 consecutive years or, if the potential take is limited to harassment, an authorization may be issued under an expedited process for up to 1 year. Prior to issuance of either authorization, the Secretary must find that the total of such taking during the period will have a negligible impact on such species or stock and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses, which only applies to Alaskan Natives as provided under the MMPA.

Section 104 provides for the issuance of permits to authorize the taking or importation of marine mammals for the purpose of scientific research, public display (unless the species or stock is considered depleted), or enhancement of the species. In addition, photography permits may be issued for educational or commercial purposes as long as the subject marine mammals are limited to harassment that only has the potential to disturb them.

Section 118 of the MMPA addresses the taking of marine mammals incidental to commercial fishing operations. This section, which was added to the MMPA in 1994, establishes a framework that authorizes the incidental take of marine mammals during commercial fishing activities. In addition, this section outlines mechanisms to monitor and reduce the level of incidental take. Information from the carcass salvage programs indicate that interactions between manatees and commercial fisheries may occur within waters of the United States but is not a concern at this time.

Title II of the MMPA established the Marine Mammal Commission (Commission), an independent agency of the U.S. Government, to review and make recommendations on the marine mammal policies, programs, and actions being carried out by Federal regulatory

agencies related to implementation of the MMPA. The Commission's primary focus and duties are the protection and conservation of marine mammals. The Service coordinates and works with the Commission in order to provide the best management practices for marine mammals.

Within the southeastern United States (including Puerto Rico), the West Indian manatee also receives protection by most State and Territorial agencies, and will continue to receive protection if this downlisting rule is finalized. In Florida, the manatee is protected by the Florida Manatee Sanctuary Act (FMSA), which established Florida as a sanctuary for manatees. This designation protects manatees from injury, disturbance, harassment, and harm in the waters of Florida, and provides for the designation and enforcement of manatee protection zones. However, Florida statutes state that, "[w]hen the federal and state governments remove the manatee from status as an endangered or threatened species, the annual allocation may be reduced" (FMSA Chap. 379.2431(2)(u)(4)(c)), suggesting that adequate funding could be problematic if downlisting occurs. Florida laws also provide a regulatory basis to protect habitat and spring flows (Florida Water Resources Act).

In Georgia, West Indian manatees are listed as endangered under the Georgia Wildlife Act of 1973 (O.C.G.A. §§ 22-3-130) which prohibits the capture, killing, or selling of protected species and protects the habitat of these species on public lands. In 1999, the Commonwealth of Puerto Rico approved the Law No. 241, known as the New Wildlife Law of Puerto Rico (*Nueva Ley de Vida Silvestre de Puerto Rico*). The purpose of this law is to protect, conserve, and enhance both native and migratory wildlife species, declare to be the property of Puerto Rico all wildlife species within its jurisdiction, and regulate permits, hunting activities, and exotic species, among other actions. In 2004, the PRDNER approved Regulation 6766 to regulate the management of threatened and endangered species in Puerto Rico (*Reglamento 6766—Reglamento para Regir el Manejo de las Especies Vulnerables y en Peligro de Extinción en el Estado Libre Asociado de Puerto Rico*). In particular, the New Wildlife Law of Puerto Rico of 1999 and its regulations provide for severe fines for any activities that affect Puerto Rico's endangered species, including the Antillean manatee. These laws similarly prohibit the capture, killing, take, or selling of protected species.

Also, the Navigation and Aquatic Safety Law for the Commonwealth of

Puerto Rico (Law 430) was implemented in year 2000 and allows for the designation and enforcement of watercraft speed zones for the protection of wildlife and coastal resources. However, in Puerto Rico and Florida, despite protections, watercraft collisions continue to be a threat to manatees (see Factor E). The PRDNER has indicated that current speed regulatory buoys are ineffective, in part because regulations do not identify the perimeter or area that each buoy regulates (PRDNER 2015, pers. comm.). Thus, emphasis has been given to public education and signage in coastal areas to further reduce manatee mortality.

In addition, there are numerous other manatee protection laws and regulations in place in other States within the United States. These are detailed in a table entitled "Existing International, Federal, and State Regulatory Mechanisms," see "Supplemental Document 2" in Docket No. FWS-R4-ES-2015-0178 or <http://www.fws.gov/northflorida> and <http://www.fws.gov/caribbean/es>. This table shows an extensive list of existing regulatory mechanisms in place for the West Indian manatee; many have been instituted, revised, or improved to better protect the manatee.

Based on population growth and stability described earlier in this rule (Florida subspecies—6,350 manatees; Puerto Rico—532 manatees), the above-described mechanisms are adequate to continue to allow growth in the West Indian manatee population in the United States and expand protection for their habitat as needed. If this downlisting rule is finalized, the West Indian manatee in the United States will remain protected as a threatened species under the ESA, and as a depleted species under the MMPA, and these existing regulatory mechanisms will remain in effect. As long as funding remains available, recovery actions would continue to be implemented, regulations enforced, and additional measures adopted as needs arise. State and Federal agencies would continue to coordinate on the implementation of manatee conservation measures.

*Summary:* Based on the above, the inadequacy of regulatory mechanisms is considered to be a moderate threat to the West Indian manatee. Although numerous regulatory mechanisms to protect manatees exist, challenges in the enforcement of these regulatory mechanisms have been identified. This threat is not severe enough to indicate the West Indian manatee is in danger of extinction. If this downlisting rule is finalized, all regulatory mechanisms will remain in place and will continue

to provide legal protections to the species throughout its range.

#### *E. Other Natural or Manmade Factors Affecting Its Continued Existence*

Other factors affecting West Indian manatees include human-related interactions, such as watercraft collisions, harassment, fishing gear entanglement, exposure to contaminants, and naturally occurring phenomena, such as harmful algal blooms, exposure to the cold, loss of genetic diversity, climate change, and tropical storms and hurricanes. In 2007, the Service considered this factor the most significant due to watercraft collisions (USFWS 2007, pp. 32–33).

#### *Watercraft*

Watercraft collisions that kill or injure manatees are a threat in some range countries outside the United States. However, current information on the effects of boat traffic on manatees does not exist for most range countries outside the United States. In some countries such as Belize, watercraft collisions were the predominant cause of death from 1996 to 2003 with an increasing trend (Auil and Valentine 2004, in UNEP 2010, p. 22). As the number of registered boats has increased significantly since the mid-1990s, manatees are most vulnerable to collisions in the waters near Belize City (Auil 1998, in UNEP 2010, p. 22). Motorboats are becoming more abundant and popular in Guatemala, and watercraft traffic and speed are not regulated even within protected areas (UNEP 2010, pp. 45–46). An aquatic transportation system with high-powered engines has increased boat transit in one of the most important manatee habitats areas in Panama (UNEP 2010, p. 66). Increased boating activities in Brazil have resulted in both lethal collisions with manatees and disruption of manatee behavior (Self-Sullivan and Mignucci-Giannoni 2012, p. 43).

Within the United States, watercraft-related deaths have been identified as the most significant anthropogenic threat to manatees in both Florida and Puerto Rico. In Puerto Rico, 34 years of manatee mortality data from 1980 to 2014 indicate that a total of 37 manatees have died due to watercraft (Mignucci *et al.* 2000, p. 192; Mignucci-Giannoni 2006, p. 2; PRDNER 2015, unpubl. data). This number represents approximately 15 percent of the total known mortality cases during that time (37 out of 242) or an average of 1.1 manatees per year. Although 37 deaths may be considered a low number, it can be argued that the percentage of watercraft-related causes

of death may be somewhat underestimated for three reasons. First, for the majority of the manatee mortality cases in Puerto Rico, the cause of death is deemed undetermined (38 percent, 92 out of 242), mostly because carcasses are too decomposed when found and a cause of death cannot be determined, so it may be that many of these deaths are also watercraft-related. Second, watercraft-related effects that may cause a mother and calf separation will go undetected, as it would be challenging to find evidence of such an event. The number of dependent calf deaths in Puerto Rico for the past 34 years is 55 calves (22.6 percent, 55 out of 242) or an average of 1.6 manatee calves per year. The majority of the manatees rescued for rehabilitation in Puerto Rico are calves. Lastly, it is assumed that not all carcasses are recovered, so that there may be additional undocumented deaths caused by watercraft.

On the other hand, carcass salvage numbers for Puerto Rico indicate that the number of watercraft-related deaths is low, and the population is believed to remain stable (see Population Size and Trend sections) in spite of these numbers. As boat use in Puerto Rico has increased in number and distribution (PRDNER 2012, p. 3), and with no State or Federal MPAs yet established, one may expect an increase in watercraft-related conflicts. Still, manatee carcass totals for Puerto Rico have exceeded 10 or more only six times over 34 years and average approximately 7 per year (Mignucci *et al.* 2000, p. 192; Mignucci-Giannoni 2006, p. 2; PRDNER Manatee Stranding Reports 2015, unpubl. data). In addition, calf numbers documented in the most recent aerial surveys indicate the population is reproducing well, with a record high of 23 calves counted in December 2013 (see *Population size* section). As the species continues to move towards recovery, the Service will continue to address and make improvements towards avoiding and further reducing this threat.

A manatee carcass salvage program, started in 1974, collected and examined manatee carcasses to determine cause of death. This program identified watercraft collisions with manatees as a primary cause of human-related manatee mortality. The recent status review and threats analysis shows that watercraft-related mortality remains the single largest threat in Florida to the West Indian manatee (O'Shea *et al.* 1985, entire; Ackerman *et al.* 1995, entire; Wright *et al.* 1995, entire; Deutsch *et al.* 2002, entire; Lightsey *et al.* 2006, entire; Rommel *et al.* 2007, entire; Runge *et al.* 2015, p. 16;). Runge *et al.* (2015, p. 20) observed that

watercraft-related mortality makes the largest contribution to the risk of extinction; full removal of this single threat would reduce the risk of extinction to near negligible levels. Mortality data from FWCs Manatee Carcass Salvage Program and other sources describe numbers of watercraft-related deaths, general areas where deaths occur, trauma, and other parameters (O'Shea *et al.* 1985, entire; Ackerman *et al.* 1995, entire; Wright *et al.* 1995, entire; Deutsch *et al.* 2002, entire; Lightsey *et al.* 2006, entire; Rommel *et al.* 2007, entire).

Over the past 5 years, more than 80 manatees have died from watercraft-related incidents each year. The highest year on record was 2009, when 97 manatees were killed in collisions with boats. The Manatee Individual Photo-identification System (1978 to present) identifies more than 3,000 Florida manatees by scar patterns mostly caused by boats, and most catalogued manatees have more than one scar pattern, indicative of multiple boat strikes. A cursory review of boat strike frequency suggested that some manatees are struck and injured by boats twice a year or more (O'Shea *et al.* 2001, pp. 33–35). The primary conservation action in place to reduce the risk of manatee injury and death from watercraft collisions is a limitation on watercraft speed. The rationale is that a slower speed allows both manatees and boaters additional response time to avoid a collision. Furthermore, if an impact occurs, the degree of trauma will generally be less if the colliding boat is operating at slower speed (Laist and Shaw 2006, p. 478; Calleson and Frohlich 2007, p. 295). Despite continued losses due to watercraft collisions, the southeastern U.S. manatee population is expected to increase slowly under current conditions (Runge *et al.* 2015, p. 11).

Federal, State, and local speed zones are established in 26 Florida counties. In Brevard and Lee Counties, where watercraft-related mortality is among the highest reported, speed zone regulations were substantially revised and areas posted to improve manatee protection in the early 2000s. Since 2004, the FWC has approved new manatee protection rules for three counties in Tampa Bay and reviewed and updated speed zones in Sarasota, Broward, Charlotte, Lee, and Duval Counties. In October 2005, the Hillsborough County Commission adopted mandatory manatee protection slow-speed zones in the Cockroach Bay Aquatic Preserve that previously had been voluntary. In 2012, speed zones were established in the Intracoastal

Waterway in Flagler County. In addition, of the 13 counties identified in 1989 as in need of State-approved MPPs, all have approved plans. Two additional counties, Clay and Levy, proactively developed their own MPPs. Implementation of these protective measures stabilizes and may even reduce the mortality rate from watercraft collisions.

The Service developed programmatic consultation procedures and permit conditions for new and expanding watercraft facilities (e.g., docks, boat ramps, and marinas) as well as for dredging and other in-water activities through an effect determination key with the U.S. Army Corps of Engineers and State of Florida (the “Manatee Key”) (recently revised in 2013). The Manatee Key ensures that watercraft facility locations are consistent with MPP boat facility siting criteria and are built consistent with MPP construction conditions. The Service concluded that these procedures constitute appropriate and responsible steps to avoid and minimize adverse effects to the species and contribute to recovery of the species.

#### Fishing Gear

Fishing gear (nets, crab traps, etc.) is known to entangle and injure and kill manatees; ingestion of fishing gear and other debris (monofilament and associated tackle, plastic banana bags, etc.) also kills manatees. In countries outside the United States, the incidental capture of animals in fishing gear is still a threat, and the captured manatees are occasionally butchered and used for food and various products. In Cuba, researchers have recently documented a decrease in the number of manatee deaths within a marine protected area, hypothesized to be due to a ban on the use of trawl net fishing in that area (Sea to Shore Alliance 2014, entire). One of the principal causes of perceived increases in manatee decline along the northern and western coasts of the Yucatan peninsula includes increased use of fishing nets that entangle manatees (Morales-Vela *et al.* 2003, in UNEP 2010, p. 59; Serrano *et al.* 2007, p. 111). In Honduras, the major cause of known manatee mortality in the period 1970–2007 was due to entanglement in fishnets (González-Socoloske *et al.* 2011, p. 123), while Nicaragua reports between 41 and 49 manatees being killed by accidental entanglements in fishing nets from 1999 to 2000 (Jiménez 2002, in UNEP 2010, p. 63). Although gillnets are illegal in Costa Rica, gillnet entanglements still occur there. However, they are uncommon in certain protected manatee use areas (Jiménez

2005, in UNEP 2010, p. 34). Castelblanco-Martínez *et al.* (2009, in Marsh *et al.* 2011, p. 278) suggest that incidental drowning in fishing nets causes almost half of the mortality and wounding of manatees in the Orinoco River in Colombia. A variety of fishing gear was reported to cause manatee entanglements, and at least 43 calves were entangled in gear in northeast Brazil between 1981 and 2002 (UNEP 2010, p. 26). Currently, on the northeast coast of Brazil, the main cause of manatee deaths is due to the constant presence of gill and drag nets (Lima *et al.* 2011, p. 107). Similar to the lack of knowledge regarding the effects of boat traffic on manatees, most range countries outside of the United States do not have current information on the effects of fishing gear and entanglements on manatees.

In Puerto Rico, fisheries-related entanglements and debris ingestion may cause take and reduce fitness of manatees. In July 2009, there was a documented case of entanglement (beach seine net) and successful release of an adult manatee and in 2014, three adult manatees were entangled in large fishing nets; one of them was an adult female that died (PRDNER 2015, unpubl. data). A few manatees have also been found that were severely entangled in monofilament line. These events are considered a low threat because stranding records indicate they rarely cause manatee deaths in Puerto Rico; a total of four (4) in 34 years.

Fishing gear, including both gear in use and discarded gear (*i.e.*, crab traps and monofilament fishing line), is a continuing and increasing problem for manatees in the southeastern United States. It is unknown if the increasing number of rescues is a reflection of increasing awareness and reporting of entangled manatees, increases in fishing effort, increases in the number of manatees, or other factors. Between 2010 and 2014, researchers attribute 18.2 percent of all rescues to entanglement.

Rescue activities that disentangle manatees have almost eliminated mortalities and injuries associated with fishing gear (USFWS Captive Manatee Database, 2015, unpubl. data). Derelict crab trap removal and monofilament recycling programs aid in efforts to reduce the number of entanglements by removing gear from the water. Extensive education and outreach efforts increase awareness and promote sound gear disposal activities. As a result, deaths and serious injuries associated with fishing gear are now extremely rare. Runge *et al.* (2015, p. 16) determined that marine debris (including

entanglements in and ingestion of fishing gear) presented a weak threat to the West Indian manatee in Florida. In the future, we would like to seek opportunities to share information with countries like Cuba, Belize, and Mexico and continue to make entanglement from discarded or current gear a low threat rangewide.

#### Water Control Structures

Advances in water control structure devices that prevent manatees from being crushed or impinged have been largely successful. In Florida, most structures have been fitted with devices. These devices include acoustic arrays, piezoelectric strips, grates, and bars that reverse closing structures and/or prevent manatees from accessing gates and recesses. Runge *et al.* (2015, p. 16) determined that water control structures presented a weak threat to the West Indian manatee in Florida and noted that death or injury due to water control structures had become a rare event (2015, p. 19).

#### Contaminants

Direct and indirect exposure to contaminants and/or chemical pollutants in benthic habitats is another factor that may have adverse effects on manatees (Bonde *et al.* 2004, p. 258). Contaminants are known to have affected one manatee in Puerto Rico (diesel spill), and residues from sugar processing in Cuba are thought to have killed manatees there. Manatees may have abandoned Cuba's largest bay area because of contamination (UNEP 1995 in UNEP 2010, p. 37). There are many activities that introduce contaminants and pollutants into the manatees' environment—gold mining, agriculture, oil and gas production, and others. Despite the presence of contaminants in manatee tissues, the effect that these have on manatees is poorly understood (Marsh *et al.* 2011, pp. 302–305)

#### Algal Blooms

In Florida, algal blooms pose a localized threat to West Indian manatees. Specifically, in southwest Florida, extensive red tide blooms killed 276 manatees in 2013 (see Table 2). Runge *et al.* (2015, p. 20) noted that on Florida's Gulf coast, red tide effects are stronger than the effect of watercraft-related mortality due, in part, to “the increased estimate of adult survival in the Southwest and the anticipated continued increase in the frequency of severe red-tide mortality.” Runge *et al.*'s (2015, p. 1) analysis did not address the effect of the 2013 red tide event in its assessment.

In 2011, algal blooms in Florida's Indian River Lagoon clouded the water column and killed over 50 percent of the seagrass beds in the region (St. Johns River Water Management District, 2015). The loss of seagrass beds likely caused a dietary change that may have played a role in the loss of more than a hundred manatees in the area. While algal blooms occur in other parts of the species' range, there have not been any significant die-offs attributable to this cause in this portion of the species' range.

#### Cold Weather

The Florida manatee subspecies is at the northern limit of the species' range. As a subtropical species, manatees have little tolerance for cold and must move to warm water during the winter as a refuge from the cold. During extremely cold weather, hundreds of animals died in 2010 and 2011 due to cold stress. Notably, animals that relied on Florida's natural warm-water springs fared the best, while animals in east-central and south Florida, where springs are absent, fared the worst (Barlas *et al.* 2011, p. 31). Manatees using seagrass beds along east-central Florida's Atlantic coast cannot easily access warm-water springs of the St. Johns River during periods of cold temperatures, and, in the absence of access to warm water associated with power plants, these manatees are at risk. Since these events, the number of deaths due to cold has returned to an average of roughly 30 per year (FWC FWRI 2015, unpubl. data). While cold stress remains a threat to Florida manatees, Antillean manatees, found outside of the southeastern United States, do not suffer from cold stress because they inhabit warm subtropical waters. Progress is being made in protecting warm-water sites; we continue to work with our partners to protect these sources to minimize cold-related manatee deaths.

#### Genetics

Isolated locations, small population sizes, and low genetic diversity increase the susceptibility of West Indian manatee to rapid decline and local extinction (Hunter *et al.* 2012, p. 1631). Low genetic diversity has been identified as a threat to manatee populations in Puerto Rico and Belize (Hunter *et al.* 2010, entire; Hunter *et al.* 2012, entire). In addition, the manatee population in Puerto Rico is essentially closed to immigration from outside sources. Natural geographical features and manatee behavior limits gene flow from other neighboring manatee populations (*i.e.*, Dominican Republic), and genetic mixing is not expected

(Hunter *et al.* 2012, p. 1631). Manatee populations in other portions of the range may also be affected by isolation, small population size, and low genetic diversity. Low genetic diversity in the southeastern United States has been identified as a potential concern (Bonde *et al.* 2012, p. 15). However, there is limited detailed genetic information to confirm the significance of this as a threat to the West Indian manatee as a whole.

#### Tropical Storms

Tropical storms and hurricanes may also pose a threat to manatees. Live manatee strandings and reduced adult manatee survival rates can be attributed, in part, to hurricanes and storms (Langtimm and Beck 2003, entire, Langtimm *et al.* 2006, entire). Langtimm and Beck (2003) suggest that both direct and indirect mortality (from strandings, debris-related injuries, animals being swept offshore, etc.) and/or emigration associated with hurricanes and storms may cause a decrease in adult survival rates. This result has been observed in Florida and in Mexico: Hurricanes and storms are thought to affect the presence/absence of manatees in storm-struck areas. In Puerto Rico, tropical storms and hurricanes intensify heavy surf, and at least one manatee calf death was attributed to Hurricane Hortense in 1996 (USFWS 2007, p. 33). Other factors can either exacerbate or ameliorate risk to the manatee population, such as density of manatees within the strike area, the number of storms within a season, protective features of the coastline such as barrier islands, or occurrence of other mortality factors (Langtimm *et al.* 2006, p. 1026). However, there is limited information to confirm the significance of tropical storms as a threat.

#### Climate Change/Sea-Level Rise

The Intergovernmental Panel on Climate Change (IPCC) concluded that warming of the climate system is unequivocal (IPCC 2014, p. 3). The more extreme impacts from recent climate change include heat waves, droughts, accelerated snow and ice melt including permafrost warming and thawing, floods, cyclones, wildfires, and widespread changes in precipitation amounts (IPCC 2014, pp. 4, 6). Due to projected sea level rise (SLR) associated with climate change, coastal systems and low-lying areas will increasingly experience adverse impacts such as submergence, coastal flooding, and coastal erosion (IPCC 2014, p. 17). In response to ongoing climate change, many terrestrial, freshwater, and marine species have shifted their geographic

ranges, seasonal activities, and migration patterns (IPCC 2014, p. 4).

Although SLR is due in part to natural variability in the climate system, scientists attribute the majority of the observed increase in recent decades to human activities that contribute to ocean thermal expansion related to ocean warming, and melting of ice (Marcos and Amores 2014, pp. 2504–2505).

Trend data show increases in sea level have been occurring throughout the southeastern Atlantic and Gulf coasts, and, according to Mitchum (2011, p. 9), the overall magnitude in the region has been slightly higher than the global average. Measurements summarized for stations at various locations in Florida indicate SLR there has totaled approximately 200 millimeters (mm) (8 inches (in.)) over the past 100 years, with an average of about 3.0 mm per year (0.12 in. per year) since the early 1990s (Ruppert 2014, p. 2). The relatively few tidal gauges in Florida, Alabama, Georgia, South Carolina, and southern North Carolina also show increases, the largest being in South Carolina, Alabama, and parts of Florida (NOAA Web site <http://tidesandcurrents.noaa.gov/sltrends/sltrends.shtml>, accessed August 28, 2015).

Continued global SLR is considered virtually certain to occur throughout this century and beyond (Stocker, 2013, p. 100; Levermann *et al.* 2013, entire). Depending on the methods and assumptions used, however, the range of possible scenarios of global average SLR for the end of this century is relatively large, from a low of 0.2 meters (m) (approximately 8 in.) to a high of 2 m (approximately 78 in., *i.e.*, 6.6 feet (ft)) (Parris *et al.* 2012, pp. 2, 10–11). Although this relatively wide range reflects considerable uncertainty about the exact magnitude of change, it is notable that increases are expected in all cases, and at rates that will exceed the SLR observed since the 1970s (IPCC 2013, pp. 25–26). Given the large number and variety of climate change and SLR models, forecasts of the rate and extent of SLR vary significantly. Because of the variation in projections and uncertainties associated with manatee response to SLR, it will be important to continue monitoring manatee habitat use throughout the species' range.

Other possible effects of climate change include increases in the frequency of harmful algal blooms, increases in the frequency and intensity of storms, losses of warm-water refugia and possible decreases in the number of watercraft collisions. Warmer seas may



increase the frequency, duration, and magnitude of harmful algal blooms and cause blooms to start earlier and last longer. Increases in salinity could create more favorable conditions for other species; conversely, increases in storm frequency and extreme rainfall could offset the effects of salinity on algal growth (Edwards *et al.* 2012, p. 3).

Climate change models predict that the intensity of hurricanes will increase with increasing global mean temperature (Edwards *et al.* 2012, p. 4). Langtimm *et al.* (2006, entire) found that mean adult survival dropped significantly in years after intense hurricanes and winter storms. These decreases were thought to be due to tidal stranding, animals being swept out to sea, loss of forage, or emigration of animals out of affected areas (Langtimm *et al.* 2006, p. 1026).

For manatees in the southeastern United States, SLR could mean the loss of most of the major industrial warm-water sites and result in changes to natural warm-water sites. In the event of a projected SLR of 1 to 2 meters (3.3 to 6.6 feet) in 88 years (Rahmstorf 2010 and Parris *et al.* 2012 in Edwards *et al.* 2012, p. 5), SLR will inundate these sites and warm-water capacity could be lost. While power plants may not be in operation when SLR inundates their sites, the increased intensity and frequency of storms could interrupt plant operations and warm-water production. If storms result in the loss of a power plant, manatees that winter at that site could die in the event that they did not move to an alternate location (Edwards *et al.* 2012, p. 5). Increased intrusion of saltwater from SLR or storm surge coupled with reduced spring flows could reduce or eliminate the viability of natural springs used by wintering manatees (Edwards *et al.* 2012, p. 5).

Climate-change-induced loss of fishing habitat and boating infrastructure (docks, etc.), increases in storm frequency, and pollutants and changes in economics and human demographics could decrease the per capita number of boats operating in manatee habitat. If these changes were to occur, decreases in the numbers of boats operating in manatee habitat could reduce numbers of manatee–watercraft collisions (Edwards *et al.* 2012, p. 7).

Many complex factors with potentially negative consequences are likely to operate on the world's marine ecosystems as global climate change progresses. Conversely, climate change could potentially have a beneficial effect, as well. Therefore, there is uncertainty regarding how climate change may affect the manatee and its

habitat in the future (Hoegh-Guldberg and Bruno 2010 in Marsh *et al.* 2011, p. 313).

*Summary:* Threats (watercraft, fishing gear, water control structures, contaminants; harmful algal blooms, cold weather, loss of genetic diversity, tropical storms, and climate change) will continue to have an effect on West Indian manatees. The threats associated with increasing numbers of watercraft will require continued maintenance and enforcement of manatee protection areas, and the adoption of additional areas both inside and outside the United States will continue as needs become apparent. Increasing fishing efforts and the consequent increase of fishing gear in water will require continued efforts to maintain gear in a manatee-safe fashion, additional and continued gear clean-ups, and maintenance of the manatee rescue program to rescue entangled manatees. While most water control structures in the United States have been fitted to prevent impingements and crushings, new structures in the United States must be fitted to minimize impacts to manatees. Existing and new structures outside the United States should be fitted, as well. For manatees in Florida, harmful algal blooms and cold weather will continue to be major threats to this subspecies. Tropical storms and hurricanes will continue to have an effect on the West Indian manatee in most parts of its range. Projections of climate change and sea level rise impacts on West Indian manatees and their habitat are uncertain.

Both Castelblanco *et al.* (2012, entire) and Runge *et al.* (2015, entire) project increasing populations under these threats as they currently exist. Accordingly, we consider threats identified in Factor E to be current threats to the species. There is a high level of uncertainty regarding the overall effects of climate change on the species and its habitat. Thus, we consider the threats identified under this factor to be moderate.

### Conclusion

By definition, an endangered species is a “species which is in danger of extinction throughout all or a significant portion of its range” and a threatened species is a “species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” We believe that the West Indian manatee is no longer in danger of extinction throughout all of its range due to significant recovery efforts made throughout its range to address threats as well as a better understanding of

manatee population demographics. In the southeastern United States, where the largest population of manatees exists, the manatee population has likely grown, based on updated adult survival rate estimates and estimated growth rates (Runge *et al.* 2015, p. 19). Accordingly, we believe that the West Indian manatee should be reclassified as threatened. Each of these successes is discussed in more detail below.

Human causes of mortality and injury are being addressed throughout the species' range. Predominant causes include poaching, entanglement in fishing gear, and collisions with watercraft. Poaching has been eliminated in the southeastern United States and in Puerto Rico. Efforts to address poaching outside the United States vary in effectiveness, with successful efforts noted in areas with a significant enforcement presence. Entanglement in fishing gear continues throughout the species' range. In the southeastern United States, entangled manatees are rescued and very few deaths and serious injuries occur. In Puerto Rico, there have been few entanglements since 1986, when entanglements were first reported as a serious threat. Entanglements outside the United States are known to occur; however, the magnitude and severity of this threat is unknown.

Watercraft collisions are the predominant anthropogenic cause of death for manatees in the United States. The Service, other Federal agencies, and State and Commonwealth wildlife management agencies continue to be engaged in significant efforts to address and further reduce this threat. In Florida, a network of marked, enforced, manatee protection areas ensure that boat operators slow down to help avoid manatees. In Puerto Rico, manatee protection areas have not been designated, but a number of regulated manatee speed buoys are in place to better protect manatees. Watercraft collisions are known to kill manatees outside the United States; however, available information on the magnitude of this threat in other counties is limited.

Habitat fragmentation and loss are thought to be the greatest single threat to manatees outside the United States. Development activities in coastal and riverine areas destroy aquatic vegetation and block access to upriver reaches and freshwater. Within the United States, Federal, State, and Commonwealth agencies limit habitat losses and those activities that block access through regulatory processes. For example, the State of Florida and the Service rely on county MPPs to address impacts to

manatee habitat from installation of, for example, a boat dock or marina. In Florida, the other potential significant threat facing manatees is the loss of winter warm-water habitat. Federal and State agencies are working with the power industry and others to ensure a future warm-water network to sustain manatees into the future. While many strides have been made in this area, work continues to be done to fully address and reduce this threat, as described above in our review of the Florida manatee recovery plans. In addition, we must continue to address pending changes in the manatees' warm-water network (develop and implement strategies) and support the adoption of minimum flow regulations for remaining important springs used by manatees.

Available population estimates suggest that there may be as many as 13,142 manatees throughout the species' range (see Table 1). Estimates from countries outside the United States (6,250) are largely conjectural and are based on the opinions of local experts. Within the United States, Martin *et al.* (2015, p. 44) and Pollock *et al.* (2013, p. 8) describe population estimates of 6,350 manatees and 532 manatees in the southeastern United States and Puerto Rico, respectively.

Recent demographic analyses (through 2009) suggest a stable or increasing population of Florida manatees (Runge *et al.* 2015, entire) and demonstrate that Florida manatees are not likely to become extinct in the foreseeable future. Castelblanco-Martínez *et al.*'s (2012, pp. 129–143) PVA model for the West Indian manatee describes a metapopulation with positive growth. Runge *et al.* (2015, p. 13) predict that it is unlikely (<2.5 percent chance) that the Florida population of manatees will fall below 4,000 total individuals over the next 100 years, assuming current threats remain constant indefinitely.

There are numerous ongoing efforts to protect, conserve, and better understand West Indian manatees and their habitat throughout their range, as described in this proposed rule. The contribution of these recovery efforts to the current status of the species is significant. Some threats remain and will likely continue into the foreseeable future and need to be addressed as appropriate. However, they are not severe enough to indicate that the West Indian manatee is currently in danger of extinction. Given our review of the best scientific and commercial information available and analyses of threats and demographics, we conclude that the West Indian manatee no longer meets the Act's

definition of endangered and should be reclassified as threatened.

### Significant Portion of the Range

Because we have concluded that the West Indian manatee is a threatened species throughout all of its range, no portion of its range can be “significant” for purposes of the definitions of “endangered species” and “threatened species.” See the Service's Significant Portion of its Range (SPR) Policy (79 FR 37578, July 1, 2014).

### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing increases public awareness of threats to the West Indian manatee, and promotes conservation actions by Federal, State, and local governments in the United States, foreign governments, private organizations and groups, and individuals. The Act provides for possible land acquisition and cooperation with the State, and for recovery planning and implementation. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

A number of manatees occur in near-shore waters off Federal conservation lands and are consequently afforded some protection from development and large-scale habitat disturbance. West Indian manatees also occur in or offshore of a variety of State-owned properties, and existing State and Federal regulations provide protection on these sites. A significant number of manatees occur along shores or rivers of private lands. Through conservation partnerships, many of these use areas are protected through the owners' stewardship. In many cases, these partnerships have been developed through conservation easements, wetland restoration projects, and other conservation means.

Section 7(a) of the Act, as amended, and as implemented by regulations in title 50 of the Code of Federal Regulations (CFR) at part 402, requires Federal agencies to evaluate their actions with respect to the West Indian manatee within the United States or under U.S. jurisdiction. If a Federal action may adversely affect the manatee or its habitat, the responsible Federal agency must consult with the Service to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued

existence of the West Indian manatee. Federal action agencies that may be required to consult with us include but are not limited to the U.S. Army Corps of Engineers, the U.S. Coast Guard, the Environmental Protection Agency, and others, due to involvement in actions or projects such as permitting boat access facilities (marinas, boat ramps, etc.), dredge and fill projects, high-speed marine events, warm-water discharges, and many other activities.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered or threatened species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign listed species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

The Secretary has the discretion to prohibit by regulation with respect to any threatened species any act prohibited under section 9(a)(1) of the Act. Exercising this discretion, the Service developed general prohibitions (50 CFR 17.31) and exceptions to those prohibitions (50 CFR 17.32) under the Act that apply to most threatened species. Our regulations at 50 CFR 17.31 provide that all the prohibitions for endangered wildlife under 50 CFR 17.21, with the exception of 50 CFR 17.21(c)(5), will generally also be applied to threatened wildlife. These prohibitions make it illegal for any person subject to the jurisdiction of the United States to “take” (including to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt any of these) within the United States or upon the high seas, import or export, deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of a commercial activity, or to sell or offer for sale in interstate or foreign commerce, any endangered (and hence, threatened) wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies. These prohibitions would be applicable to the West Indian manatee if this rule is made final. The general provisions for issuing a permit for any activity otherwise prohibited with regard to threatened species are found at 50 CFR 17.32.

The Service may develop regulations tailored to the particular conservation

needs of a threatened species under section 4(d) of the Act if there are specific prohibitions and exceptions that would be necessary and advisable for the conservation of that particular species. In such cases, some of the prohibitions and exceptions under 50 CFR 17.31 and 17.32 may be appropriate for the species and incorporated into the regulations, but they may also be more or less restrictive than those general provisions. The Service believes the prohibitions and exceptions set out in 50 CFR 17.31 and 17.32 are most appropriate to address the particular conservation needs of the West Indian manatee at this time.

In Florida, questions regarding whether specific activities will constitute a violation of section 9 of the Act should be directed to the U.S. Fish and Wildlife Service, North Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). In Puerto Rico, questions regarding whether specific activities will constitute a violation of section 9 of the Act should be directed to the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (telephone 404-679-7101, facsimile 404-679-7081).

#### Effects of This Rulemaking

This proposed rule, if made final, would revise 50 CFR 17.11(h) to reclassify the West Indian manatee from endangered to threatened on the Federal List of Endangered and Threatened Wildlife. It would recognize that the West Indian manatee is no longer in danger of extinction throughout all or a significant portion of its range. However, this reclassification would not change the protection afforded to this species under the Act. In addition, even if the West Indian manatee is reclassified from endangered to threatened, it will still be considered depleted and strategic under the MMPA.

We are also proposing to amend the historical range column for the species within the List of Endangered and Threatened Wildlife (List) to clarify the range. As proposed, the text in that column would read: U.S.A. (Southeastern), Lesser and Greater Antilles (including Puerto Rico), Mexico, Central America, South America. The historical range information in the List is informational, not regulatory.

Anyone taking, attempting to take, or otherwise possessing this species, or parts thereof, in violation of section 9 of the Act or its implementing regulations, is subject to a penalty under section 11 of the Act. Pursuant to section 7 of the Act, Federal agencies must ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of the West Indian manatee.

If the West Indian manatee is listed as threatened and this proposed rule is made final, recovery actions directed at the West Indian manatee would continue to be implemented as outlined in the recovery plans (USFWS 1986 and 2001, entire). Highest priority recovery actions include: (1) Reducing watercraft collisions with manatees; (2) protecting habitat, including foraging and drinking water sites and, for the Florida subspecies, warm-water sites; and (3) reducing entanglements in fishing gear. Other recovery initiatives also include addressing harassment and illegal hunting in sites where these occur.

Finalization of this proposed rule would not constitute an irreversible commitment on our part. Reclassification of the West Indian manatee from threatened status back to endangered status would be possible if changes occur in management, population status, or habitat, or if other factors detrimentally affect or increase threats to the species.

#### Required Determinations

##### *National Environmental Policy Act*

We have determined that we do not need to prepare an environmental assessment or environmental impact statement, as defined in the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

##### *Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior Manual Chapter 512 DM 2, we have considered possible effects on and have notified the Native American Tribes within the range of the West Indian manatee about this proposal. They have been advised through a written informational mailing from the

Service. If future activities resulting from this proposed rule may affect Tribal resources, a Plan of Cooperation will be developed with the affected Tribe or Tribes.

##### *Clarity of This Regulation (E.O. 12866)*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, *etc.*

#### References Cited

A complete list of references cited is available on <http://www.regulations.gov> under Docket Number FWS-R4-ES-2015-0178 or upon request from the North Florida Ecological Services Field Office or Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Authors

The primary authors of this document are the staff members of the North Florida Ecological Services Office and Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

#### List of Subjects in 50 CFR Part 17

Endangered and Threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

#### Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

#### **PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

- 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entry for “Manatee, West Indian” under

“Mammals” in the List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*  
(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Manatee, West Indian.	<i>Trichechus manatus</i>	U.S.A. (South-eastern), Lesser and Greater Antilles (including Puerto Rico), Mexico, Central America, South America.	Entire .....	T	1, 3, ___	17.95(a)	17.108(a)
*	*	*	*	*	*		*

\* \* \* \* \*

Dated: December 18, 2015.  
**James W. Kurth,**  
*Director, U.S. Fish and Wildlife Service.*  
 [FR Doc. 2015–32645 Filed 1–7–16; 8:45 am]  
**BILLING CODE 4333–15–P**



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Part III

## Department of Energy

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10 CFR Parts 429 and 431

Energy Conservation Program: Energy Conservation Standards for Refrigerated Bottled or Canned Beverage Vending Machines; Final Rule

**DEPARTMENT OF ENERGY****10 CFR Parts 429 and 431**

[Docket Number EERE-2013-BT-STD-0022]

RIN 1904-AD00

**Energy Conservation Program: Energy Conservation Standards for Refrigerated Bottled or Canned Beverage Vending Machines**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including refrigerated bottled or canned beverage vending machines (beverage vending machines or BVM). EPCA also requires the U.S. Department of Energy (DOE) to periodically determine whether more-stringent standards would be technologically feasible and economically justified, and would save a significant amount of energy. In this final rule, DOE is amending the energy conservation standards for Class A and Class B beverage vending machines. DOE is also amending the definition for Class A equipment to more unambiguously differentiate Class A and Class B beverage vending machines. In addition, DOE is amending the definition of combination vending machine, is defining two new classes of combination vending machines, Combination A and Combination B, and is promulgating standards for those new classes. Finally, DOE is adopting new provisions that DOE will use to verify the appropriate equipment class and refrigerated volume during enforcement testing.

**DATES:** The effective date of this rule is March 8, 2016. Compliance with the new and amended standards established for beverage vending machines in this final rule is required on and after January 8, 2019. The incorporation by reference of certain material listed in this rule is approved by the Director of the Federal Register as of March 8, 2016.

**ADDRESSES:** The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at [www.regulations.gov](http://www.regulations.gov). All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. However, some documents listed in the

index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at: [www.regulations.gov/#!docketDetail;D=EERE-2013-BT-STD-0022](http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-STD-0022). The [www.regulations.gov](http://www.regulations.gov) Web page will contain instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact Ms. Brenda Edwards at (202) 586-2945 or by email: [Brenda.Edwards@ee.doe.gov](mailto:Brenda.Edwards@ee.doe.gov).

**FOR FURTHER INFORMATION CONTACT:** Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-2J, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 287-1692. Email: [refrigerated\\_beverage\\_vending\\_machines@ee.doe.gov](mailto:refrigerated_beverage_vending_machines@ee.doe.gov).

Ms. Sarah Butler, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW., Washington, DC, 20585-0121. Telephone: (202) 586-1777. Email: [Sarah.Butler@hq.doe.gov](mailto:Sarah.Butler@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** This final rule incorporates by reference into part 431 the following industry standard:

- ASTM E 1084-86 (Reapproved 2009), "Standard Test Method for Solar Transmittance (Terrestrial) of Sheet Materials Using Sunlight," approved April 1, 2009.

Copies of ASTM standards may be obtained from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959, (877) 909-2786, or go to [www.astm.org/](http://www.astm.org/).

See section IV.O for a further discussion of this standard.

Table of Contents

## I. Synopsis of the Final Rule

- A. Benefits and Costs to Customers
- B. Impact on Manufacturers
- C. National Benefits and Costs
- D. Conclusion

## II. Introduction

- A. Authority
- B. Background
  - 1. Current Standards
  - 2. History of Standards Rulemaking for Beverage Vending Machines

## III. General Discussion

- A. Equipment Classes and Scope of Coverage
- B. Test Procedure
- C. Compliance Dates
- D. Technological Feasibility
  - 1. General
  - 2. Maximum Technologically Feasible Levels
- E. Energy Savings
  - 1. Determination of Savings
  - 2. Significance of Savings
- F. Economic Justification

## 1. Specific Criteria

- a. Economic Impact on Manufacturers and Customers
- b. Savings in Operating Costs Compared To Increase in Price (LCC and PBP)
- c. Energy Savings
- d. Lessening of Utility or Performance of Equipment
- e. Impact of Any Lessening of Competition
- f. Need for National Energy Conservation
- g. Other Factors

## 2. Rebuttable Presumption

## IV. Methodology and Discussion of Related Comments

## A. Market and Technology Assessment

- 1. Equipment Classes
  - a. Class A and Class B Beverage Vending Machines
  - b. Combination Vending Machines
  - c. Definition of Transparent and Optional Test Method for Determining Equipment Classification
- 2. Machines Vending Perishable Goods
- 3. Market Characterization
- 4. Technology Options

## B. Screening Analysis

- 1. Screened-Out Technologies
  - 2. Remaining Technologies
- C. Engineering Analysis
- 1. Baseline Equipment and Representative Sizes
  - 2. Refrigerants
    - a. Refrigerants Used in the Analysis
    - b. DOE Approach
  - 3. Screened-In Technologies Not Implemented as Design Options
  - 4. Design Options Analyzed and Maximum Technologically Feasible Efficiency Level

## a. Glass Packs

## b. Evaporator Fan Motor Controls

## c. Coils

## d. Compressors

## e. Insulation and Vacuum Insulated Panels

## f. Lighting and Lighting Low Power Modes

## g. Fan Motors

## h. Performance of Design Option Packages

## 5. Manufacturer Production Costs

## D. Markups Analysis

## E. Energy Use Analysis

## F. Life-Cycle Cost and Payback Period

## Analysis

## 1. Customer Purchase Prices

## 2. Energy Prices

## 3. Maintenance, Repair, and Installation Costs

## 4. Equipment Lifetime

## 5. Discount Rates

## 6. Equipment Efficiency in the No-New-Standards Case

## 7. Split Incentives

## G. Shipments Analysis

## 1. Market Share by Equipment Class

## 2. Market Share by Refrigerant

## 3. High and Low Shipments Assumptions

## H. National Impact Analysis

## 1. Equipment Efficiency Trends

## 2. National Energy Savings

## a. Full-Fuel-Cycle Analysis

## 3. Net Present Value Analysis

## I. Customer Subgroup Analysis

## J. Manufacturer Impact Analysis

## 1. Overview

## 2. Government Regulatory Impact Model

- a. Government Regulatory Impact Model Key Inputs
- b. Government Regulatory Impact Model Scenarios
- 3. Discussion of Comments
- K. Emissions Analysis
- L. Monetizing Carbon Dioxide and Other Emissions Impacts
  - 1. Social Cost of Carbon
  - a. Monetizing Carbon Dioxide Emissions
  - b. Development of Social Cost of Carbon Values
  - c. Current Approach and Key Assumptions
  - 2. Social Cost of Other Air Pollutants
- M. Utility Impact Analysis
- N. Employment Impact Analysis
- O. Description of Materials Incorporated by Reference
- V. Analytical Results and Conclusions
  - A. Trial Standard Levels
  - B. Economic Justification and Energy Savings
    - 1. Economic Impacts on Individual Customers
      - a. Life-Cycle Cost and Payback Period
      - b. Customer Subgroup Analysis
      - c. Rebuttable Presumption Payback
    - 2. Economic Impacts on Manufacturers
      - a. Industry Cash Flow Analysis Results
      - b. Impacts on Direct Employment
      - c. Impacts on Manufacturing Capacity
      - d. Impacts on Subgroups of Manufacturers
      - e. Cumulative Regulatory Burden
    - 3. National Impact Analysis
      - a. Significance of Energy Savings
      - b. Net Present Value of Customer Costs and Benefits
      - c. Indirect Impacts on Employment
    - 4. Impact on Utility or Performance of Equipment
    - 5. Impact of Any Lessening of Competition
    - 6. Need of the Nation To Conserve Energy
    - 7. Other Factors
    - 8. Summary of National Economic Impacts
  - C. Conclusion
    - 1. Benefits and Burdens of TSLs Considered for BVM Standards
    - 2. Summary of Annualized Benefits and Costs of the Adopted Standards
- VI. Procedural Issues and Regulatory Review
  - A. Review Under Executive Orders 12866 and 13563
  - B. Review Under the Regulatory Flexibility Act
    - 1. Description of Estimated Number of Small Entities Regulated
    - 2. Description and Estimate of Compliance Requirements
    - 3. Duplication, Overlap, and Conflict With Other Rules and Regulations
    - 4. Significant Alternatives to the Rule
  - C. Review Under the Paperwork Reduction Act
  - D. Review Under the National Environmental Policy Act of 1969
  - E. Review Under Executive Order 13132
  - F. Review Under Executive Order 12988
  - G. Review Under the Unfunded Mandates Reform Act of 1995
  - H. Review Under the Treasury and General Government Appropriations Act, 1999
  - I. Review Under Executive Order 12630
  - J. Review Under the Treasury and General Government Appropriations Act, 2001
  - K. Review Under Executive Order 13211
  - L. Review Under the Information Quality Bulletin for Peer Review

- M. Review Under Section 32 of the Federal Energy Administration Act of 1974
- N. Congressional Notification
- VII. Approval of the Office of the Secretary

### I. Synopsis of the Final Rule

Title III, Part A<sup>1</sup> of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles.<sup>2</sup> These products include refrigerated bottled or canned beverage vending machines (beverage vending machines or BVM), the subject of this document. (42 U.S.C. 6295(v))<sup>3</sup>

Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) EPCA also provides that not later than 6 years after issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the equipment do not need to be amended, or a notice of proposed rulemaking including new proposed energy conservation standards. (42 U.S.C. 6295(m)(1))

In accordance with these and other statutory provisions discussed in this document, DOE is adopting new and amended energy conservation standards for beverage vending machines. The new and amended standards, which are described in terms of the maximum daily energy consumption (MDEC) as a function of refrigerated volume, are shown in Table I.1. Specifically, DOE is

<sup>1</sup> For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

<sup>2</sup> All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Public Law 114–11 (Apr. 30, 2015).

<sup>3</sup> Because Congress included beverage vending machines in Part A of Title III of EPCA, the consumer product provisions of Part A (not the industrial equipment provisions of Part A–1) apply to beverage vending machines. DOE placed the regulatory requirements specific to beverage vending machines in Title 10 of the Code of Federal Regulations (CFR), part 431, “Energy Efficiency Program for Certain Commercial and Industrial Equipment” as a matter of administrative convenience based on their type and will refer to beverage vending machines as “equipment” throughout this document because of their placement in 10 CFR part 431. Despite the placement of beverage vending machines in 10 CFR part 431, the relevant provisions of Title A of EPCA and 10 CFR part 430, which are applicable to all product types specified in Title A of EPCA, are applicable to beverage vending machines. See 74 FR 44914, 44917 (Aug. 31, 2009).

amending the energy conservation standards established by the 2009 BVM final rule for Class A and Class B beverage vending machines. In addition, DOE is establishing two new equipment classes at 10 CFR 431.292, Combination A and Combination B, as well as new energy conservation standards for those equipment classes. The new and amended standards adopted in this final rule will apply to all equipment listed in Table I.1 and manufactured in, or imported into, the United States starting on January 8, 2019.

TABLE I.1—ENERGY CONSERVATION STANDARDS FOR BEVERAGE VENDING MACHINES

[Compliance Starting January 8, 2019]

Equipment class *	New and amended energy conservation standards ** Maximum Daily Energy Consumption (MDEC) (kWh/day †)
Class A .....	$0.052 \times V + 2.43 \ddagger$
Class B .....	$0.052 \times V + 2.20 \ddagger$
Combination A ...	$0.086 \times V + 2.66 \ddagger$
Combination B ...	$0.111 \times V + 2.04 \ddagger$

\* See section IV.A.1 of this final rule for a discussion of equipment classes.

\*\* “V” is the representative value of refrigerated volume (ft<sup>3</sup>) of the BVM model, as measured in accordance with the method for determining refrigerated volume adopted in the recently amended DOE BVM test procedure and appropriate sampling plan requirements at 10 CFR 429.52(a)(3). 80 FR 45758 (July 31, 2015). See section III.B and V.A of this final rule for more details.

† Kilowatt hours per day.

‡ Trial Standard Level (TSL) 3.

#### A. Benefits and Costs to Customers

Table I.2 and Table I.3 present DOE’s evaluation of the economic impacts of the new and amended energy conservation standards on customers, or purchasers, of beverage vending machines, as measured by the average life-cycle cost (LCC) savings and the simple payback period (PBP).<sup>4</sup> This

<sup>4</sup> The average LCC savings are measured relative to the efficiency distribution in the no-new-standards case, which depicts the market in the compliance year (see section IV.F.6 of this final rule). The simple PBP, which is designed to compare specific efficiency levels, is measured relative to the baseline model (see section IV.C.1 of this final rule). DOE acknowledges that not all BVM customers are also the entity that is responsible for the energy costs of operating the beverage vending machine in the field. However, there are many different contracting mechanisms for leasing and operating beverage vending machines, which are influenced by many factors, including the capital cost of the machine and the annual operating costs. As such, DOE believes that a simple “customer” LCC-model accurately demonstrates the cost-effectiveness of the potential energy efficiency improvements resulting from any new or amended

Continued

analysis is based upon beverage vending machines that use either CO<sub>2</sub> (R-744) or propane (R-290). These refrigerants were selected for analysis based on the recent actions of the U.S. Environmental Protection Agency’s (EPA) Significant New Alternatives Policy (SNAP) program,<sup>5</sup> including the listing of propane as acceptable in BVM

applications under Rule 19 (80 FR 19454, 19491 (April 10, 2015)) and the change of status of R-134a to unacceptable in BVM applications beginning January 1, 2019 under Rule 20 (80 FR 42870, 42917–42920 (July 20, 2015)). The selection of these refrigerants was also guided by visible trends within the BVM marketplace and

feedback from interested parties during public meetings, in written comments, and during manufacturer interviews.

Where applicable, the average LCC savings are positive for all equipment classes and refrigerants, and the PBP is less than the average lifetime of the equipment, which is estimated to be 13.5 years.

TABLE I.2—IMPACTS OF NEW AND AMENDED ENERGY CONSERVATION STANDARDS ON CUSTOMERS OF BEVERAGE VENDING MACHINES—CO<sub>2</sub> REFRIGERANT

Equipment class	Life-cycle cost savings (2014\$)	Payback period (years)
Class A .....	65	2.0
Class B .....	42	1.1
Combination A .....	990	0.8
Combination B .....	597	0.5

TABLE I.3—IMPACTS OF NEW AND AMENDED ENERGY CONSERVATION STANDARDS ON CUSTOMERS OF BEVERAGE VENDING MACHINES—PROPANE REFRIGERANT

Equipment class	Life-cycle cost savings (2014\$)	Payback period (years)
Class A .....	* 0	1.1
Class B .....	361	0.5
Combination A .....	772	0.7
Combination B .....	610	0.3

\* In this case, \$0 savings is a result of all customers in the no-new-standards efficiency distribution already achieving the efficiency standard.

DOE’s analysis of the impacts of the new and amended standards on customers is described in section V of this document.

*B. Impact on Manufacturers*

The industry net present value (INPV) is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2015 to 2048). Using a real discount rate of 8.5 percent, DOE estimates that the (INPV) for manufacturers of beverage vending machines in the case without amended standards is \$94.8 million in 2014\$. Under the adopted standards, DOE expects that manufacturers may lose up to 0.8 percent of this INPV, which is approximately \$0.7 million.<sup>6</sup> Additionally, based on DOE’s

interviews with the manufacturers of beverage vending machines, DOE does not expect significant impacts on manufacturing capacity or loss of employment for the industry as a whole to result from the standards for beverage vending machines.

DOE’s analysis of the impacts of the adopted standards on manufacturers is described in section IV.J of this document.

*C. National Benefits and Costs<sup>7</sup>*

DOE’s analyses indicate that the adopted energy conservation standards for beverage vending machines would save a significant amount of energy. Relative to the case without amended standards, the lifetime energy savings for Class A, Class B, Combination A, and Combination B beverage vending

machines purchased in the 30-year period that begins in the anticipated year of compliance with the new and amended standards (2019–2048) amount to 0.122 quadrillion Btu (quads).<sup>8</sup> This represents a savings of 16 percent relative to the energy use of this equipment in the case without amended standards (referred to as the “no-new-standards case”).<sup>9</sup>

The cumulative net present value (NPV) of total customer costs and savings of the standards for beverage vending machines range from \$0.21 billion (at a 7-percent discount rate) to \$0.51 billion (at a 3-percent discount rate).<sup>10</sup> This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased equipment costs for

standards, regardless of by whom the costs and benefits are borne.

<sup>5</sup> The EPA’s SNAP program, which is the U.S. government regulatory program responsible for maintaining the list of alternatives to ozone-depleting substances allowed for use within specific applications in the United States, has taken two rulemaking actions that concern refrigerants for the U.S. refrigerated vending machine market. See section IV.C.2 of this final rule for more details.

<sup>6</sup> All monetary values in section I.B of this final rule are expressed in 2014 dollars; discounted values are discounted to 2014 unless explicitly stated otherwise.

<sup>7</sup> All monetary values in this section are expressed in 2014 dollars and, where appropriate, are discounted to 2015 unless explicitly stated otherwise. Energy savings in this section refer to the full-fuel-cycle (FFC) savings (see section IV.H for discussion).

<sup>8</sup> A quad is equal to 10<sup>15</sup> British thermal units (Btu). The quantity refers to FFC energy savings. FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.*, coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, see section IV.H.1.

<sup>9</sup> The no-new-standards case represents a mix of efficiencies above the minimum efficiency level (EL 0). Please see section IV.F.6 for a more detail description of associated assumptions.

<sup>10</sup> These discount rates are used in accordance with the Office of Management and Budget (OMB) guidance to Federal agencies on the development of regulatory analysis (OMB Circular A–4, September 17, 2003), and section E, “Identifying and Measuring Benefits and Costs,” therein. Further details are provided in section IV.H of this final rule.



beverage vending machines purchased in 2019–2048.

In addition, the standards for beverage vending machines are projected to yield significant environmental benefits. DOE estimates that the standards would result in cumulative greenhouse gas emission reductions (over the same period as for energy savings) of 7 million metric tons (Mt)<sup>11</sup> of carbon dioxide (CO<sub>2</sub>), 4 thousand tons of sulfur dioxide (SO<sub>2</sub>), 13 thousand tons of nitrogen oxides (NO<sub>x</sub>), 32 thousand tons of methane (CH<sub>4</sub>), 0.09 thousand tons of nitrous oxide (N<sub>2</sub>O), and 0.02 tons of mercury (Hg).<sup>12</sup> The cumulative

reduction in CO<sub>2</sub> emissions through 2030 amounts to 1.16 Mt, which is equivalent to the emissions resulting from the annual electricity use of more than 160,000 homes.

The value of the CO<sub>2</sub> reductions is calculated using a range of values per metric ton of CO<sub>2</sub> (otherwise known as the Social Cost of Carbon, or SCC) developed by a Federal interagency process.<sup>13</sup> The derivation of the SCC values is discussed in section IV.L of this final rule. Using discount rates appropriate for each set of SCC values, DOE estimates that the net present monetary value of the CO<sub>2</sub> emissions

reduction (not including CO<sub>2</sub> equivalent emissions of other gases with global warming potential) is between \$49 million and \$701 million, with a value of \$230 million using the central SCC case represented by \$40.0 per metric ton in 2015. DOE also estimates that the net present monetary value of the NO<sub>x</sub> emissions reduction to be \$16 million at a 7-percent discount rate, and \$42.0 million at a 3-percent discount rate.<sup>14</sup>

Table I.4 summarizes the national economic benefits and costs expected to result from the adopted standards for beverage vending machines.

TABLE I.4—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF NEW AND AMENDED ENERGY CONSERVATION STANDARDS FOR BEVERAGE VENDING MACHINES\*

Category	Present value (million 2014\$)	Discount rate (%)
<b>Benefits</b>		
Customer Operating Cost Savings .....	225	7
	542	3
CO <sub>2</sub> Reduction Monetized Value (\$12.2/metric ton case)** .....	49	5
CO <sub>2</sub> Reduction Monetized Value (\$40.0/metric ton case)** .....	230	3
CO <sub>2</sub> Reduction Monetized Value (\$62.3/metric ton case)** .....	366	2.5
CO <sub>2</sub> Reduction Monetized Value (\$117/metric ton case)** .....	701	3
NO <sub>x</sub> Reduction Monetized Value † .....	16	7
	42	3
Total Benefits ‡ .....	471	7
	814	3
<b>Costs</b>		
Customer Incremental Installed Costs .....	18	7
	34	3
<b>Net Benefits</b>		
Including CO <sub>2</sub> and NO <sub>x</sub> † Reduction Monetized Value ‡ .....	453	7
	780	3

\* This table presents the costs and benefits associated with beverage vending machines shipped in 2019–2048. These results include benefits to customers that accrue after the last year of analyzed shipments (2048) from the equipment purchased during the 30-year analysis period. The costs account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule.

\*\* The CO<sub>2</sub> values represent global monetized values of the SCC, in 2014\$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5-percent, 3-percent, and 2.5-percent discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3-percent discount rate. The SCC time series used by DOE incorporates an escalation factor. The value for NO<sub>x</sub> is the average of high and low values found in the literature.

† The \$/ton values for NO<sub>x</sub> are described in section IV.L.

‡ Total benefits for both the 3-percent and 7-percent cases are derived using the series corresponding to average SCC with a 3-percent discount rate (\$40.0/metric ton case).

<sup>11</sup> A metric ton is equivalent to 1.1 short tons. Results for NO<sub>x</sub> and Hg are presented in short tons.

<sup>12</sup> DOE calculated emissions reductions relative to the no-new-standards case, which reflects key assumptions in the *Annual Energy Outlook 2015* (AEO2015) Reference case, which generally represents current legislation and environmental regulations for which implementing regulations were available as of October 31, 2014.

<sup>13</sup> *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866*. Interagency Working Group on Social Cost of Carbon, United States Government. May 2013; revised November 2013. Available at [www.whitehouse.gov/sites/default/files/omb/assets/](http://www.whitehouse.gov/sites/default/files/omb/assets/)

[infomag/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf](http://www3.epa.gov/ttnecas1/regdata/RIAs/111dproposalRIAfinal0602.pdf).

<sup>14</sup> DOE estimated the monetized value of NO<sub>x</sub> emissions reductions using benefit per ton estimates from the *Regulatory Impact Analysis for the Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants*, published in June 2014 by EPA's Office of Air Quality Planning and Standards. (Available at <http://www3.epa.gov/ttnecas1/regdata/RIAs/111dproposalRIAfinal0602.pdf>.) See section IV.L.2 for further discussion. For the monetized NO<sub>x</sub> benefits associated with PM<sub>2.5</sub> in DOE's primary estimate, the benefit-per-ton values are based on an estimate of premature mortality derived from the

ACS study (Krewski et al. Extended Follow-Up and Spatial Analysis of the American Cancer Society Study Linking Particulate Air Pollution and Mortality. 2009), which is the lower of the two EPA central tendencies. DOE is using the lower value as its primary estimate to be conservative when making the policy decision concerning whether a particular standard level is economically justified. DOE also estimated monetized NO<sub>x</sub> benefits used EPA's higher benefit-per-ton estimates, and the overall benefits are over two times larger (see Table V.41). See chapter 14 of the TSD for further description of EPA's low and high values and the study mentioned above. DOE is currently investigating valuation of avoided Hg and SO<sub>2</sub> emissions.

The benefits and costs of the adopted standards for beverage vending machines sold in 2019–2048 can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are the sum of (1) the national economic value of the benefits in reduced operating costs, minus (2) the increases in equipment purchase prices and installation costs, plus (3) the value of the benefits of CO<sub>2</sub> and NO<sub>x</sub> emission reductions, all annualized.<sup>15</sup>

Although the value of operating cost savings and CO<sub>2</sub> emission reductions are both important, two issues are relevant. First, the national operating cost savings are domestic U.S. customer monetary savings that occur as a result of market transactions, whereas the value of CO<sub>2</sub> reductions is based on a global value. Second, the assessments of operating cost savings and CO<sub>2</sub> savings are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of beverage vending machines shipped in

2019–2048. Because CO<sub>2</sub> emissions have a very long residence time in the atmosphere,<sup>16</sup> the SCC values in future years reflect future CO<sub>2</sub>-emissions impacts that continue beyond 2100.

Estimates of annualized benefits and costs of the adopted standards are shown in Table I.5. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO<sub>2</sub> reduction (for which DOE used a 3-percent discount rate along with the SCC series that has a value of \$40.0 per metric ton in 2015),<sup>17</sup> the estimated cost of the standards in this rule is \$1.8 million per year in increased equipment costs, while the estimated annual benefits are \$22.2 million in reduced equipment operating costs, \$12.8 million in CO<sub>2</sub> reductions, and \$1.6 million in reduced NO<sub>x</sub> emissions. In this case, the net benefit amounts to \$35 million per year. Using a 3-percent discount rate for all benefits and costs and the SCC series that has a value of \$40.0 per metric ton in 2015, the estimated cost of the standards is \$1.9

million per year in increased equipment costs, while the estimated annual benefits are \$30.2 million per year in reduced operating costs, \$12.8 million in CO<sub>2</sub> reductions, and \$2.3 million in reduced NO<sub>x</sub> emissions. In this case, the net benefit amounts to \$43 million per year.

DOE also calculated the low net benefits and high net benefits estimates by calculating the operating cost savings and shipments at the AEO2015 Low Economic Growth case and High Economic Growth case scenarios, respectively. The low and high benefits for incremental installed costs were derived using the low and high price learning scenarios. In addition, the low and high benefits estimates reflect low and high shipments scenarios (see section IV.G.3 of this final rule). The net benefits and costs for low and high net benefits estimates were calculated in the same manner as the primary estimate by using the corresponding values of operating cost savings and incremental installed costs.

TABLE I.5—ANNUALIZED BENEFITS AND COSTS OF NEW AND AMENDED STANDARDS FOR BEVERAGE VENDING MACHINES\*

	Discount rate	million 2014\$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
<b>Benefits</b>				
Customer Operating Cost Savings ....	7% .....	22 .....	16 .....	27
	3% .....	30 .....	21 .....	36
CO <sub>2</sub> Reduction Monetized Value (\$12.2/metric ton case)**	5% .....	4 .....	3 .....	4
CO <sub>2</sub> Reduction Monetized Value (\$40.0/metric ton case)**	3% .....	13 .....	9 .....	14
CO <sub>2</sub> Reduction Monetized Value (\$62.3/metric ton case)**	2.5% .....	19 .....	14 .....	21
CO <sub>2</sub> Reduction Monetized Value (\$117/metric ton case)**	3% .....	39 .....	29 .....	44
NO <sub>x</sub> Reduction Monetized Value † ...	7% .....	2 .....	1 to 3 .....	4
	3% .....	2 .....	2 to 4 .....	6
Total Benefits ‡ .....	7% range .....	28 to 63 .....	20 to 46 .....	36 to 75
	7% .....	37 .....	26 .....	46
	3% range .....	36 to 69 .....	25 to 51 .....	46 to 86
	3% .....	45 .....	32 .....	56
<b>Costs</b>				
Incremental Equipment Costs .....	7% .....	1.79 .....	1.38 .....	2.10
	3% .....	1.89 .....	1.42 .....	2.13
<b>Net Benefits</b>				
Total ‡ .....	7% range .....	26 to 61 .....	18 to 44 .....	34 to 73
	7% .....	35 .....	25 .....	44

<sup>15</sup> To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2015, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (e.g., 2020 or 2030), and then discounted the present value from each year to 2015. The calculation uses discount rates of 3 and

7 percent for all costs and benefits except for the value of CO<sub>2</sub> reductions, for which DOE used case-specific discount rates, as shown in Table I.4. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year that yields the same present value.

<sup>16</sup> The atmospheric lifetime of CO<sub>2</sub> is estimated of the order of 30–95 years. Jacobson, MZ. Correction

to 'Control of fossil-fuel particulate black carbon and organic matter, possibly the most effective method of slowing global warming,' *J. Geophys. Res.* 2005. 110. pp. D14105.

<sup>17</sup> DOE used a 3-percent discount rate because the SCC values for the series used in the calculation were derived using a 3-percent discount rate (see section 0).

TABLE I.5—ANNUALIZED BENEFITS AND COSTS OF NEW AND AMENDED STANDARDS FOR BEVERAGE VENDING MACHINES\*—Continued

	Discount rate	million 2014\$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
	3% range .....	34 to 70 .....	24 to 50 .....	44 to 84
	3% .....	43 .....	31 .....	54

\* This table presents the annualized costs and benefits associated with beverage vending machines shipped in 2019–2048. These results include benefits to customers that accrue after the last year of analyzed shipments (2048) from the equipment purchased in during the 30-year analysis period. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The primary, low benefits, and high benefits estimates utilize projections of energy prices from the AEO2015 Reference case, Low Economic Growth case, and High Economic Growth case, respectively as well as the default shipments scenario along with the low and high shipments scenarios. In addition, incremental equipment costs reflect a medium decline rate for projected equipment price trends in the primary estimate, a low decline rate for projected equipment price trends in the low benefits estimate, and a high decline rate for projected equipment price trends in the high benefits estimate. The methods used to derive projected price trends are explained in appendix 8C of the technical support document (TSD).

\*\* The CO<sub>2</sub> values represent global monetized SCC values, in 2014\$, in 2015 under several scenarios. The first three cases use the averages of SCC distributions calculated using 5-percent, 3-percent, and 2.5-percent discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3-percent discount rate. The SCC time series incorporates an escalation factor.

† The \$/ton values used for NO<sub>x</sub> are described in section IV.L.2. The Primary and Low Benefits Estimates used the values at the low end of the ranges estimated by EPA, while the High Benefits Estimate uses the values at the high end of the ranges.

‡ Total benefits for both the 3-percent and 7-percent cases are derived using the series corresponding to the average SCC with a 3-percent discount rate (\$40.0/metric ton case). In the rows labeled “7% plus CO<sub>2</sub> range” and “3% plus CO<sub>2</sub> range,” the operating cost and NO<sub>x</sub> benefits are calculated using the labeled discount rate, and those values are added to the full range of CO<sub>2</sub> values.

DOE’s analysis of the national impacts of the adopted standards is described in section V.B.3 of this final rule.

**D. Conclusion**

Based on the analyses culminating in this final rule, DOE found the benefits to the nation of the standards (energy savings, customer LCC savings, positive NPV of customer benefit, and emission reductions) outweigh the burdens (loss of INPV and LCC increases for some users of these equipment). DOE has concluded that the standards in this final rule represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in significant conservation of energy.

DOE further notes that equipment achieving these standard levels is already commercially available for Class A and Class B beverage vending machines. While DOE does not have certification data for combination equipment to determine the existence or extent of equipment meeting the adopted standard levels, DOE believes that the standard levels adopted for combination equipment are reasonable as they are based on technology options that are widely available in the BVM market today (see section III.D). DOE acknowledges that equipment using the SNAP-approved refrigerants (*i.e.*, CO<sub>2</sub> and propane) meeting the current or adopted standard levels is not available for all equipment classes, due to the limited use of CO<sub>2</sub> as a refrigerant to date and the fact that propane has only recently been approved for use in BVM applications. 80 FR 19454, 19491 (April 10, 2015).

However, DOE notes that Class B beverage vending machines using CO<sub>2</sub> are currently available. In addition, Class A and Class B equipment that meets the new and amended standard levels is currently available, although such equipment may not use refrigerants that will be acceptable under EPA SNAP at the time of compliance with these new and amended standards. While DOE acknowledges that industry experience with SNAP-compliant refrigerants is limited, DOE believes that the existing industry experience in improving the efficiency of R-134a-based equipment is applicable and transferable to equipment using CO<sub>2</sub> or propane as a refrigerant. DOE has addressed the technical feasibility and economic implications of meeting the new and amended standard levels utilizing CO<sub>2</sub> and propane refrigerants in the analyses presented in this final rule, and based on these analyses, DOE has concluded that the benefits of the new and amended standards to the nation (energy savings, positive NPV of customer benefits, customer LCC savings, and emission reductions) outweigh the burdens (loss of INPV for manufacturers).

DOE also considered more-stringent energy efficiency levels as potential standards. However, DOE concluded that the potential burdens of the more-stringent energy efficiency levels would outweigh the projected benefits. Based on consideration of the public comments DOE received in response to the 2015 BVM energy conservation standards notice of proposed rulemaking (2015 BVM ECS NOPR) and

related information collected and analyzed during the course of this rulemaking effort, DOE is adopting MDEC levels, in terms of kWh/day, that are less-stringent than the new and amended standards proposed in the NOPR and represent the standard levels resulting in the maximum economic benefits for the nation.

**II. Introduction**

The following section briefly discusses the statutory authority underlying this final rule, as well as some of the relevant historical background related to the establishment of amended and new standards for beverage vending machines.

**A. Authority**

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (codified as 42 U.S.C. 6291–6309) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances (collectively referred to as “covered products”), which includes the beverage vending machines that are the subject of this rulemaking. (42 U.S.C. 6291(40)) As part of this program, EPCA directed DOE to prescribe energy conservation standards for beverage vending machines. (42 U.S.C. 6295(v)) In addition, under 42 U.S.C. 6295(m), DOE must periodically review its established energy conservation standards for the covered equipment. This final rule fulfills these statutory requirements.

Pursuant to EPCA, DOE’s energy conservation program for covered

equipment consists essentially of four parts: (1) Testing; (2) labeling; (3) the establishment of Federal energy conservation standards; and (4) certification and enforcement procedures. The Secretary or the Federal Trade Commission, as appropriate, may prescribe labeling requirements for beverage vending machines. (42 U.S.C. 6294(a)(5)(A)) Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of covered equipment. (42 U.S.C. 6293) Manufacturers of covered equipment must use the prescribed DOE test procedure as the basis for certifying to DOE that their equipment complies with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of that equipment. (42 U.S.C. 6293(c) and 6295(s)) Similarly, DOE must use these test procedures to determine whether the equipment complies with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s))

DOE updated its test procedure for beverage vending machines in a final rule published July 31, 2015 (2015 BVM test procedure final rule). 80 FR 45758. In the 2015 BVM test procedure final rule, DOE adopted several amendments and clarifications to the DOE test procedure in appendix A and appendix B of subpart Q of 10 CFR part 431. As specified in the 2015 BVM test procedure final rule, manufacturers of beverage vending machines are required to use appendix B to demonstrate compliance with any new and amended energy conservation standards adopted as a result of this rulemaking.

DOE must follow specific statutory criteria for prescribing new or amended standards for covered equipment, including beverage vending machines. Any new or amended standard for a covered piece of equipment must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and (3)(B)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)) Moreover, DOE may not prescribe a standard: (1) For certain equipment, including beverage vending machines, if no test procedure has been established for the equipment, or (2) if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(A)–(B))

In deciding whether a standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

(1) The economic impact of the standard on manufacturers and consumers of the equipment subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered equipment in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered equipment that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered equipment likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a piece of equipment complying with an energy conservation standard level will be less than three times the value of the energy (and, as applicable, water) savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA, as codified, also contains what is known as an “anti-backsliding” provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered equipment type. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered equipment type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the

same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for covered equipment that has two or more subcategories. DOE must specify a different standard level for a type or class of equipment that has the same function or intended use if DOE determines that equipment within such group: (A) Consume a different kind of energy from that consumed by other covered equipment within such type (or class); or (B) have a capacity or other performance-related feature which other equipment within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for certain equipment, DOE must consider such factors as the utility to the consumer of such a feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2)) In this final rule, DOE is prescribing energy conservation standards for different classes of beverage vending machines and DOE’s basis for establishing such separate classes is discussed in this final rule.

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6297(d)).

Finally, pursuant to EPCA any final rule for new or amended energy conservation standards promulgated after July 1, 2010, must address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for any covered equipment after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into the standard, or, if that is not feasible, adopt a separate standard for such energy use for that equipment. (42 U.S.C. 6295(gg)(3)(A)–(B))

DOE reviewed the operating modes available for beverage vending machines and determined that this equipment does not have operating modes that meet the definition of standby mode or off mode, as established at 42 U.S.C. 6295(gg)(3). Specifically, beverage

vending machines are typically always providing at least one main function—refrigeration. (42 U.S.C. 6295(gg)(1)(A)) DOE recognizes that in a unique equipment design, the low power mode includes disabling the refrigeration system, while for other equipment the low power mode controls only elevate the thermostat set point. Because low power modes still include some amount of refrigeration for the vast majority of equipment, DOE believes that such a mode does not constitute a “standby mode,” as defined by EPCA, for beverage vending machines. Therefore, DOE believes that beverage vending

machines do not operate under standby and off mode conditions as defined in EPCA, and that the energy use of a beverage vending machine is captured in any standard established for active mode energy use. As such, the new and amended energy conservation standards adopted in this final rule do not specifically address standby mode or off mode energy consumption for the equipment.

*B. Background*

1. Current Standards

In a final rule published on August 31, 2009 (henceforth referred to as the

2009 BVM final rule), DOE prescribed the current energy conservation standards for beverage vending machines. 74 FR 44914 (Aug. 31, 2009). The 2009 BVM final rule established energy conservation standards for Class A and Class B beverage vending machines, with a compliance date of August 31, 2012, as shown in Table II.1. DOE also established a class of combination machines, but did not set standards for combination machines, instead reserving a place for possible development of future standards for that equipment.

TABLE II.1—ENERGY CONSERVATION STANDARDS FOR BEVERAGE VENDING MACHINES, PRESCRIBED BY THE 2009 BVM FINAL RULE—COMPLIANCE DATE AUGUST 31, 2012

Class	Definition	Maximum daily energy consumption
A .....	Class A means a refrigerated bottled or canned beverage vending machine that is fully cooled, and is not a combination vending machine.	$0.055 \times V + 2.56$ .
B .....	Class B means any refrigerated bottled or canned beverage vending machine not considered to be Class A, and is not a combination vending machine.	$0.073 \times V + 3.16$ .
Combination .....	Combination means a refrigerated bottled or canned beverage vending machine that also has non-refrigerated volumes for the purpose of vending other, non-“sealed beverage” merchandise.	[reserved].

The 2009 BVM final rule document is currently available at [www.regulations.gov/#!documentDetail;D=EERE-2006-STD-0125-0005](http://www.regulations.gov/#!documentDetail;D=EERE-2006-STD-0125-0005).

2. History of Standards Rulemaking for Beverage Vending Machines

EPCA directed the Secretary to issue, by rule, no later than August 8, 2009, energy conservation standards for beverage vending machines. (42 U.S.C. 6295 (v)) On August 31, 2009, DOE issued a final rule establishing performance standards for beverage vending machines to complete the first required rulemaking cycle. 74 FR 44914.

DOE conducted this energy conservation standards rulemaking pursuant to 42 U.S.C. 6295(m), which requires that within 6 years of issuing any final rule establishing or amending a standard, DOE shall publish either a notice of determination that amended standards are not needed or a NOPR proposing amended standards.

In initiating this rulemaking, DOE prepared a framework document, “Energy Conservation Standards Rulemaking Framework Document for Refrigerated Beverage Vending Machines” (framework document), which describes the procedural and analytical approaches DOE anticipates using to evaluate energy conservation standards for beverage vending

machines. DOE published a notice that announced both the availability of the framework document and a public meeting to discuss the proposed analytical framework for the rulemaking. That notice also invited written comments from the public. 78 FR 33262 (June 4, 2013). That document is available at [www.regulations.gov/#!docketDetail;D=EERE-2013-BT-STD-0022](http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-STD-0022).

DOE held the framework public meeting on June 20, 2013, at which it (1) presented the contents of the framework document; (2) described the various analyses DOE planned to conduct during the rulemaking; (3) sought comments from interested parties on these subjects; and (4) in general, sought to inform interested parties about, and facilitate their involvement in, the rulemaking. Major issues discussed at the public meeting included: (1) Equipment classes, (2) analytical approaches and methods used in the rulemaking; (3) impact of standards and burden on manufacturers; (5) technology options; (6) distribution channels and shipments; (7) impacts of outside regulations; and (8) environmental issues. At the meeting and during the comment period on the framework document, DOE received many comments that helped it identify and resolve issues pertaining to

beverage vending machines relevant to this rulemaking.

DOE then gathered additional information and performed preliminary analyses to help review standards for this equipment. DOE published a notice to announce the availability of the preliminary analysis TSD and a public meeting to discuss the preliminary analysis results. 79 FR 46379 (Aug. 8, 2014). In the preliminary analysis, DOE discussed and requested comment on the tools and methods DOE used in performing its preliminary analysis, as well as analyses results. DOE also sought comments concerning other relevant issues that could affect potential amended standards for beverage vending machines. *Id.*

The preliminary analysis provided an overview of DOE’s technical and economic analyses supporting new and amended standards for beverage vending machines, discussed the comments DOE received in response to the framework document, and addressed issues raised by those comments. The preliminary analysis TSD also described the analytical framework that DOE used (and continues to use) in considering new and amended standards for beverage vending machines, including a description of the methodology, the analytical tools, and the relationships between the various analyses that are

part of this rulemaking. Additionally, the preliminary analysis TSD presented in detail each analysis that DOE had performed for this equipment up to that point, including descriptions of inputs, data sources, methodologies, and results. These analyses included (1) the market and technology assessment, (2) the screening analysis, (3) the engineering analysis, (4) the energy use analysis, (5) the markups analysis, (6) the LCC analysis, (7) the PBP analysis, (8) the shipments analysis, (9) the national impact analysis (NIA), and (10) a preliminary manufacturer impact analysis (MIA).

The preliminary TSD that presents the methodology and results of each of these analyses is available at [www.regulations.gov/](http://www.regulations.gov/)

*#!docketDetail;D=EERE-2013-BT-STD-0022*. In this final rule, DOE is presenting additional and revised analysis in all of these areas.

The public meeting to review the preliminary analysis took place on September 16, 2014 (preliminary analysis public meeting). At the preliminary analysis public meeting, DOE presented the methodologies and results of the analyses prescribed in the preliminary analysis TSD. Comments received in response to the preliminary analysis helped DOE identify and resolve issues related to the preliminary analyses and helped refine the analyses for beverage vending machines.

DOE presented its updated analyses and proposed new and amended standard levels in the 2015 BVM ECS NOPR, which DOE published on August 19, 2015. 80 FR 50462 (Aug. 19, 2015). On September 29, 2015, DOE held a public meeting to discuss the 2015 BVM ECS NOPR and request comments on DOE's proposal (BVM ECS NOPR public meeting). DOE received multiple comments from interested parties and considered these comments in the preparation of the final rule. In response to DOE's 2015 BVM ECS NOPR, several interested parties requested additional time to prepare their written comments. (AMS, No. 45 at p. 1; NAMA, No. 44 at p. 1; Royal Vendors, No. 46 at p. 1; and Coca-Cola, No. 49 at p. 1).<sup>18</sup> To accommodate this request, DOE issued a notice to reopen the 2015 BVM ECS

NOPR comment period on October 23, 2015 until November 23, 2015. 80 FR 64370 (Oct. 23, 2015). Relevant comments received during both comment periods and the BVM ECS NOPR public meeting, as well as DOE's responses, are provided throughout this document.

### III. General Discussion

DOE is amending standards for Class A and Class B beverage vending machines. DOE is also amending the definition for Class A equipment to more unambiguously differentiate Class A and Class B beverage vending machines. In addition, DOE is amending the definition of combination vending machine, creating two classes of combination vending machine equipment, and promulgating standards for those classes. In the subsequent sections, DOE discusses the scope of coverage, test procedure, compliance dates, technical feasibility, energy savings, and economic justification of the new and amended standards.

#### A. Equipment Classes and Scope of Coverage

EPCA defines a beverage vending machine as "a commercial refrigerator<sup>19</sup> that cools bottled or canned beverages and dispenses the bottled or canned beverages on payment." (42 U.S.C. 6291(40))

When evaluating and establishing energy conservation standards, DOE divides covered equipment into equipment classes by the type of energy used or by capacity or other performance-related features that justifies a different standard. In making a determination whether a performance-related feature justify differing standards, DOE must consider such factors as the utility to the customer of the feature and other factors DOE determines are appropriate. (42 U.S.C. 6295(q))

<sup>19</sup> EPCA defines commercial refrigerator, freezer, and refrigerator-freezer as "refrigeration equipment that—

- (i) is not a consumer product (as defined in section 6291 of this title);
- (ii) is not designed and marketed exclusively for medical, scientific, or research purposes;
- (iii) operates at a chilled, frozen, combination chilled and frozen, or variable temperature;
- (iv) displays or stores merchandise and other perishable materials horizontally, semivertically, or vertically;
- (v) has transparent or solid doors, sliding or hinged doors, a combination of hinged, sliding, transparent, or solid doors, or no doors;
- (vi) is designed for pull-down temperature applications or holding temperature applications; and
- (vii) is connected to a self-contained condensing unit or to a remote condensing unit." 42 U.S.C. 6311(9)(A).

In the 2009 BVM final rule, DOE determined that unique energy conservation standards were warranted for Class A and Class B beverage vending machines and added the following definitions to 10 CFR 431.292 to differentiate such equipment:

*Class A* means a beverage vending machine that is fully cooled, and is not a combination vending machine.

*Class B* means any beverage vending machine not considered to be Class A, and is not a combination vending machine.

74 FR 44914, 44967 (Aug. 31, 2009).

DOE differentiated Class A and Class B beverage vending machines based on whether the refrigerated volume (V) of equipment was fully cooled, as DOE determined that this was the most significant criteria affecting energy consumption. *Id.* at 44924.

The 2009 BVM final rule also established a definition for combination vending machine at 10 CFR 431.292.

*Combination vending machine* means a beverage vending machine that also has non-refrigerated volumes for the purpose of vending other, non-"sealed beverage" merchandise.

74 FR 44914, 44967 (Aug. 31, 2009).

DOE considered the definition of beverage vending machine broad enough to include any vending machine that cools at least one bottled or canned beverage and dispenses it upon payment. DOE elected to establish combination machines as a separate equipment class because such machines may be challenged by component availability and such machines have a distinct utility that limits their energy efficiency improvement potential compared to Class A and B beverage vending machines. However, DOE did not establish standards for combination machines in the 2009 BVM final rule. *Id.* at 44920.

While DOE's existing definitions of Class A and Class B equipment distinguish equipment based on whether or not the refrigerated volume is "fully cooled," DOE regulations have never defined the term "fully cooled." In the framework document, DOE suggested a definition for "fully cooled" and further refined that definition in the BVM test procedure NOPR DOE published on Aug. 11, 2014 (2014 BVM test procedure NOPR). 79 FR 46908, 46934. In response to comments received on both the framework document and 2014 BVM test procedure NOPR, DOE proposed to modify the definition of Class A to more unambiguously differentiate Class A and Class B equipment. In this final rule, DOE is using the presence of a transparent front on Class A beverage

<sup>18</sup> DOE will identify comments received in response to the 2015 BVM ECS NOPR and placed in Docket No. EERE-2013-BT-STD-0022 by the commenter, the number of document as listed in the docket maintained at [www.regulations.gov](http://www.regulations.gov/), and the page number of that document where the comment appears (for example: Coca-Cola, No. 52 at p. 2). If a comment was made verbally during the BVM ECS NOPR public meeting, DOE will also specifically identify those as being located in the NOPR public meeting transcript (for example: Coca-Cola, Public Meeting Transcript, No. 48 at p. 184).

vending machines as a key distinguishing characteristic between Class A and Class B equipment and is adopting this distinction as part of the Class A equipment class definition.

In this final rule, DOE is also amending the definition of combination vending machine to better align with industry definitions and provide more clarity regarding the physical characteristics of the “refrigerated” and “non-refrigerated” volumes, or compartments. In addition, DOE is creating two classes of combination vending machines, Combination A and Combination B, to differentiate combination vending machines based on criteria similar to those used to distinguish Class A and Class B beverage vending machines (*i.e.*, the presence of a transparent front). See section IV.A.1 of this final rule for more discussion on the equipment classes addressed in this final rule.

#### B. Test Procedure

The estimates of energy use and energy saving potential presented in the final rule analysis are based on the performance of beverage vending machines when tested in accordance with appendix B of the recently amended DOE BVM test procedure located at 10 CFR 431.294. (See sections IV.B, IV.C, and IV.E of this final rule for more discussion.) On July 31, 2015, DOE published the 2015 BVM test procedure final rule, which amended DOE’s test procedure for beverage vending machines. 80 FR 45758. In the 2015 BVM test procedure final rule, DOE adopted several minor amendments to clarify DOE’s test procedure for beverage vending machines and also adopted several amendments related to the impact of low power modes on the measured daily energy consumption of BVM models. *Id.* DOE also reorganized the DOE test procedure into two new appendices, appendix A and appendix B to subpart Q to part 431 of Title 10 of the *Code of Federal Regulations*, and adopted a minor change to the certification and reporting requirements for beverage vending machines at 10 CFR 429.52(b)(2) and 10 CFR 431.296.

The DOE BVM test procedure, as amended, incorporates by reference American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 32.1–2010 to describe the measurement equipment, test conditions, and test protocol applicable to testing beverage vending machines. DOE’s test procedure also specifies that the measurement of “refrigerated volume” of beverage

vending machines must be in accordance with the methodology specified in Appendix C of ANSI/ASHRAE Standard 32.1–2010.

In the 2015 BVM test procedure final rule, DOE also adopted several new clarifying amendments including:

- (1) eliminating testing at the 90 °F ambient test condition,
- (2) clarifying the test procedure for combination vending machines,
- (3) clarifying the requirements for loading BVM models under the DOE test procedure,
- (4) clarifying the specifications of the standard product,
- (5) clarifying the next-to-vend beverage temperature test condition,
- (6) specifying placement of thermocouples during the DOE test procedure,
- (7) establishing testing provisions at the lowest application product temperature, and
- (8) clarifying the treatment of certain accessories when conducting the DOE test procedure.

These test procedure amendments are all reflected in DOE’s new appendix A, which became effective August 31, 2015 and must be used, beginning January 27, 2016, by manufacturers for representations and to demonstrate compliance with the BVM energy conservation standards adopted in the 2009 BVM final rule, for which compliance was required as of August 31, 2012. 80 FR 45758 (July 31, 2015). DOE also adopted amended language at 10 CFR 429.52(b) and 10 CFR 431.296 clarifying the certification and reporting requirements for beverage vending machines, which also became effective August 31, 2015. *Id.* at 45787.

Appendix B includes all provisions in appendix A, as well as, provisions for testing low power modes. The test procedure found in appendix B is to be used in conjunction with the new and amended standards established as a result of this final rule. As such, manufacturers are not required to use appendix B until the compliance date of the new and amended standards established in this final rule. *Id.*

During the BVM ECS NOPR public meeting and subsequent comment period, several interested parties commented about DOE’s updated BVM test procedure and how equipment are currently tested in the industry. ASAP commented in the BVM ECS NOPR public meeting that there may be potential ambiguity in the BVM test procedure DOE adopted in 2006 (71 FR 71340 (Dec. 8, 2006)) with regard to lighting low power modes in that some machines may have shown artificially lower energy consumption under this

test procedure due to lighting controls automatically turning off the lights when no one is in the test room. (ASAP, Public Meeting Transcript, No. 48 at p. 67) Royal Vendors and SandenVendo America (SVA) commented that the current standard is achievable without the use of low power modes and that they test all of their equipment without low power modes enabled, and do not include payment systems in their reported energy consumption. (Royal Vendors, No. 54 at p. 4; SVA, No. 53 at p. 2) The National Automatic Merchandising Association (NAMA) also commented that at least one manufacturer has achieved the current standard level without the use of energy management systems, and that reported energy consumption currently does not include payment systems. NAMA additionally urged DOE to allow energy management systems to be enabled during testing. (NAMA, No. 50 at p. 5) In its written comments, NAMA requested that DOE review the European Vending Association’s Energy Management Protocol Program and stated that it may provide additional guidance related to the testing of beverage vending machines in Europe that may be applicable to the United States (NAMA, No. 50 at p. 14)

Automated Merchandising Systems (AMS) commented that the revised test procedure would adversely affect the daily energy consumption (DEC) even though performance has not changed. (AMS, No. 57 at p. 2) Specifically, SVA commented that including payment systems in reported energy consumption effectively lowers the allowable DEC by 0.2 kWh/day, which would account for over 9 percent of allowable energy consumption for Class A and 6 percent for Class B. (SVA, No. 53 at p. 4) SVA stated in written comments that the inclusion of payment systems in the reported energy consumption under the new test procedure would make it difficult to meet the current standard. (SVA, No. 53 at p. 2) Similarly, Coca-Cola and Royal Vendors stated that allowances for low power states are offset by the inclusion of payment systems in the reported energy consumption under the new test procedure. (Coca-Cola, No. 52 at p. 3; Royal Vendors, No. 54 at p. 1)

DOE recognizes that the previous DOE BVM test procedure adopted in DOE’s 2006 test procedure final rule (71 FR 71340 (Dec. 8, 2006)) may have allowed for misinterpretation of some aspects of DOE’s test procedure methodology. However, the clarifications and amendments recently adopted in appendix A of the DOE BVM test procedure seeks to unambiguously

clarify how BVM equipment should be configured and tested in accordance with the DOE BVM test procedure. 80 FR 45758, 45760 (July 31, 2015). Specifically, related to lighting controls, appendix A requires that all lights be in the “on” state for the full duration of the test. However, appendix B, which is required for demonstrating compliance with the energy conservation standards adopted in this final rule, allows lighting and other accessories that are controlled by an accessory low power mode to be turned off (by the accessory low power mode) for a period of 6 hours. DOE believes this accurately represents the impact of accessory low power modes on BVM DEC. Regarding the energy consumption and configuration of payment mechanisms when testing beverage vending machines, DOE clarified in the 2015 BVM test procedure final rule that energy consumed by BVM payment systems should be included in the measured energy consumption of this equipment under both appendix A and appendix B.

In the analysis supporting this final rule, DOE has analyzed equipment under appendix B, which accounts for the use of accessory and refrigeration low power modes. DOE’s analysis also assumes the energy consumption of payment mechanisms are accounted for in the DEC of BVM equipment. DOE recognizes that some test procedure amendments included in appendix B, such as those addressing accessory and lighting low power modes, may change the measured energy consumption of covered equipment. As such, as stated in the 2015 BVM test procedure final rule, use of appendix B is only permitted to demonstrate compliance with the new and amended standards adopted in this final rule. 80 FR 45758, 45760–45761. DOE notes that, on the effective date of this BVM ECS final rule, manufacturers may elect to begin using the appendix B test procedure prior to the compliance date, provided they use the results of such testing to demonstrate compliance with the new and amended standards adopted in this final rule. Manufacturers may not use the results of testing under appendix B to demonstrate compliance with the energy conservation standards adopted in the 2009 BVM final rule.<sup>20</sup>

In response to NAMA’s comment requesting that DOE allow for the use of energy management systems during testing, DOE notes that the revised DOE

BVM test procedure now allows for the use of lighting and refrigeration low power states. In response to NAMA’s suggestion that DOE consult the European Vending Association’s Energy Management Protocol Program, DOE appreciates the suggestion from NAMA, but notes that DOE has already clarified the appropriate configuration and use of energy management systems when testing in accordance with the DOE BVM test procedure in the recently published 2015 BVM test procedure final rule. 80 FR 45758. DOE also notes that EPCA requires that the DOE BVM test procedure for beverage vending machines shall be based on ASHRAE Standard 32.1–2004, entitled “Methods of Testing for Rating Vending Machines for Bottled, Canned or Other Sealed Beverages.” 42 U.S.C. 6395(15)

#### C. Compliance Dates

Pursuant to 42 U.S.C. 6295(v)(3), the new and amended standards in this final rule will apply to equipment manufactured beginning on January 8, 2019, 3 years after the publication date of this final rule in the **Federal Register**. In its analysis, DOE used a 30-year analysis period of 2019–2048.

In written comments submitted in response to the 2015 BVM ECS NOPR, Coca-Cola, NAMA, Royal Vendors, and the American Beverage Association (ABA) requested that the compliance date for DOE’s proposed standards be delayed until 2022, 3 years after the compliance date for the new EPA SNAP Rules 19 and 20, which list as acceptable the use of CO<sub>2</sub>, propane, and isobutane refrigerants (80 FR 19454, 19491 (April 10, 2015)) and phase out the use of R–134a refrigerant for BVM applications (80 FR 42870, 42917–42920 (July 20, 2015)), respectively. (Coca-Cola, No. 52 at p. 1; NAMA, No. 50 at p. 2; Royal Vendors, No. 54 at p. 2; ABA No. 63 at p. 3) During the written comment period following the publication of the 2015 BVM ECS NOPR, DOE also received 1,140 identical form letters (hereafter referred to as the Form Letters) from interested parties (the Form Letter Writers) regarding several aspects of DOE’s proposal. In the Form Letter, commenters echoed the request for an extension of the compliance date to 2022. (The Form Letter Writers, No. 64 and 65 at p. 1)

In response to the request for an alternative compliance date for the new and amended BVM standards established as a result of this rulemaking, DOE notes that it does not have the discretion to deviate from the compliance period for beverage vending machines established under EPCA.

Pursuant to 42 U.S.C. 6295(v), any energy conservation standard prescribed for beverage vending machines “shall apply to [equipment] manufactured 3 years after the date of publication of a final rule establishing the energy conservation standard.” As such, DOE is not authorized to accommodate the request of commenters and maintains that compliance of the new and amended standards adopted in this final rule is required beginning 3 years after the publication date of this final rule in the **Federal Register**, or on January 8, 2019.

#### D. Technological Feasibility

##### 1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially available equipment or in working prototypes to be technologically feasible. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i).

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on equipment utility or availability; and (3) adverse impacts on health or safety. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(ii)–(iv). Additionally, it is DOE policy not to include in its analysis any proprietary technology that is a unique pathway to achieving a certain efficiency level. Section IV.B of this document discusses the results of the screening analysis for beverage vending machines, particularly the designs DOE considered, those it screened out, and those that are the basis for the standard levels considered in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the final rule TSD.

In response to the proposed standard levels in the 2015 BVM ECS NOPR, DOE received several comments regarding the technological feasibility of those proposed standard levels. In written

<sup>20</sup> See DOE’s test procedure guidance on this topic at [https://www1.eere.energy.gov/buildings/appliance\\_standards/pdfs/tp\\_earlyuse\\_faq\\_2014-8-25.pdf](https://www1.eere.energy.gov/buildings/appliance_standards/pdfs/tp_earlyuse_faq_2014-8-25.pdf).



comments, the Appliance Standards Awareness Project (ASAP), Alliance to Save Energy (ASE), Natural Resources Defense Council (NRDC), Northwest Energy Efficiency Alliance (NEEA), and the Northwest Power and Conservation Council (NPCC) (herein referred to as the Energy Efficiency Advocates Joint Commenters, or EEA Joint Commenters) submitted a joint comment (herein referred to as the EEA Joint Comment) expressing support for DOE's proposed standards. (EEA Joint Commenters, No. 56 at p. 1) Conversely, in the BVM ECS NOPR public meeting and in written comments, NAMA, SVA, Coca-Cola, Royal Vendors, AMS, Seaga Manufacturing (Seaga), and the U.S. Small Business Administration's Office of Advocacy (SBA Advocacy) all stated that DOE's proposed standards were too aggressive, especially in light of EPA SNAP regulations concurrent with DOE's rulemaking. (NAMA, No. 50 at p. 1; SVA, No. 53 at p. 10; Coca-Cola, No. 52 at p. 1; Royal Vendors, AMS, and Seaga, Public Meeting Transcript, No. 48 at pp. 175, 177; SBA Advocacy, No. 61 at p. 3) ABA requested that DOE coordinate with EPA to ensure the proposed standards are technologically and economically feasible relative to ENERGY STAR equipment specifications. (ABA, No. 63 at p. 3) The European Vending Association stated that adopting a standard more stringent than ENERGY STAR was not justifiable in Europe and it would not be feasible for DOE to adopt more stringent standards (EVA, No. 60 at p. 1) NAMA, SVA, and SBA Advocacy stated that the proposed standards are not technologically feasible or economically justified and will cause substantial negative impacts on the industry if enacted. (NAMA, No. 50 at p. 1; SVA, No. 53 at p. 10; SBA Advocacy, No. 61 at p. 3) AMS, SVA, and Royal Vendors stated in the BVM ECS NOPR public meeting and in written comments that compliance with DOE's proposed standards is unattainable, and Royal Vendors added that compliance would require cutting 1 kWh/day from its Class A machines and 1.5 kWh/day from its Class B machines. (AMS, SVA, and Royal Vendors, Public Meeting Transcript, No. 48 at p. 175; Royal Vendors, No. 54 at p. 1)

In the BVM ECS NOPR public meeting, Coca-Cola inquired about the manufacturer of the CO<sub>2</sub> unit that DOE examined and found to meet the 2009 standard, and expressed doubt that an existing CO<sub>2</sub> machine would be able to meet the proposed standard. (Coca-Cola, Public Meeting Transcript, No. 48 at pp. 96–101) Similarly, SVA and SBA

Advocacy expressed agreement that the current standards could be met using any refrigerant but disagreement that the efficiency levels in the NOPR TSD could be met. (SVA, No. 53 at p. 3; SBA Advocacy, No. 61 at p. 3) SVA additionally expressed disagreement with DOE's assumption that all baseline Class A and Class B propane equipment and Class A CO<sub>2</sub> equipment would be able to meet EL1 because it believes many of DOE's proposed design options have already been implemented to meet the 2009 standard. (SVA, No. 53 at p. 7) AMS commented that it would not be able to meet even the 2009 standard for class A with CO<sub>2</sub> refrigerant, and further stated that it might be possible to meet trial standard level (TSL) 1 for Class A with substantial design changes. AMS additionally commented that it may be possible for it to meet TSL 2 for Combination A equipment using CO<sub>2</sub> and TSL 3 with propane with substantial design changes. (AMS, No. 57 at p. 4) In written comments, the Form Letter Writers stated DOE has not provided proof that CO<sub>2</sub> machines meeting the proposed standards are already available. (The Form Letter Writers, No. 64 and 65 at p. 1) Further, in the Form Letters, commenters stated the combination vending machines have not been tested to the proposed standard. (The Form Letter Writers, No. 64 and 65 at p. 1)

In the BVM ECS NOPR public meeting, SVA stated that the proposed standards do not leave room for any new or innovative features which consume energy. (SVA, Public Meeting Transcript, No. 48 at p. 174) In its written comment, Coca-Cola stated that the proposed standards would make it difficult for suppliers to offer equipment with display panels for equipment interaction, video content, or advertising, and would therefore reduce utility of the equipment. (Coca-Cola, No. 52 at p. 4)

DOE appreciates the support for DOE's proposed standard levels from the EEA Joint Commenters. Regarding the concerns raised by Coca-Cola, NAMA, Royal Vendors, AMS, Seaga, and SBA Advocacy DOE has revised its engineering and economic analyses based on the specific feedback of interested parties. DOE believes that its analyses accurately reflect the capabilities of existing current equipment designs and component design options. Specifically, DOE compared its engineering outputs to empirical DEC data gathered from the units that DOE selected for testing and teardowns, as well as to certified DEC data included in the Compliance Certification Management System

(CCMS) and ENERGY STAR<sup>®</sup> directories in order to confirm the validity and accuracy of its engineering analysis inputs and results. Chapter 3 of the final rule TSD contains plots of the relevant ENERGY STAR and CCMS certification data, while Chapter 5 of the final rule TSD discusses DOE's methodology in selecting units for testing and teardown.

DOE also revised certain assumptions regarding the cost of more-efficient components and the cost to maintain, repair, and/or replace those more-efficient components to better reflect the BVM market today and throughout the analysis period. Component costs, as well as maintenance, repair, and replacement costs are discussed in chapters 5 and 8 of the final rule TSD, respectively. Based on these revised analyses, DOE is adopting in this final rule new and amended standards for beverage vending machines that are less stringent than the MDEC levels proposed in the 2015 BVM ECS NOPR. As discussed further in section V, the MDEC levels adopted in this final rule represent the standard levels for each equipment class with the maximum net benefits for the nation. DOE's engineering and economic analyses presented in this final rule represent the best available data on BVM performance and costs and include substantial input from interested parties received throughout the course of the rulemaking. As such, DOE believes the MDEC standard levels adopted in this final rule are technologically feasible and economically justified. DOE also analyzed these adopted standard levels against the reported and tested DEC values of currently available equipment and notes that there are several models of Class A and Class B equipment that would meet the amended MDEC levels under either appendix A or appendix B (that is, with or without low power modes employed). While DOE acknowledges that not all of these models use refrigerants that will be required in 2019 when compliance with the amended standards is required, DOE notes that at least one BVM model using CO<sub>2</sub> as a refrigerant are listed in the ENERGY STAR database that comply with the amended MDEC standard for Class B equipment adopted in this final rule.

In response to ABA and EVA's comments suggesting that DOE coordinate with ENERGY STAR and highlighting the technological feasibility of the ENERGY STAR standard levels, DOE notes that DOE coordinates closely with EPA's ENERGY STAR program. Regarding the technological feasibility of the new and amended standards

adopted in this final rule as compared to ENERGY STAR levels, DOE is obligated to adopt the standard levels that represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, subject to specific criteria established by EPCA. (42 U.S.C. 6295(o)(2) and (3)(B)) DOE specifically analyzed the technological feasibility and economic benefits of the current ENERGY STAR levels for Class A and Class B equipment (and comparable levels for Combination equipment) as TSL 1. DOE's analysis considers only those technology options considered to be technologically feasible, as discussed in section III.D.2 and IV.B. Therefore, by definition, all ELs and TSLs analyzed by DOE represent technologically feasible energy consumption levels for beverage vending machines. Based on DOE's analysis, as discussed further in section V.B, DOE found TSL 3 to result in the maximum economic benefits for the nation. Therefore, while the current ENERGY STAR are also technologically feasible, TSL 3 represents the maximum improvement in energy efficiency that is technologically feasible and economically justified, based on DOE's analysis.

In response to the Form Letter Writers statement that DOE has not provided proof that CO<sub>2</sub> machines meeting the proposed standards are already available, DOE recognizes that there was a statement in the 2015 BVM ECS NOPR that may have been misinterpreted by some to indicate that Class B equipment using CO<sub>2</sub> as a refrigerant was available that met the standard level proposed in the NOPR. Specifically, in both the 2015 BVM ECS NOPR public meeting and in written comments, Coca-Cola stated that it does not believe that there is a beverage vending machine with a CO<sub>2</sub> refrigeration system that is capable of meeting the proposed standards, even with credits for low power modes. (Coca-Cola, No. 52 at p. 2; Coca-Cola, Public Meeting Transcript, No. 48 at p. 184) In this final rule, DOE clarifies that the sentence in the 2015 BVM ECS NOPR was intended to read "Class B equipment that utilizes CO<sub>2</sub> as a refrigerant and Class B equipment that meets the proposed standard level is currently available." 80 FR 50462, 50467 (August 19, 2015). However, regarding the standard adopted in this final rule, DOE reiterates that at least one BVM model using CO<sub>2</sub> refrigerant is listed in the ENERGY STAR data base that meets the amended Class B standard level, and it is possible that additional units would meet the

amended standard level when tested until the new appendix B test procedure adopted in the 2015 BVM test procedure final rule. 80 FR 45758 (July 31, 2015). BVM models of Class A and combination equipment using CO<sub>2</sub> refrigerant have not yet been developed, so a similar comparison is not possible.

In response to commenters concerns regarding combination equipment, DOE notes that combination equipment manufacturers are currently not required to report their DEC or comply with any energy conservation standards and, as such, DOE does not have the data that would be needed to perform a similar comparative analysis of the analytically-determined performance levels from the engineering analysis versus certification or testing data. However, DOE notes that the design options that DOE modeled in the engineering analysis as included at the adopted standard levels for Combination A and Combination B equipment are commonly available technologies that are also included in the packages of design options analyzed at the amended standard levels for Class A and B. That is, DOE believes that all Combination A and Combination B equipment should be able to meet the new energy conservation standard levels using the same technology options and equipment designs that would be employed by Class A and Class B equipment in meeting the amended standard levels adopted for the equipment. This determination was made based on an assessment of the commonalities in design present between the analogous classes, for example the presence of a transparent front and lighting in Class A and Combination A machines, and the use of a fully insulated cabinet and zone cooling in Class B and Combination B machines. A full discussion of DOE's analysis of the performance potential of combination vending machines is contained in Chapter 5 of the TSD.

In response to SVA and Coca-Cola's concerns regarding the ability of BVM models that feature digital display screens or other innovative, interactive designs, DOE notes that compliance with the new and amended standards is assessed based on the tested DEC, as measured in accordance with appendix B of the recently updated DOE BVM test procedure (80 FR 45758 (July 31, 2015)), and appropriate sampling plans (10 CFR 429.52(a)). In both appendix A and appendix B of the recently amended DOE BVM test procedure, DOE adopted specific provisions clarifying the configuration of BVM models featuring external customer display signs, lights, or digital screens, among other

accessories and components. 80 FR 45758, 45778–45780 (July 31, 2015). Specifically, the DOE BVM test procedure specifies that external customer display signs, lights, or digital screens should be de-energized or, if they cannot be de-energized without impacting the primary functionality of the equipment, placed in the external accessory standby mode (if available) or the lowest energy consuming state (if no external accessory standby mode is available) that maintains such functionality. 10 CFR 431.292. As the incremental energy consumption of display signs and digital screens referred to by Coca-Cola and SVA potentially are not included in the measured DEC for such BVM models, DOE does not believe that innovation of manufacturers to include such features and accessories will be affected by the newly adopted test procedure or the standard levels adopted in this final rule. If any BVM manufacturers produce a BVM model with any features or accessories that cannot be accommodated by the DOE BVM test procedure or believe that application of the DOE BVM test procedure would produce results that are not adequately representative of the energy consumption of the equipment, the manufacturer of that equipment may submit a petition for a test procedure waiver in accordance with the provisions in 10 CFR 431.401.<sup>21</sup>

## 2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered equipment, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such equipment. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible ("max-tech") improvements in energy efficiency for beverage vending machines, using the design parameters for the most efficient equipment available on the market or in working prototypes. The max-tech levels that DOE determined for this rulemaking are described in section III.D.2 of this final rule and in chapter 5 of the final rule TSD.

<sup>21</sup> DOE issued a final rule amending its regulations governing petitions for waiver and interim waiver from DOE test procedures for consumer products and commercial and industrial equipment. 79 FR 26591 (May 9, 2014). This final rule became effective on June 9, 2014.

## E. Energy Savings

### 1. Determination of Savings

For each TSL, DOE projected energy savings from application of the TSL to beverage vending machines purchased in the 30-year period that begins in the year of compliance with any new and amended standards (2019–2048).<sup>22</sup> The savings are measured over the entire lifetime of equipment purchased in the 30-year analysis period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for the equipment would likely evolve in the absence of new and amended energy conservation standards.

DOE used its NIA spreadsheet models to estimate energy savings from new and amended standards for beverage vending machines. The NIA spreadsheet model (described in section IV.H of this document) calculates savings in site energy, which is the energy directly consumed by equipment at the locations where they are used. Based on the site energy, DOE calculates national energy savings (NES) in terms of primary energy savings at the site or at power plants, and also in terms of full-fuel-cycle (FFC) energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.*, coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy conservation standards.<sup>23</sup> DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered equipment. For more information on FFC energy savings, see section IV.H.2 of this document.

### 2. Significance of Savings

To adopt standards for any covered equipment, DOE must determine that such action would result in “significant” energy savings. (42 U.S.C. 6295(o)(3)(B)) Although the term “significant” is not defined in the Act, the U.S. Court of Appeals, for the District of Columbia Circuit in *Natural Resources Defense Council v. Herrington*, 768 F.2d 1355, 1373 (D.C.

Cir. 1985), indicated that Congress intended “significant” energy savings in the context of EPCA to be savings that were not “genuinely trivial.” The energy savings for all the TSLs considered in this rulemaking, including the adopted standards, are nontrivial; therefore, DOE considers them “significant” within the meaning of section 325 of EPCA.

## F. Economic Justification

### 1. Specific Criteria

As noted above, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

#### a. Economic Impact on Manufacturers and Customers

In determining the impacts of a potential amended standard on manufacturers, DOE conducts an MIA, as discussed in section IV.J of this document. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include: (1) The INPV, which values the industry on the basis of expected future cash flows; (2) cash flows by year; (3) changes in revenue and income; and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual customers, measures of economic impact include the changes in LCC and PBP associated with new or amended standards. These measures are discussed further in the following section. For customers in the aggregate, DOE also calculates the national NPV of the economic impacts applicable to a particular rulemaking. DOE also evaluates the LCC impacts of potential standards on identifiable subgroups of customers that may be affected

disproportionately by a national standard.

#### b. Savings in Operating Costs Compared To Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered equipment in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered equipment that are likely to result from a standard. (42 U.S.C.

6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a piece of equipment and the operating cost (including energy, maintenance, and repair expenditures) discounted over the lifetime of the equipment. The LCC analysis requires a variety of inputs, such as equipment prices, equipment energy consumption, energy prices, maintenance and repair costs, equipment lifetime, and discount rates appropriate for customers. To account for uncertainty and variability in specific inputs, such as equipment lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value.

The PBP is the estimated amount of time (in years) it takes customers to recover the increased purchase cost (including installation) of a more-efficient piece of equipment through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more-stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

For its LCC and PBP analysis, DOE assumed that customers will purchase the covered equipment in the first year of compliance with amended standards. The LCC savings for the considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of amended standards. DOE identifies the percentage of customers estimated to experience an LCC increase, as well as calculates the average LCC savings associated with a particular standard level. DOE's LCC and PBP analyses are discussed in further detail in section IV.F of this document.

#### c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the

<sup>22</sup> Each TSL is composed of specific efficiency levels for each equipment class. The TSL considered for this final rule are described in section V.A. DOE also presents a sensitivity analysis that considers impacts for equipment shipped in a 9-year period.

<sup>23</sup> The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (Aug. 18, 2011), as amended at 77 FR 49701 (Aug. 17, 2012).

standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section IV.H of this document, DOE uses the NIA spreadsheet models to project NES.

d. Lessening of Utility or Performance of Equipment

In establishing equipment classes, and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered equipment. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) DOE determined based on the data available that the standards adopted in this final rule will not reduce the utility or performance of the equipment under consideration in this rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General that is likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)) DOE transmitted a copy of its proposed rule to the Attorney General with a request that the Department of Justice (DOJ) provide its determination on this issue. DOE received no adverse comments from DOJ regarding the proposed rule.

f. Need for National Energy Conservation

DOE also considers the need for national energy conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from the adopted standards are likely to provide improvements to the security and reliability of the nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the nation's needed power generation capacity, as discussed in section IV.M of this document.

The adopted standards also are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production and use. DOE conducts an emissions

analysis to estimate how potential standards may affect these emissions, as discussed in section IV.K of this final rule; the emissions impacts are reported in section V.B.6 of this document. DOE also estimates the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.L of this document.

g. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) To the extent interested parties submit any relevant information regarding economic justification that does not fit into the other categories described above, DOE could consider such information under "other factors."

2. Rebuttable Presumption

EPCA sets forth a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the customer of a piece of equipment that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) DOE's LCC and PBP analyses generate values used to calculate the effect the new and amended energy conservation standards have on the PBP for customers. These analyses include, but are not limited to, the 3-year PBP contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to customers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.F of this final rule.

**IV. Methodology and Discussion of Related Comments**

This section addresses the analyses DOE has performed for this rulemaking with regard to beverage vending machines. Each component of DOE's analysis is discussed in the following subsections, and DOE summarizes and responds to associated comments received in response to the NOPR.

DOE used several analytical tools to estimate the impact of the standards considered in this document. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential amended or new energy conservation standards. The NIA uses a second spreadsheet set that provides shipment forecasts and calculates NES and NPV of total customer costs and savings expected to result from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (GRIM), to assess manufacturer impacts of potential standards. These three spreadsheet tools are available on the DOE Web site for this rulemaking: [https://www1.eere.energy.gov/buildings/appliance\\_standards/rulemaking.aspx/ruleid/73](https://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/73). Additionally, DOE used output from the latest version of EIA's AEO, a widely known energy forecast for the United States, for the emissions and utility impact analyses.

*A. Market and Technology Assessment*

DOE develops information in the market and technology assessment that provides an overall picture of the market for the equipment concerned, including the purpose of the equipment, the industry structure, manufacturers, market characteristics, and technologies used in the equipment. This activity includes both quantitative and qualitative assessments, based primarily on publicly available information.

DOE reviewed relevant literature and interviewed manufacturers to develop an overall picture of the BVM market in the United States. Industry publications, trade journals, government agencies, and trade organizations provided the bulk of the information, including (1) manufacturers and their market shares, (2) shipments by equipment type, (3) detailed equipment information, (4) industry trends, and (5) existing regulatory and non-regulatory equipment efficiency improvement initiatives. The key findings of DOE's market assessment are summarized below. See chapter 3 of the final rule TSD for further discussion of the market and technology assessment.

1. Equipment Classes

In this final rule, DOE is amending the energy conservation standards established by the 2009 BVM final rule for Class A and Class B beverage vending machines. DOE believes that Class A and Class B equipment classes continue to provide distinct utility to customers and have different energy profiles and applicable design options, as described below. As such, DOE has determined that it is appropriate to

separately analyze and regulate Class A and Class B equipment. As noted previously, DOE is amending the definition for Class A equipment to more clearly and unambiguously describe the equipment characteristics that distinguishing Class A from Class B equipment. Specifically, DOE distinguishes Class A equipment from Class B equipment based on the presence of a transparent front. DOE is also amending the definition of combination vending machine to better align with industry definitions and provide more clarity regarding the physical characteristics of the “refrigerated” and “non-refrigerated”

volumes, or compartments.<sup>24</sup> In addition, DOE is defining two new equipment classes, Combination A and Combination B, as well as establishing new energy conservation standards for those equipment classes. In the 2009 BVM final rule, DOE also established a definition for combination vending machines but elected not to set standards for them at that time. 74 FR 44914, 44920 (Aug. 31, 2009). In considering standards for combination vending machines as part of this rulemaking, DOE determined that the presence of a transparent front is an important differentiating feature for combination equipment, similar to Class

A and Class B beverage vending machines.

Table IV.1 summarizes the new and amended definitions for the four equipment classes analyzed in this final rule. The definitions, as well as the general characteristics and differentiating features, of the four equipment classes adopted in this final rule are described in the following subsections of this document. In addition, the following subsections address any comments received from interested parties on DOE’s proposed definitions presented in the 2015 BVM ECS NOPR and DOE’s response to those comments.

TABLE IV.1—EQUIPMENT CLASSES FOR BEVERAGE VENDING MACHINES

Class	Definition
A .....	A refrigerated bottled or canned beverage vending machine that is not a combination vending machine and in which 25 percent or more of the surface area on the front side of the beverage vending machine is transparent. <sup>25</sup>
B .....	Any refrigerated bottled or canned beverage vending machine that is not considered to be Class A and is not a combination vending machine.
Combination A .....	A combination vending machine where 25 percent or more of the surface area on the front side of the beverage vending machine is transparent.
Combination B .....	A combination vending machine that is not considered to be Combination A.

a. Class A and Class B Beverage Vending Machines

Class A and Class B equipment are currently differentiated based on the cooling mechanism employed by the equipment. The distinguishing criterion between these two equipment classes is whether the equipment is fully cooled. 10 CFR 431.292.

When the definitions of Class A and Class B were established as part of the 2009 final rule, DOE did not define the term “fully cooled.” In the framework document, DOE suggested defining “fully cooled” to mean a beverage vending machine within which each item in the beverage vending machine is brought to and stored at temperatures that fall within ±2 °F of the average beverage temperature, which is the average of the temperatures of all the items in the next-to-vend position for each selection. 78 FR 33262 (June 4, 2013).

Throughout the course of this rulemaking and the parallel DOE BVM test procedure rulemaking, DOE has discussed and received comments on the most appropriate, clear, and

unambiguous definitions for Class A and Class B beverage vending machines. Specifically, in the 2014 DOE BVM test procedure NOPR, DOE proposed to define “fully cooled” as “a condition in which the refrigeration system of a beverage vending machine cools product throughout the entire refrigerated volume of a machine instead of being directed at a fraction (or zone) of the refrigerated volume as measured by the average temperature of the standard test packages in the furthest from the next-to-vend positions being no more than 10 °F above the integrated average temperature of the standard test packages.” 79 FR 46908, 46934 (Aug. 11, 2014). To accompany DOE’s proposed definition of “fully cooled,” the 2014 BVM test procedure NOPR also proposed to adopt an optional test method that could be used to quantitatively differentiate between Class A and Class B equipment. 79 FR at 46917.

In response to the definition of “fully cooled” proposed in the 2014 BVM test procedure NOPR, several interested parties recommended that DOE consider an alternative differentiation between

equipment types to better capture differences in energy consumption. In a joint comment submitted on behalf of the California investor-owned utilities (Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SCGC), San Diego Gas and Electric (SDG&E), Southern California Edison (SCE), and Arizona Public Service (APS); hereafter referred to as CA IOUs) commenters suggested that the presence of a transparent or opaque front and/or the arrangement of products within the machine could be potential differentiating criteria that are more appropriate and consistent with the differentiation between equipment configurations applied in industry. (Docket No. EERE–2013–BT–TP–0045, CA IOUs, No. 0005 at p. 1) SVA also supported this position. (Docket No. EERE–2013–BT–TP–0045, SVA, Public Meeting Transcript, No. 0004 at p. 52) Many interested parties also commented on the difficulty of establishing a quantitative temperature threshold to differentiate fully cooled equipment from non-fully cooled equipment that would be applicable across all BVM models. (Docket No. EERE–2013–BT–

<sup>24</sup> The definition of combination vending machine established by DOE in the 2009 BVM final rule referenced the presence of “non-refrigerated volumes” to differentiate combination vending machines from other styles of beverage vending machines. In the amended definition for combination vending machine, DOE is referring instead to “compartments,” which DOE believes

captures the same intent as the term “volumes” in the previous definition, but better indicates that the “volumes” are to be physically separate.

<sup>25</sup> DOE notes that in the 2015 BVM ECS NOPR, DOE proposed to the definition of Class A to include the term “combination beverage vending machine.” In this final rule, DOE is adopting a definition of Class A that, instead, references the

term “combination vending machine,” as that is the defined term for combination equipment at 10 CFR 431.292. DOE notes that this minor editorial change does not affect the meaning or scope of the definition, just ensure consistency between all of the definition pertinent to the regulation of this equipment.

TP-0045, AMS, Public Meeting Transcript, No. 0004 at p. 54; Docket No. EERE-2013-BT-TP-0045, Coca-Cola, No. 0010 at p. 4; Docket No. EERE-2013-BT-TP-0045, Coca-Cola, No. 0010 at p. 4; Docket No. EERE-2013-BT-TP-0045, SVA, No. 0008 at p. 2; Docket No. EERE-2013-BT-TP-0045, NEEA, No. 0009 at p. 1)

In light of the extent and scope of the comments received in response to the amendments proposed in the 2014 BVM test procedure NOPR regarding the proposed definition of fully cooled, alternative criteria for differentiating Class A and Class B equipment, and the optional fully cooled verification test protocol, DOE wished to further consider potential classification options and criteria suggested by interested parties, as well as provide interested parties an additional opportunity to provide feedback on any proposals to amend the equipment class definitions. As such, DOE responded to the comments presented by interested parties in response to the 2014 BVM test

procedure NOPR and proposed an alternative approach to differentiate Class A and Class B equipment in the 2015 BVM ECS NOPR. Specifically, in the 2015 BVM ECS NOPR, DOE proposed to amend the definition of Class A beverage vending machines to read as follows:

*Class A* means a refrigerated bottled or canned beverage vending machine that is not a combination vending machine and in which 25 percent or more of the surface area on the front side of the beverage vending machine is transparent.

DOE did not propose in the 2015 BVM ECS NOPR to substantively modify the definition of Class B, since Class B is defined as the mutually exclusive converse of Class A. However, DOE made a minor editorial change to include the term “that” to improve readability of the definition. 80 FR 50462, 50474–50475 (Aug. 19, 2015).

DOE also noted in the 2015 BVM ECS NOPR that beverage vending machines with horizontal product rows are typically fully cooled and have a

transparent front, while beverage vending machines with vertical product stacks are typically zone cooled and are fully opaque. DOE added that it is not aware of any instances of BVM models that are not fully cooled but which have a transparent front and/or horizontal product configuration or BVM models that are fully cooled but which have an opaque front and/or vertical stacks. Thus, DOE believed that, based on current equipment designs, using criteria of (a) whether the equipment is fully cooled, (b) whether the equipment has a transparent front, or (c) whether the product arrangement is horizontal or vertical, would result in virtually identical equipment categorization. Finally, DOE also noted that, since DOE’s engineering analysis considers typical, representative equipment designs for each equipment class (see section IV.C), the cooling method, the presence of a transparent or opaque front,<sup>26</sup> and product arrangement are linked in DOE’s engineering analysis, as shown in Table IV.2. *Id.*

TABLE IV.2—EQUIPMENT CLASSES DESIGN PARAMETERS FOR BEVERAGE VENDING MACHINES MODELED IN THE ENGINEERING ANALYSIS

Class	Cooling method	Transparent or opaque front	Vendible product orientation
A .....	Fully cooled .....	Transparent front .....	Horizontal product rows.
B .....	Zone cooled .....	Opaque front .....	Vertical product stacks.
Combination A .....	Fully cooled .....	Transparent front .....	Horizontal product rows.
Combination B .....	Zone cooled .....	Opaque front .....	Vertical product stacks.

In response to DOE’s 2015 BVM ECS NOPR, NAMA and Royal Vendors, in their written comments, stated that the presence of a transparent front does not always correlate with fully-cooled equipment, and that at least one manufacturer has developed fully-cooled vending machines with solid fronts. (NAMA, No. 50 at p. 3; Royal Vendors, No. 54 at p. 3) SVA expressed disagreement with DOE’s proposed definition of Class A equipment because it stated that not all fully-cooled beverage vending machines have a transparent panel and that this may discourage the production of Class B equipment due to the more stringent proposed standards for Class B. (SVA, No. 53 at p. 1) AMS stated that the presence of a transparent front does not necessarily reflect the design intent or energy consumption characteristics of the machine (AMS, No. 57 at p. 2)

NAMA also expressed concern that the transparency requirement excludes

the use of digital video display screens in Class A equipment (NAMA, No. 50 at p. 3) SVA agreed with NAMA and expressed its belief that vending machines with digital video display screens should be considered as Class A instead of Class B equipment (SVA, Public Meeting Transcript, No. 48 at p. 19) Conversely, the CA IOUs expressed their belief that equipment with transparent and opaque video screen fronts should be regulated as separate equipment classes, with non-transparent screens classified as Class B and transparent screens classified as Class A. (CA IOUs, No. 58 at p. 1)

In determining the best way to clarify the differentiation of Class A and Class B equipment, DOE considered all comments submitted by interested parties, as well as the manner in which equipment is currently categorized by DOE and industry. It is DOE’s continued understanding that the cooling method is significantly correlated with the

product configuration and presence of a transparent front. Therefore, differentiating Class A and Class B equipment based on either the product’s configuration or the transparency of the front side of the BVM, rather than the cooling method, would preserve the same utility in each class of equipment. The presence of a transparent front provides a specific utility that allows a customer to view and select from all of the various next-to-vent product selections, which are all maintained at the appropriate vending temperature. In this manner, the presence of a transparent front is inherently related to the cooling method of a beverage vending machine (*i.e.*, whether or not the equipment is “fully cooled”). DOE acknowledges that there may be some fully cooled beverage vending machines that have an opaque front and, as such, will be subject to the energy conservation standard for Class B. For example, in the 2015 BVM ECS NOPR,

<sup>26</sup> In this notice, DOE uses the terms “solid front,” “opaque front,” and “non-transparent” front interchangeably to refer to equipment that does not

meet DOE’s definition of Class A or Combination A. That is, equipment where greater than 75 percent of the material used to construct the front of the

beverage vending machine does not meet the definition of “transparent” adopted in this final rule.

DOE pointed to test data that demonstrated some equipment with opaque fronts and small refrigerated volumes experience temperature differentials of less than 2 °F between the next-to-vent and furthest from next-to-vent beverage locations and are, therefore, effectively “fully cooled.” 80 FR 50462, 50478 (Aug. 19, 2015). However, DOE believes that the Class B standards are more appropriate for such equipment because the insulating quality of the transparent versus non-transparent front has a larger impact on energy consumption than the cooling method.

DOE believes that the presence of a transparent front provides the customer with the specific utility of being able to see all the available product selections and choose from the larger number of merchandise options that are provided by Class A equipment. In addition, DOE notes that the presence of a transparent material on the front side of a beverage vending machine has a larger impact on the energy consumption of a given beverage vending machine than the cooling method or equipment product arrangement. Thus, while DOE continues to believe that the presence of a transparent front, a “fully cooled” refrigerated volume, and horizontal product placement are all representative characteristics of most Class A equipment, DOE believes that defining equipment classes based on the feature that is most related to the unique utility and which has the largest impact on the energy use of the equipment is the most appropriate criterion to use to ensure that the utility provided by Class A equipment is maintained in the marketplace.

While DOE acknowledges that there may be some opaque front equipment that is fully cooled, DOE believes that it is more appropriate for such equipment to be treated as Class B. Because an opaque, insulated panel has significantly different heat transfer characteristics than a transparent glass front, a BVM model that is insulated on all six sides should use less energy than a similar BVM model with a transparent front. That is, DOE believes energy consumption and the presence of a transparent front are correlated.

DOE performed a sensitivity analysis using the engineering analysis spreadsheet to compare the impact of a transparent front versus solid front on DEC with the impact of a fully cooled refrigerated volume versus a zone cooled refrigerated volume on DEC. Specifically, DOE compared the analytically derived performance of two specific sets of representative units

differing only in one design characteristic—either a transparent front or a fully cooled interior. That is, DOE modeled the following three BVM unit configurations:

(1) A BVM unit with a fully cooled refrigerated volume and a transparent front

(2) a BVM unit with a fully cooled refrigerated volume and a solid front

(3) a BVM unit with a zone cooled refrigerated volume and a transparent front.

DOE compared the modeled DEC of number 1) and number 2) to determine the impact of a transparent front and compared number 1) and number 3) to determine the impact of the cooling method. The results of this analysis indicated that the difference in energy consumption between a BVM model that has a transparent front as compared to a model that does not is greater than the difference in energy consumption between a BVM model that is fully cooled as compared to one that is not. Based on this analysis, DOE has determined that the presence of a transparent front is closely correlated to the utility associated with Class A equipment and directly corresponds to the energy consumption of the equipment. Because the cooling method and the presence of a glass or solid front are correlated in practice for the vast majority of equipment, DOE believes that clarifying DOE’s equipment class definitions using the presence of a transparent front (an unambiguous equipment characteristic based on customer utility) will not result in significant changes to the classification of BVM models that are currently available on the market.

Similarly, regarding the treatment of digital screens, DOE agrees with CA IOUs that the transparency of BVM models equipped with digital screens should be ascertained as it is for BVM models with conventional glass or panel materials. That is, transparency should be determined for all the materials between the refrigerated volume and the ambient environment and only if the aggregate performance of all those materials yields a light transmittance of greater than or equal to 45 percent would that area be treated as transparent.

DOE believes that this is the most appropriate and reasonable treatment of equipment with digital screens because the energy consumption of BVM models with opaque digital screens is more similar to the energy consumption of BVM models with opaque, insulated fronts than to BVM models with transparent fronts. That is, as noted by SVA in the BVM ECS NOPR public

meeting, the panel behind any external customer display signs or digital screens is typically insulated. (SVA, Public Meeting Transcript, No. 48 at p. 24–25) DOE notes that external customer digital screens and customer display signs are not required to be energized during the testing of beverage vending machines, in accordance with the newly adopted BVM test procedure. 80 FR 45758, 45778–45780 (July 31, 2015).

Accordingly, the energy consumption and heat transfer characteristics of a BVM model with an external, opaque digital screen is much more similar to the energy consumption and heat transfer characteristics of a BVM model with an opaque, insulated front than a BVM model with a transparent front.

Regarding equipment with transparent digital screens, DOE acknowledges the statement by CA IOUs that equipment with transparent display screens where all materials between the refrigerated space and external ambient environment meet the definition of transparent will be treated as part of the transparent surface area under DOE’s definition. As such, equipment with large transparent display screens (such as, potentially, holograms projected onto glass) that still enabled the BVM user to see the refrigerated merchandise inside the BVM refrigerated compartment and constitute at least 25 percent of the front side of the beverage vending machine would be categorized as a Class A beverage vending machine. However, DOE notes that it is not aware of any such technology on the market today.

Consequently, in this final rule, DOE maintains that only BVM models where at least 25 percent of the surface area on the front side of the beverage vending machine is transparent, and that is not a combination vending machine, will be considered to be Class A. Conversely, if greater than 75 percent of the surface area on the front side of the beverage vending machine is not transparent, and the beverage vending machine is not a combination vending machine, then the beverage vending machine will be considered to be Class B. DOE notes that the amended Class A definition only considers transparent area on the front side of beverage vending machine and transparency must be determined for the entire panel, as described in section IV.A.1.c.

As interested parties did not suggest any alternative definitions or differentiating characteristics, DOE believes that modifying the definitions of Class A and Class B to rely on the presence of a transparent front allows for the most clear and unambiguous differentiation of equipment classes.

Further, DOE believes referencing the presence of a transparent front to identify Class A equipment generally aligns with DOE's and industry's interpretation of Class A machines to date. DOE notes that the amended Class A and Class B definitions are effective on the effective date of this final rule.

#### b. Combination Vending Machines

In the 2009 BVM final rule, DOE established a definition for combination vending machines (74 FR 44914, 44920 (Aug. 31, 2009)). That definition describes a combination vending machine as a refrigerated bottled or canned beverage machine that also has non-refrigerated volumes for the purpose of vending other, non-“sealed beverage” merchandise. 10 CFR 431.292. However, the 2009 BVM final rule did not consider or differentiate equipment within the combination vending machine equipment category or address any specific criteria that could be used to differentiate “refrigerated” and “non-refrigerated.”

In its recent test procedure rulemaking, culminating in the 2015 BVM test procedure final rule, DOE considered the applicability of the combination vending machine definition to equipment designs it has encountered on the market, and considered stakeholder comments on the definition of “combination vending machine.” 80 FR 45758, 45765–45767 (July 31, 2015). In the 2015 BVM test procedure final rule, DOE clarified the test procedure for combination vending machines and noted that such equipment must include compartments that are physically separated, while acknowledging that some combination equipment designs may employ a common product delivery chute between the refrigerated and non-refrigerated compartments for the purposes of delivering vendible merchandise to the customer. DOE also gave notice that it would seek to further clarify the definition of “combination vending machine” in this BVM energy conservation standard final rule. *Id.* at 45765–45767.

As such, in consideration of the input from various commenters throughout both the test procedure and energy conservation standards rulemaking processes, as well as of the range of equipment designs that DOE has observed for sale on the market, DOE proposed in the 2015 BVM ECS NOPR an amended definition of “combination vending machine.” Specifically, DOE proposed to amend the definition of “combination vending machine” to more clearly and unambiguously establish the distinction between

“refrigerated” and “non-refrigerated” compartments contained in a combination vending machine based on whether a compartment is designed to be refrigerated, as demonstrated by the presence of temperature controls. 80 FR 50462, 50478–50480 (Aug. 19, 2015).

DOE also proposed that, similar to Class A and Class B equipment classes, the transparency of the front side of the vending machine can differentiate certain styles of combination vending machines that provide a unique utility in the marketplace because their specific design attributes allow the equipment to be stocked with a wider variety of product selections that can be viewed directly through the equipment's transparent front. As such, in the 2015 BVM ECS NOPR, DOE proposed to define two new equipment classes at 10 CFR 431.292, Combination A and Combination B, and defined those equipment classes as follows:

*Combination A* means a combination vending machine where 25 percent or more of the surface area on the front side of the beverage vending machine is transparent.

*Combination B* means a combination vending machine that is not considered to be Combination A.

*Id.*

In response to DOE's proposed new and amended definitions for Combination A, Combination B, and combination vending machine, several interested parties raised questions about DOE's proposed definitions. In particular, AMS stated that machines intended to dispense both refrigerated and unrefrigerated products have an insulated tray between the refrigerated and unrefrigerated compartments and are defined as combination vending machines by their company. (AMS, Public Meeting Transcript, No. 48 at p. 18) AMS also stated that its combination vending machines only have temperature controls for the compartment intended to be refrigerated and therefore do not meet DOE's proposed definition for combination vending machines. (AMS, No. 57 at p. 2) Steven Chesney of Seaga inquired if a non-cooled refrigerated compartment attached to a separate cabinet with a refrigerated compartment would be considered as a combination vending machine. (Steven Chesney, Public Meeting Transcript, No. 48 at p. 26) EVA commented that DOE should use “simple and understandable” definitions and consider defining them similar to the European definitions. (EVA, No. 60 at p. 2)

In response to AMS's comments regarding their combination vending machine designs, featuring an insulated

shelf separating refrigerated and non-refrigerated compartments and temperature controls in the compartment intended to be refrigerated, DOE notes that this is in fact consistent with its proposed definition for combination vending machines, provided the insulated shelf is a “solid partition” and does not allow for air transfer between the compartments outside of the product delivery chute. To clarify, DOE notes that the combination vending machine definition only requires temperature controls in the compartment that is designed to be refrigerated.

In response to Mr. Chesney's inquiry regarding whether two separate cabinets attached to each other would constitute a combination vending machine, DOE clarifies that, consistent with all equipment, compliance for each model is based on how that model is distributed in commerce. That is, if the vending machine: (1) Is distributed in commerce as a single piece of equipment and (2) includes at least one compartment that was designed to be refrigerated (demonstrated by the presence of temperature controls) and at least one compartment that is not designed to be refrigerated (and, therefore, does not include temperature controls) separated by a solid partition, such equipment meets the definition of combination vending machine and would be classified as either Combination A or Combination B for the purposes of compliance with DOE's energy conservation standards. Such equipment may share the same product deliver chute or include separate product delivery chutes.

In response to EVA's suggestion that DOE use simple and understandable definitions, similar to those in the European vending market, DOE researched the definitions used in Europe to describe beverage vending machines and was not able to find consistent definitions or terminology that are publically available and such definitions were not provided in EVA's comments. However, DOE continues to believe that the definitions adopted in this final rule represent the clearest and most unambiguous approach to differentiating equipment classes for the U.S. market.

In response to DOE's 2015 BVM ECS NOPR, NAMA stated that DOE's proposed definition of combination vending machines is inconsistent with industry practice and the EPA's ENERGY STAR definition and requested that DOE change this definition to be consistent with industry practice. NAMA specifically stated that very few vending machines have a [fully-



extending] solid partition, and that instead many of them allow air to come in between the unrefrigerated and refrigerated compartments. NAMA additionally stated that the unrefrigerated space pulls down to nearly the same temperature as the refrigerated volume over time in machines it considers to be combination vending machines. (NAMA, No. 50 at p. 1) In the Form Letters, commenters stated the definition of combination vending machines were not consistent with terms used in industry. (The Form Letter Writers, No. 64 and 65 at p. 1)

In response to comments from NAMA and the Form Letter Writers that DOE's definition of combination vending machine should be consistent with the ENERGY STAR or other industry definitions for such equipment, DOE notes that the ENERGY STAR definition of combination vending machines is identical to the current DOE definition for combination vending machine. DOE is not aware of any other specific industry definitions that are relevant for this equipment, and notes that the "industry" terms mentioned by The Form Letter Writers were not provided in comments. As noted previously, DOE believes the existing definition could be made more clear and unambiguous to improve the consistency of equipment definition for regulatory purposes. In addition, in response to NAMA's observation that typical combination vending machines do not have a fully extending solid partition, DOE notes that the definition of combination specifies that such equipment have two compartments, separated by a solid partition, but that such equipment may also include a common product delivery chute. DOE agrees with NAMA that, for many designs of combination equipment on the market today, the common product delivery chute may prevent the solid partition separating the refrigerated and non-refrigerated compartments from fully extending from front to back and side to side. That is, the solid partition need not thermally isolate the refrigerated compartment(s) from the non-refrigerated compartment(s) provided any air

exchange between compartments occurs only unintentionally through the common product delivery chute. If a vending machine model were to feature openings in the solid partition designed to allow for air transfer between the compartments, other than the product delivery chute, such equipment would not be considered a combination vending machine as it would not include any "non-refrigerated" compartments. That is, DOE interprets the designed presence of openings in the solid partition as a means of "intentional refrigeration" of that compartment. Therefore, equipment that is designed for air transfer between compartments is treated as Class A or Class B, depending on whether or not the equipment featured a transparent front (see sections IV.A.1.a and IV.A.1.c)

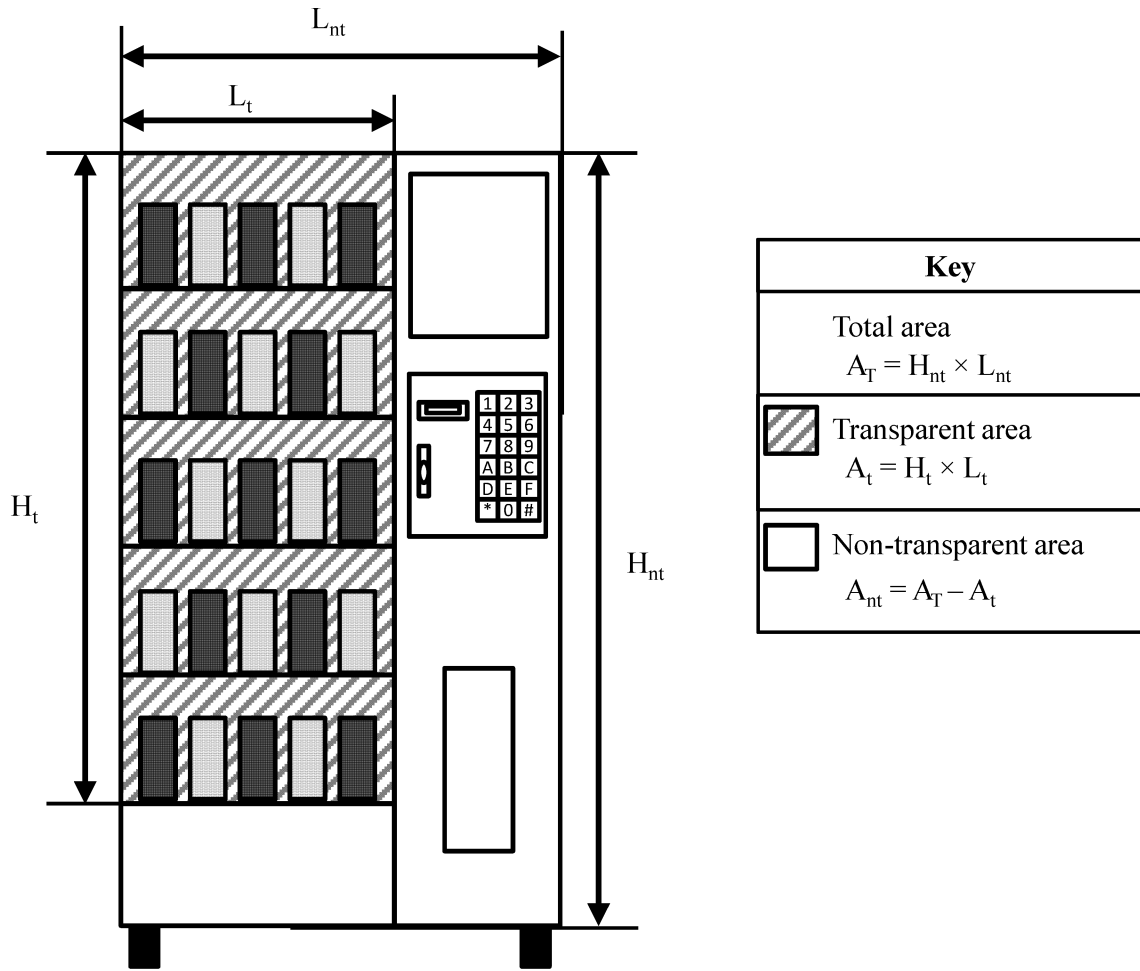
Based on the comments submitted by interested parties, DOE is adopting, in this final rule, the amended definition for combination vending machine and new definitions for Combination A and Combination B, as proposed in the 2015 BVM ECS NOPR. As noted in the 2015 BVM test procedure final rule, DOE believes that both appendix A and appendix B of the amended DOE BVM test procedure are applicable to combination vending machines. 80 FR 45758 (July 31, 2015). Specifically, appendix A of the DOE BVM test procedure is applicable to combination vending machines for the purposes of making any representations regarding the energy consumption of such equipment beginning January 27, 2016. *Id.* However, beginning on the compliance date of this final rule, manufacturers of combination vending machines will be required to use appendix B of the DOE BVM test procedure for the purposes of demonstrating compliance with any such energy conservation standards and when making representations regarding the energy consumption of covered equipment.

#### c. Definition of Transparent and Optional Test Method for Determining Equipment Classification

In the 2015 BVM ECS NOPR, DOE proposed a quantitative criterion to

clearly determine whether a BVM model "has a transparent front" based on the percentage of transparent surface area on the front side of the beverage vending machine. Specifically, DOE proposed the procedure by which DOE would (1) determine the surface area of beverage vending machines and (2) determine whether such surface area is transparent. However, DOE noted that these procedures would not be required for rating and certification of specific BVM models. Under the proposal, manufacturers would be able to certify equipment as Class A, Class B, Combination A, or Combination B based on knowledge of the specific equipment dimensions and characteristics. However, DOE would use these procedures in enforcement testing to verify the appropriate equipment classification for all cases. As such, DOE also noted that where the appropriate equipment classification is not abundantly clear, manufacturers may elect to perform the test to ensure they are categorizing their equipment properly. To clarify that such procedures are only optional for manufacturers, DOE proposed to add such procedures to the product-specific enforcement provisions at 10 CFR 429.134. 80 FR 50462, 50476–50480 (Aug. 19, 2015).

Specifically, to determine the surface area, DOE proposed to specify that the total surface area of the front side of the beverage vending machine, from edge to edge, be determined as the total length multiplied by the total height of a beverage vending machine. DOE also proposed to specify that the transparent surface area would consist of all areas composed of transparent material on the front side of a beverage vending machine, and that the non-transparent surface area would consist of all areas composed of material that is not transparent on the front side of a beverage vending machine, where the sum of the transparent and non-transparent surface areas should equal the total surface area of the front side of a beverage vending machine, as shown in Figure IV.1. 80 FR 50462, 50476 (Aug. 19, 2015).

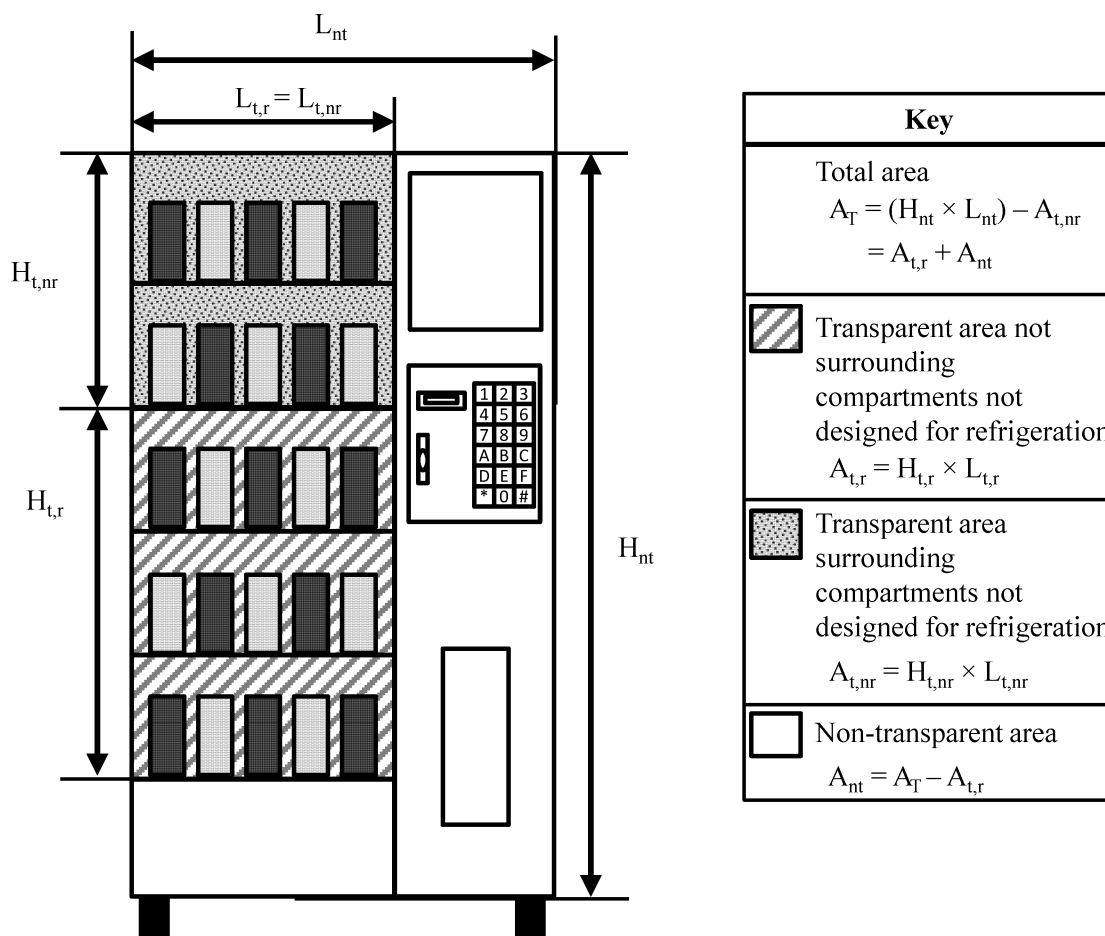


**Figure IV.1 Determination of Transparent and Non-Transparent Area for Beverage Vending Machines**

In the 2014 BVM ECS NOPR, DOE also noted that the same optional test protocol to determine the transparency of materials and the relative surface areas of transparent and non-transparent surfaces would be applicable to combination vending machines except that, the external surface areas surrounding the non-refrigerated

compartment(s) would not be considered. That is, all the surfaces that surround and enclose the compartment designed to be refrigerated (as demonstrated by the presence of temperature controls), as well as any surfaces that do not enclose any product-containing compartments (e.g., surfaces surrounding any mechanical

equipment or containing the product selection and delivery apparatus) would be considered in the calculation of transparent and non-transparent surface area for a beverage vending machine, as shown in Figure IV.2. 80 FR at 50479 (Aug. 19, 2015).



**Figure IV.2 Determination of Transparent and Non-Transparent Area for a Combination Vending Machine with Products Arranged Horizontally**

For both Class A and Combination A beverage vending machines, in the 2015 BVM ECS NOPR, DOE also proposed a specific definition and criteria to determine whether a material is transparent. Specifically, DOE proposed to adopt the definition of transparent that is applicable to commercial refrigeration equipment,<sup>27</sup> as adopted in the 2014 commercial refrigeration equipment test procedure final rule. 10 CFR 431.62; 79 FR 22277, 22286–22287, and 22308 (April 21, 2014). Under this definition, the term “transparent” would apply to any material with greater than or equal to 45 percent light transmittance, as determined in accordance with the ASTM Standard E 1084–86 (Reapproved 2009), “Standard Test Method for Solar Transmittance (Terrestrial) of Sheet Materials Using Sunlight,” at normal incidence and in

<sup>27</sup> As a beverage vending machine is defined as a type of commercial refrigerator, DOE believes that it is consistent and appropriate to use the same definition of transparent for both commercial refrigeration equipment and beverage vending machines.

the intended direction of viewing. With regard to beverage vending machines, DOE also clarified that, when determining material properties, that the transparency of the BVM cabinet materials should be determined with consideration of all the materials used to construct the wall segment(s), since the utility of the transparent material is only applicable if the viewer can clearly see the refrigerated products contained within the refrigerated volume of the beverage vending machine. 80 FR 50462, 50477 (Aug. 19, 2015).

In response to DOE’s proposed definition of transparent and optional test method for determining the relative transparent surface area, DOE received several comments and suggestions from interested parties. The CA IOUs recommended that DOE more clearly define the equipment classes being regulated using the term, “transparent.” The CA IOUs also recommended that DOE amend its definition of Class A equipment to take into account possible fluctuations in transparency of the front.

(CA IOUs, No. 58 at p. 1) Similarly, in written comments, NAMA and Royal Vendors stated that the 45 percent light transmittance criterion for the determination of transparency of the glass front of a vending machine is acceptable at this time, but may not be so in the future if better low-emissivity coatings are developed. (NAMA, No. 50 at p. 3; Royal Vendors, No. 54 at p. 3) In written comments, Royal Vendors stated also that the definition of Class A would apply to a unit in which at least 25 percent of the front surface area is transparent, but that the definition of transparency would not always be met by equipment Royal Vendors considers to be “Class A.” (Royal Vendors, No. 54 at p. 3)

In response to the comments submitted by the CA IOUs regarding the treatment of certain equipment with respect to the term “transparent,” DOE clarifies that the definition of transparent adopted in this final rule is applicable to all classes of beverage vending machines. In particular, the

definition of transparent is pertinent to differentiating Class A equipment from Class B equipment and Combination A equipment from Combination B equipment. Similarly, DOE also uses the term to determine equipment classification for commercial refrigeration equipment, the definition of transparent adopted in this final rule is pertinent only to beverage vending machines.

In response to the comments by CA IOUs, NAMA, and Royal Vendors regarding the suitability of the 45 percent threshold for light transmittance, DOE notes that it has considered the current and potential future characteristics of advanced, high-performing glass and acrylic products featuring low-emissivity coatings, low solar heat gain, or other features that may impact the overall light transmittance of the material. In the commercial refrigeration equipment test procedure NOPR, DOE had originally proposed that a transparent material was any material with greater than or equal to 65 percent light transmittance, consistent with the definition of total display area in the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) Standard 1200 (I-P)-2010 (AHRI 1200-2010), "Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets." 78 FR 64295, 64301-64302 (Oct. 28, 2013). However, after conducting market research regarding the visible transmittance of typical materials used in commercial refrigeration equipment manufacturing, as well as new high-performing glass products that could be used in such an application, DOE adopted a threshold of 45 percent in the 2014 CRE test procedure final rule. 79 FR 22277, 22287 (April 21, 2014). In support of this BVM ECS final rule, DOE conducted additional research into the glass and acrylic products typically used by manufacturers to produce Class A and Combination A beverage vending machines, as well as any new, high-performing glass products that may have been introduced since DOE's review for the 2014 CRE test procedure final rule. Based on its review, DOE believes that the threshold of 45 percent light transmittance to determine transparency is equally applicable to materials that are typically used to manufacture both commercial refrigeration equipment and beverage vending machines. DOE will continue to monitor the BVM and CRE market for any new materials integrated into equipment designs that meet DOE's intent of allow customers to view the merchandise contained within the refrigerated space but do not meet

DOE's definition of transparent and, if necessary, revise the definition of transparent accordingly.

Therefore, in this final rule, DOE is adopting a definition of transparent applicable to materials with greater than or equal to 45 percent light transmittance based testing in accordance with ASTM Standard E 1084-86 (Reapproved 2009). DOE reiterates that this test method is optional and is not required for equipment certification or testing by manufacturers. Specifically, manufacturers may continue to specify the appropriate equipment class without determining the light transmittance of materials based on testing in accordance with ASTM Standard E 1084-86 (Reapproved 2009). However, if the transparency of a material is in question, the determination of the light transmittance of a transparent material must be determined in accordance with ASTM Standard E 1084-86 (Reapproved 2009) and DOE will use this test method to determine equipment classification in enforcement testing.

## 2. Machines Vending Perishable Goods

In response to DOE's 2015 BVM ECS NOPR, NAMA and Royal Vendors stated that vending machines that vend perishable goods should be regulated under a separate equipment class because they must maintain temperatures that do not allow for a refrigeration low power mode credit. (NAMA, No. 50 at p. 5; Royal Vendors, No. 54 at p. 4) Conversely, SVA expressed agreement with DOE's position that vending machines that vend perishable goods do not require a separate equipment classification. (SVA, No. 53 at p. 2)

DOE notes that there are beverage vending machines that are capable of vending certain perishable products that may require more strict temperature control than beverage vending machines that only vend non-perishable products, such as bottled or canned soda, juice, or water. DOE notes such perishable products may or may not be sealed beverages but that, if a vending machine is refrigerated and is capable of, or can be configured to, vend sealed beverages for at least one of the product selections, then the vending machine meets DOE's definition of beverage vending machine and must comply with DOE's regulations for this equipment.

Based on input from interested parties provided throughout this rulemaking, DOE believes that machines capable of vending perishable goods are generally not materially different from other beverage vending machines, and that the necessary levels of temperature

maintenance needed to preserve perishables are achieved through the application of control settings rather than through design changes. In addition, such equipment can be tested using DOE's existing method of testing and does not have significantly different energy consumption profiles from other beverage vending machines when tested using DOE's methodology. Therefore, DOE does not believe separate equipment classes and standard levels are warranted for beverage vending machines that are capable of vending perishable goods, and DOE is not implementing a separate class for such equipment in this final rule. As such, equipment that vends perishable products along with at least one sealed beverage must be tested in accordance with the DOE test procedure and must meet applicable energy conservation standards. Vending machines that are not capable of vending sealed beverages or are not refrigerated do not meet DOE's definition of beverage vending machine and, as such, are not subject to standards, test procedures, and certification and reporting requirements for beverage vending machines.

DOE agrees with SVA that beverage vending machines that may be configured to, or capable of, vending perishable goods do not require a separate equipment class or separate energy conservation standards. Specifically, as noted in comments provided by interested parties in response to the framework document, including Witterns, Crane, AMS, and NAMA (see preliminary TSD chapter 2) DOE understands that the same BVM models may be configured to vend perishable or non-perishable goods. DOE also believes, based on market research and input from interested parties, that, if the BVM model is configured to vend perishable goods, the refrigeration low power mode that may be installed on the machine as distributed in commerce is simply disabled or overridden for that particular installation. DOE additionally understands that installations where beverage vending machines are configured to vend perishable goods represent a minority of installations, a position supported in public comments provided by Royal Vendors and NAMA (see preliminary TSD chapter 2).

## 3. Market Characterization

As part of the market and technology assessment, DOE identified and characterized relevant trade associations, manufacturers and their market shares, and current regulatory programs and non-regulatory initiatives related to BVM energy use. Details

related to this characterization are in chapter 3 of the final rule TSD.

In response to the 2015 BVM ECS NOPR, DOE received several comments related to the role that the ENERGY STAR program plays in the U.S. BVM market. In the BVM ECS NOPR public meeting and in written comments, EEA Joint Commenters expressed the belief that minimum efficiency standards and the ENERGY STAR program are complementary and that, by nature of being mandatory, DOE's energy conservation standards program is able to save more energy than ENERGY STAR alone. (EEA Joint Commenters, No. 56 at p. 4; EEA Joint Commenters, Public Meeting Transcript, No. 48 at p. 118) The Form Letter Writers stated standards would eliminate the current ENERGY STAR specification as the most efficient which would remove the credibility of the ENERGY STAR Industry. (The Form Letter Writers, No. 64 and 65 at p. 1) SVA expressed its belief at the BVM ECS NOPR public meeting that voluntary standards such as ENERGY STAR are more effective in driving the market towards more efficient equipment than DOE's mandatory standards. (SVA, Public Meeting Transcript, No. 48 at p. 117) In written comments, Royal Vendors, NAMA, and Coca-Cola stated that ENERGY STAR certification is required by a majority of equipment purchasers, and that DOE's proposed standards would trigger a revision to ENERGY STAR to further reduce allowable energy consumption below the DOE standard. These stakeholders added that a revision to the ENERGY STAR standard in response to DOE's BVM ECS rulemaking would make it more difficult to meet their customers' expectations for the ENERGY STAR label. Coca Cola added that manufacturers may devote more resources to developing technologies that can immediately meet newly-revised ENERGY STAR standards, instead of investing in the development of technologies that may result in more significant energy savings in the long term. (Royal Vendors, No. 54 at p. 7; NAMA, No. 50 at p. 14; Coca-Cola, No. 52 at p. 3).

DOE thanks the EEA Joint Commenters and SVA for their comments regarding the efficacy of ENERGY STAR in driving the market towards increased efficiency and agrees with the EEA Joint Commenters' assessment of ENERGY STAR and DOE's energy conservation standards as being complementary and more effective than voluntary standards alone. In response to comments regarding potential revision to ENERGY

STAR standards as a result of today's rulemaking, DOE notes that ENERGY STAR is a voluntary program that exists to help customers identify energy-efficient equipment on the market and save on energy costs. Specifically, the ENERGY STAR program includes only those equipment that exceeds mandated minimum standards that DOE is required by statute to set and enforce. Due to its nature as a voluntary program, DOE does not consider the impact of its energy conservation standards on potential updates to ENERGY STAR standards in its analysis. DOE coordinates with EPA on ENERGY STAR in order to reevaluate the ENERGY STAR specifications when DOE promulgates new or amended standards.

DOE also received several comments in response to the 2015 BVM ECS NOPR's request for updated estimates for the market share of combination vending machines. AMS commented that it only manufactures Class A machines and that its production volume is split roughly evenly between Class A and Combination A machines. (AMS, No. 57 at p. 2) In its written submission, NAMA stated that it did not have data to estimate the market share of combination vending machines specifically, but it estimated that beverage vending machines are approximately 60 percent of the total market for vending machines.

DOE thanks these stakeholders for their submission of specific data and has incorporated it into the analysis.

#### 4. Technology Options

As part of the technology assessment, DOE developed a list of technologies to consider for improving the efficiency of beverage vending machines. DOE considers as design options all technologies that meet the screening criteria (see section I.B) and that produce quantifiable results under the DOE test procedure.

DOE typically uses information about existing and past technology options and prototype designs to help determine which technologies manufacturers can use to attain higher energy performance levels. In consultation with interested parties, DOE develops a list of technologies for consideration in its screening and engineering analyses. Initially these technologies encompass all those that DOE believes are technologically feasible. Since many options for improving equipment efficiency are available in existing equipment, equipment literature and direct examination of BVM units currently on the market provided much of the information underlying this

analysis. While DOE notes that the majority of currently available equipment uses R-134a for its refrigerant, and R-134a will no longer be available for BVM applications at the time compliance will be required with any amended standards established as part of this final rule (80 FR 42870, 42917-42920 (July 20, 2015)), DOE believes that the majority of technology options considered in DOE's analysis and presented in the following list are applicable to all beverage vending machines, regardless of the refrigerant utilized. Specifically, DOE considered the following technologies in this final rule analyses:

- Higher efficiency lighting
- higher efficiency evaporator fan motors
- higher efficiency evaporator fan blades
- improved evaporator design
- evaporator fan motor controllers
- low-pressure-differential evaporators
- insulation improvements (including foam insulation thickness increase and use of improved materials such as vacuum insulated panels)
- improved glass pack (for Class A and Combination A equipment)
- higher efficiency defrost mechanism
- higher efficiency compressors
- variable speed compressors
- increased condenser performance
- higher efficiency condenser fan motors
- higher efficiency condenser fan blades
- microchannel heat exchangers
- higher efficiency expansion valves
- improved anti-sweat heaters
- lighting controls (including timers and/or sensors)
- refrigeration low power modes.

Chapter 3 of the final rule TSD includes the detailed description of all technology options DOE identified for consideration in this rulemaking.

#### B. Screening Analysis

The purpose of the screening analysis is to evaluate the technologies identified in the technology assessment to determine which technologies to consider further and which technologies to screen out. DOE consulted with industry, technical experts, and other interested parties in developing a list of energy-saving technologies for the technology assessment, detailed in chapter 3 of the final rule TSD. DOE then applied the screening criteria to determine which technologies were unsuitable for further consideration in this rulemaking. Chapter 4 of the final rule TSD contains details about DOE's screening criteria.

DOE uses the following four screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

(1) *Technological feasibility.* DOE considers only those technologies incorporated in commercial equipment or in working prototypes to be technologically feasible.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial equipment could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on equipment utility or product availability.* If it is determined that a technology would have significant adverse impact on the utility of the product to significant subgroups of customers or would result in the unavailability of any covered equipment type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as equipment generally available in the United States at the time, it will not be considered further.

(4) *Adverse impacts on health or safety.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

10 CFR part 430, subpart C, appendix A, 4(a)(4) and 5(b).

In sum, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the above four criteria, it will be excluded from further consideration in the engineering analysis. The reasons for eliminating any technology are discussed below.

The subsequent sections address DOE's evaluation of each technology option against the screening analysis criteria and DOE's determination of technology options excluded ("screened out") based on the screening criteria.

### 1. Screened-Out Technologies

These four screening criteria do not include the propriety status of design options. As noted previously, DOE will only consider efficiency levels achieved through the use of proprietary designs in the engineering analysis if they are not part of a unique path to achieve that efficiency level. DOE does not believe that any of the technologies identified in the technology assessment are

proprietary, and thus, did not eliminate any technologies for that reason.

### 2. Remaining Technologies

Through a review of each technology, DOE concludes that all of the other identified technologies listed in this section IV.B.2 met all four screening criteria to be examined further as design options in DOE's final rule analysis. In summary, DOE did not screen out the following technology options:

- Higher efficiency lighting
- higher efficiency evaporator fan motors
- higher efficiency evaporator fan blades
- evaporator fan motor controllers
- improved evaporator design
- low-pressure differential evaporators
- improvements to anti-sweat heaters
- improved or thicker insulation
- higher efficiency defrost mechanisms
- higher efficiency compressors
- variable speed compressors
- microchannel heat exchangers
- improved condenser design
- higher efficiency condenser fan motors
- higher efficiency condenser fan blades
- improved glass pack design (for Class A and Combination A machines)
- lighting controls
- refrigeration low power modes

DOE determined that these technology options are technologically feasible because they are being used or have previously been used in commercially available equipment or working prototypes. DOE also finds that all of the remaining technology options meet the other screening criteria (*i.e.*, practicable to manufacture, install, and service and do not result in adverse impacts on customer utility, equipment availability, health, or safety). For additional details, see chapter 4 of the final rule TSD.

### C. Engineering Analysis

The engineering analysis establishes the relationship between an increase in energy efficiency of the equipment and the corresponding increase in manufacturer selling price (MSP) associated with that efficiency level. This relationship serves as the basis for cost-benefit calculations for individual customers, manufacturers, and the nation. DOE typically structures its engineering analysis using one of three approaches: (1) The design-option approach, (2) the efficiency-level approach, or (3) the cost-assessment (reverse engineering) approach. The next paragraphs provide overviews of these three approaches.

A design-option approach identifies individual technology options (from the market and technology assessment) that can be used alone or in combination with other technology options to increase the energy efficiency of a given BVM unit. Under this approach, cost estimates of the baseline equipment and more-efficient equipment that incorporates design options are based on manufacturer or component supplier data or engineering computer simulation models. Individual design options, or combinations of design options, are added to the baseline model in descending order of cost-effectiveness.

An efficiency-level approach establishes the relationship between manufacturer cost and increased efficiency at predetermined efficiency levels above the baseline. Under this approach, DOE typically assesses increases in manufacturer cost for incremental increases in efficiency, without identifying the technology or design options that would be used to achieve such increases.

A reverse-engineering, or cost-assessment, approach involves disassembling representative units of beverage vending machines, and estimating the manufacturing costs based on a "bottom-up" manufacturing cost assessment; such assessments use detailed data to estimate the costs for parts and materials, labor, shipping/packaging, and investment for models that operate at particular efficiency levels.

As discussed in the 2015 BVM ECS NOPR, DOE employed the design-option approach to develop the relationship between energy use of a beverage vending machine and MSP. The decision to use this approach was made due to several factors, including the lack of numerous discrete levels of equipment efficiency currently available on the market and the prevalence of energy-saving technologies applicable to this equipment. More specifically, DOE identified design options for analysis and used a combination of industry research and teardown-based cost modeling to determine manufacturing costs, then employed numerical modeling to determine the energy consumption of each combination of design options employed in increasing equipment efficiency. The resulting range of equipment efficiency levels and associated manufacturer production costs (MPCs) were converted to MSPs using information regarding typical manufacturer markups and outbound freight costs. Typical manufacturer markups are presented in chapter 5 of the final rule TSD.

DOE revised the engineering analysis presented in the 2015 BVM ECS NOPR based on the feedback from stakeholders, additional industry research, and responses to recent regulatory changes implemented by EPA's SNAP program. In particular, DOE revised its assumptions for the thermal modeling of combination vending machines to account for some cooling in the compartment that is not designed to be refrigerated, incorporated higher production costs associated with specific requirements for beverage vending machines using flammable refrigerants (propane), and revised which design options were included in Class A and Class B baseline configurations. In addition, DOE adjusted the efficiency of CO<sub>2</sub> compressors relative to R-134a compressors, increased the amount of LED lighting accounted for in place of T8 lighting, decreased the impact attributed to enhanced coils, incorporated a single-pane glass pack for Combination A vending machines at baseline, removed the most-efficient compressor design option from the 2015 BVM ECS NOPR, and updated its cost estimates for several design options.

#### 1. Baseline Equipment and Representative Sizes

For each of the two classes of equipment with current standards (Class A and Class B), DOE developed baseline configurations containing design options consistent with units designed to perform at a level that approximates the existing 2009 BVM standard. DOE based its representative size assumptions for Class A and Class B equipment on the representative sizes assumed in the 2009 BVM rulemaking and input from manufacturers during the framework, preliminary analysis, and NOPR phases of this rulemaking, as well as data gathered from supplemental sources. DOE believes that these representative sizes continue to reflect the design and features of current baseline equipment for Class A and Class B equipment.

For Combination A and Combination B equipment, DOE set its baseline efficiency level differently than for Class A and Class B equipment, since there are no current regulatory standards for this equipment. Specifically, DOE modeled the baseline level of efficiency for the Combination A and Combination B equipment as representing the least-efficient technology generally found in the BVM market currently for each design option analyzed. That is, the baseline efficiency level for Combination A and Combination B equipment represented the least-

efficient combination of technologies available.

Representative sizes for Combination A and Combination B were established in the preliminary analysis based on equipment available in the current market, and have been maintained for this final rule. Specific details of the representative sizes chosen for analysis and design options representing each of the baseline equipment definitions for Class A, Class B, Combination A, and Combination B beverage vending machines are described in more detail in appendix 5A of the final rule TSD.

Based on input from manufacturers at the BVM ECS NOPR public meeting as well as feedback received in the preliminary analysis phase of the rulemaking, DOE adjusted the assumptions it used in its analysis of baseline level for Class A and Class B beverage vending machines, for which there are current standards. In this final rule, DOE began its engineering analysis by analyzing equipment designs that had levels of energy consumption much higher than allowed by the standard level set in the 2009 final rule. DOE's analysis then implemented all applicable design options (including some which likely were implemented in order to meet the 2009 final rule standard levels) in order of ascending payback period. Such an approach results in equipment designs that better reflect the current BVM market. To determine the MPC for a beverage vending machine that is minimally-compliant with the current BVM standards each size, refrigerant, and equipment class combination DOE analyzed, DOE linearly interpolated between the energy consumption levels just above (more consumptive) and just below (less consumptive) than the standard. Additional design options were then added as part of the design option engineering analysis. This methodology represents the approach that a new entrant to the market, or an existing manufacturer conducting a redesign, would take to meet the new standard analyzed in this rule, and allows cost and price associated with meeting the current standard with appendix B of the amended test procedure. See Table IV.4 for an example of this methodology.

Most of the design options analyzed in this final rule were observed by DOE in some portion of the equipment currently on the market. The presence of these design options in equipment that exceeds the current standard level serves as validation of the energy performance improvements over the baseline level that are possible with these design options. However, DOE

also realizes that no two manufacturers may necessarily use the same design option pathways to improve energy performance. As such, DOE notes that its engineering analyses represent just one potential pathway to achieve the efficiency levels modeled in downstream analyses, the one that its analysis shows to be the most cost-efficient.

After the NOPR stage, stakeholders provided comments regarding DOE's analysis of baseline equipment. In written comments, AMS commented that the baseline level calculated for Combination A beverage vending machines is far more efficient than the performance of actual machines in use today. Specifically, AMS stated that machines it manufactures, which would meet DOE's proposed definition of a Combination A vending machine, were tested, they would consume 8.09 kWh/day as opposed to the 6.18 kW/day baseline that DOE presented in the NOPR TSD. (AMS, No. 57, at p. 10) AMS specifically stated that converting a Class A machine to a Combination A machine only reduces energy by 25 percent even though the refrigerated volume was reduced by 60 percent and urged DOE to reconsider its assumptions for baseline combination vending machines. (AMS, No. 57 at p. 11)

DOE appreciates the submission of specific data by stakeholders and used this data to better inform its rulemaking activities. In response to comments and data submitted after the 2015 BVM ECS NOPR, DOE has refined its engineering model for Combination A vending machines to better account for air comingling between the compartment(s) that are designed to be refrigerated and the compartment(s) that are not designed to be refrigerated, which effectively increases the heat load associated with the non-refrigerated volumes and, correspondingly, energy consumption. DOE notes that the results of this updated analysis now more closely align with AMS's reported test results.

#### 2. Refrigerants

At the time of the final rule analysis, hydrofluorocarbon (HFC) refrigerants, and specifically R-134a, were used in most beverage vending machines on the market in the United States. In addition, based on equipment certification reports received by DOE, public statements from major end users of beverage vending machines such as Coca-Cola,<sup>28</sup>

<sup>28</sup> One example of such a public statement is available at [www.coca-colacompany.com/](http://www.coca-colacompany.com/)

and information DOE obtained through confidential manufacturer interviews (see section IV.J), DOE has come to understand that CO<sub>2</sub> refrigerant is used in a small but growing portion of the BVM market.

As discussed earlier, the refrigerants that are available for use in the U.S. BVM market are changing as a result of two recent rulemaking actions by EPA SNAP. First, EPA published proposed Rule 19 (Docket No. EPA-HQ-OAR-2014-0198) on July 9, 2014, that proposed, among other things, to list several hydrocarbons—*isobutane* and *propane*—and the hydrocarbon blend R-441A as acceptable alternatives under SNAP in BVM applications, subject to certain use conditions. 79 FR 38811. A final rule adopting these proposals became effective on May 11, 2015, and was published in the **Federal Register** on April 10, 2015. 80 FR 19454, 19491. EPA's second rulemaking under SNAP, Proposed Rule 20 (Docket No. EPA-HQ-OAR-2013-0748), was published on August 6, 2014 and proposed to change the status of certain refrigerants to unacceptable for certain applications, including R-134a for BVM application. 79 FR 46126. A final rule corresponding to proposed Rule 20 was published in the **Federal Register** on July 20, 2015. 80 FR 42870, 42917–42920 (July 20, 2015). This rule changes the status of R-134a for new beverage vending machines to unacceptable beginning on January 1, 2019. Therefore, equipment complying with the amended BVM standards DOE is adopting in this final rule will do so using the refrigerants allowable under the newly amended SNAP listings.

Due in large part to the EPA SNAP rulemaking, DOE received a number of stakeholder comments related to refrigerants in this rulemaking. In particular, commenters addressed which refrigerants were likely to be used in the future, DOE's approach to analyzing the different refrigerants, and the relative energy efficiency of the different refrigerants.

#### a. Refrigerants Used in the Analysis

DOE notes that while CO<sub>2</sub> has been approved for use in the United States in refrigerated beverage vending applications by EPA SNAP for several years, other refrigerants such as hydrocarbons, including *propane*, were only recently listed as acceptable alternatives for use in refrigerated beverage vending applications in the United States with EPA's recent

publication of final Rule 19. Although DOE is not aware of any BVM models that are currently commercially available using *propane* as a refrigerant, DOE accounted for the use of *propane* as an alternative refrigerant, in addition to CO<sub>2</sub>, as a potential refrigerant for BVM application. This was based on use of *propane* as a refrigerant in other similar, self-contained commercial refrigeration applications.

DOE did not receive any comments disagreeing with the use of these two refrigerants in the analysis. In response to DOE's 2015 BVM ECS NOPR request for comment, SVA stated that it has no plans to use *isobutane* as a refrigerant. (SVA, No. 53 at p. 5) SVA stated that it is in the early stages of research and development (R&D) for *propane* refrigerants and is concerned about EPA and UL requirements that restrict BVM placement, as well as significant equipment and facilities costs associated with flammable refrigerants. AMS commented that beverage vending machines with *propane* refrigeration systems require spark-proof motors to maintain safe operation in the event of a refrigerant leak. AMS stated that these motors are roughly three times the cost of non-spark proof motors and that this and other changes would add several hundred dollars to the cost of each machine. (SVA, No. 53 at p. 5; AMS, No. 57 at p. 8)

DOE thanks SVA and AMS for their comments. DOE has reviewed the relevant section of the UL 541 standard regarding flammable refrigerants in BVM applications and agrees with AMS that additional related costs should be accounted for in order to appropriately reflect the cost of procuring motors in compliance with the UL requirements. Accordingly, DOE has revised its cost model to account for the increased cost of the motors required by this standard.

#### b. DOE Approach

In the engineering analysis for this final rule, DOE first conducted an analysis for each equipment class based on equipment using R-134a refrigerant, the refrigerant found in the majority of equipment available today and therefore providing the most specific and comprehensive data available. DOE then conducted analysis on each equipment class using CO<sub>2</sub> and *propane* refrigerants, by adjusting the R-134a analysis to account for the performance differences attributable to the new refrigerants. This methodology allowed DOE to leverage the large existing base of experience, data, and models for sale utilizing R-134a while ensuring that its engineering model and downstream analyses properly addressed the

refrigerant landscape applicable at the time when compliance with new and amended standards will be required.

In conducting its CO<sub>2</sub> analysis, DOE adjusted its engineering analysis to account for an increase in energy use for a beverage vending machine that uses CO<sub>2</sub> versus a similarly equipped unit using R-134a. Specifically, in its final rule analysis, DOE used a 10-percent compressor power increase, based on a separate analytical comparison of HFC and CO<sub>2</sub> compressors and feedback from manufacturers, to account for the inherent relative inefficiency of CO<sub>2</sub>. This figure was reviewed with manufacturers during interviews and through requests for public comment on the preliminary analysis. DOE also analyzed components for CO<sub>2</sub> refrigeration systems such as compressors and refrigeration coils as having higher costs than those for HFC refrigeration systems. Additionally, as CO<sub>2</sub> models were currently available on the market for purchase at the time of this analysis, DOE was able to procure, test, and tear down CO<sub>2</sub> equipment to use in corroborating its analysis.

For *propane* equipment, DOE used a similar methodology to that applied for CO<sub>2</sub>. The engineering analysis used adjusted values for compressor performance, incorporating a 15-percent reduction in energy consumption as compared to an R-134a compressor, as well as adjustments to the cost of the compressor, heat exchangers, and other system components. These factors were developed through a separate, focused analysis targeting the inherent differences in performance potential between HFC and hydrocarbon refrigerants. Additionally, as mentioned above, DOE reviewed the requirements in UL 541 Supplement SA, and accordingly included an additional MPC factor representative of changes that may be needed to vend motors and other electronic components in order to comply with the UL requirements for all units modeled with *propane* refrigerant. For a detailed explanation of the methodology used in adjusting the analysis conducted on equipment using R-134a refrigerant for analyzing CO<sub>2</sub> and *propane* beverage vending machines in this final rule, please see chapter 5 of the final rule TSD.

In the BVM ECS NOPR public meeting and in written comments, EEA Joint Commenters and the CA IOUs requested that DOE treat more efficient refrigerants as a design option in its engineering analysis rather than conducting the analysis such that the proposed standards could be met by either CO<sub>2</sub> or *propane*. The EEA Joint Commenters expressed the belief that



DOE's refrigerant-neutral approach overestimates cost and underestimates potential energy savings as a result of any update to the standard. (EEA Joint Commenters, No. 56 at p. 2; CA IOUs, No. 58 at p. 2; EAA Joint Commenters, Public Meeting Transcript, No. 48 at pp. 8, 43)

DOE thanks the CA IOUs and EEA Joint Commenters for their comments. However, as noted by DOE in the BVM ECS NOPR public meeting, DOE's analysis for beverage vending machines has taken a refrigerant-neutral approach to maintain diversity and customer choice with regard to refrigerant in the BVM market. For example, Coca-Cola acknowledged in the BVM ECS NOPR public meeting that its choice for the North American business unit was CO<sub>2</sub> as a refrigerant. (Coca-Cola, Public Meeting Transcript, No. 48 at p. 48–50). Coca-Cola's statement is consistent with DOE's understanding that BVM customers may select different refrigerants for a variety of reasons and DOE does not wish the standards adopted as a result of this final rule to limit the availability or viability of certain SNAP-approved refrigerants in the BVM market. Therefore, in this final rule analysis, DOE has maintained a refrigerant-neutral analysis approach that ensures equitability across refrigerant platforms and continued availability of CO<sub>2</sub> as a refrigerant option for beverage vending machines. That is, DOE has maintained an analysis approach that independently analyzes CO<sub>2</sub>- and propane-refrigerant equipment so that the economic results can be analyzed individually. Such an approach results in selection of new and amended standard levels that result in the highest NPV for both refrigerants and that does not disadvantage another refrigerant.

### c. Relative Energy Efficiency of Refrigerants

NAMA and Royal Vendors commented in their written submissions that CO<sub>2</sub> systems consume approximately 15 percent more energy than their R-134a counterparts and cautioned that data may not be available due to the lack of current use. (NAMA, No. 50 at p. 5; Royal Vendors, No. 54 at p. 4) SBA Advocacy agreed that CO<sub>2</sub> is about 15 percent less efficient than R-134a and, therefore, claimed that it is not a technologically feasible alternative. (SBA Advocacy, No. 61 at p. 3) EVA also commented that CO<sub>2</sub> is 15 percent less efficient than an R-134a unit and the cost in Europe for "a cooling unit operating on CO<sub>2</sub> is double that of an R-134a unit as a result of a lack of availability of CO<sub>2</sub> compressors."

(EVA, No. 60 at p. 2) SVA commented that its experience with CO<sub>2</sub> refrigeration systems indicates comparable efficiency performance to R-134a systems if optimized solely for steady-state conditions but stated that these systems must be designed for pull-down requirements associated with equipment reload at higher ambient temperature and/or humidity conditions, and that this causes CO<sub>2</sub> systems tend to be about 5 percent less energy efficient than R-134a. (SVA, No. 53 at p. 3) Additionally, AMS commented that it had no direct knowledge with CO<sub>2</sub> but that its limited testing with propane showed equal or only slightly better efficiency than R-134a. (AMS, No. 57 at p. 4)

DOE thanks these stakeholders for their comments. It is DOE's understanding that the difference in performance between equipment using the different refrigerants is primarily a result of the different compressor efficiencies. DOE has incorporated these differences into its analysis and notes that its analytical results are in line with comments provided and specifically that the efficiency penalty associated with CO<sub>2</sub> refrigeration systems in the analysis is bounded by the estimates provided. Additional information about these results is in the compressors section of IV.C.4 and in chapter 5 of the final rule TSD.

### 3. Screened-In Technologies Not Implemented as Design Options

DOE removed several screened-in technologies from consideration in the engineering analysis due to lack of data, lack of availability, competing effects, or lack of measurable energy savings when tested to the DOE test procedure. The technologies included higher efficiency fan blades for evaporator and condenser fans, low-pressure differential evaporators, improvements to anti-sweat heaters, higher efficiency defrost mechanisms, variable speed compressors, and microchannel heat exchangers. More information about these technologies and the reasons they were removed from consideration can be found in chapter 5 of the final rule TSD.

DOE received several comments regarding one of the technologies it removed from consideration in the engineering analysis, variable speed compressors. In response to DOE's request for comment on the use of variable speed compressors in beverage vending machines, AMS commented that although it had used variable speed compressors for energy savings in the past, this technology was no longer available for BVM applications due to

the small market. (AMS, No. 57 at p. 3) SVA commented that it is not aware of any variable speed CO<sub>2</sub> compressors. (SVA, No. 53 at p. 5) In the BVM ECS NOPR public meeting and written comments, CA IOUs and the EEA Joint Commenters stated their belief that the three operating modes of beverage vending machines (pull-down, steady-state, and low power mode) make them good candidates for variable speed compressors to reduce energy consumption and inquired as to why DOE chose to exclude them as design options. (CA IOUs and EEA Joint Commenters, Public Meeting Transcript, No. 48 at p. 35) In its written comments, the CA IOUs requested that DOE consider variable speed compressors as a design option. (CA IOUs, No. 58 at p. 2)

DOE thanks these stakeholders for their comments and notes that manufacturers are not precluded from exploring variable speed compressors as a means to meet the updated energy conservation standards for beverage vending machines. However, manufacturer comments are consistent with DOE's conclusion in the 2015 BVM ECS NOPR that there are currently no variable speed compressors with operating capacity ranges applicable to beverage vending machines available on the market that use refrigerants other than R-134a, which will not be available for use in vending machine applications by the compliance date of this rulemaking due to EPA's SNAP regulations. Because DOE is required to set energy conservation standards that are both technologically feasible and economically justified, DOE did not include variable speed compressors as a design option in its analysis.

### 4. Design Options Analyzed and Maximum Technologically Feasible Efficiency Level

In response to the 2015 BVM ECS NOPR, DOE received comments with specific feedback regarding several of the design options analyzed, including glass packs, improved insulation and vacuum insulated panels, higher efficiency lighting, lighting low power modes, fan motors, evaporator fan controls, coils, and higher efficiency compressors.

#### a. Glass Packs

In written comments, Coca-Cola expressed its belief that enhanced glass packs, specifically those using three panes of glass, are not economically justified for the energy savings delivered. Coca-Cola further stated that some of its current Class A equipment with CO<sub>2</sub> refrigeration systems use

double pane, argon-filled, low E glass and cannot accommodate triple pane glass pack without a major redesign. (Coca-Cola, No. 52 at p. 3) Similarly, Royal Vendors commented that its Class A machines currently use double-pane, argon-filled, low-emissivity glass and cannot accommodate triple-pane glass packs without major redesigns, large development costs, and substantial machine cost increases. (Royal Vendors, No. 54 at p. 2) SVA also commented that enhanced glass packs are not economically justified. (SVA, No. 53 at p. 4)

DOE thanks Coca-Cola, Royal Vendors, and SVA for their comments and has increased the cost associated with the enhanced glass pack design option from that used during the NOPR, in order to better represent the economic ramifications of implementing that design option. DOE notes that the engineering analysis in this final rule considers the enhanced glass pack design option, which is a triple-paned glass pack, as technologically feasible, but that the economic analysis does not deem it to be part of the least-cost approach to meeting the new standard levels at any analysis point. Additionally, DOE accounted for the cost of equipment redesign and production equipment cost increases in its manufacturer impact and customer subgroup analyses (See sections IV.J and IV.I, respectively).

#### b. Evaporator Fan Motor Controls

Royal Vendors stated in written comments that its machines already use evaporator fan controls to meet the current standards. (Royal Vendors, No. 54 at p. 2)

DOE thanks Royal Vendors for their comment and agrees that most equipment on the market today makes use of evaporator fan motor controls. Accordingly, in DOE's engineering analysis in this final rule, the evaporator fan motor controls design option is implemented in the baseline level for all Class A and most Class B analysis points. See section IV.C.1 for information on how DOE established baseline levels for Class A and Class B equipment in this analysis.

#### c. Coils

In their written comments, SVA questioned DOE's assumption of 14 percent energy savings due to enhanced evaporator coils, and stated their general belief that predicted efficiency improvements based on software modeling are typically optimistic compared to test results. SVA also stated that for its Class A equipment, it already uses enhanced evaporator coils

to meet the current standard, and that enhanced condenser coils reduce equipment utility. (SVA, No. 53 at pp. 3–4)

DOE thanks SVA for their comments and has revised the cost and energy improvement associated with enhanced coils in this final rule. DOE additionally notes that in all of the final rule analysis points, the resulting reduction in DEC attributable to changes in the evaporator coil is shown to be well less than 10 percent. In addition, DOE notes that such "enhanced" evaporator and condenser coil options are already commonly implemented and commercially-available design options.

#### d. Compressors

DOE received several comments regarding different compressors. Specifically, DOE received comments regarding the higher efficiency compressor design option and regarding CO<sub>2</sub> compressors. In the BVM ECS NOPR public meeting, SVA expressed doubt that a beverage vending machine with the compressor that DOE considered as baseline in its engineering model would be able to meet the 2009 standard, and stated that DOE should instead consider the Embraco FFU130HAX compressor as the baseline efficiency level. SVA additionally stated that CO<sub>2</sub> compressors capable of reducing energy consumption to the degree indicated in DOE's 2015 BVM ECS NOPR analysis do not exist on the market. (SVA, Public Meeting Transcript, No. 48 at pp. 63–72) In written comments, Royal Vendors stated that it is not aware of any compressors with higher efficiency than the Embraco FFU130HAX for R–134a or the Sanden SRABB for CO<sub>2</sub> and that therefore DOE should not consider a more efficient compressor as a design option to reduce energy consumption. (Royal Vendors, No. 54 at p. 1) In its written comments, Coca-Cola similarly stated that the assumed ability to move to higher efficiency compressors does not exist. (Coca-Cola, No. 52 at p. 3)

While, through testing and teardowns, DOE has observed equipment on the current market that meets the current energy conservation standards that uses compressors other than the Embraco FFU130HAX, DOE agrees with stakeholder comments in that it is not currently aware of a compressor available for use in beverage vending machines in the United States that is more efficient than the Embraco FFU130HAX. Accordingly, DOE has removed from the analysis the design option that represented a higher efficiency compressor. Additionally, the engineering analysis now includes the

"Improved single speed reciprocating compressor" design option (which corresponds to the FFU130HAX, adjusted according to the refrigerant-specific analysis) in all Class A baseline equipment configurations.

Regarding CO<sub>2</sub> compressors, in written comments, AMS commented that CO<sub>2</sub> refrigerant has a significant efficiency penalty, and that it is aware of only one supplier that makes CO<sub>2</sub> compressors in the capacity range required for BVM applications. (AMS, No. 57 at p. 8) Coca-Cola also stated in its written comments that it is aware of only one CO<sub>2</sub> compressor supplier in the U.S. for beverage vending machines. (Coca-Cola, No. 52 at p. 2) Additionally, in the BVM ECS NOPR public meeting, Coca-Cola stated that it was aware of six CO<sub>2</sub> compressors, all early in the technology curve, and suggested that DOE take into account potential rapid improvements in efficiency for CO<sub>2</sub> compressors as a result of maturing engineering and supply chains into account in its analysis. (Public Meeting Transcript, No. 48 at p. 51)

DOE thanks Coca-Cola and AMS for their comments. DOE is aware that there is currently a limited selection of CO<sub>2</sub> compressors available to BVM manufacturers in the United States. Based on the feedback received, CO<sub>2</sub> compressors were analyzed in the final rule engineering analysis as using 10 percent more energy than an R–134a compressor of similar design, as opposed to the 6 percent value used in the 2015 BVM ECS NOPR engineering.

#### e. Insulation and Vacuum Insulated Panels

Royal Vendors commented that the only design options considered by DOE in this rulemaking that it has not already implemented to meet existing energy conservation standards are increased insulation thickness and vacuum insulated panels, and stated that increased insulation thickness would require large investments in redesign and new foaming fixtures. Royal Vendors additionally stated that it does not know the viability of vacuum insulated panels. (Royal Vendors, No. 54 at p. 2) Coca-Cola commented that vacuum insulated panels are highly costly to implement and that its supply base has not worked to develop this option. (Coca-Cola, No. 52 at p. 3) EEA Joint Commenters stated that DOE's analysis may overestimate the cost and underestimate the performance of vacuum insulated panels due to possibly outdated information. (EEA Joint Commenters, No. 56 at p. 3) SVA commented that they are already using increased insulation thickness on their

Class B equipment to meet the existing standard. (SVA, No. 53 at p. 4).

DOE has accounted for redesign and increased materials costs in its manufacturer impact and engineering analyses, respectively. (See sections IV.J and chapter 12 of the TSD for information on the manufacturer impact analysis.) In response to Royals' comment concerning the viability of vacuum insulated panels in BVM applications, DOE notes that proof of concept for enhanced insulation to increase energy efficiency has been shown in related industries such as commercial refrigerator manufacturing and serves as a basis on which to assess technological feasibility. Regarding Coca-Cola's comment, DOE has quantified the costs to implement vacuum insulated panels, which it agrees to be sizably higher at this time than those of traditional foam insulation, and has incorporated those costs into its engineering analysis. In response to the comment by EEA Joint Commenters regarding the cost and performance of vacuum insulated panels, DOE notes that it has continued research into this technology in concurrent rulemakings and that its assessment for beverage vending machines is based on the most up to date information that it has obtained through manufacturer interviews and other sources.

#### f. Lighting and Lighting Low Power Modes

Regarding lighting, CA IOUs in the BVM ECS NOPR public meeting and EEA Joint Commenters in their written comment expressed the belief that DOE should have accounted for a greater variation in LED lighting system efficiency rather than considering it as a single efficiency tier. (CA IOUs and the EEA Joint Commenters, Public Meeting Transcript, No. 48 at p. 59; CA IOUs, No. 58 at p. 4) In written comments, Royal Vendors stated that it is already using LED lighting in its Class A machines to meet the current standard. (Royal Vendors, No. 54 at p. 1)

DOE thanks the CA IOUs, EEA Joint Commenters, and Royal Vendors for their comments. DOE acknowledges that there are a range of LED efficiencies available on the market and notes that several design options in the analysis could be implemented to different extents, including, for example, lighting systems, thicker insulation, and various types of controls (e.g., accessory and refrigeration low power modes). In its engineering model, DOE used representative values for the energy consumption of each design option,

including lighting systems, for each equipment class. DOE notes that manufacturers are free to choose whichever design path they wish in order to meet current and future energy conservation standards. DOE analyzes and orders design options based on its determination of the relative cost-effectiveness of each design option. DOE notes that its engineering analysis agrees with Royal Vendors and accounts for the use of LED lighting in order to meet the baseline level at many Class A analysis points.

Regarding lighting low power modes, in the BVM ECS NOPR public meeting, SVA expressed the belief that test results currently included in certification directories and showing high levels of efficiency may have been developed using lighting low power modes. (SVA, Public Meeting Transcript, No. 48 at p. 66) Also in the public meeting, SVA expressed doubt that the 6-hour allowance for lighting low power states under the updated test procedure could account for as steep a drop in energy consumption as DOE's analysis shows. (SVA, Public Meeting Transcript, No. 48 at p. 66) In its written comments, SVA estimated that 20 percent energy savings over a baseline model was possible if LED lighting systems are used in conjunction with lighting controls, and 10 percent energy savings were possible if lighting controls are used with T-8 lighting systems. (SVA, No. 53 at p. 4) SVA also stated that it only uses one LED bulb in its Class A equipment while DOE assumes two LED bulbs in its engineering model. (SVA, No. 53 at p. 4)

DOE thanks SVA for its comments, and especially appreciates the submission of specific data on potential energy savings as a result of increased efficiency lighting. With regard to SVA's comment on the number of LED bulbs, DOE notes that its engineering model is based on equipment configurations equipment found in teardowns, and that it believes to be generally representative of the beverage vending machine market due to the presence of similar configurations across multiple manufacturers. DOE acknowledges that individual models may not have the same components. Additionally, DOE revisited the specifications of models available on the markets and, after additional review of available data, in its final rule analysis, DOE increased the linear footage of LED fixtures used within the case to replace T8 lighting in Class B and Combination B analyses to 8 total feet of LED fixtures, and maintained the values for Class A and

Combination A at 6 total feet of LED fixtures.

#### g. Fan Motors

In the BVM ECS NOPR public meeting, SVA commented that 9 watt fan motors are unrealistic for BVM applications and provided more detail in its written comments, stating that it uses 4 watt fan motors for its evaporator and condenser fans. In written comments, SVA also stated that its Class B equipment already implements PSC condenser fan motors and that ECM condenser fan motors are not economically justified. (SVA, Public Meeting Transcript, No. 488 at p. 174; SVA, No. 53 at p. 4) In written comments, Royal Vendors stated that it is already using ECM evaporator fan motors and PSC condenser fan motors to meet the current standards and added that converting from PSC to ECM condenser fan motors would not yield significant energy savings for the added cost. (Royal Vendors, No. 54 at p. 1)

In response to SVA's comment regarding fan power draw, DOE notes that it used fan motor wattage values that were shown to be typical of the BVM market as evidenced by their inclusion in numerous models examined during DOE's teardown analysis. DOE thanks Royal Vendors for its comment regarding the use of fan motor design options and notes that it has reviewed the energy consumption model in its engineering analysis and that Royal's and SVA's comments generally align with DOE's engineering analysis with ECM evaporator fan motors often being among the more cost-effective design options and ECM condenser fan motors being among the least cost-effective.

#### h. Performance of Design Option Packages

DOE also received several more general comments regarding the design options being used by manufacturers and the maximum technologically feasible level. In the BVM ECS NOPR public meeting and in written submission, SVA commented that it was already implementing many of DOE's proposed design options to meet existing ENERGY STAR levels and that it would not be able to come close to meeting DOE's proposed standard levels. SVA stated that many of the design options DOE analyzed are not technologically feasible or economically justified and that the remaining design options for Class A equipment are automatic lighting controls and refrigeration low power modes, which it believes would yield approximately 5 percent energy savings. SVA listed the

remaining design options for Class B equipment as including automatic lighting controls, enhanced evaporator coils, LED lighting, and refrigeration low power states. (SVA, No. 53 at pp. 3–4; Public Meeting Transcript, No. 48 at 173)

AMS commented in its written submission that it has already incorporated several design options to meet the 2009 energy conservation standards and that reducing daily energy consumption by an additional 25 percent is not feasible with present technologies and would require drastic changes to overall cabinet sizes and door design. (AMS, No. 57 at p. 9) Similarly, Royal Vendors commented that it has already employed most of the design options considered by DOE in its analysis to meet the 2009 standards and therefore does not believe it can meet the proposed standard using any refrigerant. (Royal Vendors, No. 54 at p. 4) NAMA commented that most manufacturers have already employed most of the design options considered by DOE and specifically stated that some manufacturers already use ECM evaporator fan motors, split capacitor condenser fan motors, LED lighting, and evaporator fan controls to meet the current standard. (NAMA, No. 50 at p. 5) Coca-Cola commented that many vending machines with CO<sub>2</sub> refrigeration systems that it purchases are already using LED lighting, ECM evaporator fan motors, and PSC condenser fan motors to meet ENERGY STAR. Coca-Cola additionally stated

that while LEDs can save energy, ECM condenser fan motors have minimal impact on energy consumption. (Coca-Cola, No. 52 at p. 3)

SVA commented that many of the design options considered by DOE are not technologically feasible, are not economically justified, or otherwise have a negative impact on equipment utility, citing the rebuttable presumption that the cost to the customer will be less than three times the value of the energy savings during the first year for energy conservation standards to be economically justified (Title 42 U.S.C. 6295(o)) and stated that this should preclude DOE from considering design options that do not yield an energy cost savings of at least one third of their incremental cost. (SVA, No. 53 at p. 3) Additionally, in the BVM ECS NOPR public meeting, SVA expressed the belief that DOE should have more fully disclosed the data used in its analysis and that DOE’s assumptions are generally off base with regard to manufacturer capability. (SVA, Public Meeting Transcript, No. 48 at p. 181)

In response to stakeholder comments, DOE has revised its engineering model to better represent which design options are already being used to meet the existing standard and therefore not be considered as potential sources of further incremental energy savings. In response to SVA’s comment regarding the economic justification of design options, DOE notes that it includes in the engineering analysis all technologies

that have survived the screening analysis. At the engineering analysis phase, DOE only screens out those technologies that are not technologically feasible; are not practical to manufacture, install, and service; do not impact equipment utility or equipment availability; and do not adversely affect health and safety (see section IV.B). DOE considers the economic implications of any screened-in design options in its downstream analyses and sets new and amended standard levels based on any improvements in efficiency that are economically justified based on the new costs and benefits accrued by the nation, as well as the specific impacts on manufacturers (see section IV.J) and certain customer subgroups (see section IV.I). In the LCC and PBP analyses, DOE considers the time, in years, it takes for the cumulative energy savings from more efficient equipment to recover any incremental increase in equipment cost necessary to achieve those efficiency improvements. DOE notes that the PBP analysis is assessed based on the *total* incremental equipment cost necessary to achieve a given efficiency level and the commensurate energy savings, rather than determining the PBP of individual design options. 42 U.S.C. 6295(o)(2)(B)(iii) DOE further discusses the methodology for the PBP analysis in section IV.F and presents the results of such analyses in section V.B.1.a.

The design options included in this final rule analysis are shown in Table IV.4.

TABLE IV.3—DESIGN OPTIONS MODELED IN THE ENGINEERING ANALYSIS

Design option	Notes
Higher efficiency lighting .....	<i>e.g.</i> , LEDs.
Higher efficiency evaporator fan motors .....	<i>e.g.</i> , Electronically commutated motors.
Evaporator fan controls. Improved evaporator design.	
Insulation increases or improvements .....	<i>e.g.</i> , Thicker insulation, vacuum insulated panels.
Improved glass pack .....	Class A and Combination A only.
Higher efficiency condenser fan motors .....	<i>e.g.</i> , Electronically commutated motors.
Improved condenser design. Higher efficiency compressors.	
Lighting low power modes .....	<i>e.g.</i> , Lighting timers.
Refrigeration low power modes .....	<i>e.g.</i> , Timer-based cabinet temperature rise.

An example of the results of the engineering analysis for a Class A BVM model with CO<sub>2</sub> refrigerant and a

medium refrigerated volume is provided in Table IV.4 of this notice.

TABLE IV.4—EXAMPLE OF DESIGN OPTION ANALYSIS—CLASS A MEDIUM CO<sub>2</sub> REFRIGERANT

DEC (kWh/day)	MPC (\$)	MSP (\$)	Design option added
8.598 .....	\$1,736.52	\$2,340.77	High Energy Use; with SPM fan motors, no energy controls, T8 lighting, double-pane glass pack, 1” insulation, <i>etc.</i>
7.552 .....	1,740.50	2,345.63	Evaporator Fan Controls.

TABLE IV.4—EXAMPLE OF DESIGN OPTION ANALYSIS—CLASS A MEDIUM CO<sub>2</sub> REFRIGERANT—Continued

DEC (kWh/day)	MPC (\$)	MSP (\$)	Design option added
5.555 .....	1,755.03	2,363.36	Improved Single Speed Reciprocating Compressor.
5.126 .....	1,759.01	2,368.22	Automatic Lighting Controls.
4.604 .....	1,764.90	2,375.40	Permanent Split Capacitor Evaporator Fan Motor.
4.348 .....	1,770.79	2,382.59	Permanent Split Capacitor Condenser Fan Motor.
3.867 .....	1,786.90	2,402.24	LED Lighting.
3.792 .....	1,789.48	2,405.38	Baseline—Interpolated—Exactly Meets Current Standards; Includes all Design Options Above le.
3.751 .....	1,790.88	2,407.10	Refrigeration Low Power State.
3.487 .....	1,806.03	2,425.57	Enhanced Evaporator Coil.
3.372 .....	1,830.10	2,454.94	Electronically-Commutated Evaporator Fan Motor.
3.267 .....	1,857.71	2,488.62	1.125" Thick Insulation.
2.966 .....	1,984.86	2,643.75	Enhanced Glass Pack.

### 5. Manufacturer Production Costs

In its engineering analysis, DOE estimates costs for manufacturers to produce equipment at the baseline energy use level and at increasingly higher levels of energy efficiency. In this final rule, DOE based the manufacturer production cost model upon data from physical disassembly of units available on the market, corroborated with information from manufacturer literature, discussions with industry experts, input from manufacturer interviews (see section IV.J of this final rule), and other sources. The baseline units modeled in the engineering analysis only incorporated refrigerants allowable under SNAP regulations at the time of the effective date of any new or amended standards, namely propane and CO<sub>2</sub>. As such, the manufacturer production costs at the baseline and increasing levels of efficiency all reflect the costs incurred in producing equipment using acceptable refrigerants under the final SNAP regulations issued in 2015. The incremental cost associated with producing a given BVM unit using propane or CO<sub>2</sub> refrigerant, as compared to a similar BVM unit using R-134a refrigerant is accounted for through the use of these refrigerant-specific cost curves. Chapter 5 of the final rule TSD provides a detailed description of the manufacturing cost analysis.

DOE received comments regarding the selection of units for teardown and regarding the MPCs that resulted from the analysis. Specifically, in written comments, NAMA expressed concern that no combination vending machines were directly torn down and tested and requested that DOE perform such testing before regulations are imposed on this equipment class. (NAMA, No. 50 at p. 4) And, in its written comments, SVA expressed agreement with DOE's assumed markups for Class A and Class B equipment but added that it believes

MPCs are underestimated. (SVA, No. 53 at p. 2)

In response to NAMA, DOE agrees that additional teardowns might have provided further information regarding combination vending machines. However, difficulty in procuring combination vending equipment ultimately made such teardowns impracticable. Instead, DOE used data gathered through teardowns of Class A and Class B machines and extended those data to the analysis of combination machines, drawing on the inherent physical and design similarities between the analogous equipment classes. In response to SVA, DOE notes that its MPC estimates are built up as the sum of individual component and system cost estimates, which have been subjected to numerous rounds of stakeholder review in previous stages of this rulemaking. DOE has incorporated into its cost modeling analysis all specific, actionable cost information received at each stage of the rulemaking. DOE additionally notes that as mentioned elsewhere in this final rule, it has updated its cost model for propane units to account for motors and other components that comply with applicable UL standards, and that this has had the net result of increasing MPC values for those units.

#### D. Markups Analysis

DOE uses manufacturer-to-customer markups to convert the MSP estimates from the engineering analysis into customer purchase prices, which are subsequently used in the LCC and PBP analysis to evaluate how the increased cost of higher efficiency equipment compares to the annual and lifetime energy and operating cost savings resulting from such efficiency improvements. Accordingly, DOE estimated markups for baseline and all higher efficiency levels that are applied to the MSPs from the engineering analysis to obtain final customer

purchase prices. The markups analysis developed appropriate markups (e.g., manufacturer markups, retailer markups, distributor markups, contractor markups) in the distribution chain and sales taxes to convert the MPC estimates derived in the engineering analysis to customer prices, which were then used in the LCC and PBP analysis and in the manufacturer impact analysis. At each step in the distribution channel, companies mark up the price of the equipment to cover business costs and profit margin.

In order to develop markups, DOE identified distribution channels (i.e., how the equipment is distributed from the manufacturer to the customer). Once proper distribution channels for each of the equipment classes were established, DOE relied on economic data from the U.S. Census Bureau and input from the industry to determine to what extent equipment prices increase as they pass from the manufacturer to the customer (see chapter 6 of the final rule TSD).

DOE identified three distribution channels, as described below:

- (1) Equipment Manufacturer → Vending Machine Operator (e.g., bottler, beverage distributor, large food operator)
- (2) Equipment Manufacturer → Distributor → Vending Machine Operator
- (3) Equipment Manufacturer → Distributor → Site Owner

Chapter 6 of the final rule TSD provides details on DOE's development of markups for beverage vending machines.

#### E. Energy Use Analysis

The purpose of the energy use analysis is to establish an estimate of annual energy consumption (AEC) of beverage vending machines now and over the 30-year analysis period and to assess the energy-savings potential of different equipment efficiencies. DOE uses the resulting estimated AEC in the

LCC and PBP analysis (section IV.F of this final rule) to establish the customer operating cost savings of efficiency improvements considered. DOE also uses the estimate of energy use at the baseline and at higher levels of efficiency to estimate NES in the NIA (section IV.H of this final rule).

The energy use analysis assessed the estimated AEC of a beverage vending machine as installed in the field. DOE recognizes that a variety of factors may affect the actual energy use of a beverage vending machine in the field, including ambient conditions, use and stocking profiles, and other factors. In the 2015 BVM ECS NOPR, to model the AEC of each BVM unit, DOE separately estimated the energy use of equipment installed indoors and outdoors, to account for the impact of ambient temperature and relative humidity on field-installed BVM energy use. 80 FR 5050462, 50486 (Aug. 19, 2015).

To determine the AEC of BVM units installed indoors, DOE estimated that the DEC modeled in the engineering analysis and measured according to the DOE test procedure is representative of the average energy consumption for that equipment every day of the year. DOE believes this is a reasonable assumption, as beverage vending machines installed indoors are typically subject to relatively constant temperature and relative humidity conditions consistent with the nominal DOE test conditions (75 °F and 45 percent relative humidity). DOE estimated that Class A and Combination A beverage vending machines and a majority of Class B and Combination B beverage vending machines will all be installed inside. *Id.*

However, DOE understands that some Class B and Combination B beverage vending machines are installed outdoors and will be subject to potentially more variable ambient temperature and relative humidity conditions than BVM units installed indoors. Therefore, in the 2015 BVM ECS NOPR, DOE modeled the AEC of BVM units installed outdoors based on a linear relationship that was developed between the DEC determined in accordance with the DOE test procedure, as modeled in the engineering analysis, and the AEC for Class B and Combination B beverage vending machines installed outdoors. DOE developed this linear regression based on analysis performed in support of the 2009 BVM rulemaking, where DOE modified its energy consumption model developed in the engineering analysis to reflect the equipment's thermal and compressor performance characteristics and to simulate the realistic performance of the machine exposed to varying temperature and

relative humidity conditions (chapter 7 of the 2009 BVM final rule TSD). (Docket No. EERE-2006-STD-0125, No. 79) DOE then estimated the AEC of a given Class B or Combination B beverage vending machine installed outside by multiplying the DEC value by the linear equation determined from based on the 2009 BVM rulemaking analysis. *Id.*

Regarding DOE's analysis of Class B and Combination B beverage vending machines installed outdoors, DOE's NOPR analysis did not consider the incremental energy use of any electric resistance heating elements energized to prevent freezing in cold temperatures, as DOE lacked sufficient data to do so and such energy use is not directly affected by improved efficiency levels considered by DOE because the technology options DOE considered in the engineering analysis do not include any design changes that would impact the energy use of resistance heaters. As such, DOE noted that accounting for the energy use of cold weather heaters would not significantly impact the energy use analysis, LCC analysis, or NIA results. *Id.*

In the 2015 BVM ECS NOPR, DOE estimated, based on publicly available data from college campuses,<sup>29</sup> that 16 percent of Class B machines were installed outdoors. DOE believes that these data from college campuses are reasonably representative of BVM locations nationally due to the wide variety of building types and outdoor spaces on large college campuses, which can be correlated with the likely BVM locations expected. *Id.*

In addition, the engineering analysis considered three specific sizes (small, medium, and large) for Class A and Class B equipment, and two specific sizes (medium and large) for Combination A and Combination B equipment. However, DOE based its energy use analysis on a "representative size" beverage vending machine for each equipment class, determined based on a weighted average of the equipment sizes modeled in the engineering analysis. *Id.* at 50487.

In response to DOE's energy use analysis presented in the NOPR, Seaga stated the belief that DOE should not consider the number of Class A machines installed outside to be negligible, but did not provide any additional data (Seaga, Public Meeting Transcript, No. 48 at p. 84). NAMA also noted the lack of college campuses from

the Northeast and Deep South in the dataset that DOE used and recommended that DOE expand its data collection to include these two regions of the country. (NAMA, No. 50 at p. 7) Royal Vendors agreed with DOE that use of cold weather heaters should not be considered in the NIA. (Royal Vendors, No. 54 at p. 5) Similarly, AMS expressed agreement with DOE's analysis with regard to its methodology in calculating annual energy consumption. (AMS, No. 57 at p. 5)

DOE appreciates AMS and Royal Vendor's support of DOE's energy use assessment methodology and treatment of cold weather heaters, respectively. In response to Seaga and NAMA's concerns regarding the number and type of beverage vending machines located outdoors, DOE believes that the data from six colleges and universities around the country are sufficiently representative of the general BVM population because college campuses typically have a mix of building types that mirror some of the major markets for beverage vending machines, including retail, commercial lodging, offices, public assembly, and outdoor spaces (see chapter 7 in the final rule TSD for a full discussion of the building types represented in the sample from college campuses). DOE appreciates the comments from Seaga and NAMA but, without data to improve DOE's estimates of outdoor BVM installations, DOE was not able to identify any data or information supporting such claims. DOE acknowledges that these trends could underestimate the outdoor instances of outdoor Class A machines and specific regional installation trends. However, DOE continues to believe that, on average, the majority of outdoor BVM installations across the country are Class B or Combination B units and that the number of Class A outdoor installations is small. In addition, DOE acknowledges that the six-school sample may underrepresent certain climatic regions in the United States. However, DOE does not have reason to believe that the installation trends for BVM in those regions would be significantly different from those in the regions represented in the data. Therefore, in this final rule, DOE maintained the assumption that 16 percent of Class B beverage vending machines are installed outside.

In the 2015 BVM ECS NOPR, DOE also requested comments on any other variables that it should account for in its estimate of national energy use. In response, DOE received several comments regarding the effect of dirty coils in field installations. Mr. Richard Kenelly of CoilPod LLC commented that dirty coils lead to reduced performance

<sup>29</sup> *Beverage vending machine Outdoor Location and Elevated (90 °F) Outdoor Temperature Analysis*. Lawrence Berkeley National Laboratory. June 2014. Available at <http://eetd.lbl.gov/sites/all/files/lbnl-6744e.pdf>.

and higher energy use (CoilPod LLC, No. 42 at p. 1) and added that energy consumption may be reduced 45 to 50 percent after coils are cleaned (CoilPod LLC, Public Meeting Transcript, No. 48 at p. 53). SVA added that increased condenser efficiency is often achieved by increasing fin density that can lead to accelerated coil fouling, which decreases energy consumption under actual use conditions. (SVA, Public Meeting Transcript, No. 54 at p. 54). USelectIt (USI) agreed with SVA's statement that increased fin density is used to increase condenser coil efficiency and that because customers don't generally clean their coils, they have implemented technology that runs the condenser fan motors backwards in an attempt to automatically clean the coils. USI also agreed with SVA that under real-world conditions, efficiency would decrease substantially due to coil degradation and that including higher efficiency condenser coils may work against DOE's intended goal of energy savings, as the higher fin density of these coils makes them more difficult to clean (USI, Public Meeting Transcript, No. 54 at p. 5). In written comments, Coca-Cola, Royal Vendors, and SVA expressed concern that increasing coil fin density will hinder performance in the field due to increased fouling and shorter equipment life. Royal Vendors provided the specific example of higher compressor strain due to higher static pressure and increased coil restriction in the case of increased fin density (Coca-Cola, No. 52 at p. 3; Royal Vendors, No. 54 at pp. 2, 6; SVA, No. 53 at p. 6).

DOE understands the importance of proper maintenance, including cleaning of the condenser coil, on the energy use and lifetime of beverage vending machines. DOE has accounted for regular maintenance of BVM equipment in the LCC model, which accounts for an annual preventative maintenance cost that includes coil cleaning, cleaning the exterior of the machine and machine components, and inspection of the refrigeration system (see section IV.F and chapter 8 of the TSD). DOE notes that BVM manufacturers and distributors encourage regular coil cleaning in their operation manuals.<sup>30</sup> In addition, some manufacturers and distributors require adherence to the operations manual in order to maintain

the warranty on the equipment,<sup>31</sup> which DOE believes may compel such regular preventative maintenance. While DOE acknowledges that some BVM operators may not adhere to the recommended maintenance schedule, manufacturers do not have control over the actions of BVM operators.

Furthermore, DOE does not have authority to address such application-based usage as part of these equipment standards, which are applied at the point of manufacture when the coil is clean. Therefore, DOE is electing not to consider the impact of failure to clean condenser coils or otherwise properly maintain BVM equipment in the field in the energy use analysis. DOE notes that BVM operators may install and operate their equipment in any number of inadvisable ways that may have an impact on energy use of the equipment. However, in this analysis, DOE is accounting for the anticipated energy use of beverage vending machines in the field as intended by manufacturers and distributors. DOE believes that BVM manufacturers, who are subject to these standards, should not be held responsible for any failure by BVM operators to properly operate BVM equipment in the field. DOE also notes that, were DOE to account for the impact of coil fouling in the energy use analysis, it would likely affect all equipment classes and ELs equivalently and, thus, would not affect the LCC analysis or NIA results because only costs that vary with efficiency levels (ELs) (incremental costs) lead to changes in these results.

In addition, CA IOUs requested that DOE provide state level energy savings projections for its proposed standard (CA IOUs, No. 58 at p. 6) In response to this request, DOE notes that it is obligated by EPCA to consider the national benefits and costs, including the total national energy savings, of any new or amended standards to determine whether such standards are technologically feasible and economically justified. EPCA does not require DOE to consider such state-specific information in considering and promulgating Federal standards. (42 U.S.C. 6295 (o)(2)) Furthermore, DOE does not believe that such detailed analysis would significantly improve the analysis or affect the outcome of such analysis. Therefore, DOE did not perform a state-level analysis and has based the standards analysis conducted in this final rule on the national

aggregate impacts on customer, manufacturers, and the nation in performing the analyses required by 42 U.S.C. 6295(o)(2).

Chapter 7 of the final rule TSD provides additional details on DOE's energy use analysis for beverage vending machines.

#### *F. Life-Cycle Cost and Payback Period Analysis*

New or amended energy conservation standards usually decrease equipment operating expenses and increase the initial purchase price. DOE analyzes the net effect of new or amended standards on customers by evaluating the net LCC. To evaluate the net LCC, DOE uses the cost-efficiency relationship derived in the engineering analysis and the energy costs derived from the energy use analysis. Inputs to the LCC calculation include the installed cost of equipment to the customer, operating expenses (energy expenses, and maintenance and repair costs), the lifetime of the unit, and a discount rate.

Because the installed cost of equipment typically increases while operating costs typically decrease under new standards, there is a time in the life of equipment having higher-than-baseline efficiency when the net operating-cost benefit (in dollars) since the time of purchase is equal to the incremental first cost of purchasing the equipment. The time required for equipment to reach this cost-equivalence point is known as the PBP.

DOE uses Monte Carlo simulation and probability distributions to incorporate uncertainty and variability in the LCC and PBP analysis. DOE used Microsoft Excel combined with Crystal Ball™ (a commercially available program) to develop an LCC and PBP spreadsheet model that incorporates both Monte Carlo simulation and probability distributions. The LCC subgroup analysis includes an assessment of impacts on customer subgroups.

DOE determined several input values for the LCC and PBP analysis including (1) customer purchase prices; (2) electricity prices; (3) maintenance, service, and installation costs; (4) equipment lifetimes; (5) discount rates; (6) equipment efficiency in the no-new-standards case; and (7) split incentives. The approach and data DOE used to derive these input values are described below.

#### 1. Customer Purchase Prices

DOE multiplied the MSPs estimated in the engineering analysis by the supply-chain markups to calculate customer purchase prices for the LCC and PBP analysis. DOE determined, on

<sup>30</sup> See e.g., Dixie Narco. Glassfront BevMax 3 Vender Technical Manual. Crane. [http://69.129.141.51:8080/RD/techbulletins/nsf/e667893fe32caf4785256bcd0066752b/67ec964a7ec11a7f85257346004b668b/\\$FILE/Bev%20Max%203%20CC%20Man%20260.01.pdf](http://69.129.141.51:8080/RD/techbulletins/nsf/e667893fe32caf4785256bcd0066752b/67ec964a7ec11a7f85257346004b668b/$FILE/Bev%20Max%203%20CC%20Man%20260.01.pdf) or Sma's Club [http://scene7.samsclub.com/is/content/samsclub/633055\\_P1p.pdf](http://scene7.samsclub.com/is/content/samsclub/633055_P1p.pdf).

<sup>31</sup> See e.g., Drop's Vending [www.dropsvending.com/Merchant2/merchant.mvc?Screen=TERMPOL](http://www.dropsvending.com/Merchant2/merchant.mvc?Screen=TERMPOL) or Royal <http://royalvendors.com/wp-content/uploads/2014/05/Domestic-Vender-Warranty.pdf>.

average, 15 percent of this equipment passes through a distributor or wholesaler, and 85 percent of the equipment is sold by a manufacturer directly to the end user. In the LCC and PBP analysis, approximately 15 percent of the Monte Carlo iterations include a distributor or wholesaler markup, while 85 percent of the iterations use a markup factor of 1.0, indicative of no additional markup on top of the MSPs (besides sales tax).

DOE developed a projection of price trends for beverage vending machines in the 2015 BVM ECS NOPR, based on historical price trends that projected the MSP to decline by almost 2 percent from the 2014 MSP estimates through the 2019 assumed compliance date of new or amended standards.

DOE re-examined the data available and updated the price trend analysis for this final rule analysis. DOE continued to use the automatic merchandising machines PPI and included historical shipments data from the U.S. Census Bureau's current industrial reports to examine the decline in inflation-adjusted PPI as a function of cumulative BVM shipments. Using these data for the BVM price trends analysis and DOE's projections for future shipments yields a price decline of roughly 10 percent over the period of 2014 through 2048. For the LCC model, between 2014 and 2019, the price decline is almost 2 percent. DOE used this revised price trend in the final rule analysis, which reflects analytical techniques more consistent with the methodology DOE has preferentially used for other appliances. See appendix 8C of the TSD for further details on the price learning analysis.

## 2. Energy Prices

DOE derived electricity prices from state-level EIA energy price data for the commercial and industrial sectors (manufacturing facilities). DOE used projections of these energy prices for commercial and industrial customers to estimate future energy prices in the LCC and PBP analysis. EIA's Annual Energy Outlook 2015 (*AEO2015*) was used as the source of projections for future energy prices.

DOE developed estimates of commercial and industrial electricity prices for each state and the District of Columbia. DOE derived these average energy prices from data that are published annually based on EIA Form 826. DOE then used EIA's *AEO2015* price projections to estimate state-level commercial and industrial electricity prices in future years. DOE assumed that 60 percent of installations were in

commercial locations and 40 percent were in industrial locations.

In response to the 2015 BVM ECS NOPR, Coca-Cola asked if electricity prices from EIA used in the analysis are based on a national average or if any kind of weighting or regionality was taken into account. Coca-Cola also inquired whether DOE considered marginal costs of electricity (Coca-Cola, Public Meeting Transcript, No. 48 at p. 110). DOE notes that the LCC and PBP analysis uses state-level electricity prices in its Monte Carlo approach, and as such inherently includes regional variability in prices. DOE has considered using marginal costs of electricity but opted to use average electricity prices by state in this final rule analysis because compiling and utilizing marginal rates for the commercial sector across the nation is extremely complex, and data is difficult to obtain.

## 3. Maintenance, Repair, and Installation Costs

DOE considered any expected changes to maintenance, repair, and installation costs for the beverage vending machines covered in this rulemaking. Typically, small incremental changes in equipment efficiency incur little or no changes in repair and maintenance costs over baseline equipment. The repair cost is the cost to the customer for replacing or repairing components in the BVM equipment that have failed. The maintenance cost is the cost to the customer of maintaining equipment operation. There is a greater probability that equipment with efficiencies that are significantly higher than the baseline will incur increased repair and maintenance costs, as such equipment is more likely to incorporate technologies that are not widely available or are potentially less reliable than conventional, baseline technologies.

DOE based repair costs for baseline equipment on data in a Foster-Miller Inc.<sup>32</sup> report with adjustments to account for LED lighting. Maintenance costs include both preventative maintenance and annualized cost of refurbishment. DOE estimated that beverage vending machines undergo refurbishment every 4.5 years based on two ENERGY STAR reports indicating that beverage vending machines are refurbished every 4 to 5 years. DOE used RSMMeans<sup>33</sup> data for preventative maintenance costs and used data from

<sup>32</sup> Foster-Miller, Inc. *Vending Machine Service Call Reduction Using the VendingMiser*. February 18, 2002. Report BAY-01197. Waltham, MA.

<sup>33</sup> *RSMMeans Facilities Maintenance & Repair 2010*, 17th Annual Edition. 2009. Kingston, MA.

the 2009 BVM final rule<sup>34</sup> for the annualized cost of refurbishment.

In the 2009 BVM rulemaking, DOE assumed that more-efficient beverage vending machines would not incur increased installation costs. Further, DOE did not find evidence of a change in repair or maintenance costs by efficiency level with the exception of repair cost decreases for efficiency levels that used LED lighting.

In the 2015 BVM ECS NOPR, DOE requested comment on the maintenance and repair costs modeled in the LCC analysis, especially additional data regarding differences in maintenance or repair costs that vary as a function of refrigerant, equipment class, or efficiency level. DOE received two comments. Royal Vendors commented that maintenance and repair costs will be higher for units using new refrigerants than they currently are for R-134a units, and that more efficient components are more expensive, thus higher efficiency levels should have higher maintenance costs. However, Royal Vendors did not supply supporting data. (Royal Vendors, No. 54 at p. 6) AMS commented that they had observed no measurable differences in cost or frequency of service calls for higher efficiency Class A machines. (AMS, No. 57 at pp. 5-6)

In response to these comments, in this final rule analysis DOE included higher maintenance costs for more efficient machines which implemented such design options as enhanced condenser coils, improved compressors, and high performance fans. Please see chapter 8 of the final rule TSD for more information regarding maintenance and repair costs.

## 4. Equipment Lifetime

DOE used information from various literature sources and input from manufacturers and other interested parties to establish average equipment lifetimes for use in the LCC and subsequent analyses. The 2009 final rule assumed that average BVM lifetime is 10 years. 74 FR 44914, 44927 (Aug. 31, 2009). For this final rule, a longer average lifetime of 13.5 years is assumed based on refurbishments occurring twice during the life of the equipment at an interval of 4.5 years. As discussed in section IV.F.3, this estimate is based

<sup>34</sup> U.S. Department of Energy—Office of Energy Efficiency and Renewable Energy. *Chapter 8 Life-Cycle Cost And Payback Period Analyses, Beverage Vending Machines Final Rule Technical Support Document*. 2009. Washington, DC. Available online at [www.regulations.gov](http://www.regulations.gov) under Docket No. EERE-2006-STD-0125.



on a 2010 ENERGY STAR webinar,<sup>35</sup> which reported average lifetimes of 12 to 15 years, and data on the distribution of equipment ages in the stock of beverage vending machines in the Pacific Northwest from the Northwest Power and Conservation Council 2007 Regional Technical Forum<sup>36</sup> (RTF), which observed the age of the units in service to be approximately 8 years on average.

Refurbishment costs are included in the maintenance costs presented in section IV.F.3 of this final rule, and a discussion of how maintenance and repair costs are derived is in chapter 8 of the final rule TSD. DOE believes a lifetime of 13.5 years across efficiency levels is a representative lifetime assumption for beverage vending machines. DOE used this assumption in its analysis for this final rule.

At the NOPR stage, DOE requested comment on the assumed lifetime of beverage vending machines and if the lifetime of beverage vending machines is likely to be longer or shorter in the future. In addition, DOE requested comment on its assumption that a beverage vending machine will typically undergo two refurbishments during the course of its life and if refurbishments are likely to increase or decrease in the future. DOE also requested comment on the applicability of this assumption to all equipment classes.

DOE received several additional comments on equipment lifetime in response to the NOPR analysis. AMS generally agreed with DOE's methodology and results for equipment lifetime (AMS, No.57 at p. 6), but AMS also noted that new component types with unproven reliability records may either shorten or lengthen BVM lifetimes. (AMS, No. 57 at p. 6) Royal Vendors commented that the evaporator fan and condenser fan will have shorter life with increased fan density, thereby decreasing performance and shortening compressor lifetime. (Royal Vendors, No. 54 at p. 6) NAMA commented that the lifetime of machine could be longer in the future because BVM owners will retrofit instead of buy new machines. (NAMA, No. 50 at p. 8)

<sup>35</sup>EPA. Always Count Your Change, How ENERGY STAR Refrigerated Vending Machines Save Your Facility Money and Energy. 2010. [www.energystar.gov/ia/products/vending\\_machines/Vending\\_Machine\\_Webinar\\_Transcript.pdf](http://www.energystar.gov/ia/products/vending_machines/Vending_Machine_Webinar_Transcript.pdf).

<sup>36</sup>Haeri, H., D. Bruchs, D. Korn, S. Shaw, J. Schott. Characterization and Energy Efficiency Opportunities in Vending Machines for the Northwestern US Market. Prepared for Northwest Power and Conservation Council Regional Technical Forum by Quantec, LLC and The Cadmus Group, Inc. Portland, OR. July 24, 2007.

DOE appreciates these comments, and maintained its average lifetime assumption of approximately 13.5 years for this final rule. However, DOE did compensate for the effects of enhanced evaporator and condenser fans in the repair and maintenance costs component of the LCC and PBP analysis. In this analysis, while the shorter life of these fans does not shorten the overall life of the BVM equipment, the costs to maintain more efficient equipment is greater.

DOE notes that assumptions regarding equipment lifetime and refurbishment cycles also affect DOE's shipments model, which is discussed in section IV.G of this final rule.

#### 5. Discount Rates

DOE developed discount rates by estimating the average cost of capital to companies that purchase beverage vending machines covered under this rulemaking. DOE commonly uses the cost of capital to estimate the present value of cash flows to be derived from a typical company project or investment. Most companies use both debt and equity capital to fund investments, so the cost of capital is the weighted-average cost to the firm of equity and debt financing.

#### 6. Equipment Efficiency in the No-New-Standards Case

To accurately analyze the incremental costs and benefits of the adopted standard levels, DOE's analyses consider the projected distribution of equipment efficiencies in the no-new-standards case (the case without new energy efficiency standards). That is, DOE calculates the percentage of customers who will be affected by a standard at a particular efficiency level (in the LCC and PBP analysis, discussed in this section IV.F), as well as the national benefits (in the NIA, discussed in section IV.H) and impacts on manufacturers (in the MIA, discussed in section IV.J) recognizing that a range of efficiencies currently exist in the marketplace for beverage vending machines and will continue to exist in the no-new-standards case.

To estimate the efficiency distributions for each equipment class, DOE relied on all publicly available energy use data. Specifically, the market efficiency distribution was determined separately for each equipment class and for each refrigerant. For equipment for which certification information was available in the DOE certification<sup>37</sup> and

ENERGY STAR databases,<sup>38</sup> these data were used to determine the efficiency distribution of models within the equipment class, which only included Class B CO<sub>2</sub> equipment. 80 FR 50462, 50492 (Aug. 19, 2015).

For Class A and Class B equipment that is not represented in DOE's combined BVM models database (Class A CO<sub>2</sub> equipment and Class A and Class B propane equipment), DOE assumed all equipment would be ENERGY STAR-compliant or use design options consistent with ENERGY STAR equipment in the no-new-standards case. That is, DOE assumed that if a manufacturer did not reengineer the model to meet the ENERGY STAR level independently, DOE assumed that it is likely that a manufacturer would use the same case and basic accessory set (*i.e.*, non-refrigeration system components) available on other similar ENERGY STAR-listed models using R-134a, changing only the compressor and other sealed-system components, as opposed to building or purchasing separate, less efficient, components for any new propane models. This analysis approach resulted in selection of the first efficiency level above the baseline, or EL 1, for Class A and Class B propane equipment and for Class A CO<sub>2</sub> beverage vending machines. *Id.*

For Combination A and Combination B beverage vending machines, DOE notes that very little data exists regarding the efficiency distribution of such equipment. However, because most manufacturers of Combination A and Combination B equipment also produce Class A and/or Class B equipment, DOE employed a methodology to estimate the efficiency distribution of existing Combination A and Combination B equipment based on the known efficiency of Class A and Class B equipment. Therefore, based on the same analytical methodology used for Class A and Class B propane equipment and Class A CO<sub>2</sub> equipment, DOE estimated the efficiency distribution of Combination A and Combination B equipment based on the set of design options reflected in the efficiency distribution for Class A and Class B equipment that is currently available on the market. However, DOE notes that there are some BVM manufacturers that produce only Class A and/or Class B equipment and these manufacturers typically produce the most efficient units. Therefore, DOE assumed that the design option set corresponding to the ENERGY STAR levels for Class A and Class B

<sup>37</sup> [www.regulations.doe.gov/cmcs](http://www.regulations.doe.gov/cmcs).

<sup>38</sup> [www.energystar.gov/productfinder/product/certified-vending-machines/results](http://www.energystar.gov/productfinder/product/certified-vending-machines/results).

equipment, which is the most common design, represented the maximum efficiency for combination equipment and higher efficiency Class A and Class B models did not have commensurate combination equipment platforms. Therefore, equivalent market share for combination equipment and the remaining shipments were equally distributed between the “ENERGY STAR equivalent” efficiency level and the baseline efficiency level, or EL 0. *Id.*

To project this efficiency distribution over the analysis time frame in the no-new-standards case, DOE assumed that the efficiency distribution that currently exists in the market will be maintained over the analysis period (2019–2048). *Id.*

In response to the 2015 BVM ECS NOPR analysis, DOE received comments from interested parties regarding DOE’s efficiency distribution assumptions. In particular, AMS commented that it sells Combination A machines with and without features found in their ENERGY STAR Class A machines and that less than 10 percent of its customers purchase more efficient models because the company does not see the energy savings benefits themselves. (AMS, No. 57 at p. 7) NAMA also expressed concern that DOE’s definition for combination vending machines may make the assumption that Combination A and Combination B machines have similar efficiency distributions to their Class A and Class B counterparts false. (NAMA, No. 50 at p. 9)

Regarding the efficiency distribution of combination machines, as stated above, DOE assumed that combination vending machines enter the market at efficiency levels similar to, but slightly less than, the comparable Class A and Class B efficiency distributions. Consistent with AMS and NAMA’s comments, DOE acknowledges that Combination A and Combination B equipment classes may be less efficient than Class A and B equipment because these classes have not previously been subject to standards. Therefore, DOE defined the baseline efficiency distribution for Combination A and Combination B equipment as significantly less efficient than Class A and Class B equipment. That is, Combination A and Combination B equipment is assumed to fall between the baseline efficiency unit (the least efficient combination unit that could be produced) and the EL with comparable design options to the ENERGY STAR EL for Class A and Class B equipment. DOE notes that this is significantly less efficient than the baseline efficiency distribution for Class A and Class B equipment, as this equipment is not

assumed to have shipments below ENERGY STAR and in some cases has shipments of BVM models with efficiency levels far exceeding the ENERGY STAR requirement.

DOE also notes that the values in the ENERGY STAR and CCMS databases represent values gathered under the existing DOE test procedure, or appendix A. Because this final rule analysis is conducted based on testing in accordance with appendix B, DOE elected to translate the existing equipment efficiency data to be representative of testing under appendix B. To do this, DOE calculated the average energy savings, in kWh/day, for accessory low power mode and refrigeration low power mode for those equipment classes represented in the ENERGY STAR and CCMS databases,<sup>39</sup> as these are the test procedure provisions in appendix B that affect the measured DEC of covered equipment. The energy savings from accessory and refrigeration low power mode will vary based on the specific technologies and components implemented in each different BVM model. However, DOE believes that the design options and technologies modeled in the engineering analysis are representative of typical equipment available in the market; therefore, the average energy savings for the accessory and refrigeration low power mode generated based on the engineering analysis are similarly representative of the average change in daily energy consumption that BVM models with low power modes would observe when testing in accordance with appendix B. That is, DOE’s analysis calculates the average change in measured DEC when testing under appendix B, with low power modes enabled, compared to appendix A, for the typical BVM model.

To adjust the CCMS and ENERGY STAR certified ratings, DOE assumed that all ENERGY STAR-certified equipment would have both accessory low power mode and lighting low power mode. DOE notes that ENERGY STAR prescribes that either accessory or refrigeration low power mode (or both) be present in order for a model to qualify for ENERGY STAR certification. Therefore, all ENERGY STAR models are offset by the average energy savings resulting from the use of low power modes when testing under appendix B (0.21 kWh/day for Class B equipment). DOE assumed that the models that were

certified in CCMS but were not ENERGY STAR-qualified did not have low power modes and, thus, their energy consumption was not adjusted.

Some commenters observed that some certified ratings in the CCMS or ENERGY STAR databases may be based on testing of equipment without accounting for the energy consumption of money processing equipment and/or without lighting fully energized for the duration of the test, as is currently required under appendix A (see section III.B). DOE notes that the recently published 2015 BVM test procedure final rule adopted a new appendix A that clarifies the treatment of certain accessories, including lighting, under the DOE test procedure. Specifically, appendix A provides that, while energy management systems that cannot be adjusted by the machine operator may be employed, all lighting is to be illuminated to the maximum extent throughout the test and the energy consumption of payment mechanisms is to be accounted for the DEC for each BVM model. 80 FR 45758 (July 31, 2015). DOE also notes that appendix A of the amended BVM test procedure must currently be used to certify equipment with existing energy conservation standards. While DOE acknowledges that some manufacturers may have previously misinterpreted the DOE test procedure and certified equipment without lighting fully illuminated and/or without money processing equipment in place, DOE notes that the analysis supporting the standard levels adopted in this final rule was done based on a modeled engineering analysis, which was validated based on testing DOE conducted in accordance with the amended BVM test procedure adopted in the 2015 BVM test procedure final rule. Based on the engineering analysis and testing results, DOE maintains that equipment can meet the current and amended standard levels when testing in accordance with the 2015 BVM test procedure final rule test procedure amendments. In addition, DOE notes that the CCMS and ENERGY STAR databases are only used to inform the distribution of equipment efficiencies currently available in the market. As DOE does not have information on whether and which specific models may have been testing without lighting fully illuminated and/or without money processing devices in place, DOE declines to modify the DEC values found in the CCMS and ENERGY STAR databases to account for these potential misinterpretations. However, DOE did conduct a sensitivity analysis to

<sup>39</sup> While DOE performed this analysis for both Class A and Class B equipment represented in the CCMS and ENERGY STAR database, only Class B CO<sub>2</sub> units are relevant for DOE’s analysis, as all Class A units in the ENERGY STAR and CCMS databases use R–134a refrigerant.

determine the impact of any artificially reduced DEC values in the CCMS and ENERGY STAR databases and found that it did not have a significant impact on the feasibility or cost-effectiveness of the analyzed TSLs.

For equipment that are not represented in DOE's combined BVM models database, the efficiency distributions assumed in the final rule are estimated based on the ENERGY STAR and CCMS database, knowledge of the market, test data, and comments received from manufacturers. Specifically, for Class A CO<sub>2</sub> equipment and Class A and Class B propane equipment, these models were all assumed to be designed based on a similar ENERGY STAR-compliant R-134a design platform for the given or similar equipment class. This analysis approach resulted in selection of the baseline efficiency level for Class A CO<sub>2</sub> equipment, EL1 for Class A propane equipment, and primarily EL2 for Class B propane equipment.<sup>40</sup> Chapter 8 of this final rule TSD provides more detail about DOE's approach to developing non-new-standards case efficiency distributions.

#### 7. Split Incentives

DOE understands that in most cases the purchasers of beverage vending machines (a bottler or a vending services company) do not pay the energy costs for operation and thus will not directly reap any energy cost savings from more-efficient equipment. However, DOE believes that BVM owners will seek to pass on higher equipment costs to the users who pay the energy costs, if possible. DOE understands that the BVM owner typically has a financial arrangement with the company or institution on whose premises the beverage vending machine is located, in which the latter may pay a fee or receive a share of the revenue from the beverage vending machine. Thus, DOE expects that BVM owners could modify the arrangement to effectively pass on higher equipment costs. Therefore, DOE's LCC and PBP analysis uses the perspective that the company or institution on whose premises the beverage vending machine is located pays the higher equipment cost and receives the energy cost savings.

<sup>40</sup> DOE assumed that 85 percent of the market would enter at the ENERGY STAR level (EL2), with the remaining 15 percent distributed between the lower ELs (EL1 and EL0), to reflect the fact that some manufacturers may elect to trade off the increased efficiency of propane equipment with other more efficient design options to reduce cost. This assumption for Class B equipment also reflects the larger spread in efficiency currently observed in the market, as compared to Class A equipment.

In response to the 2015 BVM ECS NOPR, NAMA and AMS commented that operators of vending machines typically do not pay the energy costs associated with the machine, which are instead borne by the business or institution where the machine is installed. (NAMA, Public Meeting Transcript, No. 48 at p. 108; AMS, No. 57 at p. 6) DOE is aware of this "split incentive" issue and its impact on the perceived cost-effectiveness of savings in the marketplace. However, as noted above, in this analysis DOE has assumed BVM owners will seek to modify existing financial arrangements and contracts to pass on higher equipment costs to the users who pay the energy costs. Therefore, DOE's LCC and PBP analysis uses the perspective that the company or institution on whose premises the beverage vending machine is located will be impacted by the higher equipment cost and receives the energy cost savings. In the MIA, DOE also accounts for the ability of manufacturers to pass on higher equipment costs to customers (see section IV.J).

#### G. Shipments Analysis

DOE uses forecasts of annual equipment shipments to calculate the national impacts of standards (NES and NPV) and to calculate the future cash flows of manufacturers.<sup>41</sup> For beverage vending machines, DOE developed shipments forecasts based on an analysis of key market drivers and industry trends for this equipment. In DOE's shipments model, shipments of equipment are driven by stock replacements assuming that the overall population of beverage vending machines will slightly decrease over the next several decades.

In the 2015 BVM ECS NOPR analysis, DOE estimated historical shipments between the years of 1998 and 2006 based on the 2009 BVM final rule shipments model, increased by 18 percent to reflect the fact that the 2009 BVM final rule shipments model addresses only Class A and Class B equipment, not Combination A or Combination B equipment. 74 FR 44914, 44928 (Aug. 31, 2009) DOE estimates that combination machines represent 18 percent of total BVM shipments, as discussed further in section IV.G.1. DOE also referenced the ENERGY STAR

<sup>41</sup> DOE uses all available data on manufacturer model availability, shipments, or national sales to develop estimates of the number of BVM units of each equipment class sold in each year of the analysis period. In general one would expect a close correspondence between shipments and sales and a reasonable correlation between model availability and sales.

shipment data to estimate shipments of new beverage vending machines between the years of 2005 and 2012 to corroborate DOE's historical shipments estimates during this period. These historical shipment estimates were used to build up a stock of BVM equipment with a representative distribution of ages, and DOE estimated a stock of 3.1 million BVM units in the United States in 2006. 80 FR 50462, 50493 (Aug. 19, 2015).

Between 2006 and 2014, DOE estimated that annual shipments declined linearly from 118,000 in 2006 to 45,000 in 2014, consistent with comments from manufacturers received in during manufacturer interviews conducted during the NOPR phase of this rulemaking (see section IV.J of this final rule). Based on these shipments, the estimated stock in 2014 is approximately 2.2 million units, compared to a stock of approximately 3 million in 2006. In the 2015 BVM ECS NOPR, DOE noted that if shipments were maintained at 2014 levels of around 45,000 units per year over the 30-year analysis period, this would result in an 80-percent reduction in overall stock of beverage vending machines in the United States and would reflect many current BVM owners removing BVM units from the marketplace permanently. Lacking any data indicating or supporting a significant reduction in availability or deployment of beverage vending machines, DOE assumed that shipments would recover over time to maintain reasonably constant stocks of beverage vending machines into the future. *Id.*

In both the BVM ECS NOPR analysis and this final rule analysis, DOE modeled future shipments of new beverage vending machines from 2014 through 2048 based on data from Vending Times Census of the Industry 2014<sup>42</sup> that reported BVM stock trends in the commercial and industrial building sectors, as well as specific commercial and industrial building sectors where beverage vending machines are commonly deployed. For each commercial and industrial building sector, DOE modeled an average annual percentage reduction in stock, as shown in Table IV.5, based on an assumed percentage reduction in BVM units for different commercial building uses. The number of buildings for each sector was also evaluated based on data available from the 2012 Commercial Building Energy

<sup>42</sup> Vending Times Census of the Industry 2014. Available at [www.vendingtimes.com](http://www.vendingtimes.com).

Consumption Survey (CBECS),<sup>43</sup> and an average increase in number of buildings was calculated by comparing 2012 CBECS data to historical 2003 CBECS data. The estimated stock in 2048 based on this method was 1.8 million, a 20-

percent decrease from the 2.2 million estimated in 2014. To estimate the shipments of new beverage vending machines based on these stock projections, DOE assumed the minimum growth rate necessary to result in a stock

of 1.8 million in 2048, which resulted in a growth rate of 3.7 percent annually throughout the analysis period. *Id* at 50494.

TABLE IV.5—AVERAGE ANNUAL PERCENT REDUCTION IN BVM STOCK AND GROWTH IN NUMBER OF BUILDINGS FOR EACH INDUSTRIAL SECTOR AND THE INDUSTRY OVERALL

Commercial and industrial building sector *	Average annual % reduction in BVM stock	Annual growth in number of buildings (Est. from CBECS data) * (%)
Plants, Factories .....	0.29	3.01
Schools & Colleges and Universities .....	0.74	0.09
Public Locations .....	0.38	-0.80
Government and Military .....	0.29	2.03
Offices, Office Complexes .....	0.74	2.54
Hospitals, Nursing Homes .....	1.47	2.41
Other Locations .....	0.45	1.27
<b>Total .....</b>	<b>0.55</b>	<b>1.78</b>

\* Note that the commercial and industrial building sectors assumed in this analysis correspond to those referenced in the 2013 Vending Times Census of the Industry. DOE mapped the CBECS building types to these commercial and industrial building sectors and provides a description of that mapping in chapter 9 of the final rule TSD.

At the 2015 BVM ECS NOPR stage, DOE requested comment on the several assumptions regarding historical shipments between 1998 and 2014 and also requested data from manufacturers on historical shipments, by equipment class, size, and efficiency level, for as many years as possible, ideally beginning in 1998 until the present.

In response, AMS offered that it manufactures only Class A and Combination A machines and that its shipment volumes are split roughly 50–50 between the two (AMS, No. 57 at p. 3). AMS also commented that DOE’s shipments assumption contradict a 2014 ENERGY STAR publication which reports 54,000 shipments for that year. AMS noted that this does not include combination machines, and claimed that even the estimated 54,000 value is likely underestimated. (AMS, No. 57 at p. 7) SVA commented that historical shipments between 1998 and 2014 had a downward trend. (SVA, No. 53 at p. 8) Regarding existing BVM stock assumptions, NAMA provided an average estimate of 2.5 machines installed per “customer location.” (NAMA, No. 50 at p. 11)

In response to these comments submitted by interested parties, DOE revised the historical shipments model to reference the most current ENERGY STAR market penetration reports, including the 2014 report cited by AMS. As AMS noted that the previous

estimate of 45,000 is likely too low, DOE has updated the shipments in 2014 to be consistent with the shipments of ENERGY STAR-qualified units reported by ENERGY STAR (54,000 units), but scaled this number to reflect the shipments of combination equipment and non-ENERGY STAR-qualified Class A and Class B equipment. Specifically, DOE increased the 54,000 estimate by 18 percent to account for shipments of combination equipment and by 11 percent to represent the shipments of non-ENERGY-STAR-qualified units,<sup>44</sup> resulting 71,443 units shipped in 2014. DOE agrees with SVA’s comment regarding the consistent downward trend of shipments between 1998 and 2014 and notes that DOE’s shipments model reflects this industry trend. DOE believes the referenced ENERGY STAR reports represent the best available data to estimate historical BVM shipments.

At the NOPR stage DOE also requested comment on its assumptions regarding future shipments. Specifically, DOE requested comment on the stock of BVM units likely to be available in the United States and in particular commercial and industrial building sectors over time. DOE also requested comment on its assumptions regarding the likely reduction in stock in different commercial and industrial building sectors in which beverage vending machines are typically installed and on any other factors that might

influence an overall reduction in BVM stock.

In response to these requests, DOE received several comments regarded future shipments. In the BVM ECS NOPR public meeting and in written comments, NAMA expressed concern regarding DOE’s assumed reduction in shipments due to health initiatives and stated that the industry is moving towards healthier options. NAMA additionally stated that the ability to place whatever the operator wants in a given machine would negate the need to remove the machine itself due to a soda ban. NAMA referenced an industry census study by Technomic, Inc. projecting growth in future revenues and asked DOE to re-evaluate assumptions regarding shipments. (NAMA, No. 50 at p. 9; NAMA, Public Meeting Transcript, No. 48 at p. 129) Reinforcing that comment, the EEA Joint Commenters argued that DOE may be underestimating total number of shipments over time because an increase in healthy options that are being offered in vending machines may actually cause shipments to increase over time, but did not provide supporting data. (EEA Joint Commenters, No. 56 at p. 4)

In written comments, NAMA commented that it is not aware of any situations that would result in further reduction to BVM stock other than micromarket expansion. However,

<sup>43</sup> www.eia.gov/consumption/commercial/reports/2012/preliminary/index.cfm.

<sup>44</sup> DOE estimates that in 2014 89 percent of Class A and B equipment were ENERGY STAR-qualified

based on the relative number of models available in the CCMS and ENERGY STAR databases in 2014.

NAMA expressed its belief that this trend may not be as significant as once thought, or as DOE suggested in the 2015 BVM ECS NOPR. NAMA cited a 15 percent growth in conversion from beverage vending machines to micromarkets and estimated there to be 10,000 micromarkets currently in existence in the United States. NAMA stated that it was unable to provide data as to how the increased presence of micromarkets would affect future shipments. (NAMA, No. 50 at pp. 10–11)

Conversely, SVA stated that new technologies such as micromarkets are resulting in the replacement of coin operated vending machines with bottle coolers. (SVA, Public Meeting Transcript, No. 48 at p. 133) In written comments, SVA expressed the belief that the current downward trend in beverage vending machine shipments in the United States will continue for the foreseeable future and recommended that DOE work to improve its understanding of equipment life, a significant driver of projected shipment calculations. (SVA, No. 53 at p. 9) SVA stated that tightening equipment budgets and increasing prices would result in increased equipment life, and if equipment life decreases, the stock of beverage vending machines in the United States would continue to decrease. SVA cited a downward trend in shipments between 1998 and 2014, and expressed strong disagreement with DOE's assumption that this trend would reverse. SVA additionally stated that due to the limited time allowed to submit comments, it was not able to provide data on shipments by equipment class. SVA stated its belief that micromarkets will continue to displace beverage vending machines and have an increasingly negative impact on shipments. (SVA, No. 53 at pp. 7–8)

DOE notes that changes in the availability of new refrigerants and limitation of certain other refrigerants for BVM applications may impact the overall BVM market in the United States and, specifically, the future shipments of new beverage vending machines through 2048. At the 2015 BVM ECS NOPR stage, DOE requested comment on the impact of the EPA SNAP rules on future shipments of beverage vending machines, by equipment class, refrigerant, and efficiency level. With respect to the impact of new refrigerants on shipments, Royal Vendors, AMS, and NAMA all commented that added machine costs due to alternative refrigerants as a result of EPA SNAP, combined with the increased efficiency required by DOE's proposed standards,

would decrease new machine purchases in favor of refurbishments. (Royal Vendors, No. 54 at p. 8; AMS, No. 57 at p. 3; NAMA, No. 50 at p. 8) Conversely, NEEA expressed the belief that EPA SNAP compliance would lead to an increase in new shipments, as refurbishment may not be practical when switching refrigerants. (NEEA, Public Meeting Transcript, No. 48 at p. 135) Related to refurbishments, SVA stated in the BVM ECS NOPR public meeting that beverage vending machines can be refurbished from R-134a to CO<sub>2</sub> but not to propane due to different safety concerns for flammable refrigerants. (SVA, Public Meeting Transcript, No. 48 at p. 136)

In response to comments received from interested parties, DOE revised certain aspects of the shipments model in its final rule analysis. Primarily, DOE revised the shipments model to more explicitly account for refurbished beverage vending machines and their impact on overall shipments, as DOE understands this is an important factor driving current and future shipments of beverage vending machines. Specifically, DOE revised the BVM shipments model to calculate the stock of beverage vending machines that survive from 1 year to the next according to the following Eq. IV.1:

$$\text{SurvivingStock} = \sum_a U(t,a) + \dot{U}_{\text{new}}(t) - U_{\text{retirements}}(t) + U_{\text{refurbishments}}(t) \quad [\text{Eq. IV.1}]$$

Where:

$U(t,a)$  = total stock of age  $a$  in a given year  $t$ ,

$\dot{U}_{\text{new}}(t)$  = new shipments of BVM units in year  $t$  (units with age  $a = 0$ ),

$U_{\text{retirements}}(t)$  = retirements of BVM units in year  $t$  (units with various age  $a \geq 13.4$ ),

$U_{\text{refurbishments}}(t)$  = refurbishments of BVM units in year  $t$  (units with various age  $30 \geq a \geq 1$ ),

$a$  = age of stock in years, and  $t$  = year.

DOE's shipments model assumes an increasing trend in refurbishing existing equipment beginning in 2009 and continuing through 2024, after which refurbishments return to pre-2009 levels. DOE notes that the impact of this increased refurbishment rate serves only to delay shipments of new equipment, rather than depress shipments permanently.

In addition, DOE revised its assumptions regarding the consistent growth of shipments beginning in 2014, in light of the impact of the new EPA SNAP regulations on the BVM market. While DOE does not have data to suggest the impact of changes in refrigerant availability on future shipments, DOE acknowledges the comments received from interested

parties expressing their concern and belief that added machine costs due to alternative refrigerants as a result of EPA SNAP combined with the increased efficiency required by DOE's proposed standards would decrease new machine purchases in favor of refurbishments after both regulations go into effect. However, between 2014 and 2019, DOE agrees with NEEA that EPA SNAP and the pending compliance date of DOE's amended standards adopted herein may actually act to increase shipments in the near term, as BVM owners opt to replace aging equipment in advance of the required design changes that will occur in 2019. DOE expects that some customers may act in anticipation of the likely increase in equipment prices that may occur as a result of the design changes necessary to comply with EPA SNAP regulations and DOE's new and amended energy conservation standards.

DOE also notes that many beverage vending machines that were refurbished beginning in 2009 to increase their life will be 4.5 years older, the typical average "refurbishment" cycle, and the additional retirement of those older refurbished machines may increase the number of retirements beginning in 2014 and thus, may also increase shipments from 2014 through 2024. However, DOE also acknowledges that BVM owners may also choose to refurbish existing equipment prior to the EPA SNAP compliance date and assumes that a significant amount of refurbishments will occur through 2024. Notably, DOE's shipments model assumes that greater than 50 percent of equipment that would otherwise reach the end of its life and be retired will instead be refurbished, delaying purchases of new equipment, until after 2024. DOE believes this assumption effectively captures the likely behavior of customers who may choose to refurbish existing R-134a equipment in anticipation of new R-134a equipment no longer being available following the compliance date of the EPA SNAP regulations.

In 2019, when EPA's SNAP regulations are anticipated to take effect, DOE estimated that shipments will decline dramatically to 2014 levels, which represents the lowest annual shipments in any year from 1998 through the end of the analysis period. In the succeeding three years, consistent with manufacturer expectations, DOE believes that BVM shipments will stagnate while manufacturers, customers, and the market respond and acclimate to the new EPA SNAP regulations and their effect on equipment availability and price. In

2022, DOE anticipates that shipments will increase, beginning to recover the aging and depleted BVM stock. DOE notes that, based on DOE's assumptions regarding the choice of customers to refurbish or delay purchases of new BVM equipment in response to the increased cost of BVM units that are compliant with EPA SNAP and DOE's new and amended standards, the BVM shipments model estimates that the BVM stock in 2022 will have decreased 46 percent compared to the existing stock in 2014. DOE believes that, by this time, customers and the marketplace will have adapted to the new alternative refrigerants and, thus, will begin to return to typical purchasing and refurbishment cycles. Therefore, to replace retiring units, DOE's final rule shipments model assumes increases in shipments through 2035, with the most significant growth occurring between 2022 and 2028.

Beyond 2035, DOE estimates that growth in shipments will slowly decline as shipments return to a more consistent, static-lifetime "replacement" scenario as older equipment permanently leaves the market. DOE estimates shipments will remain flat from 2045 through the end of the analysis period at around 135,000 units per year, resulting in a final stock of 1.8 million in 2048, as projected by DOE based on the Vending Times data. This represents a 20-percent decrease from 2014 levels, primarily due to replacement by bottle coolers and micromarkets,<sup>45</sup> which is consistent with SVA's comment that micromarkets will continue to displace beverage vending machines and have an increasingly negative impact on shipments.

DOE notes that it does not expect the specific refrigerant used in a given beverage vending machine to impact demand for beverage vending machines and overall equipment stocks over time. As such, DOE maintains that the historical Vending Times data and stock-based analysis approach that DOE employed to develop shipment assumptions for this final rule are appropriate and represent the best available information about future

<sup>45</sup> The term bottle cooler refers to a specific type of self-contained commercial refrigerator with transparent doors designed for pull-down applications. Such equipment is specifically defined as a "commercial refrigerator designed for pull-down applications" at 10 CFR 431.62. Micromarkets are small, self-service, convenience store-like establishments and typically feature a bottle cooler for selling bottled and canned beverages, among other snacks, which are paid for at a central payment kiosk. See [www.vending.org/images/pdfs/micro-market/Tech\\_W7\\_bulletin\\_Micro\\_Market\\_v4.0.pdf](http://www.vending.org/images/pdfs/micro-market/Tech_W7_bulletin_Micro_Market_v4.0.pdf).

shipments of beverage vending machines.

DOE believes it is reasonable to model increasing shipments between 2022 and 2035 to recover BVM stock in the United States, given the commitment by major bottlers to alternative refrigerants.<sup>46</sup> DOE notes that major bottlers represent approximately 90 percent of the BVM market<sup>47</sup> and, as such, anticipates consistent or increasing demand for alternative refrigerant BVM units over time. DOE notes that increasing shipments to maintain reasonable stock<sup>48</sup> and availability of BVM units in the marketplace is also consistent with the opinions of NAMA and the EEA Joint Commenters regarding the availability of healthy options in BVM merchandise and, thus, continued relevance of beverage vending machines in all industry sectors, including schools, office buildings, and other public locations.

In response to the specific comments received from NAMA and the EEA Joint Commenters, DOE has reviewed its assumptions regarding the rationale for certain reductions in different market segments. DOE agrees with commenters that the types of vended products available in beverage vending machines are not limited to soda or other sugary beverages and that sales of water, energy drinks, and sports drinks have been increasing over the past several years.<sup>49</sup> However, DOE also acknowledges that the increasing trend of micromarkets to replace beverage vending machines in some applications and notes that Vending Times reports that installations

<sup>46</sup> See e.g., R744, "Coca-Cola to approve 9 models of CO2 vending machine—exclusive interview." Available online [www.r744.com/news/view/3466](http://www.r744.com/news/view/3466); The Coca-Cola Company (2014), "2013/2014 Global Reporting Initiative Report." Available online <http://assets.coca-colacompany.com/1a/e5/20840408404b9bc484ebc58d536c/2013-2014-coca-cola-sustainability-report-pdf.pdf>; and PepsiCo (2015). "Performance with Purpose." 2015 Atmosphere Conference.

<sup>47</sup> Northwest Power and Conservation Council Regional Technical Forum. 2007. *Characterization of Energy Efficiency Opportunities in Vending Machines for the Northwestern US Market*. Available at [http://rtf.nwccouncil.org/meetings/2007/08/RTF%20Vending%20Characterization%20Study\\_Revised%20Report\\_072407.pdf](http://rtf.nwccouncil.org/meetings/2007/08/RTF%20Vending%20Characterization%20Study_Revised%20Report_072407.pdf).

<sup>48</sup> As noted in the 2015 BVM ECS NOPR, DOE assumed an average 0.55-percent reduction in BVM stock overtime, based on projected data from Vending Times *Census of the Industry 2014* and CBECS building growth trends. DOE believes that further reductions in BVM stock would represent a dramatic shift in the availability of BVM units in the United States and, thus, purchasing trends of consumers who currently purchase a variety of snacks and beverages from such vending machines. See chapter 10 of the final rule TSD for more information.

<sup>49</sup> Vending Times *Census of the Industry 2013* and 2014. Available at [www.vendingtimes.com](http://www.vendingtimes.com).

of such micromarkets nearly doubled between 2012 and 2013 and anticipates similar growth between 2013 and 2014.<sup>50</sup> As such, DOE believes that its projected reductions in certain BVM industry sectors to be reasonable, but more likely driven by replacement by mircomarkets than any health food trends or soda bans. In addition, DOE notes that these industry-segment-specific declines are primarily illustrative and serve only to support the overall 0.55 percent annual reduction in stock modeled for the industry as a whole. DOE believes that this overall trend in BVM stock continues to be valid, as supported by comments from manufacturers anticipating continuing declines in BVM stock and shipments.

For more information on DOE's shipments estimates, the shipments analysis assumptions, and details on the calculation methodology, refer to chapter 9 of the final rule TSD.

1. Market Share by Equipment Class

Given a total volume of shipments, DOE estimates the shipments of each equipment class based on the estimated market share of each equipment class. In the 2015 BVM ECS NOPR, DOE assumed the market share assigned to each of the equipment classes shown in Table IV.6.

TABLE IV.6—MARKET SHARE OF EACH EQUIPMENT CLASS ASSUMED IN NOPR ANALYSIS

Equipment class	NOPR market share (%)
Class A .....	54.3
Class B .....	27.7
Combination A .....	9.3
Combination B .....	8.7

In the NOPR analysis, DOE assumed that the market share for each equipment class was maintained over the 30-year analysis period and did not change as a function of standard level or as a function of changes in refrigerant availability resulting from the two recent EPA SNAP rulemakings. 80 FR 19454, 19491 (April 10, 2015) and 80 FR 42870, 42917–42920 (July 20, 2015). That is, in 2048, Class A, Class B, Combination A, and Combination B continued to represent 54.3, 27.7, 9.3, and 8.7 percent of the market, respectively. DOE made this assumption because it does not have data or information to suggest that the relative shipments of different equipment

<sup>50</sup> Vending Times *Census of the Industry 2014*. Available at [www.vendingtimes.com](http://www.vendingtimes.com).

classes will change over time and, if so, in what direction and on what basis. 80 FR 50462, 50494–50495 (Aug. 19, 2015).

DOE did not receive any comments in response to the NOPR on these market distributions and, as such, is maintaining the market share distribution modeled in the NOPR in the shipments model for this final rule.

## 2. Market Share by Refrigerant

Once DOE has defined shipments by equipment class, DOE also defined the shipments within each equipment class by refrigerant. In the 2015 BVM ECS NOPR, DOE based its assumptions regarding the relative shipments of each refrigerant based on recent regulatory actions under EPA's SNAP program, which listed propane and certain other hydrocarbon refrigerants as acceptable for BVM applications (80 FR 19454, 19491 (April 10, 2015)) and changed the status of the industry-standard refrigerant R-134a to unacceptable beginning on January 1, 2019 (80 FR 42870, 42917–42920 (July 20, 2015)). Specifically, in the NOPR, DOE modeled a shipments scenario assuming that all shipments of new BVM equipment will use CO<sub>2</sub> or propane as a refrigerant beginning on January 1, 2019, the effective date of the status change of R-134a as required by Final Rule 20. 80 FR 50462, 50495 (Aug. 19, 2015).

Given the greater market experience with CO<sub>2</sub>, DOE assumed that CO<sub>2</sub> will represent 60 percent of the market and propane will represent 40 percent of the market for all equipment classes beginning in 2019 and continuing through the end of the analysis period (2048). Specifically, due to the listing of CO<sub>2</sub> as an acceptable refrigerant for BVM applications several years ago by EPA SNAP, as well as a commitment by Coca-Cola (the largest equipment purchaser) to move away from HFC refrigerants in the near future, the market has already seen evolution towards the widespread use of CO<sub>2</sub>. *Id.*

However, DOE acknowledges that propane-based BVM models have only very recently become authorized under SNAP and that there is much more limited industry experience with this refrigerant. DOE has based this final rule analysis on the use of propane as an alternative refrigerant, in addition to CO<sub>2</sub>, and assumed that propane-based BVM models will represent 40 percent of shipments by 2019. As mentioned in the engineering analysis, DOE believes this assumption is reasonable based on use of propane as a refrigerant in other,

similar, self-contained commercial refrigeration applications.<sup>51</sup> *Id.*

In its written comments, SVA stated that the relative market share of each refrigerant by equipment class depended heavily on the ability of manufacturers to develop economically sound equipment that meets UL standards for flammable refrigerants. (SVA, No. 53 at p. 9) In the BVM ECS NOPR public meeting, Coca-Cola stated that its refrigerant preference for the North American market is CO<sub>2</sub> and noted that Japan (another large vending market) is already using CO<sub>2</sub>. Also in the public meeting, SVA expressed commitment to CO<sub>2</sub> but also stated it was beginning to explore propane, and Wittern stated that it was pursuing propane over CO<sub>2</sub> due to the higher operating pressures of CO<sub>2</sub> refrigeration systems, which labor the compressors and decrease efficiency. (Coca-Cola, SVA, and Wittern, Public Meeting Transcript, No. 48 at pp. 48–55)

In response to comments submitted by interested parties, DOE reviewed its assumptions regarding the relative distribution of shipments of CO<sub>2</sub> and propane BVM equipment. DOE believes that its 2015 BVM ECS NOPR assumptions regarding the increased market share of CO<sub>2</sub> equipment relative to propane equipment are consistent with the statements made by commenters regarding the existing use and preference for CO<sub>2</sub> equipment, as well as the additional safety certifications that will be necessary for propane equipment. Specifically, DOE accounted for the fact that beverage vending machines with propane refrigerant must meet all requirements of Supplement SA to the 7th edition of UL Standard 541, "Refrigerated Vending Machines," dated December 30, 2011, which specifically addresses flammable refrigerants in vending machines, as required by EPA SNAP's Rule 19 final rule. 80 FR 19454, 19460 (April 10, 2015). However, consistent with Wittern's observation regarding the relative efficiency of propane as a refrigerant compared to CO<sub>2</sub>, DOE believes it is reasonable to assume that propane will gain a significant market share by 2019 as some manufacturers elect to take advantage of propane's increased efficiency as a refrigerant in BVM applications. In summary, DOE appreciates comments from interested parties and believes they are generally consistent with DOE's assumptions in the NOPR. As such, DOE is maintaining the distribution of shipments by

refrigerant modeled in the NOPR with no modification.

DOE's shipments analysis and assumptions are discussed in more detail in chapter 9 of the final rule TSD.

## 3. High and Low Shipments Assumptions

DOE recognizes that there is considerable uncertainty in forecasting future shipments of beverage vending machines. As such, in addition to the primary shipments scenario presented above, DOE estimated low and high shipments scenarios as sensitivities on the primary scenario. For the high and low shipments scenarios, DOE assumed the market share by equipment class and refrigerant as in the default shipments scenario, while the magnitude of total shipments of new beverage vending machines is varied among the scenarios. DOE's low shipments scenario modeled lower shipments from 2014 through 2019 than DOE estimated in the NOPR to reflect comments that the increased cost of equipment (due to both EPA SNAP requirements and DOE's proposed standards) would cause a decrease in new machine purchases in favor of refurbishments. In 2019, when EPA's SNAP regulations will take effect, DOE estimated that shipments would return to 2014 levels, before beginning to recover in 2022 at the reduced growth rate, reflecting the potential increased refurbishment cycles and commensurate increased lifetime for existing BVM equipment. DOE also assumed that BVM shipments recover only to approximately 100,000 shipments per year and result in a stock of 1.3 million at the end of the analysis period, a 40-percent reduction in units installed in the United States. DOE notes that this stock reduction is consistent with the projected stock based on the Vending Times data of a 2 percent annual reduction over the analysis period,<sup>52</sup> without adjusting for the growth in buildings over the analysis period calculated based on CBECS.

Conversely, the high shipments scenario assumes the same overall decline in stock assumed in the primary shipment case; that is, a stock of 1.8 million BVM units in 2048. However, the high shipments scenario assumes that shipments recover more quickly than in the primary shipments case. The high shipments scenario assumes shipments of new beverage vending machines increase in advance of SNAP, consistent with the default shipments scenario, as BVM customers act

<sup>51</sup> See e.g., Docket No. EPA-HQ-OAR-2014-0198, The Environmental Investigation Agency, No. 0134.

<sup>52</sup> Vending Times Census of the Industry 2013 and 2014. Available at [www.vendingtimes.com](http://www.vendingtimes.com).

preemptively to purchase remaining R-134a equipment before it is no longer allowed beginning in 2019. Then, following 2019, the high shipments scenario assumes that shipments stagnate before growing rapidly again beginning in 2022 to recover over the next 5 years. DOE believes this scenario represents the case where shipments of BVM units increase over time based on the increased offerings of healthy options in beverage vending machines and demand from bottlers for such alternative refrigerant BVM units, consistent with comments by NAMA and Coca-Cola, respectively. These two sensitivity scenarios are discussed in more detail in chapter 9 of the final rule TSD.

H. National Impact Analysis

The NIA assesses the NES and the national NPV from a perspective of total customer costs and savings that would be expected to result from new or amended standards at specific efficiency levels (i.e., TSL) for each equipment class of beverage vending machines.<sup>53</sup> (“Customer” in this context refers to customers of the equipment being regulated, in this case the purchaser of the BVM) DOE calculated the NES and NPV based on projections of annual shipments, along with the annual energy consumption and total installed

cost data from the energy use and LCC analyses.<sup>54</sup> For the present analysis, DOE projected the energy savings, operating cost savings, equipment costs, and NPV of customer benefits for equipment sold from 2019 through 2048 (the expected year in which the last standards-compliant equipment is shipped during the 30-year analysis).

DOE evaluates the impacts of new and amended standards by comparing a no-new-standards case projections with the standards case projections. The no-new-standards case characterizes energy use and customer costs for each equipment class in the absence of new or amended energy conservation standards. For this projection, DOE considered historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compared the no-new-standards case with projections characterizing the market for each equipment class if DOE adopted new or amended standards at specific energy efficiency levels (i.e., the TSLs or standards cases) for that class. For the standards cases, DOE considers how a given standard would likely affect the market shares of equipment with efficiencies less than the standard.

DOE used a spreadsheet model to calculate the energy savings and the national customer costs and savings from each TSL. Interested parties can

review DOE’s analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses average values as inputs (rather than probability distributions of key input parameters as used in the LCC). To assess the effect of input uncertainty on NES and NPV results, DOE developed its spreadsheet model to conduct sensitivity analyses by running scenarios on specific input variables.

For the current analysis, the NIA used projections of energy price trends from the AEO2015 Reference case. In addition, DOE analyzed scenarios that used inputs from the AEO2015 Low Economic Growth and High Economic Growth cases. These cases have lower and higher energy price trends, respectively, compared to the reference case. NIA results based on these cases are presented in appendix 10E of the final rule TSD.

A detailed description of the procedure to calculate NES and NPV and inputs for this analysis are provided in chapter 10 of the final rule TSD.

Table IV.7 summarizes the inputs and methods DOE used for the NIA analysis for the final rule. Discussion of these inputs and methods appears following Table IV.7. See chapter 10 of the final rule TSD for further details.

TABLE IV.7—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments .....	Annual shipments from shipments model.
Compliance Date of Standard .....	2019.
Efficiency Trends .....	No-new-standards case: Standards cases:
Annual Energy Consumption per Unit .....	Annual weighted-average values are a function of energy use at each TSL.
Total Cost per Unit .....	Annual weighted-average values are a function of cost at each TSL. Incorporates projection of future equipment prices based on historical data.
Annual Energy Cost per Unit .....	Annual weighted-average values as a function of the annual energy consumption per unit and energy prices.
Repair and Maintenance Cost per Unit .....	Repair cost and maintenance costs provided from LCC analysis.
Energy Prices .....	AEO2015 forecasts (to 2040) and extrapolation through 2078.
Energy Site-to-Primary and FFC Conversion .....	A time-series conversion factor based on AEO2015.
Discount Rate .....	3% and 7%.
Present Year .....	2015.
Price Learning .....	Projection of future price trends for BVM equipment.
Lifetime .....	Weibull distribution for equipment lifetime.

1. Equipment Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases. Section IV.F.6 of this final rule describes how DOE developed an energy efficiency distribution for the no-new-standards

case (which yields a shipment-weighted average efficiency) for each of the considered equipment classes for the first year of the forecast period.

DOE developed a distribution of efficiencies in the no-new-standards case for the compliance year of new standards for each BVM equipment class. Because no information was

available to suggest a different trend, DOE assumed that the efficiency distribution in the no-new-standards case will remain the same in future years. In each standards case, a “roll-up” scenario approach was applied to establish the efficiency distribution for the compliance year. Under the “roll-up” scenario, DOE assumed: (1)

<sup>53</sup>The NIA accounts for impacts in the 50 states and U.S. territories.

<sup>54</sup>For the NIA, DOE adjusts the installed cost data from the LCC analysis to exclude sales tax, which is a transfer.



Equipment efficiencies in the no-new-standards case that do not meet the standard level under consideration will “roll-up” to meet the new standard level; and (2) equipment efficiencies above the standard level under consideration will not be affected. The “roll-up” was a more conservative approach over the “market shift” approach. In a market shift approach it is assumed that a given number of customers will prefer to buy equipment above the baseline. Therefore, in a standards case scenario customers will continue to purchase above the new baseline by shifting to an efficiency level that keeps their purchase the same number of efficiency levels above the new baseline until they no longer can do so because the market becomes compressed by the maximum available efficiency level.

DOE also recognizes that recent changes in refrigerant availability resulting from the two recent EPA SNAP rulemakings may have an impact on forecasted efficiency distributions under the no-new-standards case. 80 FR 19454, 19491 (April 10, 2015) and 80 FR 42870, 42917–42920 (July 20, 2015). However, DOE did not account for such potential impacts on efficiency distributions in this final rule analysis, as DOE does not have data or information to suggest how efficiency distributions of different equipment classes or refrigerants will change over time and, if so, in what direction and on what basis as a result of potential changes.

## 2. National Energy Savings

The inputs for determining the NES are (1) annual energy consumption per unit, (2) shipments, (3) equipment stock, (4) national energy consumption, and (5) site-to-source conversion factors. As discussed in the energy use analysis, DOE calculated the national energy consumption by multiplying the number of units (stock) of each type of equipment (by vintage or age) by the unit energy consumption (also by vintage). Vintage represents the age of the equipment.

DOE calculated annual NES based on the difference in national energy consumption for the no-new-standards case (without new efficiency standards) and for each higher efficiency standard.<sup>55</sup> Cumulative energy savings are the sum of the annual NES over the period in which equipment shipped in 2019–2048 are in operation.

<sup>55</sup> The no-new-standards case represents a mix of efficiencies above the minimum efficiency level (EL 0). Please see section IV.F.6 for a more detail description of associated assumptions.

DOE uses a multiplicative factor called “site-to-source conversion factor” to convert site energy consumption (at the commercial building) into primary or source energy consumption (the energy input at the energy generation station required to convert and deliver the energy required at the site of consumption). These site-to-source conversion factors account for the energy used at power plants to generate electricity and for the losses in transmission and distribution, as well as for natural gas losses from pipeline leakage and energy used for pumping. For electricity, the conversion factors vary over time due to projected changes in generation sources (that is, the power plant types projected to provide electricity to the country). The factors that DOE developed are marginal values, which represent the response of the system to an incremental decrease in consumption associated with amended energy conservation standards.

For this final rule, DOE used conversion factors based on the U.S. energy sector modeling using the National Energy Modeling System (NEMS) Building Technologies (NEMS–BT) version that corresponds to *AEO2015* and which provides national energy forecasts through 2040. Within the results of NEMS–BT model runs performed by DOE, a site-to-source ratio for commercial refrigeration was developed. The site-to-source ratio was held constant beyond 2040 through the end of the analysis period (30 years from the compliance year plus the life of equipment).

### a. Full-Fuel-Cycle Analysis

DOE has historically presented NES in terms of primary energy savings. On August 18, 2011, DOE published a final statement of policy in the **Federal Register** announcing its intention to use FFC measures of energy use and greenhouse gas and other emissions in the NIA and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281. While DOE stated in that document that it intended to use the Greenhouse Gases, Regulated Emissions, and Energy Use in Transportation (GREET) model to conduct the analysis, it also said it would review alternative methods, including the use of NEMS. After evaluating both models and the approaches discussed in the August 18, 2011 document, DOE published an amended statement of policy, articulating its determination that NEMS is a more appropriate tool for this purpose. 77 FR 49701 (August 17, 2012).

The approach used for this final rule, and the FFC multipliers that were

applied, are described in appendix 10D of the TSD. NES results are presented in terms of both primary and FFC savings; the savings by TSL are summarized in terms of FFC savings in section I.C of this final rule.

## 3. Net Present Value Analysis

The inputs for determining NPV are: (1) Total annual equipment cost, (2) total annual savings in operating costs, (3) a discount factor to calculate the present value of costs and savings, (4) present value of costs, and (5) present value of savings. DOE calculated the net savings for each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in equipment costs. DOE calculated savings over the lifetime of equipment shipped in the forecast period. DOE calculated NPV as the difference between the present value of operating cost savings and the present value of total equipment costs.

For the NPV analysis, DOE calculates increases in total equipment costs as the difference in total equipment cost between the no-new-standards case and standards case (*i.e.*, once the standards take effect). Because the more-efficient equipment bought in the standards case usually costs more than equipment bought in the no-new-standards case, cost increases appear as negative values in calculating the NPV.

DOE expresses savings in operating costs as decreases associated with the lower energy consumption of equipment bought in the standards case compared to the no-new-standards case. Total savings in operating costs are the product of savings per unit and the number of units of each vintage that survive in a given year.

DOE multiplied monetary values in future years by the discount factor to determine the present value of costs and savings. DOE estimates the NPV of customer benefits using both a 3-percent and a 7-percent real discount rate as the average real rate of return on private investment in the U.S. economy. DOE used these discount rates in accordance with guidance provided by the U.S. Office of Management and Budget (OMB) to Federal agencies on the development of regulatory analysis. (OMB Circular A–4 (Sept. 17, 2003), section E, “Identifying and Measuring Benefits and Costs”) The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the “societal rate of time preference,” which is the rate at which society discounts

future consumption flows to their present.

### I. Customer Subgroup Analysis

In analyzing the impact of new or amended standards on commercial customers, DOE evaluated the impact on identifiable groups (*i.e.*, subgroups) of customers, such as different types of businesses that may be disproportionately affected by a national standard. The purpose of the subgroup analysis is to determine the extent of this disproportional impact. In comparing potential impacts on the different customer subgroups, DOE may evaluate variations in regional electricity prices, energy use profiles, and purchase prices that might affect the LCC of an energy conservation standard to certain customer subgroups. For this rulemaking, DOE identified manufacturing and/or industrial facilities that purchase their own beverage vending machines as a relevant subgroup. These facilities typically have higher discount rates and lower electricity prices than the general population of BVM customers. These two conditions make it likely that this subgroup will have the lowest LCC savings of any major customer subgroup.

Two stakeholders commented on the 2015 BVM ECS NOPR subgroup analysis. AMS commented that because those who purchase the machines do not usually pay for electricity, PBP numbers for subgroup “do not really exist” (*i.e.*, energy savings are only realized by site owners). (AMS, No. 57 at Page 6) NAMA suggested that subgroups might include vending machine operating companies because “most corporate and manufacturing facilities provide vending machines to their employees through vending machine companies.” (NAMA, No. 50 at p. 12)

In response to the comment from AMS, DOE notes that the money saved by more efficient equipment through lower operating costs is accounted for in the split incentives approach. DOE believes that the subgroup to which NAMA refers can be represented by the manufacturing and/or industrial facilities that purchase their own beverage vending machines because each group would likely have lower electricity prices and higher discount rates than the typical customer.

DOE determined the impact on this BVM customer subgroup using the LCC spreadsheet model. DOE conducted the LCC and PBP analysis for customers represented by the subgroup. The results of DOE’s LCC subgroup analysis are summarized in section V.B.1.b of

this final rule and described in detail in chapter 12 of the final rule TSD.

### J. Manufacturer Impact Analysis

#### 1. Overview

DOE performed a MIA to determine the financial impact of amended energy conservation standards on manufacturers of beverage vending machines, and to estimate the potential impact of such standards on employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects. The quantitative part of the MIA primarily relies on the Government Regulatory Impact Model (GRIM), an industry cash-flow model with inputs specific to this rulemaking. The key GRIM inputs are data on the industry cost structure, equipment costs, shipments, and assumptions about markups and conversion expenditures. The key output is the INPV. Different sets of assumptions (*i.e.*, markup and shipments scenarios) will produce different results. The qualitative part of the MIA addresses factors such as equipment characteristics, impacts on particular subgroups of firms, and important market and equipment trends. The complete MIA is outlined in chapter 12 of the final rule TSD.

DOE conducted the MIA for this rulemaking in three phases. In Phase 1 of the MIA, DOE conducted structured, detailed interviews with manufacturers and prepared a profile of the BVM industry. During manufacturer interviews, DOE discussed engineering, manufacturing, procurement, and financial topics to identify concerns and to inform and validate assumptions used in the GRIM. See appendix 12A of the TSD for a copy of the interview guide.

DOE used information obtained during these interviews to prepare a profile of the BVM industry. Drawing on financial analysis performed as part of the 2009 energy conservation standard for beverage vending machines, as well as feedback obtained from manufacturers, DOE derived financial inputs for the GRIM (*e.g.*, sales, general, and administration (SG&A) expenses; research and development (R&D) expenses; and tax rates). DOE also used public sources of information, including company SEC 10-K filings,<sup>56</sup> corporate annual reports, the U.S. Census Bureau’s Economic Census,<sup>57</sup> and

Hoover’s reports,<sup>58</sup> to develop the industry profile.

In Phase 2 of the MIA, DOE prepared an industry cash-flow analysis to quantify the potential impacts of an amended energy conservation standard on manufacturers of beverage vending machines. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) Create a need for increased investment; (2) raise production costs per unit; and (3) alter revenue due to higher per-unit prices and possible changes in sales volumes. To quantify these impacts, DOE used the GRIM to perform a cash-flow analysis for the BVM industry using financial values derived during Phase 1.

In Phase 3 of the MIA, DOE evaluated subgroups of manufacturers that may be disproportionately impacted by amended energy conservation standards or that may not be represented accurately by the average cost assumptions used to develop the industry cash-flow analysis. For example, small manufacturers, niche players, or manufacturers exhibiting a cost structure that largely differs from the industry average could be more negatively affected. DOE identified one subgroup for a separate impact analysis, small businesses.

DOE identified eight companies that sell BVM equipment in the United States. For the small businesses subgroup analysis, DOE applied the small business size standards published by the Small Business Administration (SBA) to determine whether a company is considered a small business. 65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000) and codified at 13 CFR part 121. To be categorized as a small business under North American Industry Classification System (NAICS) code 333318, “*Other Commercial and Service Industry Machinery Manufacturing*,” a BVM manufacturer and its affiliates may employ a maximum of 1,000 employees. The 1,000-employee threshold includes all employees in a business’s parent company and any other subsidiaries. Based on this classification, of the eight companies selling beverage vending machines in the United States, DOE identified five manufacturers that qualify as small businesses, one of which is a foreign manufacturer with domestic-sited subsidiary that serves as its marketing arm in the United States. The BVM small manufacturer subgroup is discussed in chapter 12 of the final

<sup>56</sup> U.S. Securities and Exchange Commission. Annual 10-K Reports. Various Years. <http://sec.gov>.

<sup>57</sup> U.S. Census Bureau. Annual Survey of Manufacturers: General Statistics: Statistics for Industry Groups and Industries. <http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t>.

<sup>58</sup> Hoovers Inc. Company Profiles. Various Companies. [www.hoovers.com](http://www.hoovers.com).

rule TSD and in section IV.J of this final rule.

Additionally, in Phase 3 of the MIA, DOE evaluated impacts of amended energy conservation standards on manufacturing capacity and direct employment. DOE also evaluated cumulative regulatory burdens affecting the BVM industry.

## 2. Government Regulatory Impact Model

DOE uses the GRIM to quantify the changes in cash flow due to new standards that result in a higher or lower industry value. The GRIM analysis uses a standard, annual cash-flow analysis that incorporates manufacturer costs, markups, shipments, and industry financial information as inputs. The GRIM models changes in costs, distribution of shipments, investments, and manufacturer margins that could result from an amended energy conservation standard. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning in 2015 (the reference year of the analysis) and continuing to 2048. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. For BVM manufacturers, DOE used a real discount rate of 8.5 percent, which was derived from industry financials and then modified according to feedback received during manufacturer interviews.

The GRIM calculates cash flows using standard accounting principles and compares changes in INPV between a no-new-standards case and each standards case. The difference in INPV between the no-new-standards case and a standards case represents the financial impact of the amended energy conservation standard on manufacturers. As discussed previously, DOE collected this information on the critical GRIM inputs from a number of sources, including publicly available data and interviews with a number of manufacturers. The GRIM results are shown in section IV.J.2.b of this final rule. Additional details about the GRIM, the discount rate, and other financial parameters can be found in chapter 12 of the final rule TSD.

### a. Government Regulatory Impact Model Key Inputs

#### Manufacturer Production Costs

Manufacturing more efficient equipment is typically more expensive than manufacturing baseline equipment

due to the use of more complex components, which are typically more costly than baseline components. The changes in the MPCs of the analyzed equipment can affect the revenues, gross margins, and cash flow of the industry, making these equipment cost data key GRIM inputs for DOE's analysis.

In the MIA, DOE used the MPCs for each considered efficiency level calculated in the engineering analysis, as described in section IV.C of this final rule and further detailed in chapter 5 of the final rule TSD. In addition, DOE used information from its teardown analysis, described in chapter 5 of the TSD, to disaggregate the MPCs into material, labor, and overhead costs. To calculate the MPCs for equipment above the baseline, DOE added the incremental material, labor, and overhead costs from the engineering cost-efficiency curves to the baseline MPCs. These cost breakdowns and equipment markups were validated and revised with manufacturers during manufacturer interviews. DOE notes that, since all BVM equipment will be required to be compliant with EPA's new Rule 20 regulations prohibiting the use of R-134a after January 1, 2019 (80 FR 42870, 42917–42920 (July 20, 2015)), the MPCs modeled in the GRIM represent equipment that is compliant with Rule 20 (*i.e.*, uses only CO<sub>2</sub> and propane refrigerants), as well as any existing energy conservation standards for such equipment.

#### Shipments Forecasts

The GRIM estimates manufacturer revenues based on total unit shipment forecasts by equipment class and the distribution of these values by efficiency level. Changes in sales volumes and efficiency mix over time can significantly affect manufacturer finances. For this analysis, the GRIM uses the NIA's annual shipment forecasts derived from the shipments analysis. See section IV.H of this final rule and chapter 10 of the final rule TSD for additional details.

#### Product and Capital Conversion Costs Associated With Energy Conservation Standards for Beverage Vending Machines

An amended energy conservation standard will cause manufacturers to incur one-time conversion costs to bring their production facilities and product designs into compliance. DOE evaluated the level of conversion-related

expenditures that will be needed to comply with each considered efficiency level in each equipment class. For the MIA, DOE classified these conversion costs into two major groups: (1) Product conversion costs and (2) capital conversion costs. Product conversion costs are one-time investments in research, development, testing, marketing, and other non-capitalized costs necessary to make product designs comply with the amended energy conservation standard. Capital conversion costs are one-time investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new compliant equipment designs can be fabricated and assembled.

Industry investments related to compliance with EPA Rule 20 are detailed in the next section ("One-Time Investments Associated with EPA SNAP Rule 20") and are separate from the conversion costs manufacturers are estimated to incur to comply with amended energy conservation standards.

To evaluate the level of capital conversion expenditures manufacturers will likely incur to comply with amended energy conservation standards, DOE used manufacturer interview feedback to determine an average per-manufacturer capital conversion cost for each design option and equipment class. DOE scaled the per-manufacturer capital conversion costs to the industry level using a count of manufacturers producing the given equipment type (*i.e.*, Class A, Class B, Combination A, Combination B).

As detailed in section IV.G of this final rule, shipments of BVM units with HFC refrigerants are forecasted to fall to zero by 2019 as a result of the EPA SNAP Rule 20 compliance date of 2019. Therefore, DOE estimates no conversion costs associated with the remaining shipments of BVM units with HFC refrigerants that are forecasted to occur during the conversion period (the 3 years leading up to the amended energy conservation standard year of 2019).

Table IV.8 contains the per-manufacturer capital conversion costs associated with key design options for each equipment class. DOE assumes that all Combination A units share a common cabinet and glass pack design with a Class A unit, and will not carry any additional capital conversion costs.

TABLE IV.8—PER-MANUFACTURER CAPITAL CONVERSION COSTS FOR KEY DESIGN OPTIONS  
[million 2014\$]

Design option	Capital conversion costs (million 2014\$)			
	Class A	Class B	Combination A	Combination B
Evaporator Fan Controls .....	* N/A	0.04	0	0.04
1.125 Inch Thick Insulation .....	0.07	0.09	0	0.09
Enhanced Glass Pack .....	0.06	* N/A	0	* N/A
Vacuum Insulated Panels .....	0.14	0.17	0	0.18

\* N/A = Not Applicable.

DOE used a top-down approach that relied on manufacturer feedback from interviews to assess product conversion costs for the BVM industry. Using the DOE's CCMS<sup>59</sup> and ENERGY STAR<sup>60</sup> databases, along with manufacturer Web sites, DOE determined the number of platforms that are currently available for each equipment type (*i.e.*, Class A, Class B, Combination A, Combination B). DOE used manufacturer feedback to determine an average per platform product conversion cost by design

option and equipment type. DOE then used the platform counts to scale the average per platform product conversion to the industry level. DOE received insufficient feedback from industry to estimate representative product conversion costs for Combination A and Combination B equipment. As a result, because of the inherent commonalities of design and manufacture between Class A and Combination A equipment and between Class B and Combination B equipment, DOE scaled Class A

product conversion costs to estimate Combination A product conversion costs and DOE scaled Class B product conversion costs to scale Combination B product conversion costs. This scaling was based on the ratio of Combination A to Class A platforms in the industry and the ratio of Combination B to Class B platforms, respectively.

Table IV.9 contains the per-platform product conversion costs associated with key design options for each equipment class.

TABLE IV.9—PER-PLATFORM PRODUCT CONVERSION COSTS FOR KEY DESIGN OPTIONS  
[million 2014\$]

Design option	Product conversion costs (million 2014\$)			
	Class A	Class B	Combination A	Combination B
Evaporator Fan Controls .....	* N/A	0.02	0.004	0.02
Enhanced Evaporator Coil .....	0.02	0.01	* N/A	0.01
Enhanced Glass Pack .....	0.06	* N/A	0.004	* N/A
1.125 Inch Thick Insulation .....	0.02	0.02	0.004	0.02
Vacuum Insulated Panels .....	0.06	0.06	0.004	0.06

\* N/A = Not Applicable.

DOE assumes that all energy conservation standards-related conversion costs occur between the year of publication of the final rule and the year by which manufacturers must comply with the new standard. The conversion cost figures used in the GRIM can be found in section IV.J.2.a of this final rule. For additional information on the estimated product and capital conversion costs, see chapter 12 of the final rule TSD.

One-Time Investments Associated With EPA SNAP Rule 20

As a result of EPA Rule 20, the industry will be required to make an upfront investment in order to transition from the use of R-134a to CO<sub>2</sub> or propane. Although this industry investment (detailed below) is not a

result of the amended DOE energy conservation standards, DOE reflects the impact of this investment in both the no-new-standards and standards cases.

EPA Rule 20 did not provide an estimate of the upfront investments associated with a R-134a refrigerant phase-out for BVM manufacturers. Based on feedback in interviews, DOE estimated an upfront cost to the industry to comply with Rule 20 using refrigerants CO<sub>2</sub> and propane. DOE estimated that each BVM manufacturer will need to invest \$750,000 to update their equipment to comply with Rule 20 if they have no compliant equipment today. DOE assumed this one-time investment applied to all eight manufacturers, resulting in an industry cost of \$6 million.<sup>61</sup> DOE believes that this estimate falls on the high end of the

range of potential costs because there are manufacturers that already have SNAP-compliant equipment on the market today, and those manufacturers will not need to make the same level of investment ahead of the 2019 effective date. For integration into the GRIM, DOE assumed that this one-time cost will occur in 2018 because the EPA's Rule 20 requires a phaseout of R-134a by 2019. This cost is independent of conversion costs that industry will need to make as a result of amended energy conservation standards (discussed in the previous section). Unlike product and capital conversion costs necessitated by DOE energy conservation standards, DOE includes this one-time Rule 20 investment in the GRIM in both the no-new-standards case and the standards case. Accordingly, the costs related to

<sup>59</sup> "CCMS." CCMS. January 19, 2015. Accessed January 19, 2015. [www.regulations.doe.gov/certification-data/](http://www.regulations.doe.gov/certification-data/).

<sup>60</sup> ENERGY STAR Certified Vending Machines. June 6, 2013. Accessed January 19, 2015. [www.energystar.gov/products/certified-products](http://www.energystar.gov/products/certified-products).

<sup>61</sup> In the GRIM, the \$6 million one-time SNAP investment would affect the industry in the no-new-standards case as well as at each TSL.

complying with EPA Rule 20 have been incorporated into the baseline to which DOE analyzed these adopted standards. As such, all the costs to industry that occur in the standards case relate to the impact of the adopted energy conservation standards.

b. Government Regulatory Impact Model Scenarios

Manufacturer Markup Scenarios

MSPs include direct manufacturing production costs (*i.e.*, labor, materials, and overhead estimated in DOE’s MPCs) and all non-production costs (*i.e.*, SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied manufacturer markups to the MPCs estimated in the engineering analysis for each equipment class and efficiency level. Modifying these manufacturer markups in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards case manufacturer markup scenarios to represent the uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards: (1) A preservation of gross margin percentage markup scenario and (2) a preservation of per-unit operating profit markup scenario. These scenarios lead to different manufacturer markup values that, when applied to the inputted MPCs, result in varying revenue and cash flow impacts.

Under the preservation of gross margin percentage scenario, DOE applied a single uniform “gross margin percentage” markup across all efficiency levels (for a given equipment class), which assumes that manufacturers will be able to maintain the same amount of profit as a percentage of revenues at all efficiency levels within an equipment class. As production costs increase with efficiency, this scenario implies that the absolute dollar markup will increase as well. Based on publicly available financial information for manufacturers of beverage vending machines as well as comments from manufacturer interviews, DOE assumed the average manufacturer markups to vary by equipment class as shown in Table IV.10.

TABLE IV.10—BASELINE MANUFACTURER MARKUPS

Equipment class	Markup
Class A .....	1.22
Class B .....	1.17
Combination A .....	1.36

TABLE IV.10—BASELINE MANUFACTURER MARKUPS—Continued

Equipment class	Markup
Combination B .....	1.36

Because this manufacturer markup scenario assumes that manufacturers will be able to maintain their gross margin percentage markups as production costs increase in response to an amended energy conservation standard, it represents a high bound to industry profitability.

In the preservation of per-unit operating profits scenario, manufacturer markups are calibrated such that the per-unit operating profit in the year after the compliance date of the amended energy conservation standard is the same as in the no-new-standards case for each equipment class. Under this scenario, as the cost of production goes up, manufacturers are generally required to reduce the markups on their minimally compliant equipment to maintain a cost-competitive offering. The implicit assumption behind this scenario is that the industry can only maintain operating profits after compliance with the amended standard is required. Therefore, gross margin (as a percentage) is reduced between the no-new-standards case and the standards case. This manufacturer markup scenario represents a low bound to industry profitability under an amended energy conservation standard.

3. Discussion of Comments

During the 2015 BVM ECS NOPR public meeting and in public comments submitted in response to the 2015 BVM ECS NOPR, manufacturers, trade organizations, and SBA Advocacy provided several comments on the potential impact of amended energy conservation standards on manufacturers. These comments are outlined below. DOE notes that these comments helped to update the analysis reflected in this final rule.

Relating to DOE’s 2015 BVM ECS NOPR estimates of industry conversion costs associated with compliance with amended energy conservation standards, Seaga commented that DOE is underestimating industry conversion costs because different bottlers may want different refrigerants. (Seaga, No. 48 at p. 177)

As part of the manufacturer impact analysis, DOE evaluated the level of energy conservation standards-related expenditures that will be needed to comply with each considered efficiency level in each equipment class. DOE notes that these conversion costs are

based on manufacturer feedback on costs associated with individual design options, which are common to both CO<sub>2</sub> and propane machines. These individual design option costs were scaled to reflect industry conversion costs per design option and equipment type (*i.e.*, Class A, Class B, Combination A, Combination B) using the count of manufacturers currently producing beverage vending machines of each equipment type and the count of current platforms of each equipment type. These industry conversion cost estimates were then allocated by refrigerant using assumptions developed in the Shipments Analysis related to the distribution of refrigerants in the BVM industry by 2019 (see section IV.G.2 for a description of DOE’s methodology for forecasting future BVM shipments by refrigerant type). As DOE’s shipments forecasts by refrigerant assume a significant market share for both CO<sub>2</sub> and propane equipment, DOE accounts for manufacturers’ decisions to produce beverage vending machines using both CO<sub>2</sub> and propane in its estimates of industry conversion costs.

In response to the 2015 BVM ECS NOPR, AMS expressed concern relating to the fact that EPA’s enforcement of SNAP includes remanufactured equipment, in addition to new refrigerated beverage vending machines, while DOE energy conservation standards apply only to new machines. AMS believes this inconsistency will contribute to the cumulative regulatory burdens faced by BVM manufacturers. (AMS, No.48 at p. 137) Additionally, NAMA stated that compliance with both EPA SNAP rule 20 and proposed rule would be very costly to the industry. (NAMA, No. 50 at p. 13) The Form Letter Writers stated the standards were not technologically feasible or economically justified because of the burden on small businesses who also have to meet new EPA mandates as well as new DOE testing procedures (The Form Letter Writers, No. 64 and 65 at p. 1)

DOE recognizes that EPA regulations that restrict the use of HFC refrigerants will lead to changes in production costs for BVM manufacturers, necessitate investments, and will, accordingly, contribute to the cumulative regulatory burdens incurred by manufacturers as a result of amended DOE energy conservation standards. DOE notes that although EPA SNAP Rule 20 lists certain refrigerants as unacceptable in refurbished machines as of July 20, 2016, R-134a is not among the unacceptable refrigerants. Therefore, because manufacturers are currently capable of producing beverage vending

machines with R-134a, DOE believes that the cumulative regulatory burdens associated with EPA's enforcement of SNAP on refurbished beverage vending machines will be minimal, on both large and small manufacturers. Moreover, DOE's statutory authority to prescribe new and amended energy conservation standards only applies to the point of manufacture, and as such, DOE does not have the authority to extend such standards to refurbished equipment.

DOE accounted for the forthcoming R-134a phase out by estimating refrigerant-specific design pathways, cost efficiency curves and the upfront investments needed to adapt equipment, production lines, and facilities to the use of propane and CO<sub>2</sub>. DOE used a value of \$750,000 per manufacturer to account for capital expenditures as well as non-equipment costs such R&D, testing, and marketing material changes to bring BVM equipment using propane or CO<sub>2</sub> to market. DOE integrated this cost into both the no-new-standards and standards case estimates of INPV. See section IV.J.2.a for further detail on one-time costs associated with SNAP Rule 20 compliance. Furthermore, DOE includes the EPA's SNAP Rule 20 in its list of cumulative regulatory burdens in section V.B.2.e of this final rule. DOE also independently analyzed the impact of the adopted new and amended standards on small business in the Regulatory Flexibility Analysis, presented in section VI.B.

Also relating to cumulative regulatory burdens, Royal Vendors commented that the vending industry has experienced numerous regulatory and economic challenges in the past 5-10 years and that DOE's proposed standards would cause undue hardship on the vending industry. (Royal Vendors, No. 54 at p. 2)

In response to stakeholder feedback relating to the 2015 BVM ECS NOPR, DOE has updated its engineering analysis and standard efficiency levels for this final rule, resulting in less burdensome standard levels for all product classes of beverage vending machines relative to the 2015 BVM ECS NOPR proposal. DOE investigates cumulative regulatory burden impacts associated with this rulemaking in more detail in section V.B.2.e of this notice, and in chapter 12 of the final TSD.

Regarding the impacts of the standard levels proposed in the 2015 BVM ECS NOPR on small domestic BVM manufacturers, Seaga noted that the proposed standards would make it difficult for small manufacturers to remain in the industry. (Seaga, No. 48 at p. 177) Similarly, AMS commented that the investments in engineering and

development to meet DOE's proposed standard may require it to abandon the vending machine market. (AMS, No. 57 at p. 10) Additionally, SBA Advocacy's conversations with small businesses on their projected compliance costs [associated with the standard levels proposed in the 2015 BVM ECS NOPR] yielded estimates exceeding \$1,000,000 per small manufacturer. (SBA Advocacy, No. 61 at p. 2) SBA Advocacy stated further that, to ensure that the cost implications of complying with the SNAP rule are considered in DOE's analysis, it recommends that a sensitivity analysis be done. (SBA Advocacy, No. 61 at p. 3)

DOE recognizes that small manufacturers may be disproportionately impacted by energy conservation standards relative to other manufacturers in the industry. Again, DOE notes that, in response to stakeholder feedback relating to the 2015 BVM ECS NOPR, it has updated its engineering analysis and standard efficiency levels for this final rule, resulting in less burdensome standard levels for all equipment classes of beverage vending machines relative to the 2015 BVM ECS NOPR proposal.

DOE believes that the \$1,000,000 per small manufacturer compliance cost estimate cited by SBA Advocacy is inclusive of the both ECS-related conversion costs and SNAP-related upfront investments. DOE accounted for the forthcoming R-134a phaseout required by EPA SNAP by estimating refrigerant-specific design pathways, cost efficiency curves and the upfront investments needed to adapt equipment, production lines, and facilities to the use of propane and CO<sub>2</sub> (see section IV.C.2 for information relating to refrigerant-specific design pathways and cost efficiency curves). DOE estimated an upfront cost of \$750,000 per manufacturer to comply with Rule 20 using refrigerants propane and CO<sub>2</sub> refrigerants (this cost is independent of product and capital conversion costs associated with DOE standards compliance), and incorporated this cost in the GRIM in both the no-new-standards case and the standards case. This allowed DOE to isolate the incremental impact of amended energy conservation standards on BVM manufacturers, while still accounting for the impact of the 2019 R-134a phaseout on the industry. See section IV.J.2 for further details on DOE's modeling of ECS-related conversion costs and SNAP-related upfront investments. Additionally, DOE's analysis of the impacts of the final rule standard levels on small manufacturers is detailed in sections V.B.2 and VI.B.

Finally, SBA commented that DOE set the baseline for Combination A and Combination B equipment classes as the least efficient combination of technologies analyzed in the engineering analysis. As a result, SBA Advocacy believes DOE could be overstating benefits at higher TSLs because the baseline represents equipment that is less efficient than actual equipment on the market and may not represent a reasonable combination of technologies. (SBA Advocacy, No. 61 at p. 2)

Since there are currently no energy-related regulatory standards for Combination A and Combination B beverage vending machines, the baseline for these equipment classes is defined as the level of efficiency representing the least-efficient technology currently found in the BVM market for each design option analyzed. Starting with the least efficient technology results in an analysis where manufacturers must incorporate more design options and accrue greater conversion costs to reach an amended standard. This approach results in estimates of manufacturer conversion costs related to ECS compliance which fall in the high end of the range of potential costs.

DOE notes that, in written comments in response to the 2015 BVM ECS NOPR, AMS commented that the baseline level calculated for Combination A beverage vending machines is far more efficient than the performance of actual machines in use today (see section IV.C.1 the full discussion of this comment). In the final rule analysis, DOE made additional analytical adjustments to the engineering analysis, and as such, the baseline performance of the combination equipment showed better agreement with the figure suggested by AMS.

#### *K. Emissions Analysis*

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of CO<sub>2</sub>, NO<sub>x</sub>, SO<sub>2</sub>, and Hg. The second component estimates the impacts of potential standards on emissions of two additional greenhouse gases, CH<sub>4</sub> and N<sub>2</sub>O, as well as the reductions to emissions of all species due to "upstream" activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion. The associated emissions are referred to as upstream emissions.

The analysis of power sector emissions uses marginal emissions intensity factors that were derived from data in *AEO2015*. The methodology is described in chapters 13 and 15 of the final rule TSD.

Combustion emissions of CH<sub>4</sub> and N<sub>2</sub>O are estimated using emissions intensity factors published by the EPA, GHG Emissions Factors Hub.<sup>62</sup> The FFC upstream emissions are estimated based on the methodology described in chapter 15 of the final rule TSD. The upstream emissions include both emissions from fuel combustion during extraction, processing, and transportation of fuel, and “fugitive” emissions (direct leakage to the atmosphere) of CH<sub>4</sub> and CO<sub>2</sub>.

The emissions intensity factors are expressed in terms of physical units per MWh or MMBtu of site energy savings. Total emissions reductions are estimated using the energy savings calculated in the national impact analysis.

For CH<sub>4</sub> and N<sub>2</sub>O, DOE calculated emissions reduction in tons and in terms of units of carbon dioxide equivalent (CO<sub>2</sub>eq). Gases are converted to CO<sub>2</sub>eq by multiplying each ton of gas by the gas’ global warming potential (GWP) over a 100-year time horizon. Based on the Fifth Assessment Report of the Intergovernmental Panel on Climate Change,<sup>63</sup> DOE used GWP values of 28 for CH<sub>4</sub> and 265 for N<sub>2</sub>O.

The *AEO* incorporates the projected impacts of existing air quality regulations on emissions. *AEO2015* generally represents current legislation and environmental regulations, including recent government actions, for which implementing regulations were available as of October 31, 2014. DOE’s estimation of impacts accounts for the presence of the emissions control programs discussed in the following paragraphs.

SO<sub>2</sub> emissions from affected electric generating units (EGUs) are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO<sub>2</sub> for affected EGUs in the 48 contiguous States and the District of Columbia (D.C.). (42 U.S.C. 7651 *et seq.*) SO<sub>2</sub> emissions from 28 eastern States and D.C. were also limited under the

Clean Air Interstate Rule (CAIR). 70 FR 25162 (May 12, 2005). CAIR created an allowance-based trading program that operates along with the Title IV program. In 2008, CAIR was remanded to EPA by the U.S. Court of Appeals for the District of Columbia Circuit, but it remained in effect.<sup>64</sup> In 2011, EPA issued a replacement for CAIR, the Cross-State Air Pollution Rule (CSAPR). 76 FR 48208 (August 8, 2011). On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR,<sup>65</sup> and the court ordered EPA to continue administering CAIR. On April 29, 2014, the U.S. Supreme Court reversed the judgment of the D.C. Circuit and remanded the case for further proceedings consistent with the Supreme Court’s opinion.<sup>66</sup> On October 23, 2014, the D.C. Circuit lifted the stay of CSAPR.<sup>67</sup> Pursuant to this action, CSAPR went into effect (and CAIR ceased to be in effect) as of January 1, 2015.

EIA was not able to incorporate CSAPR into *AEO2015*, so it assumes implementation of CAIR. Although DOE’s analysis used emissions factors that assume that CAIR, not CSAPR, is the regulation in force, the difference between CAIR and CSAPR is not relevant for the purpose of DOE’s analysis of emissions impacts from energy conservation standards.

The attainment of emissions caps is typically flexible among EGUs and is enforced through the use of emissions allowances and tradable permits. Under existing EPA regulations, any excess SO<sub>2</sub> emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO<sub>2</sub> emissions by any regulated EGU. In past rulemakings, DOE recognized that there was uncertainty about the effects of efficiency standards on SO<sub>2</sub> emissions covered by the existing cap-and-trade system, but it concluded that negligible reductions in power sector SO<sub>2</sub> emissions will occur as a result of standards.

Beginning in 2016, however, SO<sub>2</sub> emissions will fall as a result of the Mercury and Air Toxics Standards (MATS) for power plants. 77 FR 9304 (Feb. 16, 2012). In the MATS rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (HAP), and also established a standard for SO<sub>2</sub> (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO<sub>2</sub> emissions will be reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. *AEO2015* assumes that, in order to continue operating, coal plants must have either flue gas desulfurization or dry sorbent injection systems installed by 2016. Both technologies, which are used to reduce acid gas emissions, also reduce SO<sub>2</sub> emissions. Under the MATS, emissions will be far below the cap established by CAIR, so it is unlikely that excess SO<sub>2</sub> emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO<sub>2</sub> emissions by any regulated EGU.<sup>68</sup> Therefore, DOE believes that energy conservation standards will generally reduce SO<sub>2</sub> emissions in 2016 and beyond.

CAIR established a cap on NO<sub>x</sub> emissions in 28 eastern States and the District of Columbia.<sup>69</sup> Energy conservation standards are expected to have little effect on NO<sub>x</sub> emissions in those States covered by CAIR because excess NO<sub>x</sub> emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO<sub>x</sub> emissions from other facilities. However, standards would be expected to reduce NO<sub>x</sub> emissions in the States not affected by the caps, so DOE estimated NO<sub>x</sub>

<sup>68</sup> DOE notes that the Supreme Court recently remanded EPA’s 2012 rule regarding national emission standards for hazardous air pollutants from certain electric utility steam generating units. See *Michigan v. EPA* (Case No. 14–46, 2015). DOE has determined that the remand of the MATS rule does not change the assumptions regarding the impact of energy efficiency standards on SO<sub>2</sub> emissions. Further, while the remand of the MATS rule may have an impact on the overall amount of mercury emitted by power plants, it does not change the impact of the energy efficiency standards on mercury emissions. DOE will continue to monitor developments related to this case and respond to them as appropriate.

<sup>69</sup> CSAPR also applies to NO<sub>x</sub> and it would supersede the regulation of NO<sub>x</sub> under CAIR. As stated previously, the current analysis assumes that CAIR, not CSAPR, is the regulation in force. The difference between CAIR and CSAPR with regard to DOE’s analysis of NO<sub>x</sub> emissions is slight.

<sup>62</sup> Available at [www.epa.gov/climateleadership/inventory/ghg-emissions.html](http://www.epa.gov/climateleadership/inventory/ghg-emissions.html).

<sup>63</sup> IPCC, 2013: Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. Chapter 8.

<sup>64</sup> See *North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. 2008); *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008).

<sup>65</sup> See *EME Homer City Generation, LP v. EPA*, 696 F.3d 7, 38 (D.C. Cir. 2012), *cert. granted*, 81 U.S.L.W. 3567, 81 U.S.L.W. 3696, 81 U.S.L.W. 3702 (U.S. June 24, 2013) (No. 12–1182).

<sup>66</sup> See *EPA v. EME Homer City Generation*, 134 S.Ct. 1584, 1610 (U.S. 2014). The Supreme Court held in part that EPA’s methodology for quantifying emissions that must be eliminated in certain States due to their impacts in other downwind States was based on a permissible, workable, and equitable interpretation of the Clean Air Act provision that provides statutory authority for CSAPR.

<sup>67</sup> See *Georgia v. EPA*, Order (D.C. Cir. filed October 23, 2014) (No. 11–1302).

emissions reductions from the standards in this final rule for these States.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, DOE's energy conservation standards would likely reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on *AEO2015*, which incorporates the MATS.

In response to the 2015 BVM ECS NOPR, CoilPod commented that DOE's estimate of emissions reduction is overstated as it does not take into account coil degradation that occurs in real-world use. They additionally cited a government report finding that bottlers have no incentive to clean the coils on their vending machines because the establishments in which they are installed pay the electricity costs. (CoilPod, Public Meeting Transcript, No. 48 at pp. 53–55)

DOE's calculation of emissions savings is based on the amount of energy saved. Coil degradation has little impact on emissions savings because it is based on incremental savings. Both baseline and more efficient equipment will be impacted by coil fouling, and the energy savings differential between the no-new-standards case and the standards case would largely remain the same.

#### *L. Monetizing Carbon Dioxide and Other Emissions Impacts*

As part of the development of this rule, DOE considered the estimated monetary benefits from the reduced emissions of CO<sub>2</sub> and NO<sub>x</sub> that are expected to result from each of the TSLs considered. In order to make this calculation analogous to the calculation of the NPV of customer benefit, DOE considered the reduced emissions expected to result over the lifetime of equipment shipped in the forecast period for each TSL. This section summarizes the basis for the monetary values used for of CO<sub>2</sub> and NO<sub>x</sub> emissions and presents the values considered in this final rule.

For this final rule, DOE relied on a set of values for the social cost of carbon (SCC) that was developed by a Federal interagency process. The basis for these values is summarized in the next section, and a more detailed description of the methodologies used is provided as an appendix to chapter 14 of the final rule TSD.

#### 1. Social Cost of Carbon

The SCC is an estimate of the monetized damages associated with an incremental increase in carbon emissions in a given year. It is intended

to include (but is not limited to) climate-change-related changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. Estimates of the SCC are provided in dollars per metric ton of CO<sub>2</sub>. A domestic SCC value is meant to reflect the value of damages in the United States resulting from a unit change in CO<sub>2</sub> emissions, while a global SCC value is meant to reflect the value of damages worldwide.

Under section 1(b)(6) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), agencies must, to the extent permitted by law, "assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs." The purpose of the SCC estimates presented here is to allow agencies to incorporate the monetized social benefits of reducing CO<sub>2</sub> emissions into cost-benefit analyses of regulatory actions. The estimates are presented with an acknowledgement of the many uncertainties involved and with a clear understanding that they should be updated over time to reflect increasing knowledge of the science and economics of climate impacts.

As part of the interagency process that developed these SCC estimates, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. The main objective of this process was to develop a range of SCC values using a defensible set of input assumptions grounded in the existing scientific and economic literatures. In this way, key uncertainties and model differences transparently and consistently inform the range of SCC estimates used in the rulemaking process.

#### a. Monetizing Carbon Dioxide Emissions

When attempting to assess the incremental economic impacts of CO<sub>2</sub> emissions, the analyst faces a number of challenges. A report from the National Research Council<sup>70</sup> points out that any assessment will suffer from uncertainty, speculation, and lack of information about: (1) Future emissions of GHGs; (2) the effects of past and future emissions

on the climate system; (3) the impact of changes in climate on the physical and biological environment; and (4) the translation of these environmental impacts into economic damages. As a result, any effort to quantify and monetize the harms associated with climate change will raise questions of science, economics, and ethics and should be viewed as provisional.

Despite the limits of both quantification and monetization, SCC estimates can be useful in estimating the social benefits of reducing CO<sub>2</sub> emissions. The agency can estimate the benefits from reduced (or costs from increased) emissions in any future year by multiplying the change in emissions in that year by the SCC values appropriate for that year. The NPV of the benefits can then be calculated by multiplying each of these future benefits by an appropriate discount factor and summing across all affected years.

It is important to emphasize that the interagency process is committed to updating these estimates as the science and economic understanding of climate change and its impacts on society improves over time. In the meantime, the interagency group will continue to explore the issues raised by this analysis and consider public comments as part of the ongoing interagency process.

#### b. Development of Social Cost of Carbon Values

In 2009, an interagency process was initiated to offer a preliminary assessment of how best to quantify the benefits from reducing CO<sub>2</sub> emissions. To ensure consistency in how benefits are evaluated across Federal agencies, the Administration sought to develop a transparent and defensible method, specifically designed for the rulemaking process, to quantify avoided climate change damages from reduced CO<sub>2</sub> emissions. The interagency group did not undertake any original analysis. Instead, it combined SCC estimates from the existing literature to use as interim values until a more comprehensive analysis could be conducted. The outcome of the preliminary assessment by the interagency group was a set of five interim values: global SCC estimates for 2007 (in 2006\$) of \$55, \$33, \$19, \$10, and \$5 per metric ton of CO<sub>2</sub>. These interim values represented the first sustained interagency effort within the U.S. government to develop an SCC for use in regulatory analysis. The results of this preliminary effort were presented in several proposed and final rules.

<sup>70</sup>National Research Council. *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use*. 2009. National Academies Press: Washington, DC.



c. Current Approach and Key Assumptions

After the release of the interim values, the interagency group reconvened on a regular basis to generate improved SCC estimates. Specially, the group considered public comments and further explored the technical literature in relevant fields. The interagency group relied on three integrated assessment models commonly used to estimate the SCC: The FUND, DICE, and PAGE models. These models are frequently cited in the peer-reviewed literature and were used in the last assessment of the Intergovernmental Panel on Climate Change (IPCC). Each model was given equal weight in the SCC values that were developed.

Each model takes a slightly different approach to model how changes in emissions result in changes in economic

damages. A key objective of the interagency process was to enable a consistent exploration of the three models, while respecting the different approaches to quantifying damages taken by the key modelers in the field. An extensive review of the literature was conducted to select three sets of input parameters for these models: climate sensitivity, socio-economic and emissions trajectories, and discount rates. A probability distribution for climate sensitivity was specified as an input into all three models. In addition, the interagency group used a range of scenarios for the socio-economic parameters and a range of values for the discount rate. All other model features were left unchanged, relying on the model developers' best estimates and judgments.

In 2010, the interagency group selected four sets of SCC values for use

in regulatory analyses. Three sets of values are based on the average SCC from the three integrated assessment models, at discount rates of 2.5, 3, and 5 percent. The fourth set, which represents the 95th percentile SCC estimate across all three models at a 3-percent discount rate, was included to represent higher-than-expected impacts from climate change further out in the tails of the SCC distribution. The values grow in real terms over time. Additionally, the interagency group determined that a range of values from 7 percent to 23 percent should be used to adjust the global SCC to calculate domestic effects,<sup>71</sup> although preference is given to consideration of the global benefits of reducing CO<sub>2</sub> emissions. Table IV.11 presents the values in the 2010 interagency group report,<sup>72</sup> which is reproduced in appendix 14A of the final rule TSD.

TABLE IV.11—ANNUAL SCC VALUES FROM 2010 INTERAGENCY REPORT, 2010–2050 [2007\$ per metric ton CO<sub>2</sub>]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	4.7	21.4	35.1	64.9
2015	5.7	23.8	38.4	72.8
2020	6.8	26.3	41.7	80.7
2025	8.2	29.6	45.9	90.4
2030	9.7	32.8	50.0	100.0
2035	11.2	36.0	54.2	109.7
2040	12.7	39.2	58.4	119.3
2045	14.2	42.1	61.7	127.8
2050	15.7	44.9	65.0	136.2

The SCC values used for this document were generated using the most recent versions of the three integrated assessment models that have been published in the peer-reviewed literature, as described in the 2013 update from the interagency working

group (revised July 2015).<sup>73</sup> Table IV.12 shows the updated sets of SCC estimates from the latest interagency update in 5-year increments from 2010 to 2050. The full set of annual SCC estimates between 2010 and 2050 is reported in appendix 14B of the final rule TSD. The central

value that emerges is the average SCC across models at the 3-percent discount rate. However, for purposes of capturing the uncertainties involved in regulatory impact analysis, the interagency group emphasizes the importance of including all four sets of SCC values.

TABLE IV.12—ANNUAL SCC VALUES FROM 2013 INTERAGENCY UPDATE (REVISED JULY 2015), 2010–2050 [2007\$ per metric ton CO<sub>2</sub>]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	10	31	50	86

<sup>71</sup> It is recognized that this calculation for domestic values is approximate, provisional, and highly speculative. There is no *a priori* reason why domestic benefits should be a constant fraction of net global damages over time.

<sup>72</sup> *Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866*. Interagency

Working Group on Social Cost of Carbon, United States Government (February 2010) (Available at: [www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf](http://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf)).

<sup>73</sup> *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive*

*Order 12866*. Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised July 2015) Available at [www.whitehouse.gov/sites/default/files/omb/inforeg/scs-td-final-july-2015.pdf](http://www.whitehouse.gov/sites/default/files/omb/inforeg/scs-td-final-july-2015.pdf).

TABLE IV.12—ANNUAL SCC VALUES FROM 2013 INTERAGENCY UPDATE (REVISED JULY 2015), 2010–2050—Continued  
[2007\$ per metric ton CO<sub>2</sub>]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2015 .....	11	36	56	105
2020 .....	12	42	62	123
2025 .....	14	46	68	138
2030 .....	16	50	73	152
2035 .....	18	55	78	168
2040 .....	21	60	84	183
2045 .....	23	64	89	197
2050 .....	26	69	95	212

It is important to recognize that a number of key uncertainties remain, and that current SCC estimates should be treated as provisional and revisable because they will evolve with improved scientific and economic understanding. The interagency group also recognizes that the existing models are imperfect and incomplete. The National Research Council report mentioned previously points out that there is tension between the goal of producing quantified estimates of the economic damages from an incremental ton of carbon and the limits of existing efforts to model these effects. There are a number of analytical challenges that are being addressed by the research community, including research programs housed in many of the Federal agencies participating in the interagency process to estimate the SCC. The interagency group intends to periodically review and reconsider those estimates to reflect increasing knowledge of the science and economics of climate impacts, as well as improvements in modeling.<sup>74</sup>

In summary, in considering the potential global benefits resulting from reduced CO<sub>2</sub> emissions, DOE used the values from the 2013 interagency report (revised July 2015), adjusted to 2014\$ using the implicit price deflator for gross domestic product (GDP) from the Bureau of Economic Analysis. For each of the four sets of SCC cases specified, the values for emissions in 2015 were \$12.2, \$40.0, \$62.3, and \$117 per metric ton avoided (values expressed in

2014\$). DOE derived values after 2050 using the relevant growth rates for the 2040–2050 period in the interagency update.

DOE multiplied the CO<sub>2</sub> emissions reduction estimated for each year by the SCC value for that year in each of the four cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SCC values in each case.

A number of stakeholders represented by the U.S. Chamber of Commerce stated that DOE should not use SCC values to establish monetary figures for emissions reductions until the SCC undergoes a more rigorous notice, review, and comment process. (The Associations, No. 62 at p. 4)

In conducting the interagency process that developed the SCC values, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. Key uncertainties and model differences transparently and consistently inform the range of SCC estimates. These uncertainties and model differences are discussed in the interagency working group’s reports, which are reproduced in appendix 14A and 14B of the final rule TSD, as are the major assumptions. The 2010 SCC values have been used in a number of Federal rulemakings upon which the public had opportunity to comment. In November 2013, OMB announced a new opportunity for public comment on the TSD underlying the revised SCC estimates. See 78 FR 70586 (Nov. 26, 2013). OMB issued a revision to the 2013 SCC estimates in July of 2015. DOE stands ready to work with OMB and the other members of the interagency working group on further review and

revision of the SCC estimates as appropriate.

2. Social Cost of Other Air Pollutants

As noted previously, DOE has estimated how the considered energy conservation standards would reduce site NO<sub>x</sub> emissions nationwide and decrease power sector NO<sub>x</sub> emissions in those 22 States not affected by the CAIR.

DOE estimated the monetized value of NO<sub>x</sub> emissions reductions using benefit per ton estimates from the “Regulatory Impact Analysis for the Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants,” published in June 2014 by EPA’s Office of Air Quality Planning and Standards.<sup>75</sup> The report includes high and low values for NO<sub>x</sub> (as PM<sub>2.5</sub>) for 2020, 2025, and 2030 discounted at 3 percent and 7 percent,<sup>76</sup> which are presented in chapter 14 of the final rule TSD. DOE assigned values for 2021–2024 and 2026–2029 using, respectively, the values for 2020 and 2025. DOE assigned values after 2030 using the value for 2030.

DOE multiplied the emissions reduction (tons) in each year by the associated \$/ton values and then discounted each series using discount rates of 3 percent and 7 percent as appropriate.

<sup>75</sup> <http://www3.epa.gov/ttnecas1/regdata/RIAs/111dproposalRIAfina0602.pdf>. See Tables 4–7, 4–8, and 4–9 in the report.

<sup>76</sup> For the monetized NO<sub>x</sub> benefits associated with PM<sub>2.5</sub>, the related benefits (derived from benefit-per-ton values) are primarily based on an estimate of premature mortality derived from the ACS study (Krewski et al., 2009), which is the lower of the two EPA central tendencies. Using the lower value is more conservative when making the policy decision concerning whether a particular standard level is economically justified. If the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al., 2012), the values would be nearly two-and-a-half times larger. (See chapter 14 of the final rule TSD for further description of the studies mentioned above.)

<sup>74</sup> In November 2013, OMB announced a new opportunity for public comment on the interagency technical support document underlying the revised SCC estimates. 78 FR 70586 (Nov. 26, 2013). In July 2015 OMB published a detailed summary and formal response to the many comments that were received. [www.whitehouse.gov/blog/2015/07/02/estimating-benefits-carbon-dioxide-emissions-reductions](http://www.whitehouse.gov/blog/2015/07/02/estimating-benefits-carbon-dioxide-emissions-reductions). It also stated its intention to seek independent expert advice on opportunities to improve the estimates, including many of the approaches suggested by commenters.

DOE is evaluating appropriate monetization of avoided SO<sub>2</sub> and Hg emissions in energy conservation standards rulemakings. DOE has not included monetization of those emissions in the current analysis.

#### M. Utility Impact Analysis

The utility impact analysis estimates several effects on the electric power industry that would result from the adoption of new or amended energy conservation standards. The utility impact analysis estimates the changes in installed electrical capacity and generation that would result for each TSL. The analysis is based on published output from the NEMS associated with *AEO2015*. NEMS produces the *AEO* Reference case, as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. DOE uses published side cases to estimate the marginal impacts of reduced energy demand on the utility sector. These marginal factors are estimated based on the changes to electricity sector generation, installed capacity, fuel consumption and emissions in the *AEO* Reference case and various side cases. Details of the methodology are provided in the appendices to chapters 13 and 15 of the final rule TSD.

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of new or amended energy conservation standards.

#### N. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a standard. Employment impacts from new or amended energy conservation standards include both direct and indirect impacts. Direct employment impacts are changes in the number of employees at the plants that produce the covered equipment, along with affiliated distribution and service companies. The MIA addresses those impacts.

Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient appliances. Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy,

other than in the manufacturing sector being regulated, caused by: (1) Reduced spending by end users on energy; (2) reduced spending on new energy supply by the utility industry; (3) increased customer spending on new equipment to which the new standards apply; and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS).<sup>77</sup> BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.<sup>78</sup> There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing customer utility bills. Because reduced customer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.*, the utility sector) to more labor-intensive sectors (*e.g.*, the retail and service sectors). Thus, based on the BLS data alone, DOE believes net national employment may increase due to shifts in economic activity resulting from energy conservation standards.

DOE estimated indirect national employment impacts for the standard level adopted in this final rule using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 4.0 (ImSET).<sup>79</sup> ImSET is a special-purpose version of the "U.S. Benchmark National Input-Output" (I-O) model, which was designed to estimate the national

employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I-O model having structural coefficients that characterize economic flows among 187 sectors most relevant to industrial, commercial, and residential building energy use.

DOE notes that ImSET is not a general equilibrium-forecasting model, and understands the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run for this rule. Therefore, DOE generated results for near-term timeframes (2020 and 2025), where these uncertainties are reduced. For more details on the employment impact analysis, see chapter 16 of the final rule TSD.

DOE reiterates that the indirect employment impacts estimated with ImSET for the entire economy differ from the direct employment impacts in the BVM manufacturing sector estimated using the GRIM in the MIA, as described at the beginning of this section. The methodologies used and the sectors analyzed in the ImSET and GRIM models are different.

#### O. Description of Materials Incorporated by Reference

In this final rule DOE is incorporating by reference ASTM Standard E 1084–86 (Reapproved 2009), "Standard Test Method for Solar Transmittance (Terrestrial) of Sheet Materials Using Sunlight," to determine whether a material is transparent when assessing whether a beverage vending machine has a transparent front and meets the adopted Class A definition. Copies of ASTM standards may be purchased from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428, (877) 909–2786, or at [www.astm.org](http://www.astm.org).

#### V. Analytical Results and Conclusions

The following section addresses the results of DOE's analyses with respect to the considered energy conservation standards for beverage vending machines. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for beverage vending machines, and the standards levels that DOE is adopting in this final rule. Additional details regarding DOE's analyses are contained in the final rule TSD supporting this notice.

<sup>77</sup> Data on industry employment, hours, labor compensation, value of production, and the implicit price deflator for output for these industries are available upon request by calling the Division of Industry Productivity Studies (202–691–5618) or by sending a request by email to [dipsweb@bls.gov](mailto:dipsweb@bls.gov).

<sup>78</sup> See Bureau of Economic Analysis, Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II), U.S. Department of Commerce (1992).

<sup>79</sup> Livingston OV, SR Bender, MJ Scott, and RW Schultz. *ImSET 4.0: Impact of Sector Energy Technologies Model Description and User's Guide*. 2015. Pacific Northwest National Laboratory, Richland, WA. Report No. PNNL–24563.

A. Trial Standard Levels

DOE analyzed 8 ELs for Class A equipment, 12 ELs for Class B equipment, 15 ELs for Combination A equipment, and 13 ELs for Combination B equipment in the LCC and NIA analyses, where each EL represents a 5-percent improvement in efficiency from baseline efficiency (EL 0) to up to max tech. Of the ELs analyzed for each class DOE selected five TSLs based on the following criteria:

(1) TSL 1 is equivalent to the current ENERGY STAR criterion for all equipment that is eligible for ENERGY STAR qualification. This corresponded to EL 2 for Class B equipment and EL 1 for Class A. Combination equipment is currently not eligible for ENERGY STAR qualification and, as such, DOE selected TSL 1 as equivalent to EL 1, since EL 1 was the first EL analyzed above the baseline (EL 0).

(2) TSL 2 was selected to be the EL that is hypothetically representative of the next version of ENERGY STAR. That is, for the given equipment class, DOE selected the EL comprising TSL 2 to be 5 or 10 percent better than TSL 1, depending on the improvement potential in different equipment classes. That is, TSL 2 represents EL 2 for Class A (5-percent improvement over TSL 1), EL 4 for Class B (10-percent

improvement over TSL 1), and EL 3 for Combination A and Combination B (10-percent improvement over TSL 1).

(3) TSL 3 represents the EL with the maximum NPV at a 7-percent discount rate. This level also corresponds to the maximum LCC savings for most equipment classes. In addition, the EL corresponding to a 3-year payback, zero customers with net cost, and maximum NPV at a 3-percent discount rate were the same or within one EL from the selected EL.

(4) TSL 4 was selected to be an interim analysis point corresponding to the EL halfway between TSL 3 and 5 (rounding up when between ELs).

(5) TSL 5 corresponds to the max tech EL.

In response to DOE's TSL selection presented in the 2015 BVM ECS NOPR, the CA IOUs commented in their written submission that DOE should consider an intermediate efficiency tier between TSL 4 and TSL 5 for Class A and Combination A and supported TSL 4 for Class B and Combination B equipment. (CA IOUs, No. 58 at p. 5) In response to CA IOUs suggestion, DOE notes that DOE has revised the TSL selection criteria for this final rule. Specifically, because the final rule analysis resulted in the maximum NVP at a 7-percent discount rate occurring at

lower ELs for all equipment classes than in the NOPR, DOE revised TSL 3 to represent the TSL with maximum NPV at a 7-percent discount rate instead of TSL 4, as proposed in the 2015 BVM ECS NOPR. Therefore, DOE has defined TSL 4 as an interim analysis point consisting of the EL halfway between TSL 3 and TSL 5 for all equipment classes. While, in the final rule analysis, TSL 3 and TSL 4 consist of lower ELs than DOE's proposed TSL 4 presented in the 2015 BVM ECS NOPR, DOE notes that the TSL 4 analysis point now reflects an interim analysis point between the TSL with maximum NPV at a 7-percent discount rate and max tech, as requested by the commenters. DOE also notes that, based on the revised final rule analyses, ELs beyond TSL 3 for equipment Class A result in increased LCC compared to baseline equipment and a negative NPV.

Table V.1 shows the TSL levels DOE selected for the equipment classes analyzed. Note that DOE performed its analyses for a "representative size" beverage vending machine and defined refrigerant-neutral ELs such that the selected ELs could be met by any refrigerant. Similarly, the defined TSLs share this approach and can be met by either refrigerant.

TABLE V.1—TRIAL STANDARD LEVELS FOR A REPRESENTATIVE SIZE BVM MODEL EXPRESSED IN TERMS OF DAILY ENERGY CONSUMPTION [kWh/day]

Equipment class	Representative volume (ft <sup>3</sup> )	TSL	Base-line	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Class A	30.0	EL	0	1	2	*1	4	8
		DEC	4.21	4.00	3.79	4.00	3.37	2.60
Class B	23.4	EL	0	2	4	6	9	12
		DEC	4.87	4.38	3.90	3.41	2.68	1.94
Combination A	10.3	EL	0	1	3	11	13	15
		DEC	7.89	7.49	6.70	3.55	2.76	2.10
Combination B	4.3	EL	0	1	3	9	11	13
		DEC	4.58	4.35	3.89	2.52	2.06	1.46

\* DOE notes that the EL selected for TSL 3 for Class A equipment is EL 1, which is the same EL selected for TSL1 for Class A equipment.

In this final rule, DOE elected to maintain the energy conservation standard structure established in the 2009 BVM final rule, which establishes the MDEC of covered BVM models in terms of a linear equation of the following form:

$$MDEC = A \times V + B$$

Where:

A is expressed in terms of kWh/(day·ft<sup>3</sup>) of measured refrigerated volume,

V is the representative value of refrigerated volume (ft<sup>3</sup>) calculated for the equipment, and  
B is an offset factor expressed in kWh/day.

Coefficients A and B are uniquely derived for each equipment class based on a linear equation passing between the daily energy consumption values for equipment of different refrigerated volumes. For the A and B coefficients, DOE used the unique energy

consumption values of the small, medium, and large or medium and large size BVM units for Class A and Class B or Combination A and Combination B beverage vending machines, respectively. Table V.2 depicts the TSL equations for each analyzed TSL and equipment class. The methodology used to establish the TSL equations and more detailed results is described in more detail in appendix 10B of the TSD.

TABLE V.2—TRIAL STANDARD LEVELS MAXIMUM DAILY ENERGY CONSUMPTION (kWh/day) EXPRESSED IN TERMS OF EQUATIONS AND COEFFICIENTS FOR BVM EQUIPMENT

TSL	Class A	Class B	Combination A	Combination B
Baseline .....	$0.055 \times V + 2.56$ .....	$0.074 \times V + 3.15$ .....	$0.192 \times V + 5.91$ .....	$0.202 \times V + 3.71$
1 .....	$0.052 \times V + 2.43$ .....	$0.066 \times V + 2.83$ .....	$0.182 \times V + 5.62$ .....	$0.192 \times V + 3.52$
2 .....	$0.050 \times V + 2.30$ .....	$0.059 \times V + 2.52$ .....	$0.163 \times V + 5.03$ .....	$0.172 \times V + 3.15$
3 .....	$0.052 \times V + 2.43$ .....	$0.052 \times V + 2.20$ .....	$0.086 \times V + 2.66$ .....	$0.111 \times V + 2.04$
4 .....	$0.044 \times V + 2.05$ .....	$0.041 \times V + 1.73$ .....	$0.067 \times V + 2.07$ .....	$0.091 \times V + 1.67$
5 .....	$0.034 \times V + 1.58$ .....	$0.029 \times V + 1.25$ .....	$0.051 \times V + 1.58$ .....	$0.064 \times V + 1.18$

In Table V.2, “V” is the representative value of refrigerated volume (ft<sup>3</sup>) of the BVM model, as measured in accordance with the method for determining refrigerated volume adopted in the recently amended DOE test procedure for beverage vending machines and appropriate sampling plan requirements. 80 FR 45758 (July 31, 2015). In the 2015 BVM ECS NOPR, DOE proposed a calculation method to be adopted at 10 CFR 429.52(a)(3) for determining the representative value of refrigerated volume for each BVM model. 80 FR 50507–50508 (Aug. 19, 2015). In response to DOE’s proposal, SVA expressed support for DOE’s proposal to clarify the calculation of refrigerated volume. (SVA, No. 53 at p. 10) DOE appreciates SVA’s support and, in this final rule, is adopting provisions to specify that the representative value of refrigerated volume must be determined as the mean of the measured refrigerated volume of each tested unit. Manufacturers must use this calculated value for determining the appropriate standard level for that model.

In addition, in the 2015 BVM ECS NOPR, DOE proposed provisions to assess whether the representative value of refrigerated volume, as certified by manufacturers, is valid. 80 FR 50507–50508 (Aug. 19, 2015). DOE did not receive any comments on this proposal and, therefore, is adopting the proposal for determining if the certified value of refrigerated volume is valid as described in the 2015 BVM ECS NOPR with no modifications.

Under the adopted provisions, DOE will compare the manufacturer’s certified rating with results from the unit or units in DOE’s tested sample. If the results of the tested unit or units in DOE’s sample are within 5 percent of the representative value of refrigerated volume certified by manufacturers, the certified refrigerated volume value is considered valid. Based on whether the representative value of refrigerated volume is valid, DOE will do one of the following:

(1) If the representative value of refrigerated volume, as certified by

manufacturers, is valid, DOE will use the certified value to determine the MDEC for that model; or

(2) If the representative value of refrigerated volume is invalid, DOE will use its results from the tested unit or units as the basis for calculating the MDEC for that BVM model.

Additionally, DOE notes that these sampling and enforcement provisions are effective March 8, 2016, as such, applicable to both the existing standards, as well as any new and amended standards adopted as a result of this final rule.

*B. Economic Justification and Energy Savings*

1. Economic Impacts on Individual Customers

DOE analyzed the economic impacts on BVM customers by looking at the effects that potential new and amended standards at each TSL would have on the LCC and PBP. DOE also examined the impacts of potential standards on customer subgroups. These analyses are discussed in the following subsections.

a. Life-Cycle Cost and Payback Period

Customers affected by new standards usually incur higher purchase prices and lower operating costs. DOE evaluates these impacts on individual customers by calculating changes in LCC and the PBP associated with the TSLs. The results of the LCC analysis for each TSL were obtained by comparing the installed and operating costs of the equipment in the no-new-standards case scenario against the standards case scenarios at each TSL. Inputs used for calculating the LCC include total installed costs (i.e., equipment price plus installation costs), operating expenses (i.e., annual energy savings, energy prices, energy price trends, repair costs, and maintenance costs), equipment lifetime, and discount rates.

The LCC analysis is carried out using Monte Carlo simulations. Consequently, the results of the LCC analysis are distributions covering a range of values, as opposed to a single deterministic

value. DOE presents the mean or median values, as appropriate, calculated from the distributions of results. The LCC analysis also provides information on the percentage of customers for whom an increase in the minimum efficiency standard would have a negative impact (net cost).

DOE also performed a PBP analysis as part of the LCC analysis. The PBP is the number of years it takes for a customer to recover the increased costs of higher efficiency equipment as a result of operating cost savings. The PBP is an economic benefit-cost measure that uses benefits and costs without discounting. Chapter 8 of the final rule TSD provides detailed information on the LCC and PBP analysis.

DOE used a “roll-up” scenario in this rulemaking. Under the roll-up scenario, DOE assumed that the market shares of the efficiency levels (in the no-new-standards case) that do not meet the standard level under consideration would be “rolled up” into (meaning “added to”) the market share of the efficiency level at the standard level under consideration, and the market shares of efficiency levels that are above the standard level under consideration would remain unaffected. Customers in the no-new-standards case scenario who buy the equipment at or above the TSL under consideration would be unaffected if the standard were to be set at that TSL. Customers in the no-new-standards case scenario who buy equipment below the TSL under consideration would be affected if the standard were to be set at that TSL. Among these affected customers, some may benefit from lower LCCs of the equipment and some may incur net cost due to higher LCCs, depending on the inputs to the LCC analysis, such as electricity prices, discount rates, and installed costs.

DOE’s LCC and PBP analysis provided key outputs for each efficiency level above the baseline. The results for all equipment classes are displayed in Table V.3 through Table V.18.

TABLE V.3—AVERAGE LCC AND PBP RESULTS FOR CLASS A, CO<sub>2</sub>\*

TSL	EL	% of baseline energy use	Average costs (2014\$)				Simple payback period ** (years)	Average lifetime (years)
			Installed cost	First year's operating cost	Lifetime operating cost	LCC		
—	0	100	2,817	487	4,991	7,807	.....	13.5
1,3	1	95	2,832	480	4,910	7,742	2.0	13.5
2	2	90	2,867	505	5,157	8,025	N/A	13.5
—	3	85	2,951	530	5,405	8,356	N/A	13.5
4	4	80	3,071	557	5,674	8,744	N/A	13.5
—	5	75	3,232	549	5,593	8,825	N/A	13.5
—	6	70	3,467	542	5,512	8,979	N/A	13.5
—	7	65	3,701	534	5,431	9,132	N/A	13.5
5	8	62	3,853	529	5,379	9,232	N/A	13.5

\* The results for each EL are calculated assuming that all customers use equipment at that efficiency level or higher. The PBP is measured relative to the baseline equipment.

\*\* Values of N/A indicate paybacks that are not possible, given that more efficient equipment is not only more expensive to purchase, but also costs more to operate.

TABLE V.4—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR CLASS A, CO<sub>2</sub>

TSL	EL	% of baseline energy use	Life-cycle cost savings	
			% of customers that experience a net cost	Average life-cycle cost savings * (2014\$)
—	0	100	.....	.....
1,3	1	95	0	65
2	2	90	100	(217)
—	3	85	100	(549)
4	4	80	100	(937)
—	5	75	100	(1,018)
—	6	70	100	(1,171)
—	7	65	100	(1,325)
5	8	62	100	(1,424)

\* The calculation includes customers with zero LCC savings (no impact). Parentheses indicate negative values.

TABLE V.5—AVERAGE LCC AND PBP RESULTS FOR CLASS A, PROPANE \*

TSL	EL	% of baseline energy use	Average costs (2014\$)				Simple payback period ** (years)	Average lifetime (years)
			Installed cost	First year's operating cost	Lifetime operating cost	LCC		
—	0	100	2,908	513	5,246	8,154	.....	13.5
1,3	1	95	2,916	505	5,165	8,081	1.1	13.5
2	2	90	2,925	497	5,084	8,010	1.2	13.5
—	3	85	2,937	464	4,748	7,686	0.6	13.5
4	4	80	2,960	457	4,668	7,627	0.9	13.5
—	5	75	3,030	515	5,243	8,274	N/A	13.5
—	6	70	3,215	507	5,162	8,377	N/A	13.5
—	7	65	3,399	534	5,431	8,830	N/A	13.5
5	8	62	3,519	529	5,379	8,897	N/A	13.5

\* The results for each EL are calculated assuming that all customers use equipment at that efficiency level or higher. The PBP is measured relative to the baseline equipment.

\*\* Values of N/A indicate paybacks that are not possible, given that more efficient equipment is not only more expensive to purchase, but also costs more to operate.

TABLE V.6—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR CLASS A, PROPANE

TSL	EL	% of baseline energy use	Life-cycle cost savings	
			% of customers that experience a net cost	Average life-cycle cost savings* (2014\$)
—	0	100		
1,3	1	95	0	0
2	2	90	0	71
—	3	85	0	395
4	4	80	0	454
—	5	75	94	(193)
—	6	70	96	(296)
—	7	65	100	(749)
5	8	62	100	(817)

\* The calculation includes customers with zero LCC savings (no impact). Parentheses indicate negative values.

TABLE V.7—AVERAGE LCC AND PBP RESULTS FOR CLASS B, CO<sub>2</sub>\*

TSL	EL	% of baseline energy use	Average costs (2014\$)				Simple payback period** (years)	Average lifetime (years)
			Installed cost	First year's operating cost	Lifetime operating cost	LCC		
—	0	100	2,320	522	5,354	7,674		13.5
—	1	95	2,324	513	5,261	7,585	0.4	13.5
1	2	90	2,328	505	5,169	7,496	0.4	13.5
—	3	85	2,332	496	5,076	7,408	0.4	13.5
2	4	80	2,336	507	5,181	7,517	1.0	13.5
—	5	75	2,340	498	5,089	7,429	0.8	13.5
3	6	70	2,348	497	5,073	7,422	1.1	13.5
—	7	65	2,362	488	4,981	7,343	1.3	13.5
—	8	60	2,388	456	4,644	7,033	1.0	13.5
4	9	55	2,449	532	5,408	7,857	N/A	13.5
—	10	50	2,665	523	5,315	7,980	N/A	13.5
—	11	45	2,973	514	5,222	8,195	85.6	13.5
5	12	40	3,298	505	5,127	8,425	58.8	13.5

\* The results for each EL are calculated assuming that all customers use equipment at that efficiency level or higher. The PBP is measured relative to the baseline equipment.

\*\* Values of N/A indicate paybacks that are not possible, given that more efficient equipment is not only more expensive to purchase, but also costs more to operate.

TABLE V.8—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR CLASS B, CO<sub>2</sub>

TSL	EL	% of baseline energy use	Life-cycle cost savings	
			% of customers that experience a net cost	Average life-cycle cost savings* (2014\$)
—	0	100		
—	1	95	0	0
1	2	90	0	0
—	3	85	0	0
2	4	80	0	0
—	5	75	0	38
—	6	70	8	42
—	7	65	0	109
—	8	60	0	375
4	9	55	99	(448)
—	10	50	99	(572)
—	11	45	99	(787)
5	12	40	100	(1,017)

\* The calculation includes customers with zero LCC savings (no impact). Parentheses indicate negative values.

TABLE V.9—AVERAGE LCC AND PBP RESULTS FOR CLASS B, PROPANE \*

TSL	EL	% of baseline energy use	Average costs (2014\$)				Simple payback period (years)	Average lifetime (years)
			Installed cost	First year's operating cost	Lifetime operating cost	LCC		
—	0	100	2,359	515	5,283	7,642	.....	13.5
—	1	95	2,363	506	5,191	7,553	0.4	13.5
1	2	90	2,366	505	5,169	7,535	0.7	13.5
—	3	85	2,370	496	5,076	7,446	0.6	13.5
2	4	80	2,374	487	4,984	7,358	0.6	13.5
—	5	75	2,379	479	4,891	7,270	0.5	13.5
3	6	70	2,384	470	4,798	7,182	0.5	13.5
—	7	65	2,389	481	4,904	7,293	0.9	13.5
—	8	60	2,397	480	4,888	7,285	1.1	13.5
4	9	55	2,414	471	4,796	7,210	1.3	13.5
—	10	50	2,538	492	5,000	7,538	7.7	13.5
—	11	45	2,752	514	5,222	7,974	632.2	13.5
5	12	40	2,982	505	5,127	8,109	64.7	13.5

\* The results for each EL are calculated assuming that all customers use equipment at that efficiency level or higher. The PBP is measured relative to the baseline equipment.

TABLE V.10—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR CLASS B, PROPANE

TSL	EL	% of baseline energy use	Life-cycle cost savings	
			% of customers that experience a net cost	Average life-cycle cost savings* (2014\$)
—	0	100	.....	.....
—	1	95	0	5
1	2	90	3	8
—	3	85	0	96
2	4	80	0	185
—	5	75	0	273
3	6	70	0	361
—	7	65	1	250
—	8	60	3	257
4	9	55	1	333
—	10	50	59	4
—	11	45	91	(432)
5	12	40	93	(566)

\*The calculation includes customers with zero LCC savings (no impact). Parentheses indicate negative values.

TABLE V.11—AVERAGE LCC AND PBP RESULTS FOR COMBINATION A, CO<sub>2</sub>\*

TSL	EL	% of baseline energy use	Average costs (2014\$)				Simple payback period (years)	Average lifetime (years)
			Installed cost	First year's operating cost	Lifetime operating cost	LCC		
—	0	100	2,768	561	5,771	8,539	.....	13.5
1	1	95	2,771	550	5,654	8,424	0.2	13.5
—	2	90	2,773	539	5,537	8,310	0.2	13.5
2	3	85	2,776	528	5,420	8,196	0.2	13.5
—	4	80	2,781	517	5,303	8,084	0.3	13.5
—	5	75	2,786	506	5,186	7,972	0.3	13.5
—	6	70	2,791	495	5,069	7,860	0.3	13.5
—	7	65	2,796	484	4,952	7,748	0.4	13.5
—	8	60	2,801	504	5,148	7,949	0.6	13.5
—	9	55	2,813	493	5,031	7,844	0.7	13.5
—	10	50	2,832	466	4,753	7,586	0.7	13.5
3	11	45	2,856	455	4,636	7,492	0.8	13.5
—	12	40	2,954	480	4,885	7,839	2.3	13.5
4	13	35	3,189	545	5,527	8,716	26.1	13.5
—	14	30	3,717	534	5,410	9,127	35.0	13.5



TABLE V.11—AVERAGE LCC AND PBP RESULTS FOR COMBINATION A, CO<sub>2</sub>\*—Continued

TSL	EL	% of baseline energy use	Average costs (2014\$)				Simple payback period (years)	Average lifetime (years)
			Installed cost	First year's operating cost	Lifetime operating cost	LCC		
5 .....	15	27	4,130	526	5,331	9,462	39.4	13.5

\*The results for each EL are calculated assuming that all customers use equipment at that efficiency level or higher. The PBP is measured relative to the baseline equipment.

TABLE V.12—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR COMBINATION A, CO<sub>2</sub>

TSL	EL	% of baseline energy use	Life-cycle cost savings	
			% of customers that experience a net cost	Average life-cycle cost savings* (2014\$)
—	0	100	.....	.....
1 .....	1	95	0	57
—	2	90	0	172
2 .....	3	85	0	286
—	4	80	0	398
—	5	75	0	510
—	6	70	0	622
—	7	65	0	733
—	8	60	0	533
—	9	55	0	638
—	10	50	0	896
3 .....	11	45	0	990
—	12	40	2	643
4 .....	13	35	76	(234)
—	14	30	86	(645)
5 .....	15	27	93	(980)

\*The calculation includes customers with zero LCC savings (no impact). Parentheses indicate negative values.

TABLE V.13—AVERAGE LCC AND PBP RESULTS FOR COMBINATION A, PROPANE \*

TSL	EL	% of baseline energy use	Average costs (2014\$)				Simple payback period (years)	Average lifetime (years)
			Installed cost	First year's operating cost	Lifetime operating cost	LCC		
— .....	0	100	2,914	561	5,771	8,685	.....	13.5
1 .....	1	95	2,915	550	5,654	8,569	0.1	13.5
—	2	90	2,916	539	5,537	8,453	0.1	13.5
2 .....	3	85	2,917	528	5,420	8,337	0.1	13.5
—	4	80	2,919	517	5,303	8,222	0.1	13.5
—	5	75	2,923	506	5,186	8,109	0.2	13.5
—	6	70	2,928	495	5,069	7,997	0.2	13.5
—	7	65	2,932	484	4,952	7,884	0.2	13.5
—	8	60	2,937	473	4,835	7,772	0.3	13.5
—	9	55	2,943	484	4,939	7,882	0.4	13.5
—	10	50	2,952	482	4,914	7,866	0.5	13.5
3 .....	11	45	2,967	480	4,889	7,855	0.7	13.5
—	12	40	2,988	444	4,519	7,508	0.6	13.5
4 .....	13	35	3,066	469	4,768	7,834	1.7	13.5
—	14	30	3,433	534	5,410	8,844	19.2	13.5
5 .....	15	27	3,765	526	5,331	9,097	24.7	13.5

\*The results for each EL are calculated assuming that all customers use equipment at that efficiency level or higher. The PBP is measured relative to the baseline equipment.

TABLE V.14—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR COMBINATION A, PROPANE

TSL	EL	% of baseline energy use	Life-cycle cost savings	
			% of customers that experience a net cost	Average life-cycle cost savings* (2014\$)
—	0	100	.....	.....
1	1	95	0	58
—	2	90	0	174
2	3	85	0	290
—	4	80	0	405
—	5	75	0	518
—	6	70	0	630
—	7	65	0	743
—	8	60	0	855
—	9	55	0	745
—	10	50	0	761
3	11	45	0	772
—	12	40	0	1,119
4	13	35	1	793
—	14	30	74	(217)
5	15	27	82	(470)

\* The calculation includes customers with zero LCC savings (no impact). Parentheses indicate negative values.

TABLE V.15—AVERAGE LCC AND PBP RESULTS FOR COMBINATION B, CO<sub>2</sub>\*

TSL	EL	% of baseline energy use	Average costs (2014\$)				Simple payback period** (years)	Average lifetime (years)
			Installed cost	First year's operating cost	Lifetime operating cost	LCC		
—	0	100	2,418	511	5,239	7,657	.....	13.5
1	1	95	2,419	502	5,149	7,568	0.1	13.5
—	2	90	2,420	494	5,058	7,479	0.1	13.5
2	3	85	2,422	485	4,968	7,390	0.1	13.5
—	4	80	2,423	477	4,878	7,301	0.1	13.5
—	5	75	2,425	468	4,787	7,212	0.2	13.5
—	6	70	2,429	460	4,697	7,126	0.2	13.5
—	7	65	2,434	451	4,607	7,040	0.3	13.5
—	8	60	2,441	452	4,608	7,049	0.4	13.5
3	9	55	2,454	444	4,517	6,971	0.5	13.5
—	10	50	2,467	464	4,717	7,184	1.0	13.5
4	11	45	2,491	464	4,718	7,209	1.6	13.5
—	12	40	2,538	526	5,336	7,874	N/A	13.5
5	13	32	3,250	512	5,188	8,438	N/A	13.5

\* The results for each EL are calculated assuming that all customers use equipment at that efficiency level or higher. The PBP is measured relative to the baseline equipment.

\*\* Values of N/A indicate paybacks that are not possible, given that more efficient equipment is not only more expensive to purchase, but also costs more to operate.

TABLE V.16—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR COMBINATION B, CO<sub>2</sub>

TSL	EL	% of baseline energy use	Life-cycle cost savings	
			% of customers that experience a net cost	Average life-cycle cost savings* (2014\$)
—	0	100	.....	.....
1	1	95	0	30
—	2	90	0	89
2	3	85	0	179
—	4	80	0	268
—	5	75	0	356
—	6	70	0	443
—	7	65	0	528
—	8	60	0	519

TABLE V.16—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION—  
Continued  
FOR COMBINATION B, CO<sub>2</sub>

TSL	EL	% of baseline energy use	Life-cycle cost savings	
			% of customers that experience a net cost	Average life-cycle cost savings* (2014\$)
3	9	55	0	597
—	10	50	2	384
4	11	45	7	359
—	12	40	83	(306)
5	13	32	97	(870)

\*The calculation includes customers with zero LCC savings (no impact). Parentheses indicate negative values.

TABLE V.17—AVERAGE LCC AND PBP RESULTS FOR COMBINATION B, PROPANE \*

TSL	EL	% of baseline energy use	Average costs (2014\$)				Simple payback period** (years)	Average lifetime (years)
			Installed cost	First year's operating cost	Lifetime operating cost	LCC		
—	0	100	2,538	511	5,239	7,777	13.5	
1	1	95	2,539	502	5,149	7,688	0.1	13.5
—	2	90	2,540	494	5,058	7,598	0.1	13.5
2	3	85	2,541	485	4,968	7,509	0.1	13.5
—	4	80	2,542	477	4,878	7,420	0.1	13.5
—	5	75	2,543	468	4,787	7,330	0.1	13.5
—	6	70	2,544	460	4,697	7,241	0.1	13.5
—	7	65	2,547	451	4,607	7,153	0.1	13.5
—	8	60	2,552	443	4,516	7,068	0.2	13.5
3	9	55	2,561	444	4,517	7,078	0.3	13.5
—	10	50	2,571	435	4,427	6,998	0.4	13.5
4	11	45	2,585	455	4,626	7,212	0.8	13.5
—	12	40	2,613	456	4,628	7,240	1.4	13.5
5	13	32	2,933	512	5,188	8,121	N/A	13.5

\*The results for each EL are calculated assuming that all customers use equipment at that efficiency level or higher. The PBP is measured relative to the baseline equipment.

\*\*Values of N/A indicate paybacks that are not possible, given that more efficient equipment is not only more expensive to purchase, but also costs more to operate.

TABLE V.18—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION  
FOR COMBINATION B, PROPANE

TSL	EL	% of baseline energy use	Life-cycle cost savings	
			% of customers that experience a net cost	Average life-cycle cost savings* (2014\$)
—	0	100	0	30
1	1	95	0	89
—	2	90	0	179
2	3	85	0	268
—	4	80	0	358
—	5	75	0	447
—	6	70	0	535
—	7	65	0	620
—	8	60	0	610
3	9	55	0	690
—	10	50	0	476
4	11	45	1	447
—	12	40	3	447
5	13	32	86	(433)

\*The calculation includes customers with zero LCC savings (no impact). Parentheses indicate negative values.

b. Customer Subgroup Analysis

Using the LCC spreadsheet model, DOE estimated the impacts of the TSLs on manufacturing and/or industrial facilities that purchase their own beverage vending machines. This subgroup typically has higher discount rates and lower electricity prices relative to the average customer. DOE

estimated the average LCC savings and simple PBP for this subgroup as shown in Table V.19 through Table V.26.

The results of the customer subgroup analysis indicate that the manufacturing/industrial subgroup fares slightly worse than the average customer, with that subgroup showing lower LCC savings and longer payback periods than a typical customer shows.

At TSL 3, all but one equipment class have positive LCC savings for the subgroup (Class A, Propane has LCC savings of 0), although the savings are not as great in magnitude as for all customers. Chapter 11 of the final rule TSD provides a more detailed discussion on the customer subgroup analysis and results.

TABLE V.19—COMPARISON OF IMPACTS FOR MANUFACTURING/INDUSTRIAL SUBGROUP RELATIVE TO ALL CUSTOMERS, CLASS A, CO<sub>2</sub>

TSL	LCC savings* (2014\$)		Simple payback period** (years)	
	Manufacturing subgroup	All customers	Manufacturing subgroup	All customers
1	47	65	2.6	2.0
2	(245)	(217)	N/A	N/A
3	47	65	2.6	2.0
4	(982)	(937)	N/A	N/A
5	(1,535)	(1,424)	N/A	N/A

\* Parentheses indicate negative values.

\*\* Values of N/A indicate paybacks that are not possible, given that more efficient equipment is not only more expensive to purchase, but also costs more to operate.

TABLE V.20—COMPARISON OF IMPACTS FOR MANUFACTURING/INDUSTRIAL SUBGROUP RELATIVE TO ALL CUSTOMERS, CLASS A, PROPANE

TSL	LCC savings* (2014\$)		Simple payback period** (years)	
	Manufacturing subgroup	All customers	Manufacturing subgroup	All customers
1	0	0	1.3	1.1
2	53	71	1.4	1.2
3	0	0	1.3	1.1
4	391	454	1.0	0.9
5	(917)	(817)	N/A	N/A

\* Parentheses indicate negative values.

\*\* Values of N/A indicate paybacks that are not possible, given that more efficient equipment is not only more expensive to purchase, but also costs more to operate.

TABLE V.21—COMPARISON OF IMPACTS FOR MANUFACTURING/INDUSTRIAL SUBGROUP RELATIVE TO ALL CUSTOMERS, CLASS B, CO<sub>2</sub>

TSL	LCC savings* (2014\$)		Simple payback period** (years)	
	Manufacturing subgroup	All customers	Manufacturing subgroup	All customers
1	0	0	0.5	0.4
2	0	0	2.0	1.0
3	22	42	2.0	1.1
4	(506)	(448)	N/A	N/A
5	(1,138)	(1,017)	N/A	58.8

\* Parentheses indicate negative values.

\*\* Values of N/A indicate paybacks that are not possible, given that more efficient equipment is not only more expensive to purchase, but also costs more to operate.

TABLE V.22—COMPARISON OF IMPACTS FOR MANUFACTURING/INDUSTRIAL SUBGROUP RELATIVE TO ALL CUSTOMERS, CLASS B, PROPANE

TSL	LCC savings* (2014\$)		Simple payback period** (years)	
	Manufacturing subgroup	All customers	Manufacturing subgroup	All customers
1 .....	3	8	1.1	0.7
2 .....	138	185	0.7	0.6
3 .....	272	361	0.7	0.5
4 .....	188	333	2.0	1.3
5 .....	(756)	(566)	N/A	64.7

\* Parentheses indicate negative values.

\*\* Values of N/A indicate paybacks that are not possible, given that more efficient equipment is not only more expensive to purchase, but also costs more to operate.

TABLE V.23—COMPARISON OF IMPACTS FOR MANUFACTURING/INDUSTRIAL SUBGROUP RELATIVE TO ALL CUSTOMERS, COMBINATION A, CO<sub>2</sub>

TSL	LCC savings* (2014\$)		Simple payback period** (years)	
	Manufacturing subgroup	All customers	Manufacturing subgroup	All customers
1 .....	44	57	0.3	0.2
2 .....	220	286	0.3	0.2
3 .....	716	990	1.1	0.8
4 .....	(529)	(234)	N/A	26.1
5 .....	(1,318)	(980)	874.3	39.4

\* Parentheses indicate negative values.

\*\* Values of N/A indicate paybacks that are not possible, given that more efficient equipment is not only more expensive to purchase, but also costs more to operate.

TABLE V.24—COMPARISON OF IMPACTS FOR MANUFACTURING/INDUSTRIAL SUBGROUP RELATIVE TO ALL CUSTOMERS, COMBINATION A, PROPANE

TSL	LCC savings* (2014\$)		Simple payback period** (years)	
	Manufacturing subgroup	All customers	Manufacturing subgroup	All customers
1 .....	45	58	0.1	0.1
2 .....	224	290	0.1	0.1
3 .....	505	772	0.9	0.7
4 .....	476	793	2.4	1.7
5 .....	(808)	(470)	546.6	24.7

\* Parentheses indicate negative values.

TABLE V.25—COMPARISON OF IMPACTS FOR MANUFACTURING/INDUSTRIAL SUBGROUP RELATIVE TO ALL CUSTOMERS, COMBINATION B, CO<sub>2</sub>

TSL	LCC savings* (2014\$)		Simple payback period** (years)	
	Manufacturing subgroup	All customers	Manufacturing subgroup	All customers
1 .....	23	30	0.2	0.1
2 .....	138	179	0.2	0.1
3 .....	436	597	0.7	0.5
4 .....	168	359	2.7	1.6
5 .....	(1,094)	(870)	N/A	N/A

\* Parentheses indicate negative values.

\*\* Values of N/A indicate paybacks that are not possible, given that more efficient equipment is not only more expensive to purchase, but also costs more to operate.

TABLE V.26—COMPARISON OF IMPACTS FOR MANUFACTURING/INDUSTRIAL SUBGROUP RELATIVE TO ALL CUSTOMERS, COMBINATION B, PROPANE

TSL	LCC savings* (2014\$)		Simple payback period** (years)	
	Manufacturing subgroup	All customers	Manufacturing subgroup	All customers
1	23	30	0.1	0.1
2	138	179	0.1	0.1
3	448	610	0.4	0.3
4	282	476	1.3	0.8
5	(658)	(433)	N/A	N/A

\* Parentheses indicate negative values.

\*\* Values of N/A indicate paybacks that are not possible, given that more efficient equipment is not only more expensive to purchase, but also costs more to operate.

c. Rebuttable Presumption Payback

As discussed in section III.F.2 of this final rule, EPCA provides a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the customer of the equipment that meets the new or amended standard level is less than three times the value of the first-year energy savings resulting from the standard. (42 U.S.C.

6295(o)(1)(B)(iii)) DOE’s LCC and PBP analyses generate values that calculate the PBP for customers of potential new and amended energy conservation standards. These analyses include, but are not limited to, the 3-year PBP contemplated under the rebuttable presumption test. However, DOE routinely conducts a full economic analysis that considers the full range of impacts, including those to the customer, manufacturer, nation, and

environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification. Table V.27 shows the rebuttable presumption payback periods for TSL 3, for all equipment classes and both CO<sub>2</sub> and propane refrigerants.

TABLE V.27—REBUTTABLE PRESUMPTION PAYBACK PERIODS AT TSL 3 FOR ALL REFRIGERANTS AND EQUIPMENT CLASSES

Refrigerant	Rebuttable presumption payback period (years)			
	Class A	Class B	Combination A	Combination B
CO <sub>2</sub>	2.0	0.5	0.7	0.5
Propane	1.1	0.5	0.4	0.3

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of new and amended energy conservation standards on manufacturers of beverage vending machines. The section below describes the expected impacts on manufacturers at each TSL. Chapter 12 of the final rule TSD explains the analysis in further detail.

a. Industry Cash Flow Analysis Results

The following tables illustrate the estimated financial impacts (represented by changes in industry net present value, or INPV) of energy conservation standards on manufacturers of beverage vending machines, as well as the conversion costs that DOE expects manufacturers would incur for all equipment classes at each TSL.

As discussed in sections IV.J and V.B.2.b of this final rule, DOE modeled two different markup scenarios to evaluate the range of cash flow impacts on the BVM industry: (1) The

preservation of gross margin percentage markup scenario; and (2) the preservation of per-unit operating profit markup scenario.

To assess the less severe end of the range of potential impacts, DOE modeled a preservation of gross margin percentage markup scenario, in which a uniform “gross margin percentage” markup is applied across all potential efficiency levels. In this scenario, DOE assumed that a manufacturer’s absolute dollar markup would increase as production costs increase in the standards case.

To assess the more severe end of the range of potential impacts, DOE modeled the preservation of per unit operating profit markup scenario, which reflects manufacturer concerns surrounding their inability to maintain margins as manufacturing production costs increase to meet more stringent efficiency levels. In this scenario, as manufacturers make the necessary investments required to convert their facilities to produce new standards-

compliant equipment and incur higher costs of goods sold, their percentage markup decreases. Operating profit does not change in absolute dollars but decreases as a percentage of revenue.

Each of the modeled scenarios results in a unique set of cash flows and corresponding industry values at each TSL. In the following discussion, the INPV results refer to the difference in industry value between the no-new-standards case and each standards case that result from the sum of discounted cash flows from the reference year 2015 through 2048, the end of the analysis period. To provide perspective on the short-run cash flow impact, DOE includes in the discussion of the results a comparison of free cash flow between the no-new-standards case and the standards case at each TSL in the year before amended standards would take effect. This figure provides an understanding of the magnitude of the required conversion costs relative to the

cash flow generated by the industry in the no-new-standards case.

Table V.28 and Table V.29 present a range of results reflecting both the preservation of gross margin percentage

markup scenario and the preservation of per-unit operating profit markup scenario. As noted, the preservation of per-unit operating profit scenario accounts for the more severe impacts

presented. Estimated conversion costs and free cash flow in the year prior to the effective date of amended standards do not vary with markup scenario.

**TABLE V.28—MANUFACTURER IMPACT ANALYSIS UNDER THE PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO FOR ANALYSIS PERIOD [2015–2048]**

	Units	No-new-standards case	Trial standard level				
			1	2	3	4	5
INPV .....	2014\$M .....	94.8	94.4	94.7	95.2	98.8	112.6
Change in INPV ....	2014\$M* .....		(0.4)	(0.1)	0.4	4.0	17.9
	% Change* .....		(0.4)	(0.1)	0.4	4.2	18.9
Product Conversion Costs.	2014\$M .....		0.58	0.58	0.58	1.19	3.27
Capital Conversion Costs.	2014\$M .....		0.30	0.30	0.30	1.14	4.29
Total Conversion Costs.	2014\$M .....		0.88	0.88	0.88	2.33	7.56
Free Cash Flow ....	2014\$M .....	10.4	10.1	10.1	10.1	9.5	7.4
	% Change* .....		(3.1)	(3.1)	(3.1)	(8.5)	(28.4)

\* Parentheses indicate negative values.

**TABLE V.29—MANUFACTURER IMPACT ANALYSIS UNDER THE PRESERVATION OF PER-UNIT OPERATING PROFIT MARKUP SCENARIO FOR ANALYSIS PERIOD [2015–2048]**

	Units	No-new-standards case	Trial standard level				
			1	2	3	4	5
INPV .....	2014\$M .....	94.8	94.1	94.0	94.0	91.5	79.3
Change in INPV ....	2014\$M* .....		(0.6)	(0.8)	(0.7)	(3.2)	(15.5)
	% Change* .....		(0.7)	(0.8)	(0.8)	(3.4)	(16.4)
Product Conversion Costs.	2014\$M .....		0.6	0.6	0.6	1.2	3.3
Capital Conversion Costs.	2014\$M .....		0.3	0.3	0.3	1.1	4.3
Total Conversion Costs.	2014\$M .....		0.9	0.9	0.9	2.3	7.6
Free Cash Flow ....	2014\$M .....	10.4	10.1	10.1	10.1	9.5	7.4
	% Change* .....		(3.1)	(3.1)	(3.1)	(8.5)	(28.4)

\* Parentheses indicate negative values.

At TSL 1, DOE estimates the impact on INPV for manufacturers of beverage vending machine to range from –\$0.6 million to –\$0.4 million, or a change in INPV of –0.7 percent and –0.4 percent under the preservation of per-unit operating profit markup scenario and preservation of gross margin percentage markup scenario, respectively. At this TSL, industry free cash flow is estimated to decrease by approximately 3.1 percent to \$10.1 million, compared to the no-new-standards case value of \$10.4 million in the year before the compliance date (2018).

At TSL 1, the industry as a whole is expected to incur \$0.6 million in product conversion costs and would be expected to incur \$0.3 in capital conversion costs necessary to manufacture redesigned platforms

associated with amended energy conservation standards compliance. DOE's engineering analysis indicates that the most cost-effective design options to reach TSL 1 are component swaps and software modifications such as automatic lighting controls, LED lighting, a refrigeration low power state mode, evaporator fan controls, incorporation of a permanent split capacitor evaporator fan motor, or enhanced evaporator coils. Manufacturer feedback indicated that such component swaps do not incur large product or capital conversion costs.

At TSL 2, DOE estimates the impact on INPV for manufacturers of beverage vending machines to range from –\$0.8 million to –\$0.1 million, or a change in INPV of –0.8 percent and –0.1 percent

under the preservation of gross margin percentage markup scenario and the preservation of per-unit operating profit markup scenario, respectively. At this TSL, industry free cash flow is estimated to decrease by approximately 3.1 percent to \$10.1 million, compared to the no-new-standards case value of \$10.4 million in the year before the compliance date (2018).

At TSL 2, the industry as a whole is expected to incur \$0.6 million in product conversion costs and \$0.3 in capital conversion costs to manufacturer equipment requiring platform redesigns. DOE's engineering analysis indicates that the most cost-effective design options to reach TSL 2 are component swaps and software modifications such as incorporating an enhanced evaporator coil, automatic lighting

controls, LED lighting, improved single speed reciprocating compressor, or a low power state, incorporating a permanent split capacitor condenser fan motor, electronically-commutated evaporator fan motor, enhanced condenser coil, or evaporator fan controls. Manufacturer feedback indicated that such component swaps do not incur large product or capital conversion costs.

At TSL 3, DOE estimates the impact on INPV for manufacturers of beverage vending machines to range from  $-\$0.7$  million to  $\$0.4$  million, or a change in INPV of  $-0.8$  percent to  $0.4$  percent under the preservation of gross margin percentage markup scenario and the preservation of per-unit operating profit markup scenario, respectively. At this TSL, industry free cash flow is estimated to decrease by approximately  $3.1$  percent to  $\$10.1$  million, compared to the no-new-standards case value of  $\$10.4$  million in the year before the compliance date (2018).

At TSL 3, the industry as a whole is expected to spend  $\$0.6$  million in product conversion costs, as well as  $\$0.3$  million in capital conversion costs to manufacture redesigned platforms. As at TSLs 1 and 2, DOE's engineering analysis indicates that the most cost-effective design options to reach TSL 3 are component swaps and software modifications such as incorporating an enhanced evaporator coil, automatic lighting controls, LED lighting, improved single speed reciprocating compressor, or a low power state, incorporating a permanent split capacitor condenser fan motor, electronically-commutated evaporator fan motor, enhanced condenser coil, or evaporator fan controls. Manufacturer feedback indicated that such component swaps do not incur large product or capital conversion costs.

At TSL 4, DOE estimates the impact on INPV for manufacturers of beverage vending machines to range from  $-\$3.2$  million to  $\$4.0$  million, or a change in INPV of  $-3.4$  percent to  $4.2$  percent under the preservation of gross margin percentage markup scenario and the preservation of per-unit operating profit markup scenario, respectively. At this TSL, industry free cash flow is estimated to decrease by approximately  $8.5$  percent to  $\$9.5$  million, compared to the no-new-standards case value of  $\$10.4$  million in the year before the compliance date (2018).

At TSL 4, the industry as a whole is expected to spend  $\$1.2$  million in product conversion costs, as well as  $\$1.1$  million in capital conversion costs for platform redesigns. At TSL 4, depending on the equipment, some

manufacturers will likely be required to increase the thickness of their equipment's insulation, switch to an electronically-commutated condenser fan motor and incorporate vacuum insulated panels (VIPs). Additionally, many manufacturers of Combination A machines will most likely be required to integrate enhanced glass packs or double pane glass in order to achieve the required efficiency.

At TSL 5, DOE estimates the impact on INPV for manufacturers of beverage vending machines to range from  $-\$15.5$  million to  $\$17.9$  million, or a change in INPV of  $-16.4$  percent to  $18.9$  percent under the preservation of gross margin percentage markup scenario and the preservation of per-unit operating profit markup scenario, respectively. At this TSL, industry free cash flow is estimated to decrease by approximately  $28.4$  percent to  $\$7.4$  million, compared to the no-new-standards case value of  $\$10.4$  million in the year before the compliance date (2018).

At TSL 5, the industry as a whole is expected to spend  $\$3.3$  million in product conversion costs associated with the research and development and testing and certification, as well as  $\$4.3$  million in one-time investments in PP&E for platform redesigns. The conversion cost burden for manufacturers of all equipment increases substantially at TSL 5. At this level, manufacturers will likely be required to integrate VIPs to achieve the required efficiency. VIPs are an unproven technology in the BVM industry and would likely require substantial effort and cost to incorporate.

At TSL 5, there is approximately a  $7$ -percent decrease in total industry shipments in 2019 relative to the no-new-standards case. Under the preservation of gross margin percentage markup scenario, this decrease in shipments and increased conversion costs are outweighed by a relatively larger increase in industry MPCs, resulting in a positive change in INPV. Under the preservation of per-unit operating profit markup scenario, the increase in MPCs at TSL 5 is outweighed by the decrease in shipments and the increase in industry conversion costs. This results in a decrease in INPV.

#### b. Impacts on Direct Employment

To quantitatively assess the potential impacts of amended energy conservation standards on direct employment, DOE used the GRIM to estimate the domestic labor expenditures and number of direct employees in the no-new-standards case

and at each TSL from 2014 through 2048. DOE used data from the U.S. Census Bureau's 2013 Annual Survey of Manufacturers,<sup>80</sup> the results of the engineering analysis, and interviews with manufacturers to determine the inputs necessary to calculate industry-wide labor expenditures and domestic direct employment levels. Labor expenditures related to manufacturing of beverage vending machines are a function of labor intensity, sales volume, and an assumption that wages remain fixed in real terms over time. The total labor expenditures in each year are calculated by multiplying the MPCs by the labor percentage of MPCs. DOE estimates that  $90$  percent of BVM units are produced domestically.

The total labor expenditures in the GRIM were then converted to domestic production employment levels by dividing production labor expenditures by the annual payment per production worker (production worker hours times the labor rate found in the U.S. Census Bureau's 2013 Annual Survey of Manufacturers). The production worker estimates in this section only cover workers up to the line-supervisor level who are directly involved in fabricating and assembling a piece of equipment within an original equipment manufacturer (OEM) facility. Workers performing services that are closely associated with production operations, such as materials handling tasks using forklifts, are also included as production labor. DOE's estimates only account for production workers who manufacture the specific equipment covered by this rulemaking.

Because production employment expenditures are assumed to be a fixed percentage of cost of goods sold and the MPCs typically increase with more efficient equipment, labor tracks the increased prices in the GRIM. As efficiency of beverage vending machines increase, so does the complexity of the equipment, generally requiring more labor to produce. Based on industry feedback, DOE believes that manufacturers that use domestic production currently will continue to produce the same scope of covered equipment in domestic production facilities. DOE does not expect production to shift to lower labor cost countries. To estimate a lower bound to employment, DOE assumed that employment tracks closely with industry shipments, and any percentage decrease in shipments will result in a

<sup>80</sup> U.S. Census Bureau. Annual Survey of Manufacturers: General Statistics: Statistics for Industry Groups and Industries (2013). Available at [www.census.gov/manufacturing/asm/index.html](http://www.census.gov/manufacturing/asm/index.html).



commensurate percentage decrease in employment. A complete description of the assumptions used to generate these upper and lower bounds can be found in chapter 12 of the final rule TSD.

Using the GRIM, DOE estimates that in the absence of amended energy conservation standards, there would be 653 domestic production workers in the BVM industry. As noted previously, DOE estimates that 90 percent of BVM

units sold in the United States are manufactured domestically. Table V.30 shows the range of the impacts of potential amended energy conservation standards on U.S. production workers of beverage vending machines.

TABLE V.30—POTENTIAL CHANGES IN THE TOTAL NUMBER OF BEVERAGE VENDING MACHINE PRODUCTION WORKERS IN 2019

	No-new-standards case *	Trial standard level				
		1	2	3	4	5
Potential Changes in Domestic Production Workers in 2019 **.	.....	0 to 2 .....	0 to 7 .....	0 to 6 .....	(5) to 46 .....	(49) to 233.

\* No-new-standards case estimates 653 domestic production workers in the BVM industry in 2019.

\*\* Parentheses indicate negative values.

The upper end of the range estimates the maximum increase in the number of production workers in the BVM industry after implementation of an amended energy conservation standard. It assumes that manufacturers would continue to produce the same scope of covered equipment within the United States and would require some additional labor to produce more efficient equipment.

The lower end of the range represents the maximum decrease in total number of U.S. production workers that could result from an amended energy conservation standard. During interviews, manufacturers noted that, due to the high shipping costs associated with beverage vending machines, they would be hesitant to move any major production operations outside the United States. Therefore, the lower bound of direct employment impacts assumes domestic production of beverage vending machines would decrease by the same relative percentage decrease in industry shipments as a result of an amended energy conservation standard.

This conclusion is independent of any conclusions regarding indirect employment impacts in the broader U.S. economy, which are documented in chapter 16 of the TSD.

c. Impacts on Manufacturing Capacity

In reference to the amended standard levels proposed in the 2015 BVM ECS NOPR, DOE received comments from multiple small, domestic BVM manufacturers stating that the proposed standards could result in one or more small manufacturers exiting the BVM market altogether. As detailed in section IV.J.3, DOE notes that, in response to stakeholder feedback relating to the 2015 BVM ECS NOPR, it has updated its engineering analysis and standard efficiency levels for this final rule,

resulting in less burdensome standard levels for all equipment classes of beverage vending machines relative to the NOPR proposal. DOE believes that manufacturers will be able to maintain production capacity levels sufficient to meet market demand under the final rule standard levels.

Additionally, manufacturers have expressed concern regarding the potential strain on technical resources associated with having to comply with both DOE amended energy conservation standards and the EPA’s R-134a phaseout for beverage vending machines (see SNAP Final Rule 20 (80 FR 42870, 42917–42920 (July 20, 2015))) by 2019. Few manufacturers have experience with CO<sub>2</sub> designs, and no beverage vending machines in the domestic market currently use propane. The switch to CO<sub>2</sub> and propane will require all manufacturers to redesign the majority of their equipment. Manufacturers are concerned they do not have the technical capacity to redesign for new refrigerants and amended energy conservation standards. DOE accounted for the forthcoming R-134a phaseout in its analysis by estimating CO<sub>2</sub>- and propane-specific cost-efficiency curves and industry conversion costs related to energy conservation standards compliance, as well as a one-time investment required for the industry to switch all BVM production to CO<sub>2</sub>- and propane. Cost-efficiency curves are presented in chapter 5 of the final rule TSD, and information regarding conversion costs is contained in chapter 12.

d. Impacts on Subgroups of Manufacturers

Small manufacturers, niche equipment manufacturers, and manufacturers exhibiting a cost

structure substantially different from the industry average could be affected disproportionately. Using average cost assumptions to develop an industry cash-flow estimate is inadequate to assess differential impacts among manufacturer subgroups.

For BVM equipment, DOE identified and evaluated the impact of amended energy conservation standards on one subgroup: Small manufacturers. The SBA defines a “small business” as having 1,000 employees or less for NAICS 333318, “Other Commercial and Service Industry Machinery Manufacturing.” Based on this definition, DOE identified five manufacturers in the BVM equipment industry that are small businesses.

For a discussion of the impacts on the small manufacturer subgroup, see the Regulatory Flexibility Analysis in section VI.B of this final rule and chapter 12 of the final rule TSD.

e. Cumulative Regulatory Burden

While any one regulation may not impose a significant burden on manufacturers, the combined effects of several impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. Multiple regulations affecting the same manufacturer can strain profits and can lead companies to abandon product lines or markets with lower expected future returns than competing equipment. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

For the cumulative regulatory burden analysis, DOE considers other DOE regulations that could affect BVM manufacturers that will take effect

approximately 3 years before or after the 2019 compliance date of amended energy conservation standards. The

compliance years and expected industry conversion costs of energy conservation standards that may also impact BVM

manufacturers are indicated in Table V.31.

TABLE V.31—COMPLIANCE DATES AND EXPECTED CONVERSION EXPENSES OF FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING BVM MANUFACTURERS

Regulation	Compliance date(s)	Expected expenses/impacts
Commercial Refrigeration Equipment 79 FR 17725 (Mar. 28, 2014) .....	3/27/2017 .....	\$43.1 million.

Manufacturers cited ENERGY STAR standards for beverage vending machines as a source of regulatory burden. DOE notes that ENERGY STAR is a voluntary program that is not federally mandated. As such, DOE does not consider the ENERGY STAR program in its analysis of cumulative regulatory burden.

In interviews and in public comments made in response to the 2015 BVM ECS NOPR, manufacturers cited the EPA's SNAP Rule 20 phaseout of HFCs in beverage vending machines by 2019 (80 FR 42870 (July 20, 2015)) as a major source of additional burden accompanying potential amended efficiency standards. As detailed in section IV.J, based on feedback in interviews, DOE assumed that each

manufacturer would need to invest \$750,000 to update their equipment to comply with Rule 20. DOE assumed this one-time SNAP investment would apply to all eight manufacturers in the year leading up to the phaseout (*i.e.*, 2018), resulting in an additional burden to the industry of \$6 million. This one-time cost occurs in both the no-new-standards case and in the standards case.

3. National Impact Analysis

a. Significance of Energy Savings

DOE estimated the NES by calculating the difference in annual energy consumption for the no-new-standards case scenario and standards case scenario at each TSL for each equipment class and summing up the annual

energy savings for the beverage vending machines purchased during the 30-year 2019 through 2048 analysis period. Energy impacts include the 30-year period, plus the life of equipment purchased in the last year of the analysis, or roughly 2019 through 2078. The energy consumption calculated in the NIA is FFC energy, which quantifies savings beginning at the source of energy production. DOE also reports primary or source energy that takes into account losses in the generation and transmission of electricity. FFC and primary energy are discussed in section IV.H.2 of this final rule.

Table V.32 presents the source NES for all equipment classes at each TSL and the sum total of NES for each TSL.

TABLE V.32—CUMULATIVE NATIONAL PRIMARY ENERGY SAVINGS FOR EQUIPMENT PURCHASED IN 2019–2048 [Quads]

Equipment class	Standard level				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Class A .....	0.012	0.031	0.012	0.070	0.138
CO <sub>2</sub> .....	0.012	0.024	0.012	0.047	0.087
Propane .....	0.000	0.008	0.000	0.024	0.051
Class B .....	0.001	0.010	0.026	0.059	0.091
CO <sub>2</sub> .....	0.000	0.000	0.007	0.026	0.045
Propane .....	0.001	0.010	0.019	0.033	0.046
Combination A .....	0.002	0.012	0.051	0.061	0.067
CO <sub>2</sub> .....	0.001	0.007	0.031	0.036	0.040
Propane .....	0.001	0.005	0.020	0.024	0.027
Combination B .....	0.001	0.007	0.028	0.035	0.044
CO <sub>2</sub> .....	0.001	0.004	0.017	0.021	0.026
Propane .....	0.000	0.003	0.011	0.014	0.018
Total * .....	0.016	0.061	0.117	0.225	0.340

\* Numbers may not add to totals, due to rounding.

Table V.33 presents FFC energy savings at each TSL for each equipment class. The NES increases from 0.017

quads at TSL 1 to 0.355 quads at TSL 5.

TABLE V.33—CUMULATIVE NATIONAL ENERGY SAVINGS INCLUDING FULL-FUEL-CYCLE FOR EQUIPMENT PURCHASED IN 2019–2048 [Quads]

Equipment class	Standard level				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Class A .....	0.012	0.033	0.012	0.073	0.144
CO <sub>2</sub> .....	0.012	0.025	0.012	0.049	0.091

TABLE V.33—CUMULATIVE NATIONAL ENERGY SAVINGS INCLUDING FULL-FUEL-CYCLE FOR EQUIPMENT PURCHASED IN 2019–2048—Continued  
[Quads]

Equipment class	Standard level				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Propane .....	0.000	0.008	0.000	0.025	0.054
Class B .....	0.001	0.011	0.027	0.061	0.095
CO <sub>2</sub> .....	0.000	0.000	0.007	0.027	0.047
Propane .....	0.001	0.011	0.020	0.035	0.048
Combination A .....	0.003	0.013	0.053	0.063	0.070
CO <sub>2</sub> .....	0.002	0.008	0.032	0.038	0.042
Propane .....	0.001	0.005	0.021	0.025	0.028
Combination B .....	0.001	0.007	0.029	0.037	0.046
CO <sub>2</sub> .....	0.001	0.004	0.018	0.022	0.027
Propane .....	0.000	0.003	0.012	0.015	0.019
Total * .....	0.017	0.063	0.122	0.235	0.355

\* Numbers may not add to totals, due to rounding.

OMB Circular A–4<sup>81</sup> requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using 9 rather than 30 years of

equipment shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.<sup>82</sup> DOE notes that the review timeframe established in EPCA generally does not overlap with the equipment lifetime, equipment manufacturing cycles or other factors specific to beverage vending machines.

Thus, this information is presented for informational purposes only and is not indicative of any change in DOE’s analytical methodology. The NES results based on a 9-year analysis period are presented in Table V.34. The impacts are counted over the lifetime of equipment purchased in 2019 through 2027.

TABLE V.34—NATIONAL FULL-FUEL-CYCLE ENERGY SAVINGS FOR 9 YEARS OF SHIPMENTS (2019–2027)  
[Quads]

Equipment class	Standard level				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Class A .....	0.003	0.007	0.003	0.017	0.033
CO <sub>2</sub> .....	0.003	0.006	0.003	0.011	0.020
Propane .....	0.000	0.002	0.000	0.006	0.012
Class B .....	0.000	0.002	0.006	0.014	0.021
CO <sub>2</sub> .....	0.000	0.000	0.002	0.006	0.010
Propane .....	0.000	0.002	0.005	0.008	0.011
Combination A .....	0.001	0.003	0.012	0.014	0.016
CO <sub>2</sub> .....	0.000	0.002	0.007	0.009	0.009
Propane .....	0.000	0.001	0.005	0.006	0.006
Combination B .....	0.000	0.002	0.007	0.008	0.010
CO <sub>2</sub> .....	0.000	0.001	0.004	0.005	0.006
Propane .....	0.000	0.001	0.003	0.003	0.004
Total * .....	0.004	0.014	0.028	0.054	0.080

\* Numbers may not add to totals, due to rounding.

b. Net Present Value of Customer Costs and Benefits

DOE estimated the cumulative NPV to the nation of the total savings for the customers that would result from

potential standards at each TSL. In accordance with OMB guidelines on regulatory analysis (OMB Circular A–4, section E, September 17, 2003), DOE calculated NPV using both a 7-percent

and a 3-percent real discount rate. The 7-percent rate is an estimate of the average before-tax rate of return on private capital in the U.S. economy, and reflects the returns on real estate and

<sup>81</sup> U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis*. September 17, 2003. Available at [www.whitehouse.gov/omb/circulars\\_a004\\_a-4/](http://www.whitehouse.gov/omb/circulars_a004_a-4/).

<sup>82</sup> EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is

promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. (42 U.S.C. 6295(m)) While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6-year

period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some consumer products, the compliance period is 5 years rather than 3 years.

small business capital, including corporate capital. DOE used this discount rate to approximate the opportunity cost of capital in the private sector, because recent OMB analysis has found the average rate of return on capital to be near this rate. In addition, DOE used the 3-percent rate to capture the potential effects of amended standards on private consumption. This rate represents the rate at which society discounts future consumption flows to their present value. It can be approximated by the real rate of return on long-term government debt (*i.e.*, yield on Treasury notes minus annual

rate of change in the CPI), which has averaged about 3 percent on a pre-tax basis for the last 30 years.

Table V.35 and Table V.36 show the customer NPV results for each of the TSLs DOE considered for beverage vending machines at both 7-percent and 3-percent discount rates. In each case, the impacts cover the expected lifetime of equipment purchased from 2019 through 2048. Detailed NPV results are presented in chapter 10 of the final rule TSD.

The NPV results at a 7-percent discount rate for TSL 5 were negative for all equipment classes. This is

consistent with the results of LCC analysis results for TSL 5, which showed significant increase in LCC and significantly higher PBPs. Efficiency levels for TSL 3 were chosen to correspond to the highest NPV at a 7-percent discount rate for all classes. Consequently, the total NPV for beverage vending machines was highest for TSL 3, with a value of \$0.207 billion (2014\$) at a 7-percent discount rate. TSL 1 showed the second highest total NPV, with a value of \$0.030 billion (2014\$) at a 7-percent discount rate. TSL 2, TSL 4 and TSL 5 have a total NPV lower than TSL 1 or 3.

TABLE V.35—NET PRESENT VALUE AT A 7-PERCENT DISCOUNT RATE FOR EQUIPMENT PURCHASED IN 2019–2048 [billion 2014\$]

Equipment class	Standard level *				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Class A .....	0.021	(0.058)	0.021	(0.213)	(0.645)
CO <sub>2</sub> .....	0.021	(0.074)	0.021	(0.314)	(0.464)
Propane .....	0.000	0.016	0.000	0.101	(0.181)
Class B .....	0.001	0.021	0.047	(0.041)	(0.235)
CO <sub>2</sub> .....	0.000	0.000	0.007	(0.078)	(0.169)
Propane .....	0.001	0.021	0.041	0.037	(0.065)
Combination A .....	0.005	0.027	0.085	0.015	(0.075)
CO <sub>2</sub> .....	0.003	0.016	0.056	(0.015)	(0.056)
Propane .....	0.002	0.011	0.029	0.030	(0.019)
Combination B .....	0.003	0.016	0.053	0.035	(0.063)
CO <sub>2</sub> .....	0.002	0.009	0.032	0.019	(0.047)
Propane .....	0.001	0.006	0.022	0.017	(0.016)
Total .....	0.030	0.006	0.207	(0.204)	(1.017)

\* Values in parentheses are negative numbers.

TABLE V.36—NET PRESENT VALUE AT A 3-PERCENT DISCOUNT RATE FOR EQUIPMENT PURCHASED IN 2019–2048 [billion 2014\$]

Equipment class	Standard level *				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Class A .....	0.054	(0.124)	0.054	(0.450)	(1.281)
CO <sub>2</sub> .....	0.054	(0.163)	0.054	(0.694)	(0.923)
Propane .....	0.000	0.039	0.000	0.244	(0.358)
Class B .....	0.002	0.050	0.116	(0.079)	(0.435)
CO <sub>2</sub> .....	0.000	0.000	0.018	(0.172)	(0.319)
Propane .....	0.002	0.050	0.098	0.093	(0.116)
Combination A .....	0.013	0.065	0.208	0.056	(0.117)
CO <sub>2</sub> .....	0.008	0.039	0.137	(0.019)	(0.091)
Propane .....	0.005	0.026	0.071	0.075	(0.026)
Combination B .....	0.006	0.038	0.129	0.089	(0.116)
CO <sub>2</sub> .....	0.004	0.023	0.077	0.048	(0.086)
Propane .....	0.003	0.015	0.052	0.041	(0.029)
Total .....	0.076	0.029	0.508	(0.0384)	(1.949)

\* Values in parentheses are negative numbers.

The NPV results based on the aforementioned 9-year analysis period are presented in Table V.37 and Table V.38. The impacts are counted over the

lifetime of equipment purchased in 2019–2027. As mentioned previously in section V.B.3.a of this final rule, this information is presented for

informational purposes only and is not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.37—NET PRESENT VALUE AT A 7-PERCENT DISCOUNT RATE FOR 9 YEARS OF SHIPMENTS (2019–2027)  
[billion 2014\$]

Equipment class	Standard level *				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Class A .....	0.009	(0.026)	0.009	(0.093)	(0.279)
CO <sub>2</sub> .....	0.009	(0.032)	0.009	(0.0135)	(0.200)
Propane .....	0.000	0.006	0.000	0.041	(0.079)
Class B .....	0.000	0.008	0.019	(0.020)	(0.104)
CO <sub>2</sub> .....	0.000	0.000	0.003	(0.034)	(0.074)
Propane .....	0.000	0.008	0.016	0.014	(0.030)
Combination A .....	0.002	0.011	0.034	0.004	(0.035)
CO <sub>2</sub> .....	0.001	0.007	0.022	(0.008)	(0.025)
Propane .....	0.001	0.004	0.011	0.012	(0.009)
Combination B .....	0.001	0.006	0.021	0.014	(0.029)
CO <sub>2</sub> .....	0.001	0.004	0.013	0.007	(0.021)
Propane .....	0.000	0.003	0.009	0.006	(0.008)
Total .....	0.012	(0.000)	0.083	(0.096)	(0.446)

\* Values in parentheses are negative numbers

TABLE V.38—NET PRESENT VALUE AT A 3-PERCENT DISCOUNT RATE FOR 9 YEARS OF SHIPMENTS (2019–2027)  
[billion 2014\$]

Equipment class	Standard level *				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Class A .....	0.015	(0.041)	0.015	(0.144)	(0.405)
CO <sub>2</sub> .....	0.015	(0.052)	0.015	(0.216)	(0.290)
Propane .....	0.000	0.011	0.000	0.072	(0.115)
Class B .....	0.001	0.014	0.033	(0.030)	(0.142)
CO <sub>2</sub> .....	0.000	0.000	0.005	(0.055)	(0.102)
Propane .....	0.001	0.014	0.028	0.025	(0.040)
Combination A .....	0.004	0.019	0.059	0.011	(0.043)
CO <sub>2</sub> .....	0.002	0.011	0.039	(0.009)	(0.032)
Propane .....	0.002	0.008	0.020	0.021	(0.011)
Combination B .....	0.002	0.011	0.037	0.024	(0.040)
CO <sub>2</sub> .....	0.001	0.007	0.022	0.013	(0.029)
Propane .....	0.001	0.004	0.015	0.011	(0.011)
Total .....	0.022	0.003	0.144	(0.138)	(0.630)

\* Values in parentheses are negative numbers.

c. Indirect Impacts on Employment

DOE expects energy conservation standards for beverage vending machines to reduce energy costs for equipment owners, with the resulting net savings being redirected to other forms of economic activity. Those shifts in spending and economic activity could affect the demand for labor. Thus, indirect employment impacts may result from expenditures shifting between goods (the substitution effect) and changes in income and overall expenditure levels (the income effect) that occur due to the imposition of new and amended standards. These impacts may affect a variety of businesses not directly involved in the decision to make, operate, or pay the utility bills for beverage vending machines. As described in section IV.N of this final rule, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that

DOE considered in this rulemaking (see chapter 16 of the final rule TSD for more details). DOE understands that there are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term time frames (2020–2025), where these uncertainties are reduced.

The results suggest that these adopted standards would be likely to have negligible impact on the net demand for labor in the economy. All TSLs increase net demand for labor by fewer than 1000 jobs. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the final rule TSD presents more detailed results about anticipated indirect employment impacts. As shown in Table V.39, DOE estimates that net indirect employment

impacts from a BVM amended standard are small relative to the national economy.

TABLE V.39—NET SHORT-TERM CHANGE IN EMPLOYMENT  
[Jobs]

Trial standard level	2020	2025
1 .....	2	7
2 .....	22	85
3 .....	43	173
4 .....	71	294
5 .....	*(42)	24

\* Values in parentheses are negative numbers.

4. Impact on Utility or Performance of Equipment

In its analyses, DOE has considered potential impacts of amended standards, including the use of design options considered in the engineering analysis,

on the performance and utility of BVM equipment. This includes the ability to achieve and maintain the necessary vending temperatures, the ability to display and vend product upon receipt of payment, and other factors core to the utility of vending machine operation. DOE has concluded that the new and amended standards in this final rule will not lessen the utility or performance of beverage vending machines.

5. Impact of Any Lessening of Competition

As discussed in section III.F.1.e, the Attorney General of the United States (Attorney General) determines the impact, if any, of any lessening of competition likely to result from an adopted standard and transmits such determination in writing to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii)) To assist

the Attorney General in making such determination, DOE provided the Department of Justice (DOJ) with copies of the 2015 BVM ECS NOPR and the TSD for review. In its assessment letter responding to DOE, DOJ concluded that the proposed energy conservation standards for beverage vending machines are unlikely to have a significant adverse impact on competition. The Attorney General's assessment is published as an appendix at the end of this final rule.

6. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. As a measure of this

reduced demand, chapter 15 in the final rule TSD presents the estimated reduction in generating capacity, relative to the no-new-standards case, for the TSLs that DOE considered in this rulemaking.

Energy conservation resulting from new and amended standards for the BVM equipment classes covered in this final rule will also produce environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with electricity production. Table V.40 provides DOE's estimate of cumulative emissions reductions to result from the TSLs considered in this rulemaking. The table includes both power sector emissions and upstream emissions. The upstream emissions were calculated using the multipliers discussed in section IV.K of this final rule. DOE reports annual CO<sub>2</sub>, NO<sub>x</sub>, and Hg emissions reductions for each TSL in chapter 13 of the final rule TSD.

TABLE V.40—CUMULATIVE EMISSIONS REDUCTION FOR POTENTIAL STANDARDS FOR BEVERAGE VENDING MACHINES

	TSL				
	1	2	3	4	5
<b>Power Sector and Site Emissions</b>					
CO <sub>2</sub> (million metric tons) .....	0.97	3.61	6.98	13.39	20.23
NO <sub>x</sub> (thousand tons) .....	1.06	3.97	7.66	14.70	22.22
Hg (tons) .....	0.00	0.01	0.02	0.03	0.05
N <sub>2</sub> O (thousand tons) .....	0.01	0.04	0.09	0.16	0.25
CH <sub>4</sub> (thousand tons) .....	0.08	0.31	0.60	1.16	1.75
SO <sub>2</sub> (thousand tons) .....	0.59	2.18	4.22	8.09	12.22
<b>Upstream Emissions</b>					
CO <sub>2</sub> (million metric tons) .....	0.05	0.20	0.39	0.75	1.13
NO <sub>x</sub> (thousand tons) .....	0.78	2.90	5.60	10.74	16.24
Hg (tons) .....	0.00	0.00	0.00	0.00	0.00
N <sub>2</sub> O (thousand tons) .....	0.00	0.00	0.00	0.01	0.01
CH <sub>4</sub> (thousand tons) .....	4.30	16.01	30.92	59.34	89.70
SO <sub>2</sub> (thousand tons) .....	0.01	0.04	0.07	0.14	0.21
<b>Total Emissions</b>					
CO <sub>2</sub> (million metric tons) .....	1.02	3.81	7.37	14.14	21.36
NO <sub>x</sub> (thousand tons) .....	1.84	6.86	13.26	25.44	38.45
Hg (tons) .....	0.00	0.01	0.02	0.03	0.05
N <sub>2</sub> O (thousand tons) .....	0.01	0.05	0.09	0.17	0.26
CH <sub>4</sub> (thousand tons) .....	4.38	16.32	31.52	60.50	91.45
SO <sub>2</sub> (thousand tons) .....	0.60	2.22	4.29	8.23	12.43

As part of the analysis for this final rule, DOE estimated monetary benefits likely to result from the reduced emissions of CO<sub>2</sub> and NO<sub>x</sub> estimated for each of the TSLs considered for beverage vending machines. As discussed in section IV.L of this final rule, for CO<sub>2</sub>, DOE used values for the SCC developed by an interagency process. The interagency group selected

four sets of SCC values for use in regulatory analyses. Three sets are based on the average SCC from three integrated assessment models, at discount rates of 2.5 percent, 3 percent, and 5 percent. The fourth set, which represents the 95th percentile SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts

from temperature change further out in the tails of the SCC distribution. The four SCC values for CO<sub>2</sub> emissions reductions in 2015, expressed in 2014\$, are \$12.2 per metric ton, \$40.0 per metric ton, \$62.3 per metric ton, and \$117 per metric ton for discount rates of 2.5 percent, 3 percent, 5 percent, and 3 percent respectively. The values for later years are higher due to increasing

emissions-related costs as the magnitude of projected climate change increases.

Table V.41 presents the global value of CO<sub>2</sub> emissions reductions at each TSL. DOE calculated domestic values as a range from 7 percent to 23 percent of

the global values, and these results are presented in chapter 14 of the final rule TSD.

TABLE V.41—GLOBAL PRESENT VALUE OF CO<sub>2</sub> EMISSIONS REDUCTION FOR POTENTIAL STANDARDS FOR BEVERAGE VENDING MACHINES

TSL	SCC case * (million 2014\$)			
	5% discount rate, average *	3% discount rate, average *	2.5% discount rate, average *	3% discount rate, 95th percentile *
<b>Primary Energy Emissions</b>				
1 .....	7	30	48	92
2 .....	24	113	180	344
3 .....	47	218	347	664
4 .....	90	418	666	1,275
5 .....	136	631	1,005	1,925
<b>Upstream Emissions</b>				
1 .....	0	2	3	5
2 .....	1	6	10	19
3 .....	3	12	19	37
4 .....	5	23	37	71
5 .....	7	35	56	107
<b>Total Emissions</b>				
1 .....	7	32	51	97
2 .....	26	119	190	363
3 .....	49	230	366	701
4 .....	95	441	703	1,345
5 .....	143	666	1,061	2,031

\*For each of the four cases, the corresponding SCC value for emissions in 2015 is \$12.2, \$40.0, \$62.3, and \$117 per metric ton (2014\$), respectively.

DOE is aware that scientific and economic knowledge about the contribution of CO<sub>2</sub> and other GHG emissions to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed in this rulemaking on reducing CO<sub>2</sub> emissions is subject to change. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in CO<sub>2</sub> and other GHG emissions. This review considered the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE included in this final rule the most recent values and analyses resulting from the interagency review process.

DOE also estimated a range for the cumulative monetary value of the economic benefits associated with NO<sub>x</sub> emissions reductions anticipated to result from amended standards for the

BVM equipment that is the subject of this final rule. The dollar-per-ton values that DOE used are discussed in section IV.L of this final rule. Table V.42 presents the present value of cumulative NO<sub>x</sub> emissions reductions for each TSL calculated using the average dollar-per-ton values and 7-percent and 3-percent discount rates. This table presents values that use the low dollar-per-ton values, which reflect DOE's primary estimate. Results that reflect the range of NO<sub>x</sub> dollar-per-ton values are presented in Table V.44

TABLE V.42—PRESENT VALUE OF NO<sub>x</sub> EMISSIONS REDUCTION FOR POTENTIAL STANDARDS FOR BEVERAGE VENDING MACHINES \*

TSL	(Million 2014\$)	
	3% discount rate	7% discount rate
<b>Power Sector Emissions</b>		
1 .....	3	1
2 .....	13	5
3 .....	24	9
4 .....	47	18

TABLE V.42—PRESENT VALUE OF NO<sub>x</sub> EMISSIONS REDUCTION FOR POTENTIAL STANDARDS FOR BEVERAGE VENDING MACHINES \*—Continued

TSL	(Million 2014\$)	
	3% discount rate	7% discount rate
5 .....	70	27
<b>Upstream Emissions</b>		
1 .....	2	1
2 .....	9	3
3 .....	17	7
4 .....	33	13
5 .....	51	19
<b>Total Emissions</b>		
1 .....	6	2
2 .....	22	8
3 .....	42	16
4 .....	80	31
5 .....	121	46

\*Results are based on the low benefit-per-ton values.

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) No other factors were considered in this analysis.

8. Summary of National Economic Impacts

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the customer savings calculated for each TSL considered in this rulemaking. Table V.43 presents the NPV values that result from adding the

estimates of the potential economic benefits resulting from reduced CO<sub>2</sub> and NO<sub>x</sub> emissions in each of four valuation scenarios to the NPV of customer savings calculated for each TSL considered in this rulemaking, at both a 7-percent and 3-percent discount rate. The CO<sub>2</sub> values used in the columns of each table correspond to the four sets of SCC values discussed above.

TABLE V.43—NET PRESENT VALUE OF CUSTOMER SAVINGS COMBINED WITH PRESENT VALUE OF MONETIZED BENEFITS FROM CO<sub>2</sub> AND NO<sub>x</sub> EMISSIONS REDUCTIONS

TSL	≤Customer NPV at 3% discount rate added with (billion 2014\$*):			
	SCC case \$12.2/ metric ton and 3% low NO <sub>x</sub> value	SCC Case \$40.0/ metric ton and 3% low NO <sub>x</sub> value	SCC case \$62.3/ metric ton and 3% low NO <sub>x</sub> value	SCC case \$117/ metric ton and 3% low NO <sub>x</sub> value
1 .....	0.088	0.114	0.132	0.179
2 .....	0.077	0.170	0.241	0.414
3 .....	0.599	0.780	0.916	1.251
4 .....	(0.209)	0.137	0.398	1.041
5 .....	(1.685)	(1.162)	(0.767)	0.203
	Customer NPV at 7% discount rate added with (billion 2014\$*):			
TSL	SCC case \$12.2/ metric ton and 7% low NO <sub>x</sub> value	SCC case \$40.0/ metric ton and 7% low NO <sub>x</sub> value	SCC case \$62.3/ metric ton and 7% low NO <sub>x</sub> value	SCC case \$117/ metric ton and 7% low NO <sub>x</sub> value
1 .....	0.039	0.065	0.083	0.130
2 .....	0.040	0.133	0.204	0.377
3 .....	0.272	0.453	0.589	0.924
4 .....	(0.078)	0.268	0.530	1.173
5 .....	(0.827)	(0.305)	0.090	1.061

\* Parentheses indicate negative values.

Note: The SCC case values represent the global SCC in 2015, in 2014\$, for each case.

In considering the above results, two issues are relevant. First, the national operating cost savings are domestic U.S. monetary savings that occur as a result of market transactions, while the value of CO<sub>2</sub> reductions is based on a global value. Second, the assessments of operating cost savings and the SCC are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of equipment shipped in 2019 to 2048. Because CO<sub>2</sub> emissions have a very long residence time in the atmosphere,<sup>83</sup> the SCC values in future years reflect future climate-related impacts that continue beyond 2100.

C. Conclusion

When considering standards, the new or amended energy conservation standards that DOE adopts for any type (or class) of covered equipment must be

designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)). The new or amended standard must also result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

In this final rule, DOE considered the impacts of the standards for beverage vending machines at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next-most-efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader in understanding the benefits and/or burdens of each TSL, tables in this section summarize the quantitative analytical results for each TSL, based on the assumptions and methodology discussed herein. The efficiency levels contained in each TSL are described in section V.A of this final rule. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of customers who may be disproportionately affected by a national standard, impacts on employment, technological feasibility, manufacturer costs, and impacts on competition may affect the economic results presented. Section V.B.1.b of this final rule presents the estimated impacts of each TSL for these subgroups. DOE discusses the impacts on direct employment in BVM manufacturing in section V.B.2 of this final rule, and discusses the indirect employment impacts in section V.B.3.c of this final rule.

<sup>83</sup> The atmospheric lifetime of CO<sub>2</sub> is estimated of the order of 30–95 years. Jacobson, MZ. "Correction to 'Control of fossil-fuel particulate black carbon and organic matter, possibly the most effective method of slowing global warming.'" *J. Geophys. Res.* 110. pp. D14105 (2005).



1. Benefits and Burdens of TSLs Considered for BVM Standards  
 Table V.44, Table V.45, and Table V.46 summarize the quantitative impacts estimated for each TSL for beverage vending machines. The national impacts are measured over the lifetime of beverage vending machines purchased in the 30-year period that begins in the year of compliance with amended standards (2019–2048). The energy savings, emissions reductions, and value of emissions reductions refer to FFC results.

TABLE V.44—SUMMARY OF ANALYTICAL RESULTS FOR BEVERAGE VENDING MACHINES: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
National FFC Energy Savings ( <i>quads</i> ) .....	0.02	0.06	0.12	0.24	0.36
NPV of Customer Benefits (2014\$ billion):					
3% Discount Rate .....	0.08	0.03	0.51	(0.38)	(1.95)
7% Discount Rate .....	0.03	0.01	0.21	(0.20)	(1.02)
Cumulative Emissions Reduction (Total FFC Emissions):					
CO <sub>2</sub> (MMt) .....	1.02	3.81	7.37	14.14	21.36
NO <sub>x</sub> (kt) .....	1.84	6.86	13.26	25.44	38.45
Hg (t) .....	0.002	0.01	0.02	0.03	0.05
N <sub>2</sub> O (kt) .....	0.01	0.05	0.09	0.17	0.26
N <sub>2</sub> O (kt CO <sub>2</sub> eq) .....	3.28	12.23	23.63	45.34	68.47
CH <sub>4</sub> (kt) .....	4.38	16.32	31.52	60.50	91.45
CH <sub>4</sub> (kt CO <sub>2</sub> eq) .....	122.70	457.00	882.67	1,693.88	2,560.72
SO <sub>2</sub> (kt) .....	0.60	2.22	4.29	8.23	12.43
Value of Cumulative Emissions Reduction (Total FFC Emissions):					
CO <sub>2</sub> (2014\$ million)** .....	7 to 97	26 to 363	49 to 701	95 to 1,345	143 to 2,031
NO <sub>x</sub> —3% Discount Rate (2014\$ million) .....	6 to 13	22 to 48	42 to 92	80 to 177	121 to 267
NO <sub>x</sub> —7% Discount Rate (2014\$ million) .....	2 to 5	8 to 19	16 to 36	31 to 69	46 to 104

\* MMT is million metric ton. kt is thousand tons. t is ton. CO<sub>2</sub>eq is the quantity of CO<sub>2</sub> that would have the same global warming potential (GWP).

\*\* Range of the economic value of CO<sub>2</sub> reductions is based on estimates of the global benefit of reduced CO<sub>2</sub> emissions.

TABLE V.45—NPV OF CUSTOMER BENEFITS BY EQUIPMENT CLASS

Equipment class	Discount rate (%)	Trial standard level* (billion 2014\$)				
		1	2	3	4	5
Class A .....	3	0.054	(0.124)	0.054	(0.450)	(1.281)
	7	0.021	(0.058)	0.021	(0.213)	(0.645)
Class B .....	3	0.002	0.050	0.116	(0.079)	(0.435)
	7	0.001	0.021	0.047	(0.041)	(0.235)
Combination A .....	3	0.013	0.065	0.208	0.056	(0.117)
	7	0.005	0.027	0.085	0.015	(0.075)
Combination B .....	3	0.006	0.038	0.129	0.089	(0.116)
	7	0.003	0.016	0.053	0.035	(0.063)
Total—All Classes .....	3	0.076	0.029	0.508	(0.384)	(1.949)
	7	0.030	0.006	0.207	(0.204)	(1.017)

\* Parentheses indicate negative values.

TABLE V.46—SUMMARY OF ANALYTICAL RESULTS FOR BEVERAGE VENDING MACHINES: MANUFACTURER AND CUSTOMER IMPACTS

	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Manufacturer Impacts:					
Industry NPV relative to a case without standards value of 94.8 (million 2014\$) .....	94.1 to 94.4	94.0 to 94.7	94.0 to 95.2	91.5 to 98.8	79.3 to 112.6
Industry NPV (% Change) .....	−0.7 to −0.4	−0.8 to −0.1	−0.8 to 0.4	−3.4 to 4.2	−16.4 to 18.9
Customer Mean LCC Savings* (2014\$):					
Class A CO <sub>2</sub> .....	65	(217)	65	(937)	(1,424)
Class A Propane .....	0	71	0	454	(817)
Class B CO <sub>2</sub> .....	0	0	42	(448)	(1,017)
Class B Propane .....	8	185	361	333	(566)
Combination A CO <sub>2</sub> .....	57	286	990	(234)	(980)
Combination A Propane .....	58	290	772	793	(470)
Combination B CO <sub>2</sub> .....	30	179	597	359	(870)
Combination B Propane .....	30	179	610	476	(433)
Customer Simple PBP** (years):					
Class A CO <sub>2</sub> .....	2.0	N/A	2.0	N/A	N/A
Class A Propane .....	1.1	1.2	1.1	0.9	N/A
Class B CO <sub>2</sub> .....	0.4	1.0	1.1	N/A	58.8

TABLE V.46—SUMMARY OF ANALYTICAL RESULTS FOR BEVERAGE VENDING MACHINES: MANUFACTURER AND CUSTOMER IMPACTS—Continued

	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Class B Propane .....	0.7	0.6	0.5	1.3	64.7
Combination A CO <sub>2</sub> .....	0.2	0.2	0.8	26.1	39.4
Combination A Propane .....	0.1	0.1	0.7	1.7	24.7
Combination B CO <sub>2</sub> .....	0.1	0.1	0.5	1.6	N/A
Combination B Propane .....	0.1	0.1	0.3	0.8	N/A
Distribution of Customer LCC Impacts— Net Cost (%):					
Class A CO <sub>2</sub> .....	0	100	0	100	100
Class A Propane .....	0	0	0	0	100
Class B CO <sub>2</sub> .....	0	0	8	99	100
Class B Propane .....	3	0	0	1	93
Combination A CO <sub>2</sub> .....	0	0	0	76	93
Combination A Propane .....	0	0	0	1	82
Combination B CO <sub>2</sub> .....	0	0	0	7	97
Combination B Propane .....	0	0	0	1	86

\* Parentheses indicate negative values.

\*\* Values of N/A indicate paybacks that are not possible, given that more efficient equipment is not only more expensive to purchase, but also costs more to operate.

DOE also notes that the economic literature provides a wide-ranging discussion of how customers trade-off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why customers appear to undervalue energy efficiency improvements. There is evidence that customers undervalue future energy savings as a result of (1) a lack of information; (2) a lack of sufficient salience of the long-term or aggregate benefits; (3) a lack of sufficient savings to warrant delaying or altering purchases (e.g., an inefficient ventilation fan in a new building or the delayed replacement of a water pump); (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments; (5) computational or other difficulties associated with the evaluation of relevant tradeoffs; and (6) a divergence in incentives (e.g., renter versus building owner, builder versus home buyer). Other literature indicates that with less than perfect foresight and a high degree of uncertainty about the future, customers may trade off these types of investments at a higher-than-expected rate between current consumption and uncertain future energy cost savings. This undervaluation suggests that regulation that promotes energy efficiency can produce significant net private gains (as well as producing social gains by, for example, reducing pollution).

While DOE is not prepared at present to provide a fuller quantifiable framework for estimating the benefits and costs of changes in customer purchase decisions due to new and

amended energy conservation standards, DOE is committed to developing a framework that can support empirical quantitative tools for improved assessment of the customer welfare impacts of appliance standards. DOE posted a paper that discusses the issue of customer welfare impacts of appliance energy efficiency standards, and potential enhancements to the methodology by which these impacts are defined and estimated in the regulatory process.<sup>84</sup>

As mentioned previously, in this final rule, DOE considered the impacts of the standards for beverage vending machines at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next-most-efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

Accordingly, DOE first considered TSL 5, which corresponds to the max-tech level for all the equipment classes and offers the potential for the highest cumulative energy savings through the analysis period from 2019 to 2048. The estimated energy savings from TSL 5 are 0.36 quads of energy, an amount DOE considers significant. TSL 5 has an estimated NPV of customer benefit of negative \$1.017 billion using a 7-percent

discount rate, and negative \$1.949 billion using a 3-percent discount rate.

The cumulative emissions reductions at TSL 5 are 21.4 million metric tons of CO<sub>2</sub>, 12.4 thousand tons of SO<sub>2</sub>, 38.5 thousand tons of NO<sub>x</sub>, 0.05 tons of Hg, 91.5 thousand tons of CH<sub>4</sub>, and 0.3 thousand tons of N<sub>2</sub>O. The estimated monetary value of the CO<sub>2</sub> emissions reductions at TSL 5 ranges from \$143 million to \$2,031 million.

At TSL 5, the average LCC savings range from negative \$1,424 to negative \$433, depending on equipment class. The fraction of customers incurring a net cost range from 82 percent for Combination A machines with propane refrigerant to 100 percent for all Class A machines and Class B machines with CO<sub>2</sub> refrigerant. Accordingly, approximately 90 percent of customers purchasing Class B propane equipment, Combination A CO<sub>2</sub> equipment, Combination B CO<sub>2</sub>, and Combination B propane equipment would incur next cost, or 93, 93, 97, and 86 percent of customers, respectively.

At TSL 5, the projected change in INPV ranges from a decrease of \$15.5 million to an increase of \$17.9 million. If the lower bound of the range of impacts is reached, TSL 5 could result in a net loss of up to 16.4 percent in INPV for manufacturers.

Based on these results, the Secretary concludes that at TSL 5 for beverage vending machines, the benefits of energy savings, emission reductions, and the estimated monetary value of the CO<sub>2</sub> emissions reductions would be outweighed by the negative NPV, negative LCC savings, and the negative INPV on manufacturers. Consequently, DOE has concluded that TSL 5 is not economically justified.

<sup>84</sup> Sanstad, A. *Notes on the Economics of Household Energy Consumption and Technology Choice*. 2010. Lawrence Berkeley National Laboratory, Berkeley, CA. [https://www1.eere.energy.gov/buildings/appliance\\_standards/pdfs/consumer\\_ee\\_theory.pdf](https://www1.eere.energy.gov/buildings/appliance_standards/pdfs/consumer_ee_theory.pdf).

Next DOE considered TSL 4, which saves an estimated total of 0.24 quads of energy, an amount DOE considers significant. TSL 4 has an estimated NPV of customer benefit of negative \$0.20 billion using a 7-percent discount rate, and negative \$0.38 billion using a 3-percent discount rate.

The cumulative emissions reductions at TSL 4 are 14.1 million metric tons of CO<sub>2</sub>, 8.2 thousand tons of SO<sub>2</sub>, 25.4 thousand tons of NO<sub>x</sub>, 0.03 tons of Hg, 60.5 thousand tons of CH<sub>4</sub>, and 0.2 thousand tons of N<sub>2</sub>O. The estimated monetary value of the CO<sub>2</sub> emissions reductions at TSL 4 ranges from \$95 million to \$1,345 million.

At TSL 4, the average LCC savings ranges from negative \$937 to positive \$793, depending on equipment class. The fraction of customers incurring a net cost range from 0 percent, for Class A propane equipment, to 100 percent, for Class A CO<sub>2</sub> equipment, depending on equipment class. As shown in Table V.46, a large percentage of Class B and Combination A CO<sub>2</sub> equipment incur a net cost, and overall, a majority of customers (53.8 percent) would experience a net cost at TSL 4.

Regarding impacts on manufacturers, at TSL 4, the projected change in INPV ranges from a decrease of \$3.2 million to an increase of \$4.0 million. At TSL 4, DOE recognizes the risk of negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the lower bound of the range of impacts is reached, as DOE expects, TSL 4 could result in a net loss of up to 3.4 percent in INPV for manufacturers.

Based on these results, the Secretary concludes that at TSL 4 for beverage vending machines, the benefits of energy savings, emission reductions, and the estimated monetary value of the CO<sub>2</sub> emissions reductions would be outweighed by the negative NPV, negative LCC savings, and the negative INPV on manufacturers. Consequently, DOE has concluded that TSL 4 is not economically justified.

Next DOE considered TSL 3, which saves an estimated total of 0.12 quads of energy, an amount DOE considers significant. TSL 3 has an estimated NPV of customer benefit of \$0.20 billion using a 7-percent discount rate, and \$0.51 billion using a 3-percent discount rate.

The cumulative emissions reductions at TSL 3 are 7.4 million metric tons of CO<sub>2</sub>, 4.3 thousand tons of SO<sub>2</sub>, 13.3

thousand tons of NO<sub>x</sub>, 0.02 tons of Hg, 31.5 thousand tons of CH<sub>4</sub>, and 0.09 thousand tons of N<sub>2</sub>O. The estimated monetary value of the CO<sub>2</sub> emissions reductions at TSL 3 ranges from \$49 million to \$701 million.

At TSL 3, the average LCC savings ranges from \$0 to \$990, depending on equipment class. There are no customers incurring a net cost for almost all equipment classes, except for Class B equipment with CO<sub>2</sub> refrigerant for which 8 percent of customers experience a net cost.

At TSL 3, the projected change in INPV ranges from a decrease of \$0.7 million to an increase of \$0.4 million. If the lower bound of the range of impacts is reached, as DOE expects, TSL 3 could result in a net loss of up to 0.8 percent in INPV for manufacturers.

After carefully considering the analysis results and weighing the benefits and burdens of TSL 3, DOE believes that setting the standards for beverage vending machines at TSL 3 represents the maximum improvement in energy efficiency that is technologically feasible and economically justified. TSL 3 is technologically feasible because the technologies required to achieve these levels already exist in the current market and are available from multiple manufacturers. TSL 3 is economically justified because the benefits to the nation in the form of energy savings, customer NPV at both a 3-percent and 7-percent discount rate, and emissions reductions outweigh the costs associated with reduced INPV and potential effects of reduced manufacturing capacity.

Therefore, DOE is adopting new and amended energy conservation standards for beverage vending machines at TSL 3 as indicated in Table V.47.

TABLE V.47—ADOPTED ENERGY CONSERVATION STANDARDS FOR BEVERAGE VENDING MACHINES

Equipment class *	Adopted energy conservation standards** maximum daily energy consumption (MDEC) kWh/day †
A .....	$0.052 \times V + 2.43 \ddagger$
B .....	$0.052 \times V + 2.20 \ddagger$
Combination A .....	$0.086 \times V + 2.66 \ddagger$

TABLE V.47—ADOPTED ENERGY CONSERVATION STANDARDS FOR BEVERAGE VENDING MACHINES—Continued

Equipment class *	Adopted energy conservation standards** maximum daily energy consumption (MDEC) kWh/day †
Combination B .....	$0.111 \times V + 2.04 \ddagger$

\* See section IV.A.1 of the final rule for a discussion of equipment classes.

\*\* "V" is the representative value of refrigerated volume (ft<sup>3</sup>) of the BVM model, as measured in accordance with the method for determining refrigerated volume adopted in the recently amended DOE test procedure for beverage vending machines and appropriate sampling plan requirements. 80 FR 45758 (July 31, 2015). See section III.B and V.A for more details.

† kilowatt hours per day.

‡ Trial Standard Level (TSL) 3.

2. Summary of Annualized Benefits and Costs of the Adopted Standards

The benefits and costs of the adopted standards can also be expressed in terms of annualized values. The annualized net benefit is the sum of: (1) The annualized national economic value (expressed in 2014\$) of the benefits from operating equipment that meet the adopted standards (consisting primarily of operating cost savings from using less energy, minus increases in equipment purchase costs, and (2) the annualized monetary value of the benefits of CO<sub>2</sub> and NO<sub>x</sub> emission reductions.<sup>85</sup>

Table V.48 shows the annualized values for beverage vending machines under TSL 3, expressed in 2014\$. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO<sub>2</sub> reductions (for which DOE used a 3-percent discount rate along with the average SCC series corresponding to a value of \$40.0 per metric ton in 2015 (2014\$)), the estimated cost of the adopted standards for BVM equipment is \$1.8 million per year in increased equipment costs, while the estimated benefits are \$22.2 million per year in reduced equipment operating costs, \$12.8 million per year in CO<sub>2</sub> reductions, and \$1.6 million per year in reduced NO<sub>x</sub> emissions. In this case, the net benefit amounts to \$35 million per year.

Using a 3-percent discount rate for all benefits and costs and the average SCC

value of CO<sub>2</sub> reductions, for which DOE used case-specific discount rates. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year that yields the same present value.

<sup>85</sup> To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2015, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated

with each year's shipments in the year in which the shipments occur (2020, 2030, etc.), and then discounted the present value from each year to 2015. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the

series corresponding to a value of \$40.0 million per year in increased equipment costs, while the estimated annual benefits are \$30.2 million in reduced operating costs, \$12.8 million in CO<sub>2</sub> reductions, and \$2.3 million in reduced NO<sub>x</sub> emissions. In this case, the net benefit amounts to \$43 million per year.

TABLE V.48—ANNUALIZED BENEFITS AND COSTS OF ADOPTED STANDARDS (TSL 3) FOR BEVERAGE VENDING MACHINES

	Discount rate	(Million 2014\$/year)		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
<b>Benefits</b>				
Customer Operating Cost Savings .....	7% .....	22 .....	14 .....	27
	3% .....	30 .....	18 .....	36
CO <sub>2</sub> Reduction Value (\$12.2/metric ton) ** .....	5% .....	4 .....	2 .....	4
CO <sub>2</sub> Reduction Value (\$40.0/metric ton) ** .....	3% .....	13 .....	8 .....	14
CO <sub>2</sub> Reduction Value (\$62.3/metric ton) ** .....	2.5% .....	19 .....	12 .....	21
CO <sub>2</sub> Reduction Value (\$117/metric ton) ** .....	3% .....	39 .....	26 .....	44
NO <sub>x</sub> Reduction Value † .....	7% .....	2 .....	1 .....	4
	3% .....	2 .....	2 .....	6
Total Benefits ‡ .....	7% range .....	28 to 63 .....	17 to 41 .....	36 to 75
	7% .....	37 .....	23 .....	46
	3% range .....	36 to 72 .....	22 to 46 .....	46 to 86
	3% .....	45 .....	28 .....	56
<b>Costs</b>				
Customer Incremental Equipment Costs .....	7% .....	1.79 .....	0.98 .....	2.10
	3% .....	1.89 .....	1.01 .....	2.13
<b>Net Benefits</b>				
Total ‡ .....	7% range .....	26 to 61 .....	16 to 40 .....	34 to 73
	7% .....	35 .....	22 .....	44
	3% range .....	34 to 70 .....	21 to 45 .....	44 to 84
	3% .....	43 .....	27 .....	54

\* This table presents the annualized costs and benefits associated with beverage vending machines shipped in 2019–2048. These results include benefits to customers that accrue after the last year of analyzed shipments (2048) from the equipment purchased in during the 30-year analysis period. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The primary, low benefits, and high benefits estimates utilize projections of energy prices from the AEO2015 Reference case, Low Economic Growth case, and High Economic Growth case, respectively as well as the default shipments scenario along with the low and high shipments scenarios. In addition, incremental equipment costs reflect a medium decline rate for projected equipment price trends in the primary estimate, a low decline rate for projected equipment price trends in the low benefits estimate, and a high decline rate for projected equipment price trends in the high benefits estimate. The methods used to derive projected price trends are explained in appendix 8C of the technical support document.

\*\* The CO<sub>2</sub> values represent global monetized SCC values, in 2014\$, in 2015 under several scenarios. The first three cases use the averages of SCC distributions calculated using 5-percent, 3-percent, and 2.5-percent discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3-percent discount rate. The SCC time series incorporates an escalation factor.

† The \$/ton values used for NO<sub>x</sub> are described in section IV.L.2. The Primary and Low Benefits Estimates used the values at the low end of the ranges estimated by EPA, while the High Benefits Estimate uses the values at the high end of the ranges.

‡ Total benefits for both the 3-percent and 7-percent cases are derived using the series corresponding to the average SCC with a 3-percent discount rate (\$40.0/metric ton case). In the rows labeled “7% plus CO<sub>2</sub> range” and “3% plus CO<sub>2</sub> range,” the operating cost and NO<sub>x</sub> benefits are calculated using the labeled discount rate, and those values are added to the full range of CO<sub>2</sub> values.

**VI. Procedural Issues and Regulatory Review**

*A. Review Under Executive Orders 12866 and 13563*

Section 1(b)(1) of Executive Order 12866, “Regulatory Planning and Review,” 58 FR 51735 (Oct. 4, 1993), requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. The problems that the adopted standards for beverage vending machines are intended to address are as follows:

(1) Insufficient information and the high costs of gathering and analyzing relevant information leads some customers to miss opportunities to make cost-effective investments in energy efficiency.

(2) In some cases the benefits of more efficient equipment are not realized due to misaligned incentives between purchasers and users. An example of such a case is when the equipment purchase decision is made by a building contractor or building owner who does not pay the energy costs.

(3) There are external benefits resulting from improved energy efficiency of equipment that is not captured by the users of such

equipment. These benefits include externalities related to public health, environmental protection and national energy security that are not reflected in energy prices, such as reduced emissions of air pollutants and greenhouse gases that impact human health and global warming. DOE attempts to qualify some of the external benefits through use of social cost of carbon values.

The Administrator of the Office of Information and Regulatory Affairs (OIRA) in the OMB has determined that this regulatory action is not a significant regulatory action under section (3)(f) of Executive Order 12866. Section 6(a)(3)(A) of the Executive Order states

that absent a material change in the development of the planned regulatory action, regulatory action not designated as significant will not be subject to review under section 6(a)(3) unless, within 10 working days of receipt of DOE's list of planned regulatory actions, the Administrator of OIRA notifies the agency that OIRA has determined that a planned regulation is a significant regulatory action within the meaning of the Executive order.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. 76 FR 3281 (Jan. 21, 2011). EO 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, OIRA has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that this final rule is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

### *B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (FRFA) for any final rule. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (<http://energy.gov/gc/office-general-counsel>). DOE has prepared the following FRFA for the equipment that are the subject of this rulemaking.

For manufacturers of BVM equipment, the SBA has set a size threshold, which defines those entities classified as "small businesses" for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. See 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at [www.sba.gov/content/table-small-business-size-standards](http://www.sba.gov/content/table-small-business-size-standards). BVM equipment manufacturing is classified under NAICS 333318, "Other Commercial and Service Industry Machinery Manufacturing." The SBA sets a threshold of 1,000 employees or less for an entity to be considered as a small business for this category.

#### 1. Description of Estimated Number of Small Entities Regulated

During its market survey, DOE used available public information to identify potential small manufacturers. DOE's research involved public databases (*e.g.*, DOE's Compliance Certification Management System (CCMS),<sup>86</sup> and ENERGY STAR<sup>87</sup> databases), individual company Web sites, and market research tools (*e.g.*, Hoovers reports<sup>88</sup>) to create a list of companies that manufacture or sell equipment covered by this rulemaking. DOE also asked stakeholders and industry representatives during manufacturer interviews and at DOE public meetings if they were aware of any other small

manufacturers. DOE reviewed publicly available data and contacted select companies on its list, as necessary, to determine whether they met the SBA's definition of a small business manufacturer of covered BVM equipment. DOE screened out companies that do not offer equipment covered by this rulemaking, do not meet the definition of a "small business," or are foreign-owned.

DOE identified eight companies selling BVM equipment in the United States. Four are small domestic manufacturers and one is a small foreign manufacturer with domestic-sited subsidiary that serves as its marketing arm in the United States. DOE contacted all identified BVM manufacturers for interviews. Ultimately, DOE interviewed manufacturers representing approximately 78 percent of BVM equipment industry shipments and approximately 50 percent of the small business shipments.

#### 2. Description and Estimate of Compliance Requirements

The four small domestic BVM manufacturers account for approximately 15–20 percent of BVM equipment shipments. The small domestic manufacturers are Automated Merchandising Systems, Multi-Max Systems, Seaga, and Wittern.

In general, the small manufacturers focus on the Combination A and Combination B market segments. Together, the four domestic and one foreign small manufacturer account for 74 percent of Combination A and Combination B sales. Based on the shipments analysis, Combination A and Combination B shipments account for roughly 18 percent of the total BVM market. The market share estimates are based on aggregate information compiled through manufacturer interviews. The interview process is described in section IV.J.1 of this notice and chapter 12 of the TSD. The interview guide used for interviews was published as Appendix 12B of the NOPR TSD. The shipments percentages are from shipments analysis, which is explained in section IV.G of this notice.

The remaining 82 percent of BVM shipments are Class A and Class B units. Based on data obtained during manufacturer interviews, DOE estimated that small business manufacturers (including the one foreign small manufacturer) account for approximately 5 percent of the market for each of the Class A and Class B market segments. The remaining 95 percent of both Class A and Class B market segments are held by the three

<sup>86</sup> "CCMS." CCMS. [www.regulations.doe.gov/certification-data/](http://www.regulations.doe.gov/certification-data/).

<sup>87</sup> ENERGY STAR Certified Vending Machines. June 6, 2013. [www.energystar.gov/products/certified-products](http://www.energystar.gov/products/certified-products).

<sup>88</sup> Hoovers. [www.hoovers.com/](http://www.hoovers.com/).

large manufacturers: Crane, Royal Vendors, and SVA.

DOE derived industry conversion using a top-down approach described in methodology section IV.J.2.a. Using product platform counts by equipment type (i.e., Class A, Class B, Combination A, Combination B) and manufacturer, DOE estimated the distribution of industry conversion costs between small

manufacturers and large manufacturers. Using its count of manufacturers, DOE calculated capital conversion costs (Table VI.1) and product conversion costs (Table VI.2) for an average small manufacturer versus an average large manufacturer. To provide context on the size of the conversion costs relative to the size of the businesses, DOE presents

the conversion costs relative to annual revenue and annual operating profit under the final standard level, as shown in VI.3. The current annual revenue and annual operating profit estimates are derived from the GRIM's industry revenue calculations and the market share breakdowns of small versus large manufacturers.

TABLE VI.1—COMPARISON OF TYPICAL SMALL AND LARGE MANUFACTURER'S CAPITAL CONVERSION COSTS \*

Trial standard level	Capital conversion costs for typical small manufacturer (2014\$ millions)	Capital conversion costs for typical large manufacturer (2014\$ millions)
TSL 1 .....	0.03	0.06
TSL 2 .....	0.03	0.06
TSL 3 .....	0.03	0.06
TSL 4 .....	0.11	0.20
TSL 5 .....	0.31	0.70

\* Capital conversion costs are the capital investments made during the 3-year period between the publication of the final rule and the compliance year of the final standard.

TABLE VI.2—COMPARISON OF TYPICAL SMALL AND LARGE MANUFACTURER'S PRODUCT CONVERSION COSTS \*

Trial standard level	Product conversion costs for typical small manufacturer (2014\$ millions)	Product conversion costs for typical large manufacturer (2014\$ millions)
TSL 1 .....	0.06	0.09
TSL 2 .....	0.06	0.09
TSL 3 .....	0.06	0.09
TSL 4 .....	0.12	0.19
TSL 5 .....	0.23	0.54

\* Product conversion costs are the R&D and other product development investments made during the 3-year period between the publication of the final rule and the compliance year of the final standard.

TABLE VI.3—COMPARISON OF CONVERSION COSTS FOR AN AVERAGE SMALL AND AN AVERAGE LARGE MANUFACTURER AT TSL 3

	Capital conversion cost (2014\$ millions)	Product conversion cost (2014\$ millions)	Conversion costs/annual revenue (%)	Conversion costs/annual operating profit (%)	Conversion costs/conversion period revenue* (%)	Conversion costs/conversion period operating profit* (%)
Small Manufacturer .....	0.03	0.06	1.5	26.4	0.5	8.8
Large Manufacturer .....	0.06	0.09	0.3	5.8	0.1	1.9

\* The conversion period, the time between the final rule publication year and the compliance year for this rulemaking, is 3 years.

At the established standard level, DOE estimates total conversion costs associated with new and amended energy conservation standards for an average small manufacturer to be \$87,000, which is approximately 1.5 percent of annual revenue and 26.4 percent of annual operating profit. This suggests that an average small manufacturer would need to reinvest roughly 8.8 percent of its operating profit per year over the conversion period to comply with standards. In addition, DOE found that 17 of 19 Class A models in the combined CCMS and

ENERGY STAR databases will be compliant with standards as amended in this final rule, with no modification required under appendix A. This includes units from AMS, Wittern, and Seaga (all small manufacturers), in addition to Royal, Crane, and SandenVendo (all large manufacturers).

The total conversion costs associated with new and amended energy conservation standards for an average large manufacturer is \$150,000, which is approximately 0.3 percent of annual revenue and 5.8 percent of annual operating profit. This suggests that an

average large manufacturer would need to reinvest roughly 1.9 percent of its operating profit per year over the 3-year conversion period.

Product conversion costs, which include one-time investments such as equipment redesigns and industry certification, are a key driver of conversion investments to comply with the established level of standards. Product conversion costs tend to be fixed and do not scale with sales volume. For each equipment platform, small businesses must make redesign investments that are similar to their

large competitors. However, because small manufacturers' costs are spread over a lower volume of units, it takes longer for small manufacturers to recover their investments. Similarly, capital conversion costs are spread across a lower volume of shipments for small business manufacturers. DOE notes that all small manufacturers manufacturer both conventional (*i.e.*, Class A and Class B equipment) as well as combination equipment; there are no small manufacturers that manufacturer only combination equipment. DOE's product research suggests the combination and conventional equipment from the same manufacturer often share design elements, such as cabinet and glass pack designs. Manufacturers that produce both combination and conventional equipment using shared design elements would experience conversion costs lower than those estimated since a single redesign effort could be leveraged across models in multiple equipment classes.

DOE notes that, in response to stakeholder feedback relating to the 2015 BVM ECS NOPR, it has updated its engineering analysis and standard efficiency levels for this final rule, resulting in less burdensome standard levels for small manufacturers of beverage vending machines relative to the 2015 BVM ECS NOPR proposal. In the 2015 BVM ECS NOPR, DOE estimated that the average small manufacturer would incur costs of \$217,000 as a result of proposed standards. For this final rule, DOE estimates that the average small manufacturer will incur costs of \$87,000 as a result of final standards.

### 3. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with today's final rule.

### 4. Significant Alternatives to the Rule

DOE received two comments concerning alternative programs. SVA expressed the belief that voluntary programs such as ENERGY STAR are more effective in driving the market towards more efficient equipment than mandatory energy conservation standards. (SVA, Public Meeting Transcript, No. 48 at p. 117) ASAP commented that while ENERGY STAR has been effective in moving the market towards more efficient equipment, DOE's final standards can achieve far greater savings. (ASAP, Public Meeting Transcript, No. 48 at p. 118) Neither comment provided any supporting data. In addition, SBA Advocacy stated its

belief that DOE did not adequately analyze the impact of any alternatives presented in the RIA on small manufacturers and questioned DOE's analysis of lower TSLs as alternatives to the proposed standard if EPCA restricts DOE from selecting such less burdensome standards. (SBA Advocacy, No. 61 at p. 4).

DOE thanks SVA and ASAP for their comments regarding the efficacy of ENERGY STAR in driving the market towards increased efficiency and agrees with the ASAP assessment of ENERGY STAR and DOE's energy conservation standards as being complementary and more effective than voluntary standards alone. In particular, in response to SVA's comment regarding the efficacy of voluntary programs like ENERGY STAR in achieving energy savings, DOE considered such alternatives in the Regulatory Impact Analysis. However, DOE notes that it is difficult to confidently estimate the future impacts of voluntary or market-based programs because DOE does not control the stringency of any such programs compared to the current equipment efficiency distributions. Further, unlike the energy conservation standards adopted in this final rule, compliance with such programs or incentives is voluntary, and it is therefore difficult to estimate savings since it is unclear if and how many manufacturers or customers will choose to participate. In addition, as noted by ASAP, the benefits of any such voluntary programs would likely be significantly less than DOE's amended energy conservation standards, since it is unlikely that there would be significant percent market penetration or commensurately more-stringent energy efficiency targets for beverage vending machines.

In response to SBA Advocacy's comment regarding DOE's analysis of the impacts of regulatory alternatives on small businesses, the discussion in the previous section analyzes impacts on small businesses that would result from DOE's final rule, TSL 3. In reviewing alternatives to the final rule, DOE examined energy conservation standards set at lower efficiency levels. As a result of these updates, DOE found that TSL 1 and TSL 2 would not reduce the impacts on small business manufacturers (relative to TSL 3) and both would come at the expense of a reduction in energy savings and a reduction in consumer NPV. TSL 1 achieves 86 percent lower energy savings compared to the energy savings at TSL 3. TSL 2 achieves 48 percent lower energy savings compared to the energy savings at TSL 3. The estimated conversion costs for small business

manufacturers are estimated to be the same at TSL 1 and TSL 2 as at TSL 3 (\$87,000).

Additionally, DOE considered standards at higher efficiency levels, corresponding to TSL 4 and TSL 5. TSL 4 achieves approximately 94 percent higher savings than TSL 3, and TSL 5 achieves approximately 191 percent higher savings than TSL 3. However, DOE rejected this TSL due to the negative NPV results.

Furthermore, the estimated conversion costs for small business manufacturers are significantly higher at TSL 4 and TSL 5 than at TSL 3. To comply with TSL 4, the average small manufacturer must make \$228,000 in conversion cost investments, which is \$141,000 more than at TSL 3. To comply with TSL 5, the average small manufacturer must make \$542,000 in conversion cost investments, which is \$455,000 more than at TSL 3.

DOE believes that establishing standards at TSL 3 balances the benefits of the energy savings at TSL 3 with the potential burdens placed on beverage vending machine manufacturers, including small business manufacturers. Accordingly, DOE is declining to adopt one of the other TSLs considered in the analysis, or the other policy alternatives detailed as part of the regulatory impacts analysis included in chapter 17 of the final rule TSD.

Regarding SBA Advocacy's comment questioning DOE's analysis of lower TSLs are reasonable regulatory alternatives, DOE is following SBA Advocacy's public guidance to Federal agencies for how to comply with the Regulatory Flexibility Analysis Act, wherein SBA Advocacy states that agencies "should consider a variety of mechanisms to reach the regulatory objective without regard to whether that mechanism is statutorily permitted."<sup>89</sup>

DOE also notes that additional compliance flexibilities may be available through other means. EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed \$8 million may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standard. Additionally, Section 504 of the Department of Energy Organization Act, 42 U.S.C. 7194, provides authority for the Secretary to adjust a rule issued under EPCA in order to prevent "special hardship,

<sup>89</sup> U.S. Small Business Administration Office of Advocacy, *A Guide for Government Agencies, How to Comply with the Regulatory Flexibility Act*, May 2012. [https://www.sba.gov/sites/default/files/rfaguide\\_0512\\_0.pdf](https://www.sba.gov/sites/default/files/rfaguide_0512_0.pdf).

inequity, or unfair distribution of burdens” that may be imposed on that manufacturer as a result of such rule. Manufacturers should refer to 10 CFR part 430, subpart E, and part 1003 for additional details.

DOE believes that establishing standards at TSL 3 balances the benefits of the energy savings at TSL 3 with the potential burdens placed on refrigerated beverage vending machine manufacturers, including small business manufacturers. Accordingly, DOE is declining to adopt one of the other TSLs considered in the analysis, or the other policy alternatives detailed as part of the regulatory impacts analysis included in Chapter 17 of this NOPR TSD.

#### *C. Review Under the Paperwork Reduction Act*

Manufacturers of beverage vending machines must certify to DOE that their equipment comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their equipment according to the DOE test procedures for beverage vending machines, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including beverage vending machines. 76 FR 12422 (March 7, 2011); 80 FR 5099 (Jan. 30, 2015). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

#### *D. Review Under the National Environmental Policy Act of 1969*

Pursuant to the National Environmental Policy Act (NEPA) of 1969, DOE has determined that the final rule fits within the category of actions included in Categorical Exclusion (CX) B5.1 and otherwise meets the

requirements for application of a CX. See 10 CFR part 1021, App. B, B5.1(b); 1021.410(b) and App. B, B(1)–(5). The final rule fits within this category of actions because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this rule. DOE’s CX determination for this rule is available at <http://energy.gov/nepa/categorical-exclusion-cx-determinations-cx>.

#### *E. Review Under Executive Order 13132*

Executive Order 13132, “Federalism,” 64 FR 43255 (Aug. 10, 1999) imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this final rule and has determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that is the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by Executive Order 13132.

#### *F. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform,” imposes on Federal agencies the general duty to adhere to the

following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

#### *G. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for



intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at [http://energy.gov/sites/prod/files/gcprod/documents/umra\\_97.pdf](http://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf).

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the final rule. (2 U.S.C. 1532(c)). The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The SUPPLEMENTARY INFORMATION section of this document and the "Regulatory Impact Analysis" section of the TSD for this final rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. (2 U.S.C. 1535(a)) DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6295(d), (f), and (o), 6313(e), and 6316(a), this final rule would establish new and amended energy conservation standards for beverage vending machines that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in the "Regulatory Impact Analysis" section of the TSD for this final rule.

#### *H. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

#### *I. Review Under Executive Order 12630*

Pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property

Rights," 53 FR 8859 (March 18, 1988), DOE has determined that this final rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

#### *J. Review Under the Treasury and General Government Appropriations Act, 2001*

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

#### *K. Review Under Executive Order 13211*

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that this regulatory action, which sets forth new and amended energy conservation standards for beverage vending machines, is not a significant energy action because the standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this final rule.

#### *L. Review Under the Information Quality Bulletin for Peer Review*

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are "influential scientific information," which the Bulletin defines as "scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions." *Id* at FR 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The "Energy Conservation Standards Rulemaking Peer Review Report" dated February 2007 has been disseminated and is available at the following Web site: <http://energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report>.

#### *M. Review Under Section 32 of the Federal Energy Administration Act of 1974*

Under section 301 of the Department of Energy Organization Act (Pub. L. 95-91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of

such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

This final rule incorporates testing methods contained in the following standard: ASTM Standard E 1084–86, “Standard Test Method for Solar Transmittance (Terrestrial) of Sheet Materials Using Sunlight.” DOE has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the Federal Energy Administration Act (*i.e.*, whether they were developed in a manner that fully provides for public participation, comment, and review).

DOE has consulted with both the Attorney General and the Chairwoman of the FTC about the impact on competition of using the methods contained in this standard and has received no comments objecting to its use.

#### N. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is a “major rule” as defined by 5 U.S.C. 804(2).

#### VII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

#### List of Subjects

##### 10 CFR Part 429

Confidential business information, Energy conservation, Household appliances, Imports, Reporting and recordkeeping requirements.

##### 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Incorporation by reference, Reporting and recordkeeping requirements.

Issued in Washington, DC, on December 23, 2015.

David J. Friedman,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE amends parts 429 and 431 of chapter II of title 10 of the Code of Federal Regulations, as set forth below:

#### PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317.

■ 2. Section 429.52 is amended by adding paragraph (a)(3) to read as follows:

##### § 429.52 Refrigerated bottled or canned beverage vending machines.

(a) \* \* \*

(3) The representative value of refrigerated volume of a basic model reported in accordance with paragraph (b)(2) of this section shall be the mean of the refrigerated volumes measured for each tested unit of the basic model and determined in accordance with the test procedure in § 431.296.

\* \* \* \* \*

■ 3. Section 429.134 is amended by adding paragraph (g) to read as follows:

##### § 429.134 Product-specific enforcement provisions.

\* \* \* \* \*

(g) *Refrigerated bottled or canned beverage vending machines—(1) Verification of refrigerated volume.* The refrigerated volume (V) of each tested unit of the basic model will be measured pursuant to the test requirements of 10 CFR 431.296. The results of the measurement(s) will be compared to the representative value of refrigerated volume certified by the manufacturer. The certified refrigerated volume will be considered valid only if the measurement(s) (either the measured refrigerated volume for a single unit sample or the average of the measured refrigerated volumes for a multiple unit sample) is within five percent of the certified refrigerated volume.

(i) If the representative value of refrigerated volume is found to be valid, the certified refrigerated volume will be used as the basis for calculation of maximum daily energy consumption for the basic model.

(ii) If the representative value of refrigerated volume is found to be invalid, the average measured refrigerated volume determined from the tested unit(s) will serve as the basis for calculation of maximum daily energy consumption for the tested basic model.

(2) *Verification of surface area, transparent, and non-transparent areas.* The percent transparent surface area on the front side of the basic model will be

measured pursuant to these requirements for the purposes of determining whether a given basic model meets the definition of Class A or Combination A, as presented at 10 CFR 431.292. The transparent and non-transparent surface areas shall be determined on the front side of the beverage vending machine at the outermost surfaces of the beverage vending machine cabinet, from edge to edge, excluding any legs or other protrusions that extend beyond the dimensions of the primary cabinet. Determine the transparent and non-transparent areas on each side of a beverage vending machine as described in paragraphs (g)(2)(i) and (ii) of this section. For combination vending machines, disregard the surface area surrounding any refrigerated compartments that are not designed to be refrigerated (as demonstrated by the presence of temperature controls), whether or not it is transparent.

Determine the percent transparent surface area on the front side of the beverage vending machine as a ratio of the measured transparent area on that side divided by the sum of the measured transparent and non-transparent areas, multiplying the result by 100.

(i) *Determination of transparent area.* Determine the total surface area that is transparent as the sum of all surface areas on the front side of a beverage vending machine that meet the definition of transparent at 10 CFR 431.292. When determining whether or not a particular wall segment is transparent, transparency should be determined for the aggregate performance of all the materials between the refrigerated volume and the ambient environment; the composite performance of all those materials in a particular wall segment must meet the definition of transparent for that area be treated as transparent.

(ii) *Determination of non-transparent area.* Determine the total surface area that is not transparent as the sum of all surface areas on the front side of a beverage vending machine that are not considered part of the transparent area, as determined in accordance with paragraph (g)(2)(i) of this section.

#### PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 4. The authority citation for part 431 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317.

■ 5. Section 431.292 is amended by:

■ a. Revising the definitions for “Class A” and “Class B”;

- b. Adding in alphabetical order definitions for “Combination A” and “Combination B”;
- c. Revising the definition of “Combination vending machine”; and
- d. Adding in alphabetical order a definition for “Transparent”.

The revisions and additions read as follows:

**§ 431.292 Definitions concerning refrigerated bottled or canned beverage vending machines.**

\* \* \* \* \*

*Class A* means a refrigerated bottled or canned beverage vending machine that is not a combination vending machine and in which 25 percent or more of the surface area on the front side of the beverage vending machine is transparent.

*Class B* means a refrigerated bottled or canned beverage vending machine that is not considered to be Class A and is not a combination vending machine.

*Combination A* means a combination vending machine where 25 percent or more of the surface area on the front side of the beverage vending machine is transparent.

*Combination B* means a combination vending machine that is not considered to be Combination A.

*Combination vending machine* means a bottled or canned beverage vending machine containing two or more compartments separated by a solid partition, that may or may not share a product delivery chute, in which at least one compartment is designed to be refrigerated, as demonstrated by the presence of temperature controls, and at least one compartment is not.

\* \* \* \* \*

*Transparent* means greater than or equal to 45 percent light transmittance, as determined in accordance with ASTM E 1084–86 (Reapproved 2009), (incorporated by reference, see § 431.293) at normal incidence and in the intended direction of viewing.

\* \* \* \* \*

- 6. Section 431.293 is amended by adding paragraph (c) to read as follows:

**§ 431.293 Materials incorporated by reference.**

\* \* \* \* \*

(c) *ASTM*. ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959, (877) 909–2786, or go to [www.astm.org](http://www.astm.org).

(1) ASTM E 1084–86 (Reapproved 2009), “Standard Test Method for Solar Transmittance (Terrestrial) of Sheet

Materials Using Sunlight,” approved April 1, 2009, IBR approved for § 431.292.

(2) [Reserved]

- 7. Section 431.296 is revised to read as follows:

**§ 431.296 Energy conservation standards and their effective dates.**

(a) Each refrigerated bottled or canned beverage vending machine manufactured on or after August 31, 2012 and before January 8, 2019, shall have a daily energy consumption (in kilowatt hours per day), when measured in accordance with the DOE test procedure at § 431.294, that does not exceed the following:

Equipment class	Maximum daily energy consumption (kilowatt hours per day)
Class A .....	$0.055 \times V \uparrow + 2.56.$
Class B .....	$0.073 \times V \uparrow + 3.16.$
Combination Vending Machines.	[RESERVED].

† “V” is the representative value of refrigerated volume (ft<sup>3</sup>) of the BVM model, as calculated pursuant to 10 CFR 429.52(a)(3).

(b) Each refrigerated bottled or canned beverage vending machine manufactured on or after January 8, 2019, shall have a daily energy consumption (in kilowatt hours per day), when measured in accordance with the DOE test procedure at § 431.294, that does not exceed the following:

Equipment class	Maximum daily energy consumption (kilowatt hours per day)
Class A .....	$0.052 \times V \uparrow + 2.43.$
Class B .....	$0.052 \times V \uparrow + 2.20.$
Combination A ...	$0.086 \times V \uparrow + 2.66.$
Combination B ...	$0.111 \times V \uparrow + 2.04.$

† “V” is the representative value of refrigerated volume (ft<sup>3</sup>) of the BVM model, as calculated pursuant to 10 CFR 429.52(a)(3).

\* \* \* \* \*

**Note:** The following letter will not appear in the Code of Federal Regulations.

U.S. DEPARTMENT OF JUSTICE  
 Antitrust Division  
 William J. Baer  
 Assistant Attorney General  
 Main Justice Building  
 950 Pennsylvania Avenue NW.,  
 Washington, DC 20530–0001  
 (202) 514–2401 / (202) 616–2645 (Fax)  
 October 19, 2015  
 Anne Harkavy

Deputy General Counsel for Litigation, Regulation and Enforcement  
 1000 Independence Ave. SW.,  
 U.S. Department of Energy  
 Washington, DC 20585

Re: Energy Conservation Standards for Refrigerated Beverage Vending Machines; Doc. No. EERE–2013–BT–STD–0022

Dear Deputy General Counsel Harkavy:

I am responding to your August 20, 2015, letter seeking the views of the Attorney General about the potential impact on competition of proposed energy conservation standards for refrigerated beverage vending machines. Your request was submitted under Section 325(o)(2)(B)(i)(V) of the Energy Policy and Conservation Act, as amended (ECPA), 42 U.S.C. 6295(o)(2)(B)(i)(V), which requires the Attorney General to make a determination of the impact of any lessening of competition that is likely to result from the imposition of proposed energy conservation standards. The Attorney General’s responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR § 0.40(g).

In conducting its analysis, the Antitrust Division examines whether a proposed standard may lessen competition, for example, by substantially limiting consumer choice or increasing industry concentration. A lessening of competition could result in higher prices to manufacturers and consumers.

We have reviewed the proposed standards contained in the Notice of Proposed Rulemaking (80 Fed. Reg. 50462, Aug. 19, 2015) (NOPR) and the related Technical Support Documents. We have also reviewed supplementary information submitted to the Attorney General by the Department of Energy, as well as materials presented at the public meeting held on the proposed standards on September 29, 2015. Based on this review, our conclusion is that the proposed energy conservation standards for refrigerated beverage vending machines are unlikely to have a significant adverse impact on competition.

Sincerely,  
 William J. Baer

[FR Doc. 2015–33074 Filed 1–7–16; 8:45 am]

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Federal Register

Vol. 81, No. 5

Friday, January 8, 2016

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## FEDERAL REGISTER PAGES AND DATE, JANUARY

1-144.....	4
145-370.....	5
371-718.....	6
719-868.....	7
869-1114.....	8

## CFR PARTS AFFECTED DURING JANUARY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

### 3 CFR

<b>Proclamations:</b>	
9385.....	713
9386.....	715
9387.....	717

### Administrative Orders:

<b>Memorandums:</b>	
Memorandum of	
January 4, 2016.....	719

### 7 CFR

<b>Proposed Rules:</b>	
271.....	398
272.....	398
273.....	398
274.....	398
278.....	398

### 10 CFR

72.....	371
429.....	580, 1028
430.....	580
431.....	1028
<b>Proposed Rules:</b>	
50.....	410
72.....	412

### 14 CFR

39.....	145, 147, 869
61.....	1
91.....	721, 727
121.....	1
135.....	1
<b>Proposed Rules:</b>	
39.....	22, 24, 27, 28, 30, 32, 34, 38, 191
382.....	193

### 15 CFR

902.....	150
<b>Proposed Rules:</b>	
922.....	879

### 16 CFR

1109.....	2
1500.....	2

### 17 CFR

23.....	636
140.....	636
232.....	3
<b>Proposed Rules:</b>	
240.....	733

### 20 CFR

<b>Proposed Rules:</b>	
404.....	41

### 21 CFR

176.....	5
884.....	354, 364, 378

### Proposed Rules:

172.....	42
----------	----

### 22 CFR

<b>Proposed Rules:</b>	
147.....	44

### 24 CFR

<b>Proposed Rules:</b>	
Ch. IX.....	881

### 26 CFR

<b>Proposed Rules:</b>	
1.....	194, 882

### 32 CFR

706.....	8
----------	---

### 33 CFR

117.....	10
151.....	173
165.....	11
<b>Proposed Rules:</b>	
110.....	194

### 38 CFR

<b>Proposed Rules:</b>	
17.....	196

### 39 CFR

3017.....	869
-----------	-----

### 40 CFR

52.....	296
62.....	380
141.....	13

### Proposed Rules:

62.....	414
122.....	415

### 41 CFR

<b>Proposed Rules:</b>	
300-3.....	884
301-11.....	884
301-12.....	884
301-70.....	884

### 42 CFR

<b>Proposed Rules:</b>	
100.....	884

### 45 CFR

164.....	382
----------	-----

### 47 CFR

1.....	396
20.....	173

### Proposed Rules:

20.....	204
---------	-----

### 49 CFR

<b>Proposed Rules:</b>	
195.....	885

512.....47	660.....183	<b>Proposed Rules:</b>	660.....215
<b>50 CFR</b>	679.....150, 184, 188	17.....214, 435, 1000	679.....897
635.....19		32.....886, 887	
		36.....886, 887	

---

---

**LIST OF PUBLIC LAWS**

---

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion

in today's **List of Public Laws**.

Last List December 23, 2015

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