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Rules and Regulations

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

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

DEPARTMENT OF THE TREASURY

2 CFR Part 1000

RIN 1505–AC48

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury publishes this rule to adopt as a final rule, without change, a joint interim final rule published with the Office of Management and Budget (OMB) for all federal award-making agencies that implemented guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). This rule is necessary to incorporate into regulation and thus bring into effect the Uniform Guidance as required by OMB for the Department of the Treasury.

DATES: *Effective date:* February 26, 2016.

FOR FURTHER INFORMATION CONTACT: Michael Briskin, Special Counsel to the Assistant General Counsel for General Law, Ethics & Regulation, (202) 622–0450.

SUPPLEMENTARY INFORMATION: On December 19, 2014, OMB published a rulemaking in the **Federal Register** finalizing the guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (79 FR 75867). As a part of the same rulemaking, OMB issued the interim final Federal Awarding Agency Regulatory Implementation of Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards which contained a separate section for each federal awarding agency. Where applicable, agencies provided additional language beyond that included in 2 CFR part 200, consistent with their existing policy, to provide more detail with respect to how they intend to implement the policy, where appropriate. Treasury's regulations are contained in 2 CFR part 1000 (79 FR 76047).

The interim final rule went into effect on December 26, 2014. The public comment period for the interim final rule closed on February 17, 2015. The Department of the Treasury received no comments from members of the public in response to its section of the joint interim final rule. Accordingly, the Department adopts as a final rule without change the interim rule amending title 2 to add chapter X of the Code of Federal Regulations.

Procedural Matters

Executive Order 12866

This regulatory action is not a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this rule is not subject to review under the Executive Order by the Office of Information and Regulatory Affairs within the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency that is issuing a final rule to provide a final regulatory flexibility analysis or certify that the rule will not have a significant economic impact on a substantial number of small entities. This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because this rule pertains to grants, which the APA expressly exempts from notice and comment rulemaking requirements. 5 U.S.C. 553(a)(2).

Review Under Executive Order 13132

OMB determined that the joint interim final rule does not have any Federalism implications, as required by Executive Order 13132.

Review Under the Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that covered agencies prepare a budgetary impact statement before promulgating a rule that includes any federal mandate that may result in 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. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires covered agencies to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OMB determined that the joint interim final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, this final rule adopting the interim final rule without change does not include a budgetary impact statement or specifically address the regulatory alternatives considered.

Congressional Review Act

This action is subject to the Congressional Review Act (5 U.S.C. 801), and the Department of the Treasury will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Accordingly, the interim rule amending title 2 to add chapter X of the Code of Federal Regulations, which was published at 79 FR 75867, on December 19, 2014, is adopted as a final rule without change.

Brodi Fontenot,

Assistant Secretary for Management, Department of the Treasury.

[FR Doc. 2016–01620 Filed 1–26–16; 8:45 am]

BILLING CODE 4810–25–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2015–0186]

RIN 3150–AJ65

List of Approved Spent Fuel Storage Casks: NAC International, Inc., MAGNASTOR® Cask System; Certificate of Compliance No. 1031, Amendment Nos. 0–3, Revision 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of February 1, 2016, for the direct final rule that was published in the **Federal Register** on November 18, 2015. This direct final rule amended the NRC's spent fuel storage regulations by revising the NAC International, Inc., MAGNASTOR® Cask System listing within the ''List of approved spent fuel storage casks'' to include Revision 1 to Amendment Nos. 0–3 to Certificate of Compliance (CoC) No. 1031. Revision 1 to Amendment Nos. 0–3 to CoC No. 1031 makes changes to the Technical Specifications (TS), including correcting a typographical error in two actual boron loadings in TS 4.1.1(a), and revising the decay times in Tables B2–4 (for Amendment Nos. 0 and 1) and B2–5 (for Amendment Nos. 2 and 3) in Appendix B of the TSs for minimum additional decay time required for spent fuel assemblies that contain nonfuel hardware.

DATES: *Effective date:* The effective date of February 1, 2016, for the direct final rule published November 18, 2015 (80 FR 71929), is confirmed.

ADDRESSES: Please refer to Docket ID NRC–2015–0186 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0186. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Solomon Sahle, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3781; email: *Solomon.Sahle@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

On November 18, 2015 (80 FR 71929), the NRC published a direct final rule amending its regulations in § 72.214 of title 10 of the *Code of Federal Regulations* by revising the NAC International, Inc., MAGNASTOR® Cask System listing within the ''List of approved spent fuel storage casks'' to include Revision 1 to Amendment Nos. 0–3 to CoC No. 1031. Revision 1 to Amendment Nos. 0–3 to CoC No. 1031 makes changes to the TSs, including correcting a typographical error in two actual boron loadings in TS 4.1.1(a), and revising the decay times in Tables B2–4 (for Amendment Nos. 0 and 1) and B2–5 (for Amendment Nos. 2 and 3) in Appendix B of the TSs for minimum additional decay time required for spent fuel assemblies that contain nonfuel hardware.

II. Public Comments on the Companion Proposed Rule

In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on February 1, 2016. The NRC did not receive any comments on the direct final rule. Therefore, this direct final rule will become effective as scheduled.

Dated at Rockville, Maryland, this 21st day of January, 2016.

For the Nuclear Regulatory Commission.

Cindy Bladey,

Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2016–01547 Filed 1–26–16; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2012–BT–STD–0047]

RIN 1904–AC88

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Residential Boilers; Correction

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; technical correction.

SUMMARY: On January 15, 2016, the U.S. Department of Energy (DOE) published a final rule in the **Federal Register** that amended the energy conservation standards for residential boilers (81 FR 2319). Due to a drafting error, that document recited an ambiguous/erroneous date for compliance with the amended standards at one place in the final rule's preamble. However, the compliance date was correctly provided in the **DATES** section, as well as the regulatory text. Nevertheless, in order to prevent any confusion, this final rule corrects this error.

DATES: *Effective Date:* January 27, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1692. Email: *John.Cymbalsky@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. Email: *Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 15, 2016, DOE's Office of Energy Efficiency and Renewable Energy published a final rule in the **Federal Register** titled, ''Energy Conservation Standards for Residential Boilers'' (hereafter referred to as the ''January 2016 final rule''). 81 FR 2319. Since the publication of that final rule, it has come to DOE's attention that, due to a technical oversight, a certain part of the January 2016 final rule incorrectly recites the compliance date for the amended standards for residential boilers. Specifically in the third column of page 2321, the final rule states, ''These standards apply to all residential boilers listed in Table I.1 and Table I.2 and manufactured in, or imported into,

the United States starting on the date five years after January 15, 2021.'' As properly reflected in the **DATES** section and the regulatory text, the compliance date is January 15, 2021. The erroneous language conflated ''the date five years after publication of the final rule'' with an instruction to the **Federal Register** to insert a date five years after date of publication of the final rule. This final rule corrects this error.

II. Need for Correction

As published, the compliance date reported on page 2321 of the January 15, 2016 final rule could potentially result in confusion regarding the date upon which compliance with the amended energy conservation standards for residential boilers is required. Because this final rule would simply correct the erroneous compliance date in this one location, thereby making it consistent with the proper compliance date reported at other places in the final rule, the change addressed in this document is technical in nature.

Correction

In final rule FR Doc. 2016–00025, appearing on page 2319 in the issue of Friday, January 15, 2016, the following correction should be made:

On page 2321, third column, second paragraph, the last sentence is corrected to read as follows:

These standards apply to all residential boilers listed in Table I.1 and Table I.2 and manufactured in, or imported into, the United States starting on January 15, 2021.

Issued in Washington, DC on January 21, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2016–01655 Filed 1–26–16; 8:45 am]

BILLING CODE 6450–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 790

RIN 3133–AE57

Technical Amendments

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board is amending the section of NCUA's regulations addressing the description of NCUA to make minor, non-substantive technical corrections. The technical amendments update the regulations to reflect current agency office functions and responsibilities and will not cause any substantive changes.

DATES: The final rule is effective on January 27, 2016.

FOR FURTHER INFORMATION CONTACT: Linda Dent, Associate General Counsel, or Jacqueline Lussier, Staff Attorney, Office of General Counsel, at 1775 Duke Street, Alexandria, VA 22314 or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Final Rule
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I. Background and Purpose of the Final Rule

Why is the NCUA Board issuing this rule?

Office of Minority and Women Inclusion.

The NCUA Board (Board) is issuing this rule to accurately reflect the functions and responsibilities of the Office of Minority and Women Inclusion (OMWI) and the direct reporting line for its director.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) [1] required several agencies to establish OMWI offices with each OMWI Director appointed by and reporting to ''the agency administrator.'' [2] The Dodd-Frank Act defines the term ''agency administrator'' as ''the head of an agency.'' [3] NCUA's Office of General Counsel determined that at NCUA, the Chairman is the ''agency administrator'' or the head of the agency for reporting purposes. Additionally, pursuant to delegated authorities, the Executive Director could serve as the reporting conduit to the Chairman.

In 2011, the Board appointed an OMWI Director who began reporting to the Executive Director under delegated Board authority. The Dodd-Frank Act does not prohibit this delegation.

Subsequently, in November 2013, the Board added the equal employment opportunity (EEO) program to OMWI's functions, removing the program from the Office of the Executive Director. The Board regarded the realignment as strengthening OMWI's compliance with Dodd-Frank Act requirements concerning equal employment opportunity and diversity of the agency workforce and senior management.

NCUA implemented the realignment in January 2014, but the Executive Director remained the EEO Director due to a vacancy in the OMWI Director's position. In July 2015, NCUA hired an OMWI Director and, accordingly, is transferring the EEO Director designation to the OMWI Director.

In implementing federal anti-discrimination laws, the Equal Employment Opportunity Commission requires each executive agency to designate an EEO Director who ''shall be under the *immediate* supervision of the agency head.'' [4] This regulatory requirement does not permit further delegation. Accordingly, assigning the EEO Director designation to the OMWI Director necessitates a change in the OMWI Director's direct reporting line.

In addition, other agencies that were required to establish an OMWI office currently have the OMWI Director reporting directly to the agency's top official.[5]

For the reasons discussed above, this final rule amends the description of OMWI to reflect the transfer of the designation of Director of EEO to the OMWI Director. This rule change also amends the description of OMWI to reflect that the OMWI Director reports directly to the NCUA Chairman.

Office of the Executive Director

This final rule amends the description of the Office of the Executive Director to delete the statement that the Executive Director serves as the Director of EEO because this designation has transferred to the Director of OMWI.

In addition, the list of offices in the description that are coordinated by the Executive Director is outdated. This final rule amends the description to update the list of offices currently coordinated by the Executive Director. This rule change reflects all current offices within NCUA's organizational structure.

To effect these changes, the Board is making two conforming technical amendments to part 790, as described in section II.

II. Regulatory Amendments

Part 790—Changes to NCUA's Central Office Structure

As discussed above, the Board is amending part 790 of NCUA's regulations to conform it to NCUA's current central office structure.

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[1] 12 U.S.C. 5452.

[2] *Id.* at Section 5452(b)(1).

[3] *Id.* at Section 5452(g)(2).

[4] 29 CFR 1614.102(b)(4) (emphasis added).

[5] OMWI Directors report to the Comptroller of the Currency, the Consumer Financial Protection Bureau Director, the Federal Deposit Insurance Corporation Chairman, the Federal Housing Finance Agency Director, the Federal Reserve Board Chairman, and the Securities and Exchange Commission Chairman.

Office of Minority and Women Inclusion

The final rule amends the description of OMWI to reflect that the Director of OMWI is the NCUA's Director of EEO. Previously, the Executive Director served as the agency's EEO Director. The final rule also amends the description to reflect that the Director of OMWI reports directly to the NCUA Chairman. Previously, the OMWI Director reported to the Executive Director, who in turn reported directly to the NCUA Chairman.

Office of the Executive Director

The final rule amends the description of the Office of the Executive Director to delete the statement that the Executive Director serves as the Director of EEO because this designation has transferred to the Director of OMWI.

The final rule also amends the list of offices coordinated by the Executive Director to reflect NCUA's current organizational structure.

III. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those under $100 million in assets). This final rule only makes non-substantive, technical changes. NCUA certifies that these technical amendments will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.[6] For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. NCUA has determined that the technical amendments in this final rule do not increase the paperwork requirements under the PRA or regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

Assessment of Federal Regulations and Policies on Families

NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[7]

Final Rule

Generally, the Administrative Procedure Act (APA) requires a federal agency to provide the public with notice and the opportunity to comment on agency rulemakings. The amendments in this rule are non-substantive and technical, involve only matters relating to agency management and personnel and are exempt from APA notice and comment requirements.[8] They reflect changes to NCUA's organizational structure. The APA permits an agency to forego the notice and comment period under certain circumstances, such as when a rulemaking is technical and non-substantive. NCUA finds that, in this instance, notice and public comment are unnecessary under section 553(b)(3)(B) of the APA.[9] NCUA also finds good cause to dispense with the 30-day delayed effective date requirement under section 553(d)(3) of the APA.[10] The rule, therefore, will be effective immediately upon publication.

List of Subjects in 12 CFR Part 790

Organization and functions (Government agencies).

By the National Credit Union Administration Board on January 21, 2016.

Gerard Poliquin,

Secretary of the Board.

For the reasons discussed above, the NCUA Board amends 12 CFR part 790 as follows:

PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

■ 1. The authority citation for part 790 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789, 1795f.

■ 2. In § 790.2, revise paragraphs (b)(6) and (13) to read as follows:

§ 790.2 Central and field office organization.

* * * * *

(b) * * *

(6) *Office of the Executive Director.* The Executive Director reports to the entire NCUA Board. The Executive Director translates NCUA Board policy decisions into workable programs, delegates responsibility for these programs to appropriate staff members, and coordinates the activities of the senior executive staff, which includes: The General Counsel; the Regional Directors; and the Office Directors for the Asset Management and Assistance Center, Chief Economist, Chief Financial Officer, Chief Information Officer, Consumer Protection, Continuity and Security Management, Examination and Insurance, Human Resources, Minority and Women Inclusion, National Examinations and Supervision, Public and Congressional Affairs and Small Credit Union Initiatives. Because of the nature of the attorney/client relationship between the Board and General Counsel, the General Counsel may be directed by the Board not to disclose discussions and/or assignments with anyone, including the Executive Director. The Executive Director is otherwise to be privy to all matters within senior executive staff's responsibility. The Office of the Executive Director also supervises the agency's ombudsman. The ombudsman investigates complaints and recommends solutions on regulatory issues that cannot be resolved at the regional level.

* * * * *

(13) *Office of Minority and Women Inclusion.* The Office of Minority and Women Inclusion (OMWI) was established pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. The Director of OMWI reports to the NCUA Chairman. OMWI has the responsibility for all NCUA matters relating to diversity in management, employment, and business activities. Specific duties of the office include developing and implementing standards for: Equal employment opportunity and the racial, ethnic, and gender diversity of the workforce and senior management of NCUA; increased participation of minority-owned and women-owned businesses in the programs and contracts of NCUA, including standards for coordinating technical assistance to such businesses; assessing the diversity policies and practices of credit unions regulated by NCUA; and preserving credit unions run

[6] 44 U.S.C. 3507(d); 5 CFR part 1320.

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

[8] 5 U.S.C. 553(a)(2) and 553(b)(3)(B).

[9] 5 U.S.C. 553(b)(3)(B).

[10] 5 U.S.C. 553(d)(3).

by minorities and/or serving minorities. The Director of OMWI also serves as NCUA's Director of Equal Employment Opportunity.

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[FR Doc. 2016–01602 Filed 1–26–16; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2015–5878; Special Conditions No. 25–608–SC]

Special Conditions: Dassault Aviation, Model Falcon 2000EX Airplanes, Head-Up Display (HUD) With Vision-System Video

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Dassault Aviation Model Falcon 2000EX airplanes. This airplane will have a novel or unusual design feature associated with a vision system that displays video imagery on the head-up display (HUD). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Dassault Aviation on January 27, 2016. We must receive your comments by March 14, 2016.

ADDRESSES: Send comments identified by docket number FAA–2015–5878 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dale Dunford, FAA, Airplane and Flightcrew Interface, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2239; facsimile 425–227–1100.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected airplane. In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On September 24, 2012, the European Aviation Safety Agency (EASA), on behalf of Dassault Aviation, applied for a design change to type certificate no. A50NM to install the Elbit Systems head-up display, which is an enhanced-flight vision system (EFVS) and synthetic vision system (SVS). The change includes the display of a vision-system video on the HUD.

Video display on the HUD constitutes new and unusual technology for which the FAA has no certification criteria. Title 14, Code of Federal Regulations (14 CFR) 25.773 does not permit visual distortions and reflections in the pilot's view out the airplane windshield that could interfere with the pilot's normal duties, and was not written in anticipation of such technology. Special conditions are therefore issued as prescribed under the provisions of § 21.16.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Dassault Aviation must show that the Model Falcon 2000EX airplane, as changed, continues to meet the applicable provisions of the regulations listed in type certificate no. A50NM, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA. The regulations listed in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations listed in type certificate no. A50NM are as follows:

14 CFR part 25, effective February 1, 1965, including the latest applicable requirements of Amendments 25–1 through 25–98. In addition, the certification basis includes certain special conditions, exemptions, or later amended sections of the applicable part that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model Falcon 2000EX airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Dassault Aviation Model Falcon 2000EX airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.101.

Novel or Unusual Design Features

The Model Falcon 2000EX airplane will incorporate the following novel or unusual design feature:

Enhanced-flight vision system and synthetic vision system that display video imagery on a HUD.

Discussion

For many years the FAA has approved, on transport-category airplanes, the use of HUD that display flight symbols without a significant visual obstruction of the outside view. When the FAA began to evaluate the display of enhanced vision-system (EVS) imagery on the HUD, significant potential to obscure the outside view became apparent, contrary to the requirements of 14 CFR 25.773. This rule does not permit distortions and reflections in the pilot-compartment view, through the airplane windshield, that interferes with normal duties, and the rule was not written in anticipation of such technology. The video image potentially interferes with the pilot's ability to see the natural scene in the center of the forward field of view. Therefore, the FAA issued special conditions for such HUD/EVS installations to ensure that the level of safety required by § 25.773 would be met even when the image might partially obscure the outside view. While many of the characteristics of EVS and SVS video differ in some ways, they have one thing in common: The potential for interference with the outside view through the airplane windshield.

Although the pilot readily may be able to see around and through small, individual, stroke-written symbols on the HUD, the pilot may not be able to see, without some interference of the outside view, around or through the image that fills the display. Nevertheless, the vision-system video may be capable of meeting the required level of safety when considering the combined view of the image and the outside scene visible to the pilot through the image. It is essential that the pilot can use this combination of image and natural view of the outside scene as safely and effectively as the pilot-compartment view currently available without the vision-system image.

Because § 25.773 does not provide for any alternatives or considerations for such a new and novel system, the FAA establishes safety requirements that assure an equivalent level of safety and effectiveness of the pilot-compartment view as intended by that rule. The purpose of these special conditions is to provide the unique pilot-compartment-view requirements for the EFVS/SVS installation.

Applicability

As discussed above, these special conditions are applicable to the Dassault Aviation Model Falcon 2000EX airplane. Should the applicant apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on Dassault Aviation Model Falcon 2000EX airplanes. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the public notice and comment period in several prior instances, and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the HUD/EVS modification to the Falcon 2000EX airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**.

The FAA requests comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type-certification basis for Dassault Aviation Falcon 2000EX airplanes.

1. During any phase of flight in which it is to be used, the vision-system video imagery on the HUD must not degrade flight safety or interfere with the effective use of outside visual references for required pilot tasks.

2. To avoid unacceptable interference with the safe and effective use of the pilot-compartment view, the vision system must meet the following requirements:

a. The vision-system design must minimize unacceptable display characteristics or artifacts (*e.g.,* terrain shadowing against a dark background) that obscure the desired image of the scene, impair the pilot's ability to detect and identify visual references, mask flight hazards, distract the pilot, or otherwise degrade task performance or safety.

b. Control of vision-system display brightness must be sufficiently effective in dynamically changing background (ambient) lighting conditions to avoid pilot distraction, impairment of the pilot's ability to detect and identify visual references, masking of flight hazards, or to otherwise degrade task performance or safety. If automatic control for image brightness is not provided, it must be shown that a single, manual setting is satisfactory for the range of lighting conditions encountered during a time-critical, high-workload phase of flight (*e.g.,* low-visibility instrument approach).

c. A readily accessible control must be provided that permits the pilot to immediately deactivate and reactivate display of the vision-system video image on demand, without having to remove hands from the primary flight controls (yoke or equivalent) or thrust control.

d. The vision-system video image on the HUD must not impair the pilot's use of guidance information, or degrade the presentation and pilot awareness of essential flight information displayed on the HUD, such as alerts, airspeed, attitude, altitude and direction, approach guidance, windshear guidance, TCAS resolution advisories, or unusual-attitude recovery cues.

e. The vision-system video image and the HUD symbols, which are spatially referenced to the pitch scale, outside view, and image, must be scaled and aligned (*i.e.,* conformal) to the external scene. In addition, the vision-system video image and the HUD symbols—when considered singly or in combination—must not be misleading, cause pilot confusion, or increase

workload. Airplane attitudes or cross-wind conditions may cause certain symbols and graphic elements (*e.g.,* the zero-pitch line or flight-path vector) to reach field-of-view limits, such that they cannot be positioned in alignment with the image and external scene. In such cases, these symbols may be displayed but with an altered appearance (''ghosting'') that makes the pilot aware that the symbols and graphics are no longer displayed conformally. The combined use of symbols and runway image may not be used for path monitoring when path symbols are no longer conformal (*i.e.,* in alignment with the real-world view out the airplane window).

f. A HUD system used to display vision-system video images must, if previously certified, continue to meet all of the requirements of the original approval.

3. The safety and performance of the pilot tasks associated with the use of the pilot-compartment view must be not be degraded by the display of the vision-system video image. These tasks include the following:

a. Detection, accurate identification, and maneuvering, as necessary, to avoid traffic, terrain, obstacles, and other flight hazards.

b. Accurate identification and utilization of visual references required for every task relevant to the phase of flight.

4. Appropriate limitations must be stated in the Operating Limitations section of the Airplane Flight Manual to prohibit the use of vision systems for functions that have not been found to be acceptable.

Issued in Renton, Washington, on January 19, 2016.

Michael Kaszycki

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–01583 Filed 1–26–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2014–1076; Special Conditions No. 25–607–SC]

Special Conditions: Dassault Aviation Model Falcon 5X, Limit Pilot Forces

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Dassault Aviation Model Falcon 5X airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is an electronic flight-control system with pilot controls through a side stick instead of a conventional control stick. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Dassault Aviation on January 27, 2016. We must receive your comments by March 14, 2016.

ADDRESSES: Send comments identified by docket number FAA–2014–1076 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Freisthler, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1119; facsimile 425–227–1320.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected airplane.

In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On July 1, 2012, Dassault applied for a type certificate for their new Model Falcon 5X airplane. This airplane is a large transport-category airplane to be operated in private/corporate transportation with a maximum of 19 passengers. The Falcon 5X is expected to have a range of 5,200 nm at Mach 0.80. The Model Falcon 5X airplane incorporates a low, swept wing with winglets, and twin rear-fuselage-mounted Snecma Silvercrest turbofan engines. The fuselage is about 23 m long with a 26 m wingspan. The maximum altitude is 51,000 ft and maximum take-off weight is 30,225 kg. The Model Falcon 5X airplane also features the newest generation of Dassault Aviation's EASy flight deck.

The current limit pilot forces requirement in Title 14, Code of Federal Regulations (14 CFR) part 25 is inadequate for addressing an airplane

with electronic flight controls that affect maneuvering.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Dassault Aviation must show that the Model Falcon 5X airplane meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–136.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model Falcon 5X airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model Falcon 5X airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Model Falcon 5X airplane will incorporate the following novel or unusual design feature:

This airplane is equipped with an electronic flight-control system that includes pilot controls through a side stick instead of through a conventional control stick.

Discussion

The Dassault Falcon 5X airplane is equipped with a side stick instead of a conventional control stick. The requirement of § 25.397(c), which defines limit pilot forces and torques, applies to conventional wheel or stick control and is therefore not adequate for this new side-stick design.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Model Falcon 5X airplane. Should Dassault Aviation apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued, in lieu of § 25.397(c), as part of the type-certification basis for the Dassault Aviation Model Falcon 5X airplane.

For Model Falcon 5X airplanes equipped with side-stick controls designed for forces to be applied by one wrist and not arms, the limit pilot forces are as follows.

1. For all components between and including the side-stick control-assembly handle and its control stops:

Pitch	Roll
Nose up, 200 lbf	Nose left, 100 lbf.
Nose down, 200 lbf ...	Nose right, 100 lbf.

2. For all other components of the side-stick control assembly, but excluding the internal components of the electrical sensor assemblies, to avoid damage to the control system as the result of an in-flight jam:

Pitch	Roll
Nose up, 125 lbf	Nose left, 50 lbf.
Nose down, 125 lbf ...	Nose right, 50 lbf.

Issued in Renton, Washington, on January 20, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–01581 Filed 1–26–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 746

[Docket No. 151208999–5999–01]

RIN 0694–AG79

Cuba Licensing Policy Revisions

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the exceptions to the general policy of denial in the Export Administration Regulations (EAR) for exports and reexports to Cuba by identifying additional types of exports and reexports that are subject to a general policy of approval: items for safety of civil aviation and safe operation of commercial aircraft engaged in international air transportation, certain telecommunications and agricultural items, items to human rights organizations or individuals and non-governmental organizations that promote independent activity intended to strengthen civil society in Cuba, and items for use by U.S. news bureaus. This rule also amends the exceptions to the general policy of denial in the EAR for exports and reexports to Cuba by identifying types of exports and reexports that will be reviewed to determine, on a case-by-case basis, whether such transactions meet the needs of the Cuban people, including exports and reexports for this purpose made to state-owned enterprises and agencies and organizations of the Cuban government that provide goods and services to the Cuban people. BIS is making these changes to further implement the Administration's policy

of empowering and engaging the Cuban people. This rule retains the prohibition on the export or reexport of items subject to the EAR to Cuba without a license or applicable license exception.

DATES: This rule is effective January 27, 2016.

FOR FURTHER INFORMATION CONTACT: Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Phone: (202) 482–4252.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 2014, the President announced a historic new approach in U.S. policy toward Cuba. This approach recognized that increased commerce benefits the American and Cuban people, and sought to make the lives of ordinary Cubans easier and more prosperous. On January 16, 2015, the Bureau of Industry and Security (BIS) amended the Export Administration Regulations (EAR) to create License Exception Support for the Cuban People (SCP), which authorizes the export and reexport, without a license, of certain items to, among other objectives, improve the living conditions of the Cuban people (*see* 80 FR 2286). That rule also established a licensing policy of case-by-case review of license applications for the export and reexport to Cuba of telecommunications items to contribute to the ability of the Cuban people to communicate with one another and with people in the United States and the rest of the world.

On July 22, 2015, BIS published a rule implementing the May 29, 2015, rescission of Cuba's designation as a state sponsor of terrorism (*see* 80 FR 43314). That rule expanded certain license exception availability for exports and reexports to Cuba, including making general aviation aircraft eligible for temporary sojourns to Cuba.

On September 21, 2015, BIS published a rule to enhance support for the Cuban people (*see* 80 FR 56898). This rule expanded the scope of transactions that are eligible for License Exception SCP and made certain vessels on temporary sojourn to Cuba eligible for a license exception.

To further engage and empower the Cuban people, this rule amends the licensing policy in § 746.2 of the EAR to add a general policy of approval for certain exports and reexports previously subject to case-by case review and a policy of case-by-case review for exports and reexports of items not eligible for License Exception SCP to meet the needs of the Cuban people, including exports and reexports for this purpose made to state-owned enterprises and agencies and organizations of the Cuban government that provide goods and services to the Cuban people. BIS is taking this action in coordination with the Department of the Treasury, Office of Foreign Assets Control, which is amending the Cuban Assets Control Regulations (31 CFR part 515). The specific terms and limitations of this policy are more fully discussed below.

Specific Changes Made by This Rule

This rule revises the licensing policy from possible approval on a case-by-case basis to a general policy of approval for exports and reexports of:

- Telecommunications items that would improve communications to, from, and among the Cuban people;
- Certain commodities and software to human rights organizations or to individuals and non-governmental organizations that promote independent activity intended to strengthen civil society in Cuba;
- Commodities and software to U.S. news bureaus in Cuba whose primary purpose is the gathering and dissemination of news to the general public; and
- Agricultural items that are outside the scope of ''agricultural commodities'' as defined in part 772 of the EAR (such as insecticides, pesticides and herbicides) as well as agricultural commodities not eligible for License Exception Agricultural commodities (AGR) (such as those that are specified in an entry on the Commerce Control List, *i.e.,* are not designated EAR99).
- Items that are necessary to ensure the safety of civil aviation and the safe operation of commercial aircraft engaged in international air transportation, including the export or reexport of such aircraft leased to state-owned enterprises. Given a substantial increase in air travel to and from Cuba, BIS is making the change to emphasize the importance of civil aviation safety and to recognize that access to aircraft used in international air transportation that meet U.S. Federal Aviation Administration and European Aviation Safety Agency operating standards by Cuban state-owned enterprises contributes to that safety.

These revisions are consistent with long-standing licensing practice for such exports and reexports.

This rule also amends the exceptions to the general policy of denial by adopting a case-by-case review policy for exports and reexports of certain items to meet the needs of the Cuban people, including exports and reexports to state-owned enterprises, agencies, and other organizations of the Cuban government that provide goods and services for the use and benefit of the Cuban people. This case-by-case review policy includes exports and reexports of items for agricultural production, artistic endeavors (including the creation of public content, historic and cultural works and preservation), education, food processing, disaster preparedness, relief and response, public health and sanitation, residential construction and renovation and public transportation. The policy also includes exports and reexports of items for use in construction of: facilities for treating public water supplies, facilities for supplying electricity or other energy to the Cuban people, sports and recreation facilities, and other infrastructure that directly benefits the Cuban people. Additionally, it includes exports and reexports to wholesalers and retailers of items for domestic consumption by the Cuban people.

BIS is implementing this policy to further facilitate exports and reexports to meet the needs of the Cuban people. This licensing policy is consistent with long-standing policy to support the Cuban people. Accordingly, BIS will continue to apply a general policy of denial for applications to export or reexport items for use by state-owned enterprises, agencies, or other organizations of the Cuban government that primarily generate revenue for the state, including those engaged in tourism and those engaged in the extraction or production of minerals or other raw materials. Additionally, applications to export or reexport items destined to the Cuban military, police, intelligence and security services remain subject to a general policy of denial. Licenses issued under this case-by-case review licensing policy generally will have a condition prohibiting both reexports from Cuba to any other destination and uses that enable or facilitate the export of goods or services from Cuba to third countries. BIS anticipates these revisions will significantly benefit the Cuban people, while not significantly increasing overall exports to Cuba's state-run economy.

This rule also adds the term ''reexport'' to the existing statement of a policy of case-by-case review of applications for aircraft or vessels on temporary sojourn to Cuba. The change reflects BIS's practice of generally applying the same licensing policy to exports and reexports of a given item.

Finally, this rule consolidates the statements of licensing policy for exports and reexports to Cuba. Prior to this rule, the policies were described in six paragraphs and like policies existed

in several non-adjacent paragraphs with slightly different wording. Under this rule, the policies will be stated in three paragraphs based upon licensing policy. One paragraph applies to medicine and medical devices, which are subject to certain statutorily mandated policies. This rule makes no changes to the text of that paragraph. A second paragraph describes transactions that are subject to a general policy of approval, including transactions for which the general policy of approval predates this rule. A third paragraph describes transactions that may be authorized on a case-by-case basis, including transactions for which the policy of case-by-case review predates this rule. Additionally, the rule adopts uniform terminology to describe case-by-case review of license applications and removes some superfluous text. All of the changes described in this paragraph are intended to improve clarity and readability of the EAR, and none of them are substantive changes to licensing policy.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 7, 2015, 80 FR 48233 (August 11, 2015), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. This rule involves a collection of information approved under OMB control number 0694–0088—Simplified Network Application Processing+ System (SNAP+) and the Multipurpose Export License Application, which carries an annual estimated burden of 31,833 hours. BIS believes that this rule will have no material impact on that burden. To the extent that it has any impact, BIS believes that the benefits of this rule justify any additional burden it creates. This rule does not impose any new license requirements, it creates less restrictive licensing policies (*i.e.,* the policies under which the decision to approve or deny a license application is made) for exports and reexports to Cuba. These less restrictive policies might increase the number of license applications submitted to BIS because applicants might be more optimistic about obtaining approval. However, the benefit to license applicants in the form of greater likelihood of approval justifies any additional burden. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget, by email at *jseehra@omb.eop.gov* or by fax to (202) 395–7285 and to William Arvin at *william.arvin@bis.doc.gov.*

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (*see* 5 U.S.C. 553(a)(1)). This rule is a part of a foreign policy initiative to change the nature of the relationship between Cuba and the United States announced by the President on December 17, 2014. Delay in implementing this rule to obtain public comment would undermine the foreign policy objectives that the rule is intended to implement. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553, or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects in 15 CFR Part 746

Exports, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 15 CFR Chapter VII, Subchapter C is amended as follows:

PART 746—[AMENDED]

■ 1. The authority citation for 15 CFR part 746 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Presidential Determination 2007–7 of December 7, 2006, 72 FR 1899 (January 16, 2007); Notice of May 6, 2015, 80 FR 26815 (May 8, 2015); Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

■ 2. Section 746.2 is amended by revising paragraphs (b)(2) and (b)(3) and removing paragraphs (b)(4), (b)(5) and (b)(6) to read as follows:

§ 746.2 Cuba.

* * * * *

(b) * * *

(2) *Exports and reexports that generally will be approved.* Applications for licenses to export or reexport the following generally will be approved:

(i) Telecommunications items that would improve communications to, from, and among the Cuban people;

(ii) Commodities and software to human rights organizations or to individuals and non-governmental organizations that promote independent activity intended to strengthen civil society in Cuba;

(iii) Commodities and software to U.S. news bureaus in Cuba whose primary purpose is the gathering and dissemination of news to the general public;

(iv) Agricultural items that are outside the scope of agricultural commodities as defined in part 772 of the EAR, such as insecticides, pesticides and herbicides, and agricultural commodities not eligible for License Exception AGR;

(v) Items necessary to ensure the safety of civil aviation and the safe operation of commercial aircraft engaged in international air transportation, including the export or reexport of such aircraft leased to state-owned enterprises; and

(vi) Items necessary for the environmental protection of U.S. and international air quality, waters, or coastlines (including items related to renewable energy or energy efficiency).

(3) *Exports and reexports that may be authorized on a case-by-case basis.* (i) Applications for licenses to export or reexport items to meet the needs of the Cuban people, including exports and reexports of such items to state-owned enterprises, agencies, and other organizations of the Cuban government that provide goods and services for the use and benefit of the Cuban people may be authorized on a case-by-case basis. This policy of case-by-case review includes applications for licenses to export or reexport items for:

(A) Agricultural production, artistic endeavors (including the creation of public content, historic and cultural works and preservation), education, food processing, disaster preparedness, relief and response, public health and sanitation, residential construction and renovation and public transportation;

(B) Wholesale and retail distribution for domestic consumption by the Cuban people; and

(C) Construction of facilities for treating public water supplies, facilities for supplying electricity or other energy to the Cuban people, sports and recreation facilities, and other infrastructure that directly benefits the Cuban people.

Note 1 to paragraph (b)(3)(i): Licenses issued pursuant to the policy set forth in this paragraph generally will have a condition prohibiting both reexports from Cuba to any other destination and uses that enable or facilitate the export of goods or services from Cuba to third countries.

Note 2 to paragraph (b)(3)(i): The policy of case-by-case review in this paragraph is intended to facilitate exports and reexports to meet the needs of the Cuban people. Accordingly, BIS generally will deny applications to export or reexport items for use by state-owned enterprises, agencies, and other organizations that primarily generate revenue for the state, including those engaged in tourism and those engaged in the extraction or production of minerals or other raw materials. Applications for export or reexport of items destined to the Cuban military, police, intelligence or security services also generally will be denied.

(ii) Applications for exports or reexports of aircraft or vessels on temporary sojourn to Cuba either to deliver humanitarian goods or services, or consistent with the foreign policy interests of the United States, may be authorized on a case-by-case basis.

* * * * *

Dated: January 21, 2016.

Penny Pritzker,

Secretary of Commerce.

[FR Doc. 2016–01557 Filed 1–26–16; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is amending the Cuban Assets Control Regulations to further implement elements of the policy announced by the President on December 17, 2014 to engage and empower the Cuban people. These amendments remove certain payment and financing restrictions for authorized exports and reexports to Cuba of items other than agricultural items or commodities and further facilitate travel to Cuba for authorized purposes by allowing blocked space, code-sharing, and leasing arrangements with Cuban airlines and authorizing additional travel-related and other transactions directly incident to the temporary sojourn of aircraft and vessels. These amendments also authorize additional transactions related to professional meetings and other events, disaster preparedness and response projects, and information and informational materials, including transactions incident to professional media or artistic productions in Cuba.

DATES: *Effective:* January 27, 2016.

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Regulatory Affairs, tel.: 202–622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202–622–0077.

Background

The Department of the Treasury issued the Cuban Assets Control Regulations, 31 CFR part 515 (the ''Regulations''), on July 8, 1963, under the Trading With the Enemy Act (50 U.S.C. App. 5 *et seq.*). OFAC has amended the Regulations on numerous occasions.

Most recently, on January 16 and September 21, 2015, OFAC amended the Regulations, in coordinated actions with the Department of Commerce, to implement certain policy measures announced by the President on December 17, 2014 to further engage and empower the Cuban people. Today, OFAC and the Department of Commerce are taking additional coordinated actions in support of the President's Cuba policy.

The Department of Commerce is amending the exceptions to the general policy of denial in the Export Administration Regulations (EAR) for exports and reexports to Cuba by identifying additional types of exports and reexports that are subject to a general policy of approval, including items for safety of civil aviation and safe operation of commercial aircraft engaged in international air transportation. Commerce is also amending the exception to the general policy of denial in the EAR for exports and reexports to Cuba by identifying types of exports and reexports that will be reviewed to determine, on a case-by-case basis, whether such transactions meet the needs of the Cuban People.

OFAC is making additional amendments to the Regulations with respect to non-agricultural export trade financing and travel and related services, as set forth below.

Non-Agricultural Export Trade Financing

OFAC is amending section 515.533(a) to remove the former limitations on payment and financing terms for all exports from the United States or reexports of 100 percent U.S.-origin items from a third country that are licensed or otherwise authorized by the Department of Commerce, other than exports of agricultural items or commodities. As required by the Trade

Sanctions Reform and Export Enhancement Act of 2000, 22 U.S.C. 7207(b)(1), such agricultural exports continue to be authorized only if one of the payment and financing terms specified in the statute are used. OFAC also is amending section 515.584 to add an authorization for depository institutions to provide financing for such authorized exports and making a conforming change to section 515.421.

Travel and Related Services

Carrier services by air. In parallel with the Department of Commerce's amendments relating to the safety of civil aviation, OFAC is amending section 515.572 to authorize the entry into blocked space, code-sharing, and leasing arrangements to facilitate the provision of carrier services by air authorized pursuant to section 515.572(a)(2), including the entry into such arrangements with a national of Cuba.

Temporary sojourn. OFAC is amending section 515.533 to authorize travel-related and other transactions directly incident to the facilitation of the temporary sojourn of aircraft and vessels as authorized by the Department of Commerce for travel between the United States and Cuba, including by certain personnel required for normal operation and service on board a vessel or aircraft or to provide services to a vessel in port or aircraft on the ground.

Transactions related to information and informational materials. OFAC is amending section 515.545 to expand the general license authorizing travel-related and other transactions that are directly incident to the export, import, or transmission of informational materials to include professional media or artistic productions in Cuba. Such productions include media programs (such as movies and television programs), music recordings, and the creation of artworks. OFAC is removing a restriction in an existing general license and explicitly authorizing transactions relating to the creation, dissemination, or artistic or other substantive alteration or enhancement of informational materials, including employment of Cuban nationals and the remittance of royalties or other payments. OFAC also is making a conforming change to section 515.206.

Professional meetings. OFAC is amending section 515.564 to authorize travel-related and other transactions to organize professional meetings or conferences in Cuba.

Public performances, clinics, workshops, athletic and other competitions, and exhibitions. OFAC is amending section 515.567 to authorize travel-related and other transactions to organize amateur and semi-professional international sports federation competitions and public performances, clinics, workshops, other athletic or non-athletic competitions, and exhibitions in Cuba. OFAC is also removing the existing requirements for certain events that all U.S. profits from the event after costs be donated to an independent nongovernmental organization in Cuba or a U.S.-based charity and that workshops and clinics be organized and run, at least in part, by the authorized traveler.

Humanitarian projects. OFAC is amending section 515.575 to expand the list of authorized humanitarian projects to include disaster preparedness and response.

Public Participation

Because the amendments of the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations'') and section 515.572 of this part. Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information are covered by the Office of Management and Budget under control numbers 1505–0164, 1505–0167, and 1505–0168. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 515

Administrative practice and procedure, Banking, Carrier services, Cuba, Financial transactions, Reporting and recordkeeping requirements, Travel restrictions.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR part 515 as set forth below:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

■ 1. The authority citation for part 515 continues to read as follows:

Authority: 22 U.S.C. 2370(a), 6001–6010, 7201–7211; 31 U.S.C. 321(b); 50 U.S.C. App 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–114, 110 Stat. 785 (22 U.S.C. 6021–6091); Pub. L. 105–277, 112 Stat. 2681; Pub. L. 111–8, 123 Stat. 524; Pub. L. 111–117, 123 Stat. 3034; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

Subpart B—Prohibitions

■ 2. Amend § 515.206 by removing Examples #1–4 and adding a Note to paragraph (a) to read as follows:

§ 515.206 Exempt transactions.

* * * * *

Note to paragraph (a): See § 515.545 for general licenses authorizing certain travel-related and other transactions that are directly incident to the export, import, or transmission of informational materials and certain transactions related to the creation, dissemination, or artistic or other substantive alteration or enhancement of informational materials.

* * * * *

Subpart D—Interpretations

■ 3. Amend § 515.421 by revising paragraph (a)(4) to read as follows:

§ 515.421 Transactions ordinarily incident to a licensed transaction.

(a) * * *

(4) In the case of export or reexport-related transactions authorized by § 515.533(a), payment or financing that is not authorized by § 515.533 or § 515.584(f).

* * * * *

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 4. Amend § 515.533 by revising the introductory text to paragraph (a)(2), redesignating the note to paragraph (a) as Note 1 to paragraph (a), adding Note 2 to paragraph (a), and revising paragraph (d) to read as follows:

§ 515.533 Exportations from the United States to Cuba; reexportations of 100% U.S.-origin items to Cuba; negotiation of executory contracts.

(a) * * *

(2) In the case of agricultural commodities, as that term is defined in 15 CFR part 772, or agricultural items authorized for export or reexport

pursuant to 15 CFR 746.2(b)(2)(iv), only the following payment and financing terms may be used:

* * * * *

Note 2 to paragraph (a): The limitation in paragraph (a)(2) applies only to payment and financing terms for exports or reexports of agricultural items or commodities and is required by the Trade Sanctions Reform and Export Enhancement Act of 2000, 22 U.S.C. 7207(b)(1). For other authorized exports and reexports, paragraph (a) does not restrict payment and financing terms. See § 515.584 for an authorization for depository institutions to provide financing for authorized exports and reexports of items other than agricultural items or commodities.

* * * * *

(d) *General license for travel-related transactions incident to exportation or reexportation of certain items.* (1) The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to the conduct of market research, commercial marketing, sales or contract negotiation, accompanied delivery, installation, leasing, or servicing in Cuba of items consistent with the export or reexport licensing policy of the Department of Commerce are authorized, provided that the traveler's schedule of activities does not include free time or recreation in excess of that consistent with a full-time schedule.

(2) The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to the facilitation of the temporary sojourn of aircraft and vessels as authorized by 15 CFR 740.15 (License Exception Aircraft, Vessels and Spacecraft) or pursuant to other authorization by the Department of Commerce for travel between the United States and Cuba authorized pursuant to this part, including travel-related transactions by personnel who are persons subject to U.S. jurisdiction and who are required for normal operation and service on board a vessel or aircraft, as well as personnel who are persons subject to U.S. jurisdiction and who are required to provide services to a vessel in port or aircraft on the ground, provided that:

(i) The aircraft or vessel must be transporting individuals whose travel between the United States and Cuba is authorized pursuant to any section of this part other than paragraph (d)(2) of this section; and

(ii) Such travel-related transactions by such personnel are limited to the duration and scope of their duties in relation to the particular authorized temporary sojourn.

* * * * *

■ 5. Amend § 515.545 by revising paragraphs (a) and (b), redesignating the Note to § 515.545 as Note 1 to § 515.545, and adding Note 2 to § 515.545 to read as follows:

§ 515.545 Transactions related to information and informational materials.

(a) Transactions relating to the creation, dissemination, artistic or other substantive alteration, or enhancement of informational materials are authorized, including employment of Cuban nationals and remittance of royalties or other payments in connection with such transactions. This section authorizes marketing related to the dissemination of such informational materials but does not authorize other marketing or business consulting services.

(b) *General license.* (1) The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to the exportation, importation, or transmission of information or informational materials as defined in § 515.332 are authorized, provided that the traveler's schedule of activities does not include free time or recreation in excess of that consistent with a full-time schedule.

(2) The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to professional media or artistic productions of information or informational materials for exportation, importation, or transmission, including the filming or production of media programs (such as movies and television programs), the recording of music, and the creation of artworks in Cuba, are authorized, provided that the traveler is regularly employed in or has demonstrated professional experience in a field relevant to such professional media or artistic productions, and that the traveler's schedule of activities does not include free time or recreation in excess of that consistent with a full-time schedule.

* * * * *

Note 2 to § 515.545: See § 515.332(a)(2) for clarification as to the types of artworks that are considered to be informational materials.

■ 6. Amend § 515.564 by revising the introductory text to paragraph (a)(2), paragraph (a)(2)(ii), and paragraph (a)(2)(iv) and adding a note to paragraph (a)(2) to read as follows:

§ 515.564 Professional research and professional meetings in Cuba.

(a) * * *

(2) *Professional meetings.* The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to travel to Cuba to attend or organize professional meetings or conferences in Cuba are authorized, provided that:

* * * * *

(ii) For a traveler:

(A) Attending a professional meeting or conference, the purpose of the meeting or conference directly relates to the traveler's profession, professional background, or area of expertise, including area of graduate-level full-time study;

(B) Organizing a professional meeting or conference on behalf of an entity, either the traveler's profession must be related to the organization of professional meetings or conferences or the traveler must be an employee or contractor of an entity that is organizing the professional meeting or conference.

* * * * *

(iv) The traveler's schedule of activities does not include free time or recreation in excess of that consistent with a full-time schedule of attendance at, or organization of, professional meetings or conferences.

Note to § 515.564(a)(2): Transactions incident to the organization of professional meetings or conferences include marketing related to such meetings or conferences in Cuba.

* * * * *

■ 7. Amend § 515.567 by revising the introductory text to paragraph (a), revising paragraph (b), redesignating the Note to § 515.567(a) and (b) as Note 1 to § 515.567(a) and (b), and adding Note 2 to § 515.567(a) and (b) to read as follows:

§ 515.567 Public performances, clinics, workshops, athletic and other competitions, and exhibitions.

(a) *General license for amateur and semi-professional international sports federation competitions.* The travel-related transactions set forth in § 515.560(c) and such other transactions as are directly incident to participation in athletic competitions in Cuba by amateur or semi-professional athletes or athletic teams, or organization of such competitions, are authorized, provided that:

* * * * *

(b) *General license for public performances, clinics, workshops, other athletic or non-athletic competitions, and exhibitions.* The travel-related transactions set forth in § 515.560(c) and such other transactions as are directly incident to participation in or organization of a public performance, clinic, workshop, athletic competition not covered by paragraph (a) of this section, non-athletic competition, or exhibition in Cuba by participants in or

organizers of such activities are authorized, provided that the event is open for attendance, and in relevant situations participation, by the Cuban public.

Example 1 to § 515.567(a) and (b): An amateur baseball team wishes to travel to Cuba to compete against a Cuban team in a baseball game in Cuba. The game will *not* be held under the auspices of the international sports federation for baseball. The baseball team's activities therefore would not qualify for the general license in paragraph (a). The game will, however, be open to the Cuban public. The baseball team's activities would qualify for the general license in paragraph (b).

Example 2 to § 515.567(a) and (b): A U.S. concert promoter wishes to organize a musical event in Cuba that would be open to the public and feature U.S. musical groups. The organizing of the musical event in Cuba by the U.S. concert promoter and the participation by U.S. musical groups in the event would qualify for the general license in paragraph (b).

* * * * *

Note 2 to § 515.567(a) and (b): Transactions incident to the organization of amateur and semi-professional international sports federation competitions and public performances, clinics, workshops, other athletic or non-athletic competitions, and exhibitions include marketing related to such events in Cuba.

* * * * *

■ 8. Amend § 515.572 by revising paragraph (a)(2) and the introductory text to the Note to § 515.572 to read as follows:

§ 515.572 Authorization to provide travel services, carrier services, and remittance forwarding services.

(a) * * *

(2) *Authorization to provide carrier services.* (i) Persons subject to U.S. jurisdiction are authorized to provide carrier services to, from, or within Cuba in connection with travel or transportation, directly or indirectly, between the United States and Cuba of persons, baggage, or cargo authorized pursuant to this part.

(ii) The entry into blocked space, code-sharing, or leasing arrangements to facilitate the provision of carrier services by air authorized pursuant to section 515.572(a)(2) is authorized, including the entry into such arrangements with a national of Cuba.

* * * * *

Note to § 515.572: The following persons may be transported, directly or indirectly, between the United States and Cuba by a person authorized to provide carrier services:

* * * * *

■ 9. Amend § 515.575 by revising paragraph (b) to read as follows:

§ 515.575 Humanitarian projects.

* * * * *

(b) *Authorized humanitarian projects.* The following projects are authorized by paragraph (a) of this section: Medical and health-related projects; construction projects intended to benefit legitimately independent civil society groups; disaster preparedness, relief, and response; historical preservation; environmental projects; projects involving formal or non-formal educational training, within Cuba or off-island, on the following topics: Entrepreneurship and business, civil education, journalism, advocacy and organizing, adult literacy, or vocational skills; community-based grassroots projects; projects suitable to the development of small-scale private enterprise; projects that are related to agricultural and rural development that promote independent activity; microfinancing projects, except for loans, extensions of credit, or other financing prohibited by § 515.208; and projects to meet basic human needs.

* * * * *

■ 10. Amend § 515.584 by adding paragraph (f) to read as follows:

§ 515.584 Certain financial transactions involving Cuba.

* * * * *

(f) Depository institutions, as defined in § 515.333, are authorized to provide financing for exports or reexports of items, other than agricultural items or commodities, authorized pursuant to § 515.533, including issuing, advising, negotiating, paying, or confirming letters of credit (including letters of credit issued by a financial institution that is a national of Cuba), accepting collateral for issuing or confirming letters of credit, and processing documentary collections.

Dated: January 21, 2016.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2016–01559 Filed 1–26–16; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0023]

RIN 1625–AA00

Safety Zone; Transit Restrictions, Lower Mississippi River Mile Marker 311.0–319.0

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is extending an established safety zone for emergency purposes for all waters of the Lower Mississippi River (LMR), extending the entire width from mile 311.0 to mile 319.0 above head of passes (AHP). This emergency safety zone is needed to protect persons, property and flood control infrastructure from the potential safety hazards associated with vessels underway transiting this area. Deviation from the safety zone is prohibited unless specifically authorized by the Captain of the Port Lower Mississippi River or a designated representative.

DATES: This rule is effective without actual notice from January 27, 2016 until 11:59 p.m. on February 1, 2016. For the purposes of enforcement, actual notice will be used from 12:01 a.m. on January 9, 2016 until January 27, 2016.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2016–0023]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Tyrone L. Conner, U.S. Coast Guard; telephone 901–521–4825, email *Tyrone.L.Conner@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

AHP Above head of passes
CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive order
FR **Federal Register**
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code
COTP Captain of the Port
LMR Lower Mississippi River
USACE U.S. Army Corps of Engineers

II. Background Information and Regulatory History

This temporary rule extends the location for the safety zone under 33 CFR 165.802, which provides for a safety zone on the Lower Mississippi River extending from mile 311.5 to 316.1 AHP. This temporary rule extends that location to mile 311 to 319 AHP for emergency purposes responding to high water. The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to protect persons, property and flood control infrastructure from the potential safety hazards associated with vessels underway transiting this area. Completing the full NPRM process is impracticable and contrary to the public interest because we must establish this safety zone in response to increasing high water and possible flood and high water operations taking place between January 9 and February 1, 2016. Completing the NPRM process would delay the additional safety measures necessary to protect persons, property and flood control infrastructure from the hazards associated with vessels underway.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because we must establish this safety zone in response to increasing high water and possible emergency operations taking place between January 9 and February 1, 2016.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231.

The Coast Guard received notification from the New Orleans District, Army Corps of Engineers that there is a high possibility that flood control infrastructure from mile 311.0 to mile 319.0 AHP on the Mississippi River will sustain damage if immediate action isn't taken to reduce the effects of normal traffic patterns during high water. Additionally, if the flood control infrastructure is sufficiently weakened by resulting effects of high water during this period it could fail. Loss of this section of the main line infrastructure system would be catastrophic to large sections of Louisiana. The COTP Lower Mississippi River is establishing this safety zone as an extension of the established regulation at 33 CFR 165.802, effective from 12:01 a.m. January 9, 2016 to 11:59 p.m. February 1, 2016 or until the river flood levels decrease, whichever occurs earlier.

IV. Discussion of the Rule

The Coast Guard is extending the location for the safety under 33 CFR 165.802 for emergency high water response purposes. As established, 33 CFR 165.802 provides for a safety zone as follows:

- The area enclosed by the following boundary is a safety zone—from the Black Hawk Point Light, mile 316.1 AHP LMR to a point opposite Ft. Adams Light, mile 311.5 AHP along the low water reference plane above the right descending bank; thence to the levee on a line perpendicular to the channel centerline; thence along the levee to the upstream end of the Old River Overbank structure; thence along a line to the Black Hawk Point Light.
- Any vessel desiring to enter this safety zone must first obtain permission from the Captain of the Port, New Orleans. The resident engineer at Old River Control Structure (WUG–424) is delegated the authority to permit entry into this safety zone.

This rule extends the published location to mile 311.0 to mile 319.0 AHP, extending the entire width of the river and is effective from 12:01 a.m. January 9, 2016 through 11:59 p.m. on February 1, 2016 or until the river flood levels decrease, whichever occurs earlier.

Entry into this zone is prohibited unless permission has been granted by the COTP Lower Mississippi or a designated representative or by the authority as delegated in 33 CFR 165.802. Broadcast Notice to Mariners (BNM) will provide any changes in the schedule for this safety zone. Deviation requests will be considered and reviewed on a case-by-case basis. The COTP Lower Mississippi River may be contacted by telephone at 1–866–777–2784 or can be reached by VHF–FM channel 16.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action,'' under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. This emergency safety zone will restrict navigation on the Mississippi River from mile 311.0 to mile 319.0 AHP in the vicinity of Ft. Adams Light and Black Hawk Point Light from 12:01 p.m. January 9, 2016 through 11:59 p.m. on February 1, 2016, or until the river flood levels decrease, whichever occurs earlier. Notifications to the marine community will be made through BNM, LNM, and communications with local waterway users. Notices of changes to the safety zone and effective times will also be made. Additionally, deviation requests may be made and will be considered and reviewed on a case-by-case basis.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in

understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves an emergency safety zone that will prohibit entry into this zone unless permission has been granted by the COTP Lower Mississippi or a designated representative on the Mississippi River mile 311.0 to mile 319.0 AHP. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1; 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T08–0023 is added to read as follows:

§ 165.T08–0023 Safety Zone; Mississippi River, Mile Marker 365.0 to 354.0.

(a) *Location.* The following area is an emergency safety zone: All waters of the Mississippi River between mile 311.0 and mile 319.0, extending the entire width of the river.

(b) *Enforcement date.* This rule is effective from 12:01 a.m. on January 9, 2016 through 11:59 p.m. on February 1, 2015, or until the river flood levels decrease, whichever occurs earlier.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into this zone is prohibited unless specifically authorized by the COTP Lower Mississippi River or a designated representative.

(2) Any vessel desiring to enter this safety zone must first obtain permission from the Captain of the Port, New Orleans. They may be contacted on VHF–FM Channel 16 or by telephone at 866–777–2784. The resident engineer at Old River Control Structure (WUG–424) is delegated the authority to permit entry into this safety zone.

(d) *Informational broadcasts.* The COTP Lower Mississippi River or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the emergency safety zone as well as any changes in the dates and times of enforcement.

Dated: January 7, 2016.

T.J. Wendt,

Captain, U.S. Coast Guard, Captain of the Port, Lower Mississippi River.

[FR Doc. 2016–01632 Filed 1–26–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0014]

RIN 1625–AA00

Safety Zone; Transit Restrictions, Lower Mississippi River Mile Marker 365.0—361.0

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Lower Mississippi River (LMR), extending the entire width from mile 365.0 to mile 361.0. This safety zone is needed to protect persons, property and flood control infrastructure from the potential safety hazards associated with the wake from vessels underway transiting this area. Deviation from the safety zone is prohibited unless specifically authorized by the Captain of the Port Lower Mississippi River or a designated representative.

DATES: This rule is effective without actual notice from January 27, 2016 until 11:59 p.m. on February 1, 2016. For the purposes of enforcement, actual notice will be used from 12:01 a.m. on January 10, 2016 until January 27, 2016.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2016–0014]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Tyrone L. Conner, U.S. Coast Guard; telephone 901–521–4825, email *Tyrone.L.Conner@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive order
FR **Federal Register**
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code
COTP Captain of the Port
LMR Lower Mississippi River

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to protect persons, property and flood control infrastructure from the potential safety hazards associated with the wake from vessels underway transiting this area. Completing the full NPRM process is impracticable and contrary to the public interest because we must establish this safety zone in response to increasing high water and possible flood and high water operations taking place between January 10 and February 1, 2016. Completing the NPRM process would delay the additional safety measures necessary to protect persons, property and flood control infrastructure from the hazardous associated with the wake from vessels underway.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because we must establish this safety zone in response to increasing high water and possible emergency operations taking place between January 10 and February 1, 2016.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231.

The Coast Guard received notification from the Vicksburg District, Army Corps of Engineers that there is a high possibility that the levees from mile 354.0 to mile 357.0, and at mile 365.0, including the temporary flood structures in Vidalia, LA and the waterfront in Natchez, MS will sustain damage when the Natchez gauge reaches 55 feet and higher if immediate action isn't taken to reduce the effects of normal traffic patterns during high water. Additionally, if the levee is sufficiently weakened by resulting effects of high water during this period it could fail. Loss of this section of the main line levee system would be catastrophic to large sections of Louisiana. The COTP Lower Mississippi River intends to establish a safety zone from 12:01 a.m. January 10, 2016 to 11:59 p.m. February 1, 2016 or until the river reading levels is 55 feet and falling at the Natchez, MS river gauge, whichever occurs earlier.

IV. Discussion of the Rule

The Coast Guard is establishing a temporary safety zone on Lower Mississippi River from mile 365.0 to mile 361.0, extending the entire width of the river from 12:01 a.m. January 10, 2016 through 11:59 p.m. on February 1, 2016 or until the river reading levels is 55 feet and falling at the Natchez, MS river gauge, whichever occurs earlier. Entry into this zone is prohibited unless permission has been granted by the COTP Lower Mississippi or a designated representative. Broadcast Notice to Mariners (BNM) will provide any changes in the schedule for this safety zone. Deviation requests will be considered and reviewed on a case-by-case basis. The COTP Lower Mississippi River may be contacted by telephone at 1–866–777–2784 or can be reached by VHF–FM channel 16.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action,'' under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. This temporary safety zone will restrict navigation on the Mississippi River from mile 365.0 to mile 361.0 in the vicinity of Natchez, Mississippi from 12:01 p.m. January 10, 2016 through 11:59 p.m. on February 1, 2016, or until the river reading levels is 55 feet and falling at the Natchez, MS river gauge, whichever occurs earlier. Notifications to the marine community will be made through BNM, LNM, and communications with local waterway users. Notices of changes to the safety zone and effective times will also be made. Additionally, deviation requests may be made and will be considered and reviewed on a case-by-case basis.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental

jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone that will prohibit entry into this zone unless permission has been granted by the COTP Lower Mississippi or a designated representative on the Mississippi River mile 365.0 to mile 361.0. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1; 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T08–0014 is added to read as follows:

§ 165.T08–0014 Safety Zone; Mississippi River, Mile Marker 365.0 to 354.0.

(a) *Location.* The following area is a temporary safety zone: all waters of the Mississippi River between mile 365.0 and mile 361.0, extending the entire width of the river.

(b) *Effective date.* This rule is effective from 12:01 a.m. on January 10, 2016 through 11:59 p.m. on February 1, 2015, or until the river reading levels is 55 feet and falling at the Natchez, MS river gauge, whichever occurs earlier.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into this zone is prohibited unless specifically authorized by the COTP Lower Mississippi River or a designated representative.

(2) Persons or vessels desiring to enter into or pass through the zone must request permission from the COTP Lower Mississippi River or a designated representative. They may be contacted on VHF–FM channel 16 or by telephone at 866–777–2784 for COTP Lower Mississippi River.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP Lower Mississippi River or designated representative.

(d) *Informational broadcasts.* The COTP Lower Mississippi River or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the emergency safety zone as well as any changes in the dates and times of enforcement.

Dated: January 7, 2016.

T.J. Wendt,

Captain, U.S. Coast Guard, Captain of the Port, Lower Mississippi River.

[FR Doc. 2016–01637 Filed 1–26–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0016]

RIN 1625–AA00

Safety Zone; Bayou Chene Beginning at Mile 130.0 on the Atchafalaya River Extending Through the Bayou Chene Ending at Mile 85.0 on the Intercoastal Waterway Morgan City, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary emergency safety zone for all waters of the Bayou Chene beginning at mile 130.0 on the Atchafalaya River extending north through the Bayou Chene and ending at Mile 85.0 on the Intercoastal Waterway. The emergency safety zone is needed to protect persons, property, and infrastructure from potential damage and safety hazards associated with high waters. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Morgan City (COTP). Deviation from the safety zone may be requested and will be considered on a case-by-case

basis as specifically authorized by the COTP or a designated representative.

DATES: This rule is effective without actual notice from January 27, 2016 until 11:59 p.m. on February 29, 2016. For the purposes of enforcement, actual notice will be used from 8:00 a.m. on January 7, 2016 until January 27, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0016 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LTJG Vanessa Taylor, Chief of Waterways, U.S. Coast Guard; telephone 985–380–5334, email *Vanessa.R.Taylor@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BNM Broadcast Notice to Mariners
CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
E.O. Executive order
FR **Federal Register**
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because there is immediate need for additional safety measures due to the increased safety risks caused by high waters on the Atchafalaya River that result in back flooding through five surrounding parishes. On January 5, 2016, the Coast Guard determined that immediate action is necessary to establish an emergency safety zone to protect life and property from the hazards associated with and resulting from high waters. It is impracticable to publish an NPRM because we must establish this safety zone by January 7, 2016. Broadcast Notices to Mariners (BNM) and information sharing with waterway users will update mariners of enforcement times and any changes to the schedule during this emergency situation.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Providing 30 days notice would be contrary to public interest because immediate action is needed to protect life and property from the hazards associated with and resulting from high waters.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Morgan City determined that potential hazards associated with and resulting from high waters and potential back flooding in surrounding areas require additional safety measures. This rule establishes a temporary emergency safety zone beginning at mile 130.0 on the Atchafalaya River extending north through the Bayou Chene and ending at Mile 85.0 on the Intercoastal Waterway to protect those operating in the area and assist the Coast Guard in maintaining navigational safety.

IV. Discussion of the Rule

The Coast Guard is establishing a temporary emergency safety zone prohibiting access to the Bayou Chene extending the entire length of the waterway of the rivers beginning at 8:00 a.m. on January 7, 2016, through February 29, 2016, or until waters recede and conditions allow for safe navigation, whichever occurs earlier. Deviation from the emergency safety zone may be requested and will be considered on a case-by-case basis as specifically authorized by the COTP or a designated representative. Deviation requests will be considered and reviewed on a case-by-case basis. The COTP may be contacted by telephone at 985–380–5375 or can be reached by VHF–FM channel 16.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action,'' under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget. This rule establishes a temporary emergency safety zone placing restrictions on vessels transiting the Bayou Chene. Notifications of enforcement times and any changes to the schedule will be communicated to the marine community via BNM. The impacts on navigation will be limited to ensure the safety of mariners and vessels during hazardous conditions associated with high waters.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A. above, this rule will not have significant economic impact on any vessel owner or operator.

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you

wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves an emergency safety measure limiting access to the area described as the Bayou Chene beginning at mile 130.0 on the Atchafalaya River extending north through the Bayou Chene and ending at Mile 85.0 of the Intercoastal Waterway. This emergency situation requires a safety zone lasting longer than one week so a preliminary environmental analysis checklist and a categorical exclusion determination are being prepared and will be made available as indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0016 to read as follows:

§ 165.T08–0016 Safety Zone; Bayou Chene, beginning at mile 130.0 on the Atchafalaya River extending through the Bayou Chene ending at Mile 85.0 on the Intercoastal Waterway Morgan City, LA.

(a) *Location.* The following area is a safety zone: All waters of the Bayou Chene beginning at mile 130.0 on the Atchafalaya River extending north through the Bayou Chene and ending at Mile 85.0 on the Intercoastal Waterway.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officers operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) Morgan City in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF–FM channel 16, or through Coast Guard Marine Safety Unit Morgan City at 985–380–5334. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement periods.* This rule is effective from 8:00 a.m. on January 7, 2016 through 11:59 p.m. on February 29, 2016 or until waters recede and conditions allow for safe navigation.

(e) *Informational broadcasts.* The COTP or a designated representative will inform the public through broadcasts notice to mariners of the enforcement period for the emergency safety zone as well as any changes in the dates and times of enforcement.

Dated: January 6, 2016.

D.G. McClellan,

Captain, U.S. Coast Guard, Alternate Captain of the Port Morgan City.

[FR Doc. 2016–01631 Filed 1–26–16; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL MARITIME COMMISSION

46 CFR Part 515

[Docket No. 13–05]

RIN 3072–AC44

Ocean Transportation Intermediary Licensing and Financial Responsibility Requirements, and General Duties

AGENCY: Federal Maritime Commission.

ACTION: Correcting amendments.

SUMMARY: The Federal Maritime Commission corrects rules governing the licensing, financial responsibility requirements and duties of Ocean Transportation Intermediaries that were recently amended to add a section inadvertently omitted and to correct problems which occurred in production of the Code of Federal Regulations.

DATES: This correction is effective January 27, 2016.

FOR FURTHER INFORMATION CONTACT: Karen V. Gregory, Secretary, Federal

Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, Tel.: (202) 523–5725, Email: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION: On December 9, 2015, a Final Rule took effect significantly amending the Federal Maritime Commission's regulations governing Ocean Transportation Intermediaries (OTIs). The Final Rule was published in the **Federal Register** on November 5, 2015, 80 FR 68721. A section of the regulations in place prior to the Final Rule, 46 CFR 515.17, (''Application after revocation or denial''), was inadvertently deleted when the Final Rule was published. This correction re-inserts the section content at 46 CFR 515.18, and moves another section's content to section 515.17 so that the regulations are in the proper order.

This correction also fixes three minor typographical errors that were created in the course of production of the Code of Federal Regulations in 46 CFR 515.42 and Appendix D to part 515.

List of Subjects in 46 CFR Part 515

Freight, Freight forwarders, Maritime carriers, Reporting and recordkeeping requirements.

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, the Federal Maritime Commission corrects 46 CFR part 515 as follows:

PART 515—LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES

■ 1. The authority citation for part 515 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. 305, 40102, 40104, 40501–40503, 40901–40904, 41101–41109, 41301–41302, 41305–41307; Pub. L. 105–383, 112 Stat. 3411; 21 U.S.C. 862.

Subpart B—Eligibility and Procedure for Licensing and Registration

§ 515.18 [Redesignated as § 515.17]

■ 2. Redesignate § 515.18 as § 515.17.

■ 3. Add new § 515.18 to read as follows:

§ 515.18 Application after revocation or denial.

Whenever a license has been revoked or an application has been denied because the Commission has found the licensee or applicant to be not qualified to render ocean transportation intermediary services, any further application within 3 years of the Commission's notice of revocation or denial, made by such former licensee or applicant or by another applicant employing the same qualifying individual or controlled by persons whose conduct the Commission based its determination for revocation or denial, shall be reviewed directly by the Commission.

Subpart E—Freight Forwarding Fees and Compensation

■ 4. In § 515.42:

■ a. Revise the section heading.

■ b. In paragraph (c), in the last sentence, remove the numeral ''2'' and add in its place ''__''.

The revision reads as follows:

§ 515.42 Forwarder and carrier compensation; fees.

* * * * *

Appendix D to Part 515 [Amended]

■ 5. In Appendix D remove ''the __, day of __'' and add in its place ''the __, day of__,__'' every place it occurs.

Karen V. Gregory,

Secretary.

[FR Doc. 2016–01578 Filed 1–26–16; 8:45 am]

BILLING CODE 6731–AA–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 536 and 552

[Change 68; GSAR Case 2015–G508; Docket No. 2005–0013; Sequence No. 1]

RIN 3090–AI81

General Services Administration Acquisition Regulation (GSAR); Removal of Unnecessary Construction Clauses and Editorial Changes

AGENCY: Office of Acquisition Policy, General Services Administration (GSA)

ACTION: Final rule.

SUMMARY: This final rule amends the General Services Administration Acquisition Regulation (GSAR) coverage on Construction and Architect-Engineer Contracts, including provisions and clauses for solicitations and resultant contracts, to remove unnecessary regulations.

DATES: *Effective:* January 27, 2016.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Christina Mullins, General Services Acquisition Policy Division, GSA, by phone at 202–969–4066 or by email at *Christina.Mullins@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite GSAR case 2015–G508.

SUPPLEMENTARY INFORMATION:

I. Background

The General Services Administration (GSA) published a proposed rule in the **Federal Register** at 80 FR 45498 on July 30, 2015 to revise sections of GSAR Part 536, Construction and Architect-Engineer Contracts, and Part 552, Solicitation Provisions and Contract Clauses, to remove unnecessary construction clauses. No comments were received on the proposed rule.

II. Discussion of Analysis

No changes were made to the rule as there were no comments received.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

GSA does not expect this final rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, at 5 U.S.C. 601, *et.seq.,* because the rule only deletes unnecessary sections and clauses and does not contain substantive changes. However, a Final Regulatory Flexibility Analysis (FRFA) has been prepared.

There were no comments submitted in response to the initial regulatory flexibility analysis provided in the proposed rule. The final rule changes will not have a significant economic impact on a substantial number of small entities. The rule changes do not place any new requirements on small entities. The section, provision and clause associated with project labor agreement is no longer a requirement based on Executive Order 13202 and because Executive Order 13502 was incorporated into FAR Subpart 22.5. The provisions and associated clauses for specialist, working hours, use of premises, measurements, samples, heat, and government use of equipment are considered technical requirements that are contained in the scope of work or specifications.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 536 and 552

Government procurement.

Dated: January 15, 2016.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, GSA amends 48 CFR parts 536 and 552 as set forth below:

PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 1. The authority citation for 48 CFR part 536 continues to read as follows:

Authority: 40 U.S.C. 121(c).

■ 2. Revise section 536.101 to read as follows:

536.101 Applicability.

This part supplements FAR Part 36 policies and procedures applicable to contracting for construction and architect-engineer services. Contracts for construction management services are covered by FAR Part 37 and GSAM Part 537. Part 536 shall take precedence when the acquisition involves (1) construction or architect-engineer services, and (2) when the requirement is inconsistent with another part of the GSAR.

536.271 [Removed]

■ 3. Remove section 536.271.

536.570–3 [Removed and Reserved]

■ 4. Remove and reserve section 536.570–3.

536.570–5 through 536.570–7 [Removed and Reserved]

■ 5. Remove and reserve sections 536.570–5 through 536.570–7.

536.570–10 and 536.570–11 [Removed and Reserved]

■ 6. Remove and reserve sections 536.570–10 and 536.570–11.

536.570–14 [Removed]

■ 7. Remove section 536.570–14.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. The authority citation for 48 CFR part 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

552.236–72 [Removed and Reserved]

■ 9. Remove and reserve section 552.236–72.

552.236–74 through 552.236–76 [Removed and Reserved]

■ 10. Remove and reserve sections 552.236–74 through 552.236–76.

552.236–79 and 552.236–80 [Removed and Reserved]

■ 11. Removed and reserve sections 552.236–79 and 552.236–80.

552.236–83 [Removed]

■ 12. Remove section 552.236–83.

[FR Doc. 2016–01422 Filed 1–26–16; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 140918791–4999–02]

RIN 0648–XE410

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2016 total allowable catch of pollock for Statistical Area 630 in the GOA.

DATES: Effective 1,200 hrs., Alaska local time (A.l.t.), January 27, 2016, through 1,200 hrs., A.l.t., March 10, 2016.

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

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

The A season allowance of the 2016 total allowable catch (TAC) of pollock in Statistical Area 630 of the GOA is 12,456 metric tons (mt) as established by the final 2015 and 2016 harvest specifications for groundfish of the GOA (80 FR 10250, February 25, 2015) and inseason adjustment (81 FR 188, January 5, 2016).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2016 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 11,856 mt and is setting aside the remaining 600 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a document providing time for public comment because the most recent, relevant data only became available as of January 20, 2016.

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

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

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

Dated: January 22, 2016.

Emily H. Menashes,

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

[FR Doc. 2016–01624 Filed 1–26–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 17
Wednesday, January 27, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2015–5391; Notice No. 25–16–01–SC]

Special Conditions: The Boeing Company, Boeing 767–2C Airplane; Non-Rechargeable Lithium Battery Installations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Boeing Model 767–2C airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is non-rechargeable lithium battery systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before March 14, 2016.

ADDRESSES: Send comments identified by docket number FAA–2015–5391 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC, 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone 425–227–2432; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On January 18, 2010, The Boeing Company applied for an amendment to Type Certificate No. A1NM to include a new Model 767–2C airplane. The Model 767–2C airplane is a twin-engine, transport-category airplane that is a freighter derivative of the Model 767–200 airplane currently approved under Type Certificate No. A1NM. The Model 767–2C airplane incorporates freighter features such as a main deck cargo door and strengthened floors to provide cargo carriage capability on the main deck. Provisions are also incorporated to support subsequent supplemental type certificate (STC) modifications which are intended to provide additional mission capabilities, including provisions to support conversion into an aerial refueling platform (*i.e.,* tanker) configuration.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations, (14 CFR) 21.101, The Boeing Company must show that the Model 767–2C airplane meets the applicable provisions of the regulations listed in Type Certificate A1NM or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA. The regulations listed in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations listed in Type Certificate No. A1NM are 14 CFR part 25 effective February 1, 1965 including Amendments 25–1 through 25–37 with exceptions listed in the type certificate. In addition, the certification basis includes other regulations, special conditions, and exemptions that are not relevant to these proposed special conditions. Type Certificate No. A1NM will be updated to include a complete description of the certification basis for this airplane model.

In addition to the applicable airworthiness regulations and special conditions, the Model 767–2C airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model 767–2C airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate

for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.101.

Novel or Unusual Design Features

A battery system consists of the battery and any protective, monitoring and alerting circuitry or hardware inside or outside of the battery and venting capability where necessary. For the purpose of these special conditions, we refer to a battery and battery system as a battery. The Model 767–2C airplane will incorporate non-rechargeable lithium batteries, which are novel or unusual design features.

Discussion

We derived the current regulations governing installation of batteries in transport-category airplanes from Civil Air Regulations (CAR) 4b.625(d) as part of the re-codification of CAR 4b that established 14 CFR part 25 in February 1965. We basically reworded the battery requirements, which are currently in § 25.1353(b)(1) through (b)(4), from the CAR requirements. Non-rechargeable lithium batteries are novel and unusual with respect to the state of technology considered when these requirements were codified. These batteries introduce higher energy levels into airplane systems through new chemical compositions in various battery-cell sizes and construction. Interconnection of these cells in battery packs introduces failure modes that require unique design considerations, such as provisions for thermal management.

Recent events involving rechargeable and non-rechargeable lithium batteries prompted the FAA to initiate a broad evaluation of these energy-storage technologies. In January 2013, two independent events involving rechargeable lithium-ion batteries demonstrated unanticipated failure modes. A National Transportation Safety Board (NTSB) letter to the FAA, dated May 22, 2014, which is available at *http://www.ntsb.gov,* filename A–14–032–036.pdf, describes these events.

On July 12, 2013, an event involving a non-rechargeable lithium battery, in an emergency locator transmitter installation, demonstrated unanticipated failure modes. Air Accident Investigations Branch Bulletin S5/2013 describes this event.

Some other known uses of rechargeable and non-rechargeable lithium batteries on airplanes include:

- Flight deck and avionics systems such as displays, global positioning systems, cockpit voice recorders, flight data recorders, underwater locator beacons, navigation computers, integrated avionics computers, satellite network and communication systems, communication-management units, and remote-monitor electronic line-replaceable units (LRU);
- Cabin safety, entertainment, and communications equipment, including life rafts, escape slides, seatbelt air bags, cabin management systems, Ethernet switches, routers and media servers, wireless systems, internet and in-flight entertainment systems, satellite televisions, remotes, and handsets;
- Systems in cargo areas including door controls, sensors, video surveillance equipment, and security systems.

Some known potential hazards and failure modes associated with non-rechargeable lithium batteries are:

- Internal failures

In general, these batteries are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (*i.e.,* thermal runaway) than their nickel-cadmium or lead-acid counterparts. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion.

- Fast or imbalanced discharging

Fast discharging or an imbalanced discharge of one cell of a multi-cell battery may create an overheating condition that results in an uncontrollable venting condition, which in turn leads to a thermal event or an explosion.

- Flammability

Unlike nickel-cadmium and lead-acid batteries, these batteries use higher energy and current in an electrochemical system that can be configured to maximize energy storage of lithium. They also use liquid electrolytes that can be extremely flammable. The electrolyte, as well as the electrodes, can serve as a source of fuel for an external fire if the battery casing is breached.

Proposed Special Condition 1 requires that each individual cell within a battery be designed to maintain safe temperatures and pressures. Proposed Special Condition 2 addresses these same issues but for the entire battery. Proposed Special Condition 2 requires the battery be designed to prevent propagation of a thermal event, such as self-sustained, uncontrolled increases in temperature or pressure from one cell to adjacent cells.

Proposed Special Conditions 1 and 2 are intended to ensure that the battery and its cells are designed to eliminate the potential for uncontrolled failures. However, a certain number of failures will occur due to various factors beyond the control of the designer. Therefore, other special conditions are intended to protect the airplane and its occupants if failure occurs.

Proposed Special Conditions 3, 9 and 10 are self-explanatory, and the FAA does not provide further explanation for them at this time.

The FAA proposes Special Condition 4 to make it clear that the flammable-fluid fire-protection requirements of § 25.863 apply to non-rechargeable lithium battery installations. Section 25.863 is applicable to areas of the airplane that could be exposed to flammable fluid leakage from airplane systems. Non-rechargeable lithium batteries contain electrolyte that is a flammable fluid.

Proposed Special Condition 5 requires each non-rechargeable lithium battery installation to not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape. Proposed Special Condition 6 requires each non-rechargeable lithium battery installation to have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells. The means of meeting these proposed special conditions may be the same, but they are independent requirements addressing different hazards. Proposed Special Condition 5 addresses corrosive fluids and gases, whereas Proposed Special Condition 6 addresses heat.

Proposed Special Conditions 7 and 8 require non-rechargeable lithium batteries to have automatic means for battery disconnection and control of battery discharge rate due to the fast-acting nature of lithium-battery chemical reactions. Manual intervention would not be timely or effective in mitigating the hazards associated with these batteries.

These special conditions will apply to all non-rechargeable lithium battery installations in lieu of § 25.1353(b)(1) through (b)(4) at Amendment 25–123. Sections 25.1353(b)(1) through (b)(4) at Amendment 25–123 will remain in effect for other battery installations.

These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Model 767–2C airplane. Should the applicant apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and record keeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the FAA proposes the following special conditions as part of the type certification basis for Boeing Model 767–2C airplane.

Non-Rechargeable Lithium Battery Installations

In lieu of § 25.1353(b)(1) through (b)(4) at Amendment 25–123, each non-rechargeable lithium battery installation must:

1. Maintain safe cell temperatures and pressures under all foreseeable operating conditions to prevent fire and explosion.
2. Prevent the occurrence of self-sustaining, uncontrolled increases in temperature or pressure.
3. Not emit explosive or toxic gases, either in normal operation or as a result of its failure, that may accumulate in hazardous quantities within the airplane.
4. Meet the requirements of § 25.863.
5. Not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape.
6. Have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells.
7. Be capable of automatically controlling the discharge rate of each cell to prevent cell imbalance, back-charging, overheating, and uncontrollable temperature and pressure.
8. Have a means to automatically disconnect from its discharging circuit in the event of an over-temperature condition, cell failure or battery failure.
9. Have a failure sensing and warning system to alert the flightcrew if its failure affects safe operation of the airplane.
10. Have a means for the flightcrew or maintenance personnel to determine the battery charge state if the battery's function is required for safe operation of the airplane.

Note 1: A battery system consists of the battery and any protective, monitoring and alerting circuitry or hardware inside or outside of the battery. It also includes vents (where necessary) and packaging. For the purpose of these special conditions, a battery and battery system are referred to as a battery.

Issued in Renton, Washington, on January 20, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–01582 Filed 1–26–16; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–76958; File No. S7–25–15]

RIN 3235–AL53

Extension of Comment Period for Disclosure of Payments by Resource Extraction Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period.

SUMMARY: The Securities and Exchange Commission is extending the comment period for a release proposing new Rule 13q–1 and an amendment to Form SD to implement Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act relating to disclosure of payments by resource extraction issuers [Release No. 34–76620 (Dec. 11, 2015); 80 FR 80057 (Dec. 23, 2015)]. The comment period for the proposal is divided between an initial comment period and a period for reply comments. The original initial comment period is scheduled to end on January 25, 2016 and the original period for reply comments is scheduled to end on February 16, 2016. The Commission is extending the time period in which to provide the Commission with initial comments until February 16, 2016 and to provide reply comments until March 8, 2016. This action will allow interested persons additional time to analyze the issues and prepare their comments.

DATES: The comment period for the proposed rule published on December 23, 2015 (80 FR 80057), is extended. Initial comments are due on February 16, 2016. Reply comments, which may respond only to issues raised in the initial comment period, are due on March 8, 2016. In developing the final rules, the Commission may rely on both new comments and comments that have been received to date, including those that were provided in connection with the prior rules that the Commission issued under Section 13(q).

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment forms (*http://www.sec.gov/rules/proposed.shtml*);
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–25–15 on the subject line; or
- Use the Federal Rulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–25–15. This file number should be included on the subject line if email is used. To help us 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/proposed.shtml*). Comments also are available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Room 1580, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of

the inclusion in the comment file of any such materials will be made available on the SEC's Web site. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Shehzad K. Niazi, Special Counsel; Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430; or Elliot Staffin, Special Counsel; Office of International Corporate Finance, Division of Corporation Finance, at (202) 551–3450, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission has requested comment on a release proposing new Rule 13q–1 and an amendment to Form SD to implement Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 1504 added Section 13(q) to the Securities Exchange Act of 1934, which directs the Commission to issue rules requiring resource extraction issuers to include in an annual report information relating to any payment made by the issuer, a subsidiary of the issuer, or an entity under the control of the issuer, to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals. Section 13(q) requires a resource extraction issuer to provide information about the type and total amount of payments made for each project related to the commercial development of oil, natural gas, or minerals, and the type and total amount of payments made to each government. In addition, Section 13(q) requires a resource extraction issuer to provide certain information regarding those payments in an interactive data format, as specified by the Commission.

The Commission originally requested that initial comments on the release be received by January 25, 2016 and that reply comments, which may respond only to issues raised in the initial comment period, be received by February 16, 2016. The Commission has received a request for an extension of time for public comment on the proposal to, among other things, allow for the collection of information and to improve the quality of responses.[1] The Commission believes that providing the public additional time to consider thoroughly the matters addressed by the release and to submit comprehensive responses to the release would benefit the Commission in its consideration of final rules. Therefore, the Commission is extending the comment period for Release No. 34–76620 ''Disclosure of Payments by Resource Extraction Issuers'' until February 16, 2016 for initial comments and until March 8, 2016 for reply comments.

By the Commission.

Dated: January 21, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–01545 Filed 1–26–16; 8:45 am]

BILLING CODE 8011–01–P

[1] Letter from American Petroleum Institute (Jan. 7, 2016). Comments are available on the Commission's Web site at *http://www.sec.gov/comments/s7-25-15/s72515.shtml.*

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–147310–12]

RIN–1545–BM22

Applicability of Normal Retirement Age Regulations to Governmental Pension Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 401(a) of the Internal Revenue Code (Code). These regulations would provide rules relating to the determination of whether the normal retirement age under a governmental plan (within the meaning of section 414(d) of the Code) that is a pension plan satisfies the requirements of section 401(a) and whether the payment of definitely determinable benefits that commence at the plan's normal retirement age satisfies these requirements. These regulations would affect sponsors and administrators of governmental pension plans, as well as participants in such plans.

DATES: Comments and requests for a public hearing must be received by April 26, 2016.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–147310–12), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–147310–12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–147310–12).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Pamela Kinard at (202) 317–4148 or Robert Walsh at (202) 317–4102; concerning the submission of comments or to request a public hearing, Oluwafunmilayo (Funmi) Taylor, (202) 317–7180 or (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

I. Normal Retirement Age Generally

This document contains proposed regulations under section 401(a) of the Internal Revenue Code (Code). Section 401(a) sets forth the qualification requirements for a trust forming part of a stock bonus, pension, or profit-sharing plan of an employer. Several of these qualification requirements are based on a plan's normal retirement age, including the regulatory interpretation of the requirement that the plan provide for definitely determinable benefits (generally after retirement). Final regulations defining normal retirement age for the definitely determinable requirement were published in the **Federal Register** as TD 9325 on May 22, 2007 (72 FR 28604) (2007 NRA regulations).

Section 1.401(a)–1(b)(1) of the 2007 NRA regulations generally requires that a pension plan be established and maintained primarily to provide systematically for the payment of definitely determinable benefits over a period of years, usually for life, after retirement. The 2007 NRA regulations include two exceptions to the general rule that payments commence after retirement: (1) Payments can commence after attainment of normal retirement age; and (2) in accordance with section 401(a)(36), payments can commence after an employee reaches age 62.

Section 1.401(a)–1(b)(2)(i) of the 2007 NRA regulations provides that, as a general rule, a normal retirement age under a pension plan must be an age that is not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed (reasonably representative requirement). Section 1.401(a)–1(b)(2)(ii) of the 2007 NRA regulations provides that a normal retirement age of age 62 or later is deemed to satisfy the reasonably representative requirement. Under section 1.401(a)–1(b)(2)(iii) of the 2007 NRA regulations, whether a normal retirement age that is not earlier than age 55 but is below age 62 satisfies the reasonably representative

requirement is based on a facts and circumstances analysis. Section 1.401(a)–1(b)(2)(iv) of the 2007 NRA regulations provides that a normal retirement age that is lower than age 55 is presumed not to satisfy the reasonably representative requirement unless the Commissioner determines otherwise on the basis of facts and circumstances. Under § 1.401(a)–1(b)(2)(v) of the 2007 NRA regulations, in the case of a pension plan in which substantially all of the participants are qualified public safety employees (within the meaning of section 72(t)(10)(B)), a normal retirement age of age 50 or later is deemed to satisfy the reasonably representative requirement.

As previously explained, normal retirement age is used by a pension plan in a variety of circumstances relating to plan qualification. Generally, in the case of a pension plan that is not a governmental plan under section 414(d) and is subject to the rules of section 411(a) through (d), normal retirement age is used in applying the rules under section 411(b) that are designed to preclude avoidance of the minimum vesting standards through the backloading of benefits (such as a benefit formula under which the rate of benefit accrual is increased disproportionately for employees with longer service). Normal retirement age is also relevant for such a plan for other purposes, including the application of the rules relating to suspension of benefits under section 411(a)(3)(B), plan offset rules under section 411(b)(1)(H)(iii), and the minimum benefit rules applicable to non-key employee participants in the case of a top-heavy defined benefit plan under section 416. In addition, for such a plan, section 411(a)(8) defines the term *normal retirement age* as the earlier of (a) the time a participant attains normal retirement age under the plan or (b) the later of the time a plan participant attains age 65 or the 5th anniversary of the time a plan participant commenced participation in the plan.[1]

II. Normal Retirement Age Under a Governmental Plan

A. Application of Section 411 to Governmental Plans

Section 414(d) of the Code provides that the term *governmental plan* generally means a plan established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing.[2] See sections 3(32) and 4021(b)(2) of ERISA for definitions of the term *governmental plan* for purposes of title I and title IV of ERISA, respectively.

Section 411(e)(1) of the Code provides that the provisions of section 411, other than section 411(e)(2), do not apply to a governmental plan. Under section 411(e)(2), a governmental plan is treated as meeting the requirements of section 411, for purposes of section 401(a), if the plan meets the vesting requirements resulting from the application of sections 401(a)(4) and 401(a)(7) as in effect on September 1, 1974 (pre-ERISA vesting rules). The only requirements under section 411 that apply to a governmental plan are the pre-ERISA vesting rules under section 411(e)(2). Thus, the definition of normal retirement age under section 411(a)(8) does not apply to a governmental plan. In addition, other rules of section 411, including section 411(a)(3)(B) (related to suspension of benefits), section 411(b)(1) (related to backloading of benefits in a defined benefit plan), and section 411(b)(1)(H)(iii) (related to offsets after normal retirement age) do not apply to a governmental plan. Therefore, except for specific circumstances in which in-service benefit payments are permitted under § 1.401(a)–1(b)(1), the definition of normal retirement age need not be used by a governmental plan for the same purposes that apply to a plan subject to section 411(a) through (d).[3]

B. Pre-ERISA Vesting Requirements for Governmental Plans

Under section 411(e)(2), a normal retirement age under a governmental plan must satisfy the pre-ERISA vesting rules. The pre-ERISA vesting rules applicable to governmental plans contain two basic components: (a) Rules relating to vesting and (b) rules relating to the right to commence benefits without reduction for early commencement. Rev. Rul. 66–11, 1966–1 C.B. 71, and Rev. Rul. 68–302, 1968–1 C.B. 163, illustrate the interplay between normal retirement age under the pre-ERISA vesting rules and section 401(a). As described in these rulings, to satisfy the requirements of section 401(a), a plan that is subject to the pre-ERISA vesting rules must provide for full vesting of the contributions made to or benefits payable under the plan for any employee who has attained normal retirement age under the plan and satisfied any reasonable and uniformly applicable requirements as to length of service or participation described in the plan. For more information about these rules, see Part 5(c) of Publication 778, *Guides for Qualification of Pension, Profit-Sharing, and Stock Bonus Plans (Pub. 778).*

Rev. Rul. 71–24, 1971–1 C.B. 114, illustrates the application of the pre-ERISA vesting rules to benefits provided under a pension plan for employees who continue employment after normal retirement age. Rev. Rul. 71–24 includes an example under which benefits are permitted to commence during employment after normal retirement age.

As described in Rev. Rul. 71–147,[4] 1971–1 C.B. 116, the normal retirement age in a pension or annuity plan under the pre-ERISA vesting rules is generally the lowest age specified in the plan at which the employee has the right to retire without the consent of the employer and receive retirement benefits based on the amount of the employee's service to the date of retirement at the full rate set forth in the

[1] Section 411(f) provides a special normal retirement age rule that applies only to certain defined benefit plans that are subject to section 411(a) through (d). Section 411(f) was added to the Code on December 16, 2014 by Section 2 of Division P of the Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113–235 (128 Stat. 2130 (2014)), which also made a corresponding change to section 204 of the Employee Retirement Income Security Act of 1974, Public Law 93–406 (88 Stat. 829 (1974)), as amended (ERISA). Under section 101 of Reorganization Plan No. 4 of 1978 (92 Stat. 3790), the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in section 411(f) for purposes of ERISA, as well as the Code.

[2] The term *governmental plan* also includes a plan that is established and maintained by an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), or an agency or instrumentality of either, and all the participants of which are employees of such entity substantially all of whose services as such an employee are in the performance of essential governmental functions but not in the performance of commercial activities (whether or not an essential government function). In addition, the term *governmental plan* includes any plan to which the Railroad Retirement Act of 1935 or 1937 (49 Stat. 967, as amended by 50 Stat. 307) applies and which is financed by contributions required under that Act and any plan of an international organization that is exempt from taxation by reason of the International Organizations Immunities Act, Public Law 79–291 (59 Stat. 669).

[3] Normal retirement age may also be relevant to participant eligibility for certain favorable tax treatment, including section 402(l) (providing an income exclusion of up to $3,000 annually for certain distributions for health insurance and long-term care insurance premiums to eligible retired public safety officers who separate from service by reason of disability or attainment of normal retirement age) and the special catch-up provisions under § 1.457–4(c)(3)(v)(A).

[4] Even though Rev. Rul. 71–147 was superseded by Rev. Rul. 80–276, 1980–1 C.B. 131, for plans subject to section 411(a)(8), Rev. Rul. 71–147 remains valid guidance for purposes of the pre-ERISA vesting rules.

plan (that is, without actuarial or similar reduction because of retirement before some later specified age). Rev. Rul. 71–147 does not explicitly require a plan to include a provision defining normal retirement age. Instead, a plan's normal retirement age may be deduced from other plan provisions. As described in Rev. Rul. 71–147, although normal retirement age under a pension or annuity plan is ordinarily age 65, a plan may specify a lower age at which the employee has the right to retire without the consent of the employer and to receive retirement benefits based on the amount of the employee's service at the full rate set forth in the plan if this lower age would be an age at which employees customarily retire in the particular company or industry, and if the provision permitting receipt of unreduced benefits at this age is not a device to accelerate funding. For more information about these rules, see also Part 5(e) of Pub. 778.

III. Application of the 2007 NRA Regulations to Governmental Plans

Notice 2007–69, 2007–2 C.B. 468, asked for comments ''on whether and how a pension plan with a normal retirement age conditioned on the completion of a stated number of years of service satisfies the requirement in § 1.401(a)–1(b)(1)(i) that a pension plan be maintained primarily to provide for the payment of definitely determinable benefits after retirement or attainment of normal retirement age and how such a plan satisfies the pre-ERISA vesting rules.'' Comments were received on a variety of issues, including comments that guidance should be issued to (1) clarify that governmental plans are not required to define normal retirement age, (2) provide safe harbor rules that would permit a governmental plan to define normal retirement age that includes a service component, and (3) provide that the age-50 safe harbor rule in § 1.401(a)–1(b)(2)(v) for qualified public safety employees can apply to these employees even if less than substantially all of a plan's participants are qualified public safety employees.

The 2007 NRA regulations provided that, in the case of governmental plans, the regulations would be effective for plan years beginning on or after January 1, 2009. Notices 2008–98, 2008–44 I.R.B. 1080, and 2009–86, 2009–6 I.R.B. 629, provided that the Department of the Treasury and the IRS intended to amend the 2007 NRA regulations to change the effective date of the 2007 NRA regulations for governmental plans to January 1, 2013.

Notice 2012–29, 2012–18 I.R.B. 872, announced that the Department of the Treasury and the IRS intend to modify provisions of the 2007 NRA regulations as applied to governmental plans in two ways. First, Notice 2012–29 announced the intent to modify the regulations to clarify that a governmental plan that is not subject to section 411(a) through (d) and does not provide for the payment of in-service distributions before age 62 will not fail to satisfy the requirement that the plan provide definitely determinable benefits to employees after retirement or attainment of normal retirement age merely because the pension plan does not have a definition of normal retirement age or does not have a definition of normal retirement age that satisfies the requirements of the 2007 NRA regulations.

Second, Notice 2012–29 announced the intent to modify the 2007 NRA regulations to provide that the rule deeming age 50 or later to be a normal retirement age that satisfies the 2007 NRA regulations will apply to a group of employees substantially all of whom are qualified public safety employees, whether or not the group of qualified public safety employees are covered by a separate plan. Thus, under the intended modification, a governmental plan would be permitted to satisfy the reasonably representative requirement using a normal retirement age as low as 50 for a group substantially all of whom are qualified public safety employees and a later normal retirement age that otherwise satisfies the 2007 NRA requirements for all other participants.

Notice 2012–29 requested comments from governmental stakeholders on the guidance under consideration. Specific comments were requested on whether a new rule should be provided under which retirement after 20 to 30 years of service may be a normal retirement age that is reasonably representative of the typical retirement age for the industry in which qualified public safety employees are employed because these employees tend to have career spans that commence at a young age and continue over a limited number of years. Many commenters wrote that such a rule would be helpful and appropriate. Several commenters requested a rule that would permit a governmental plan to use the completion of 20 or more years of service as a normal retirement age for public safety employees.

Comments were also requested on whether there are other categories of governmental employees who have career spans similar to qualified public safety employees for whom a rule should be provided that is similar to the safe harbor for qualified public safety employees. Many commenters recommended a rule that would permit governmental plans to use the completion of a number of years of service as a normal retirement age for all employees, not just qualified public safety employees.

Notice 2012–29 also requested information on the overall retirement patterns of employees in government service to assist the Department of the Treasury and the IRS in determining the earliest age that is reasonably representative of the typical retirement ages for the industry in which these employees are employed. One commenter provided data on the retirement patterns and median normal retirement ages for participants in a state retirement system.

Notice 2012–29 also provided that the Department of the Treasury and the IRS intend to amend the 2007 NRA regulations to modify the effective date of the 2007 NRA regulations for governmental plans to annuity starting dates that occur in plan years beginning on or after the later of (1) January 1, 2015 or (2) the close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date that is 3 months after the final regulations are published in the **Federal Register**.

Explanation of Provisions

I. Overview

These proposed regulations would provide guidance with respect to the applicability of the 2007 NRA regulations to governmental plans. These proposed regulations, when finalized, would provide guidance relating to the determination of whether the normal retirement age under a governmental plan satisfies the requirements of section 401(a) by amending the 2007 NRA regulations to provide additional rules for governmental plans. In addition, these proposed regulations would also include a minor change to the 2007 NRA regulations to reflect the addition of section 411(f), which provides a special rule for determining a permissible normal retirement age that applies only to certain defined benefit plans that are not governmental plans.

II. Use of Years of Service as a Component of the Pre-ERISA Vesting Rules

In response to Notice 2012–29, the Department of the Treasury and the IRS received a range of comments regarding the pre-ERISA vesting rules that apply to a governmental plan's normal retirement age. In particular, the Department of the Treasury and the IRS received many comments requesting

rules that would permit governmental plans to define normal retirement age by reference to a period of service. Comments also focused on whether a governmental plan is required to include an explicit definition of normal retirement age.

As previously stated, a normal retirement age under a governmental plan must satisfy the pre-ERISA vesting rules. The Department of the Treasury and the IRS generally agree with those commenters who indicated that the pre-ERISA vesting rules applicable to normal retirement age may be read to permit a governmental plan to use a normal retirement age that reflects a period of service. Under pre-ERISA vesting rules, use of a period of service to determine normal retirement age under a governmental plan would be permissible if the period of service used is reasonable and uniformly applicable and the other pre-ERISA rules related to normal retirement age are satisfied. One of the pre-ERISA rules permits a governmental plan to specify a normal retirement age that is lower than age 65 if that age represents the age at which employees customarily retire in the industry.

Under the pre-ERISA rules related to normal retirement age, the terms of a governmental plan are not required to include an explicit definition of the term normal retirement age in order to satisfy section 401(a). However, in the absence of an explicit definition of normal retirement age, the terms of the plan must specify the earliest age at which a participant has the right to retire without the consent of the employer and to receive retirement benefits based upon the amount of the participant's service on the date of retirement at the full rate set forth in the plan (that is, without actuarial or similar reduction because of retirement before some later specified age). That age (the earliest age described in the preceding sentence) will be considered the plan's normal retirement age for purposes of any statutory or regulatory requirements based on a normal retirement age.

Consistent with Notice 2012–29, the proposed regulations would provide that a governmental plan that does not provide for the payment of in-service distributions before age 62 would not fail to satisfy § 1.401(a)–1(b)(1) under these proposed regulations merely because the pension plan has a normal retirement age that is earlier than otherwise permitted under the requirements of § 1.401(a)–1(b)(2) of the 2007 NRA regulations (as proposed to be amended by these proposed regulations). Instead, because section 411(a) through (d) does not apply, the earlier normal retirement age under such a plan is treated as the age as of which an unreduced early retirement benefit is payable for purposes of these regulations.

III. Normal Retirement Age Must Satisfy the Reasonably Representative Requirement

A. In General

These proposed regulations would apply the reasonably representative requirement in the 2007 NRA regulations to governmental plans. Thus, the normal retirement age under a governmental plan must be an age that is not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed.

B. General Safe Harbor

These proposed regulations would apply to governmental plans the safe harbor in the 2007 NRA regulations that a normal retirement age of at least age 62 is deemed to satisfy the reasonably representative requirement. Thus, a governmental plan satisfies this safe harbor if the normal retirement age under the plan is age 62 or if the normal retirement age is the later of age 62 or another specified date, such as the fifth anniversary of plan participation.

C. Safe Harbors for Governmental Plans

To address comments regarding the need for additional safe harbors for governmental plans, including safe harbors that reflect permissible periods of service, these proposed regulations would provide several additional alternative safe harbors that a governmental plan could satisfy. The safe harbors included in these proposed regulations were developed based upon feedback provided in comments received in response to Notices 2007–69 and 2012–29.

1. Age 60 and 5 Years of Service

Under these proposed regulations, a normal retirement age under a governmental plan that is the later of age 60 or the age at which the participant has been credited with at least 5 years of service would be deemed to satisfy the reasonably representative requirement.

2. Age 55 and 10 Years of Service

Similarly, a normal retirement age under a governmental plan that is the later of 55 or the age at which the participant has been credited with at least 10 years of service would be deemed to satisfy the reasonably representative requirement. Thus, for example, a normal retirement age under a governmental plan that is the later of age 55 or the age at which the participant has been credited with 12 years of service would satisfy this safe harbor.

3. Combined Age and Years of Service of 80 or More

A normal retirement age under a governmental plan that is the participant's age if the sum of the participant's age plus the number of years of service that have been credited to the participant under the plan equals 80 or more would also be deemed to satisfy the reasonably representative requirement. For example, a participant in a governmental plan who is age 55 and who has been credited with 25 years of service under the plan would satisfy this safe harbor.

4. Any Age With 25 years of Service (in Combination With a Safe Harbor That Includes an Age)

A governmental plan would also be permitted to combine any of the other safe harbors (except for the qualified public safety employee safe harbors) provided under the proposed regulations with 25 years of service, so that a participant's normal retirement age would be the participant's age when the number of years of service that have been credited to the participant under the plan equals 25 if that age is earlier than what the participant's normal retirement age would be under the other safe harbor(s). For example, a normal retirement age under a governmental plan would satisfy the reasonably representative requirement if the normal retirement age is the earlier of (1) the participant's age when the participant has been credited with 25 years of service under the plan and (2) the later of age 60 or the age when the participant has been credited with 5 years of service under the plan. Use of 25 years of service by a governmental plan for normal retirement age generally would not satisfy the pre-ERISA vesting requirement relating to normal retirement age, unless it is used in conjunction with an alternative normal retirement age that includes an age component and that otherwise satisfies the pre-ERISA rules. This is because the pre-ERISA vesting requirements allow for a service component only if that component does not unreasonably delay full vesting. For example, applying a 25 years of service requirement (without an alternative normal retirement age) to a newly-hired 63-year-old employee would not be reasonable because it would result in a normal retirement age of 88. See generally, Rev. Rul. 66–11.

D. Qualified Public Safety Employees

The proposed regulations include three safe harbors specifically for qualified public safety employees. The safe harbors were developed based upon feedback provided in comments received in response to Notices 2007–69 and 2012–29. Consistent with Notice 2012–29 and in response to comments, the proposed regulations would make clear that a governmental plan is permitted to use one or more of the safe harbors for qualified public safety employees to satisfy the reasonably representative requirement for those employees even if a different normal retirement age or ages is used under the plan for one or more other categories of participants who are not qualified public safety employees. The safe harbors for qualified public safety employees are not permitted to be used for these other categories of participants; a different normal retirement age (or ages) must be used for participants in a plan who are not qualified public safety employees.

As under the 2007 NRA regulations, the term *qualified public safety employee* would be defined by reference to section 72(t)(10)(B), under which a qualified public safety employee means any employee of a State or political subdivision of a State who provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision.[5] Defining qualified public safety employee by reference to section 72(t)(10)(B) has been retained because it is closely aligned with the categories of employees described in the Age Discrimination in Employment Act that an employer may refrain from hiring after a certain age.[6] Because qualified public safety employees typically commence plan participation at younger ages, the period of service required for full vesting at normal retirement age under each of the safe harbors for qualified public safety employees should be reasonable.

1. Age 50

The proposed regulations would modify the safe harbor for qualified public safety employees that was provided in the 2007 NRA regulations under which a normal retirement age of age 50 or later is deemed to satisfy the reasonably representative requirement and would expand on the guidance under consideration described in Notice 2012–29. The proposed regulations would make clear that a governmental plan is permitted to use the safe harbor (alone or together with one or both of the other safe harbors for qualified public safety employees described in this preamble) for one or more qualified public safety employees in a governmental plan without regard to any ''substantially all'' requirement (that is, without regard to whether substantially all of the participants in the plan or substantially all of the participants within a group of participants are qualified public safety employees).

2. Combined Age and Years of Service of 70 or More

The proposed regulations would add a safe harbor under which a normal retirement age for qualified public safety employees under a governmental plan that is the participant's age when the sum of the participant's age plus the number of years of service that have been credited to the participant under the plan equals 70 or more would be deemed to satisfy the reasonably representative requirement.

3. Any Age With 20 Years of Service

The proposed regulations would also add a safe harbor under which a normal retirement age for qualified public safety employees under a governmental plan that is the participant's age when the number of years of service that have been credited to the participant under the plan equals 20 or more would be deemed to satisfy the reasonably representative requirement. For example, a normal retirement age for qualified public safety employees under a plan that is 25 years of service would satisfy this safe harbor. The Department of the Treasury and the IRS agree with the comments received in response to Notice 2012–29 that indicated that a safe harbor based solely on a period of service would be appropriate for qualified public safety employees because these employees typically have career spans that commence at a young age and continue over a limited period of years.

E. Multiple Normal Retirement Ages in a Governmental Plan

Commenters on Notice 2012–29 stated that it is a common practice for governmental plans to have a normal retirement age that is a combination of age and years of service. In light of these comments, some of the safe harbors proposed in these regulations contemplate a combination of age and years of service, such as, for example, the use of a normal retirement age that is the earlier of (1) the participant's age when the participant has been credited with 30 years of service under the plan or (2) the later of age 60 or the age when the participant has been credited with 5 years of service under the plan. A normal retirement age under a governmental plan that is consistent with the safe harbors in these proposed regulations would not fail to satisfy the pre-ERISA requirements, including the requirement that any period of service required for vesting at normal retirement age be uniformly applicable to all employees in a plan, merely because the plan uses such a normal retirement age.

Commenters to Notice 2012–29 also stated that governmental plans typically provide multiple normal retirement ages, often based on different benefit structures or classifications of employees in a single plan. These comments expressed concern that certain language in Notice 2012–29[7] could be read to indicate that a governmental plan could only have two normal retirement ages if one of the normal retirement ages covered qualified public safety employees and the other normal retirement age covered all of the other participants in the plan.

Use of one normal retirement age for one classification of employees (such as qualified public safety employees) and one or more other normal retirement ages for one or more different classifications of employees would not

[5] Section 72(t)(10)(B) was amended by section 2(a) of Defending Public Safety Employees' Retirement Act, Public Law 114–26 (129 Stat. 319) (2015)) and section 308 of Protecting Americans From Tax Hikes Act of 2015 (PATH Act), enacted as part of the Consolidated Appropriations Act, 2016, Public Law 114–113 (129 Stat. 2422), to include federal public safety employees as qualified public safety employees for purposes of the rules under section 72(t)(10). Thus, for distributions made after December 31, 2015, the term *qualified public safety employee* means any employee of a State or political subdivision of a State who provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision, or any Federal law enforcement officer described in section 8331(20) or 8401(17) of title 5, United States Code, any Federal customs and border protection officer described in section 8331(31) or 8401(36) of such title, any Federal firefighter described in section 8331(21) or 8401(14) of such title, or any air traffic controller described in 8331(30) or 8401(35) of such title, any nuclear materials courier described in section 8331(27) or 8401(33) of such title, any member of the United States Capitol Police, any member of the Supreme Court Police, and any diplomatic security special agent of the Department of State.

[6] See section 4(j) of the Age Discrimination in Employment Act, 29 U.S.C. 623(j).

[7] Notice 2012–29 provided that, under an anticipated amendment to the 2007 NRA regulations, a governmental plan would be permitted to satisfy the reasonably representative requirement using a normal retirement age as low as 50 for a group substantially all of whom are qualified public safety employees and a later normal retirement age that otherwise satisfies the 2007 NRA requirements for all other participants.

be inconsistent with these proposed regulations and generally would not be inconsistent with the applicable pre-ERISA requirements, including the requirement that any period of service required for full vesting at normal retirement age be uniformly applicable. Similarly, the use of one normal retirement age under a governmental plan for employees hired before a certain date and another normal retirement age under the plan for employees hired on or after that date generally would not fail to satisfy the applicable pre-ERISA requirements.

F. Other Normal Retirement Ages

The proposed regulations would provide that in the case of a normal retirement age under a governmental plan that fails to satisfy any of the governmental plan safe harbors, whether the normal retirement age satisfies the reasonably representative requirement would be based on all of the relevant facts and circumstances. Similar to the treatment of normal retirement ages between ages 55 and 62 under the 2007 NRA regulations, it is generally expected that a good faith determination of the typical retirement age for the industry in which the covered workforce is employed that is made by the employer will be given deference, assuming that the determination is reasonable under the facts and circumstances and that the normal retirement age is otherwise consistent with the pre-ERISA vesting requirements.

Proposed Effective Date

These regulations are proposed to be effective for employees hired during plan years beginning on or after the later of (1) January 1, 2017 or (2) the close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date that is 3 months after the final regulations are published in the **Federal Register**. Governmental plan sponsors may rely on these proposed regulations for periods preceding the effective date, pending the issuance of final regulations. If and to the extent the final regulations are more restrictive than the rules in these proposed regulations, those provisions of the final regulations will be applied without retroactive effect.

Statement of Availability for IRS Documents

For copies of recently issued Revenue Procedures, Revenue Rulings, Notices, and other guidance published in the Internal Revenue Bulletin or Cumulative Bulletin, please visit the IRS Web site at *http://www.irs.gov* or the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that 5 U.S.C. 533(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. In addition, because no collection of information is imposed on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply and a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Office of Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. All comments are available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Sarah R. Bolen and Pamela R. Kinard, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the Department of the Treasury and the IRS participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.401(a)–1 is amended by:

■ 1. Revising paragraph (b)(2)(v).

■ 2. Adding paragraph (b)(2)(vi).

■ 3. Revising the heading and the second sentence of paragraph (b)(4).

The revisions read as follows:

§ 1.401(a)–1 Post-ERISA qualified plans and qualified trusts; in general.

* * * * *

(b) * * *

(2) * * *

(v) *Rules of application for governmental plans*—(A) *In general.* In the case of a governmental plan (within the meaning of section 414(d)) that provides for distributions before retirement, the general rule described in paragraph (b)(2)(i) of this section may be satisfied in accordance with paragraph (b)(2)(ii) of this section or this paragraph (b)(2)(v). In the case of a governmental plan that does not provide for distributions before retirement, the plan's normal retirement age is not required to comply with the general rule described in paragraph (b)(2)(i) of this section or this paragraph (b)(2)(v).

(B) *Age 60 and 5 years of service safe harbor.* A normal retirement age under a governmental plan that is the later of age 60 or the age at which the participant has been credited with at least 5 years of service under the plan is deemed to be not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed.

(C) *Age 55 and 10 years of service safe harbor.* A normal retirement age under a governmental plan that is the later of age 55 or the age at which the participant has been credited with at least 10 years of service under the plan is deemed to be not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed.

(D) *Sum of 80 safe harbor.* A normal retirement age under a governmental plan that is the participant's age at which the sum of the participant's age plus the number of years of service that have been credited to the participant under the plan equals 80 or more is deemed to be not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the

covered workforce is employed. For example, a normal retirement age under a governmental plan that is age 55 for a participant who has been credited with 25 years of service would satisfy the rule described in this paragraph.

(E) *Service-based combination safe harbor.* A normal retirement age under a governmental plan that is the earlier of the participant's age at which the participant has been credited with at least 25 years of service under the plan and an age that satisfies any other safe harbor provided under paragraphs (b)(2)(v)(B) through (D) of this section is deemed to be not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed. For example, a normal retirement age under a governmental plan that is the earlier of the participant's age at which the participant has been credited with 25 years of service under the plan and the later of age 60 or the age at which the participant has been credited with 5 years of service under the plan would satisfy this safe harbor.

(F) *Age 50 safe harbor for qualified public safety employees.* A normal retirement age under a governmental plan that is age 50 or later is deemed to be not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed if the participants to which this normal retirement age applies are qualified public safety employees (within the meaning of section 72(t)(10)(B)).

(G) *Sum of 70 safe harbor for qualified public safety employees.* A normal retirement age under a governmental plan that is the participant's age at which the sum of the participant's age plus the number of years of service that have been credited to the participant under the plan equals 70 or more, is deemed to be not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed if the participants to which this normal retirement age applies are qualified public safety employees (within the meaning of section 72(t)(10)(B)).

(H) *Service-based safe harbor for qualified public safety employees.* A normal retirement age under a governmental plan that is the age at which the participant has been credited with at least 20 years of service under the plan is deemed to be not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed if the participants to which this normal retirement age applies are qualified public safety employees (within the meaning of section 72(t)(10)(B)). For example, a normal retirement age that covers only qualified public safety employees and that is an employee's age when the employee has been credited with 25 years of service under a governmental plan would satisfy this safe harbor.

(I) *Reserved.*

(J) *Other normal retirement ages.* In the case of a normal retirement age under a governmental plan that fails to satisfy any safe harbor described in paragraph (b)(2)(ii) of this section or this paragraph (b)(2)(v), whether the age is not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed is based on all of the relevant facts and circumstances.

(vi) *Special normal retirement age rule for certain plans.* See section 411(f), which provides a special rule for determining a permissible normal retirement age under certain defined benefit plans.

* * * * *

(4) *Effective/applicability date.* * * * In the case of a governmental plan (as defined in section 414(d)), the rules in paragraph (b)(2)(v) of this section are effective for employees hired during plan years beginning on or after the later of: January 1, 2017; or the close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date that is 3 months after the final regulations are published in the **Federal Register**. However, a governmental plan sponsor may elect to apply the rules of paragraph (b)(2)(v) of this section to earlier periods. * * *

John M. Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2016–01639 Filed 1–26–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–115452–14]

RIN 1545–BM12

Disguised Payments for Services; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of a public hearing on notice of proposed rulemaking.

SUMMARY: This document provides a notice of public hearing on proposed regulations relating to disguised payments for services under section 707(a)(2)(A) of the Internal Revenue Code.

DATES: The public hearing is being held on Friday, February 26, 2016, at 10:00 a.m. The IRS must receive outlines of the topics to be discussed at the public hearing by Monday, February 8, 2016.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building.

Send Submissions to CC:PA:LPD:PR (REG–115452–14), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG–115452–14), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–115452–14).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Wendy Kribell at (202) 317–6850; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing Oluwafunmilayo Taylor at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

The subject of the public hearing is the notice of proposed rulemaking (REG–115452–14) that was published in the **Federal Register** on Thursday, July 23, 2015 (80 FR 43652).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments by November 16, 2015, must submit an outline of the topics to be addressed and the amount of time to be denoted to each topic by Monday, February 8, 2016.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom

of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue NW., entrance, 1111 Constitution Avenue NW., Washington, DC 20224.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2016–01520 Filed 1–26–16; 8:45 am]

BILLING CODE 4830–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket No. RM2016–5; Order No. 2039]

Procedures Related to the Mail Classification Schedule

AGENCY: Postal Regulatory Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is proposing rules which amend the existing Commission rules related to the publication of specific notices related to the Mail Classification Schedule and Product Lists in the **Federal Register**. The proposed rules seek to modify Commission rules that require the publication of duplicative filings. The Commission invites public comment on the proposed rules.

DATES: *Comments are due:* February 26, 2016. *Reply comments are due:* March 14, 2016.

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

SUPPLEMENTARY INFORMATION:

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I. Background
II. Proposed Changes to the Publishing Requirements of Product Lists Under 39 CFR part 3020
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I. Background

The Postal Regulatory Commission (Commission) establishes a rulemaking docket pursuant to its responsibilities under the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3198 (2006), to consider amendments to the Commission's rules concerning the product lists, 39 CFR part 3020. The proposed amendments make minor changes to rules that obligate the Commission to publish, in the **Federal Register**, the initial proposals from the Postal Service requesting to modify the product lists published in the Mail Classification Schedule (MCS) and draft modifications to the MCS approved by the Commission. There is no statutory requirement that the Commission publish these notices and orders. Specifically the proposed rules remove the Commission's obligation to publish duplicative filings: (1) The initial notices and orders identifying a Postal Service request to modify the MCS, which are duplicative of the Postal Service notices/requests to modify the MCS; and (2) the orders identifying draft MCS changes approved by the Commission but not yet finalized in a modification to the MCS, which are duplicative of the quarterly MCS update. As required, pursuant to § 3020.14,[1] the Commission will continue to publish the modified MCS (as opposed to its draft) in the **Federal Register**.

II. Proposed Changes to the Publishing Requirements of Product Lists Under 39 CFR Part 3020

The changes proposed in this Order eliminate the requirements in the Commission's regulations that the Commission publish notices and final orders regarding proposed modifications and draft changes to the competitive and market dominant products of the MCS in the **Federal Register**.

The Commission must publish all actual modifications to the MCS in the **Federal Register**.[2] The Commission may eliminate publishing such notices and final orders regarding competitive and market dominant product modifications to the MCS in the **Federal Register** because neither constitutes an actual modification to the MCS.

The MCS is an interpretive rule, as it serves an advisory function of explaining how the Postal Service categorizes mail products and assures the Postal Service will provide a consistent and uniform interpretation of these products. The Commission's notice-and-comment requirements, based on 5 U.S.C. 553, do not apply to interpretive rules.[3] Because the Postal Service is required by statute to publish its proposed changes to the MCS in the **Federal Register**,[4] a re-publication by the Commission is duplicative and not required by statute.[5] Similarly, again because the MCS is an interpretive rule, the Commission is not obligated to provide notice-and-comment for modifications proposed by itself or third parties, such as the Public Representative or users of the mail.[6]

All actual changes on the MCS take effect only when the Commission issues the revised MCS (based on the draft). The Commission's final orders regarding proposed changes to the MCS state whether the change has been approved by the Commission and adds the change to a working draft of the MCS that can be found on the Commission's Web site. The working draft does not constitute a revised MCS.[7] The Commission is only obligated to publish actual changes on interpretive rules in the **Federal Register**.[8] An actual MCS modification occurs only when the Commission incorporates all the changes from the working draft into a final product and publishes the revised MCS in the **Federal Register**. Currently, the Commission issues a revised MCS on a quarterly basis.

Proposed changes to 39 CFR part 3020 related to the **Federal Register** publication requirement are reproduced below the Secretary's signature on this Order.

III. Invitation To Comment

Interested persons are invited to comment on the proposed changes to part 3020. Comments are due within 30 days of the date of publication of this notice in the **Federal Register**.

Pursuant to 39 U.S.C. 505, Katrina R. Martinez is designated as the Public Representative in this proceeding to represent the interests of the general public.

IV. Ordering Paragraphs

It is ordered:

1. Docket No. RM2016–5 is established for the purpose of receiving comments on the proposed changes to part 3020, as discussed in this Order.

[1] "Whenever the Postal Regulatory Commission modifies the list of products in the market dominant category or the competitive category, it shall cause notice of such change to be published in the **Federal Register.**" 39 CFR 3020.14; 39 U.S.C. 3642(d)(1).

[2] 39 CFR 3020.14; 39 U.S.C. 3642(d)(1).

[3] 5 U.S.C. 553(b)(3)(A).

[4] 39 U.S.C. 3642(d)(1).

[5] *See* 39 U.S.C. 3642, which only requires the Commission to publish actual changes, not proposed changes to the MCS in the **Federal Register**.

[6] *See* 5 U.S.C. 553(b)(3)(A) and 39 U.S.C. 3642(d)(2). This does not prohibit the Commission from choosing, on its own accord, to publish such proposals to give the public opportunity for notice-and-comment.

[7] The redline draft of the MCS is available to the public on the Commission's Web site.

[8] 39 CFR 3020.14; 39 U.S.C. 3642.

2. Interested parties may submit comments no later than 30 days from the date of publication of this notice in the **Federal Register**.

3. Pursuant to 39 U.S.C. 505, Katrina R. Martinez is appointed to serve as Public Representative in this proceeding.

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

By the Commission.

Stacy L. Ruble,

Secretary.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure.

For the reasons discussed in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 1. Amend § 3020.33 by revising the introductory text and paragraph (d), removing paragraph (e), and redesignating paragraph (f) as paragraph (e). The revisions read as follows:

§ 3020.33 Docket and notice.

The Commission will establish a docket for each request to modify the market dominant list or the competitive product list and post the filing on its Web site. The notice shall include:

* * * * *

(d) The identification of an officer of the Commission to represent the interests of the general public in the docket; and

(e) Such other information as the Commission deems appropriate.

■ 2. Amend § 3020.53 by revising the introductory text and paragraph (d), removing paragraph (e), and redesignating paragraph (f) as paragraph (e). The revisions read as follows:

§ 3020.53 Docket and notice.

The Commission will establish a docket for each request to modify the market dominant list or the competitive product list and post the filing on its Web site. The notice shall include:

* * * * *

(d) The identification of an Office of the Commission to represent the interests of the general public in the docket; and

(e) Such other information as the Commission deems appropriate.

■ 3. Amend § 3020.82 by revising paragraphs (c) and (d), and removing paragraph (e). The revisions read as follows:

§ 3020.82 Docket and notice of material changes to product descriptions.

* * * * *

(c) Publish notice of the request on its Web site; and

(d) Designate an officer of the Commission to represent the interests of the general public in the docket.

(e) [Removed]

■ 4. Amend § 3020.91 by revising paragraphs (c) and (d), and removing paragraph (e). The revisions read as follows:

§ 3020.91 Docket and notice of minor corrections to product descriptions.

* * * * *

(c) Publish notice of the proposal on its Web site; and

(d) Designate an officer of the Commission to represent the interests of the general public in the docket.

(e) [Removed]

[FR Doc. 2016–01407 Filed 1–26–16; 8:45 am]

BILLING CODE 7710–FW–P

Notices

Federal Register

Vol. 81, No. 17

Wednesday, January 27, 2016

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

Submission for OMB Review; Comment Request

January 21, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by February 26, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Importation of Citrus from Peru.

OMB Control Number: 0579–0289.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests new to the United States or not known to be widely distributed throughout the United States. The Animal and Plant Health Inspection Service (APHIS) fruits and vegetables regulations allow the importation, under certain conditions, of fresh commercial citrus fruit (grapefruit, limes, mandarin oranges, or tangerines, sweet oranges, and tangelos) from approved areas of Peru into the United States.

Need and Use of the Information: APHIS will collect information that includes Fruit Fly Management Program inspections by National Plant Protection Organization officials from Peru, grower registration and agreement, fruit fly trapping and monitoring, recordkeeping, and phytosanitary certificates. Without this information, APHIS could not verify that: (1) Fruit was treated; (2) citrus canker, fruit flies, and other pests were destroyed by treatment; or (3) the treatment was adequate to prevent the risk of plant pests from entering into the United States.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 31.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 31,339.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–01608 Filed 1–26–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Submission for OMB Review; Comment Request

January 21, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by February 26, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Uniform Grant Application for Non-Entitlement Discretionary Grants.

OMB Control Number: 0584–0512.

Summary of Collection: The Food and Nutrition Service (FNS) has a number of

non-entitlement discretionary grant programs to collect the information from grant applicants needed to evaluate and rank applicants and protect the integrity of the grantee selection process. All FNS discretionary grant programs will be eligible, but not required to use the uniform grant application package. The authorities for these grants vary. The term ''grant'' in this submission refers only to non-entitlement discretionary grants or cooperative agreements. Discretionary grant announcements include a number of information collections, including a ''project description'' (program narrative), budget information, disclosure of lobbying activities certification, and disclosure of Corporate Felony Convictions and Corporate Federal Tax Delinquencies. The requirements for the program narrative statement are based on the requirements for program narrative statements described in section 1.c (5) of OMB Circular A–102 and OMB A–110 (as implemented at USDA 7 CFR part 3015, 3016 and 3019); and will apply to all types of grantees; State and local governments, non-profit organizations, institutions of higher education, hospitals, and for profit organizations.

Need and Use of the Information: The primary users of the information collected from the applicant are FNS and other Federal staff who will serve on a panel to systematically review, evaluate, and approve the grant/cooperative agreement applications and recommend the applicants most likely to meet program objectives and most responsive to the solicitation. The selection criteria will be contained in the Request for Application package. Without this information, FNS will not have adequate data to select appropriate grantees or evaluate which grants should be continued, or monitor financial reporting requirements.

Description of Respondents: State, Local, or Tribal Government; Business or other for-profit; Not for profit institutions.

Number of Respondents: 3,000.

Frequency of Responses: Reporting: Other (one-time).

Total Burden Hours: 150,000.

Food and Nutrition Service

Title: Generic Clearance for the Development of Nutrition Education Messages and Products for the General Public.

OMB Control Number: 0584–0523.

Summary of Collection: The Center for Nutrition Policy and Promotion (CNPP) of the U.S. Department of Agriculture conducts consumer research to identify key issues of concern related to understanding and use of the *Dietary Guidelines for Americans* (DGA), as well as the tools and resources used to implement the Dietary Guidelines—previously known as the *MyPyramid* food guidance system. The *Dietary Guidelines,* a primary source of dietary health information, are issued jointly by the USDA and Health and Human Services and serve as the cornerstone of Federal nutrition policy and form the basis for nutrition education efforts of these agencies. After the release of the 2010 DGA a new communication initiative built around USDA's new *MyPlate* icon, including the resources at ChooseMyPlate.gov, was launched. *MyPlate* is a visual cue supported by Dietary Guidelines messages to help consumer make better food choices.

Need and Use of the Information: CNPP will collect information to develop practical and meaningful nutrition and physical activity guidance for Americans to help improve their health. The collected information will also be used to expand the knowledge base concerning how the *Dietary Guidelines for Americans* recommendations and messages supporting *MyPlate* are understood and how they can be used by consumers to improve balance of their food intake with physical energy expenditure for good health. If this information is not collected, USDA's ability to incorporate messages and materials that are practical, meaningful, and relevant for the intended audience in any proposed update of the Dietary Guidelines for Americans or related resources at Choosemyplate.gov will be impaired.

Description of Respondents: Individuals or households.

Number of Respondents: 57,000.

Frequency of Responses: Reporting: Other (as desired).

Total Burden Hours: 12,004.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–01609 Filed 1–26–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Community Eligibility Provision Characteristics Study (CEP)

AGENCY: Food and Nutrition Service, United States Department of Agriculture (USDA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This is a new collection for the Community Eligibility Provision Characteristics Study (CEP).

DATES: Written comments must be received on or before March 28, 2016.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were 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 use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to John Endahl, Senior Program Analyst, Office of Policy Support, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1004, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of John Endahl at 703–305–2576 or via email to *john.endahl@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project, or to obtain a copy of the data collection plans contact John Endahl, Senior Program Analyst, Office of Policy Support, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1004, Alexandria, VA 22302; Fax: 703–305–2576; Email: *john.endahl@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Community Eligibility Provision Characteristics Study (CEP).

Form Number: N/A.

OMB Number: Not yet assigned.

Expiration Date: Not yet determined.

Type of Request: New collection.

Abstract: The Food and Nutrition Service (FNS) intends to request approval from the Office of Management and Budget (OMB) for a clearance that will allow FNS to conduct the Community Eligibility Provision (CEP) Characteristics Study. The objective of the study is to examine operational issues and perceived incentives and barriers for adopting CEP as well as the impacts on NSLP and SBP participation and per meal revenues.

Section 104(a) of the Healthy Hunger-Free Kids Act of 2010 (Pub. L. 111–296) amended section 11(a)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)(1) (the law) to provide an alternative to household applications for free and reduced-price meals in high poverty local education agencies (LEAs) and schools. This alternative is referred to as the Community Eligibility Provision (CEP).

To be eligible, LEAs and/or schools must meet a minimum level (40%) of identified students for free meals in the year prior to implementing the provision; agree to serve free lunches and breakfasts to all students; not collect free and reduced-price applications from households in participating schools, and agree to cover with non-Federal funds any costs of providing free meals to all students above amounts provided in Federal reimbursement.

Reimbursement is based on claiming percentages derived from the identified student percentage (ISP). The *Identified Students* are students certified for free meals through means other than individual household applications. The claiming percentages established for a school in the first year may be used for a period of up to four school years and may be increased if direct certification percentages rise in that school.

In accordance with the law, CEP was phased in over a period of several years. The provision was available to eligible LEAs and schools in three States (Illinois, Kentucky, and Michigan) selected by Food and Nutrition Service (FNS) for the school year (SY) 2011–12. An additional four States (the District of Columbia, New York, Ohio, and West Virginia) were added for SY 2012–13. FNS selected four more States (Florida, Georgia, Maryland, and Massachusetts) for SY 2013–14. CEP became available nationwide to all eligible LEAs and schools beginning July 1, 2014. As a result, in SY 2014–2015, approximately 14,000 schools in more than 2,000 LEAs serving more than 6.4 million children elected to participate in CEP.

A report was submitted to Congress that presented the results of an evaluation that examined the number of schools and LEAs that were eligible to receive special assistance payments under CEP, and described various attributes of those eligible schools and LEAs that elected or did not elect this provision. The evaluation also examined the impact of electing to receive special assistance payments under CEP on program participation, revenues, availability and type of school breakfast, LEA administrative costs, program integrity, and meal quality. The final report can be found on the FNS Web site (*http://www.fns.usda.gov/community-eligibility-provision-evaluation*). The Addendum describes the characteristics of LEAs and schools that participated in CEP in School Year 2013–14. It also describes how these characteristics differ for those high-poverty LEAs and schools that did *not* take up CEP.

With the expansion of CEP nationwide, the CEP Characteristics Study will include surveys of nationally representative samples of participating and eligible non-participating LEAs to obtain updated information on the characteristics of participating and non-participating districts and schools. The study will update information obtained in the Implementation Study component of the Community Eligibility Provision Evaluation. It will also examine CEP impacts on student participation and per meal revenue.

Affected Public: Respondent categories of affected public and the corresponding study participants will include: State Agency Child Nutrition Directors, CEP eligible SFAs with schools participating in the CEP and CEP eligible SFAs with no schools that elect to participate in the CEP.

Number of Respondents: 1,040 annually.

Frequency of Responses: Once per year.

Average Burden Hours per Response: 1.52 hours.

Total Annual Burden Hours: 1,308 hours. See the table below for estimated total annual burden for each type of respondent.

Data collection activity	Number of respondents (annual)	Frequency of responses (annual)	Average burden (hours per response)	Annual burden hours	Number of non-respondents (annual)	Frequency of responses (annual)	Average burden (hours per non-response)	Annual burden hours (non-response)	Total annual burden
CN Director Survey	52	1	0.75	39	0	1	0.083	0	39
SFA Director Survey (participating SFAs)	386	1	1.5	579	96	1	0.083	8	587
SFA Director Survey (non-participating)	386	1	1.0	386	96	1	0.083	8	394
CEP Impact Study Information—Phase 1	12	1	16	192	0	1	0.083	0	192
CEP Impact Study information—Phase 2	12	1	8	96	0	1	0.083	0	96
	848	1	1.52	1,292	192	1	0.083	16	1,308

Dated: January 19, 2016.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2016–01518 Filed 1–26–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Utility Service

Submission for OMB Review; Comment Request

January 21, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by February 26, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: 7 CFR 1717 Subpart Y, Settlement of Debt Owed by Electric Borrowers.

OMB Control Number: 0572–0116.

Summary of Collection: The Rural Utilities Service (RUS) makes mortgage loans and loan guarantees to electric systems to provide and improve electric service in rural areas pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 et. seq.) (RE Act). This information collection requirement stems from passage of Public Law 104–127, which amended section 331(b) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.,*) to extend to the RUS' loans and loan guarantees the Secretary authority to compromise, adjust, reduce, or charge-off debts or claims owed to the government (collectively, debt settlement) with respect to loans made or guaranteed by RUS. Only those electric borrowers that are unable to fully repay their debts to the government and who apply to RUS for relief will be affected by this collection of information. The information collected will be similar to that which any prudent lender would need to determine whether debt settlement is required and the amount of relief that is needed.

Need and Use of the Information: RUS will collect information to determine the need for debt settlement; the amount of debt the borrower can repay; the future scheduling of debt repayment; and, the range of opportunities for enhancing the amount of debt that can be recovered.

Description of Respondents: Non-for-profit institutions; Business or other for-profit.

Number of Respondents: 1.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,000.

Rural Utilities Service

Title: 7 CFR part 1721, Extensions of Payments of Principal and Interest.

OMB Control Number: 0572–0123.

Summary of Collection: The Rural Utilities Service (RUS) electric program provides loans and loan guarantees to borrowers at interest rates and on terms that are more favorable than those generally available from the private sector. Procedures and conditions which borrowers may request extensions of the payment of principal and interest are authorized, as amended, in section 12 of the Rural Electrification Act of 1936, and section 236 of the ''Disaster Relief Act of 1970 (Public Law 91–606), as amended by the Department of Agriculture Reorganization Act of 1994 (Public Law 103–354). As a result of obtaining federal financing, RUS borrowers receive economic benefits that exceed any direct economic costs associated with complying with (RUS) regulations and requirements.

Need and Use of the Information: The collection of information occurs only when the borrower requests an extension of principal and interest. Eligible purposes include financial hardship, energy resource conservation loans, renewable energy project, and contributions-in-aid of construction. These procedures are codified at 7 CFR part 1721, subpart B. The collections are made to provide needed benefits to borrowers while also maintaining the integrity of RUS loans and their repayment of taxpayer's monies.

Description of Respondents: Not for-profit institutions.

Number of Respondents: 29.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 296.

Rural Utilities Service

Title: 7 CFR part 1738, Rural Broadband Loan and Loan Guarantee.

OMB Control Number: 0572–0130.

Summary of Collection: Title VI, Rural Broadband Access, of the Rural Electrification Act of 1936, as amended (RE Act), provides loans and loan guarantees to fund the cost of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural communities in State and territories of the United States. The regulation prescribes the types of loans available, facilities financed and eligible applicants, as well as minimum credit support requirements considered for a loan. In addition, Title VI of the RE Act requires that Rural Utilities Service (RUS) make or guarantee a loan only if there is reasonable assurance that the loan, together with all outstanding loans and obligations of the borrower, will be repaid in full within the time agreed.

Need and Use of the Information: The information in the program application guide—RUS Bulletin 1738–1 provides applicants with needed information, definitions and details for completing and submitting an application. Information will be used to determine an applicant's eligibility, availability of broadband service for priority consideration, technical and economic feasibility of the proposed project (that the funds requested are adequate to complete the project taking into consideration any additional funding provided by the applicant and that the loan can be repaid within the allowable time frame), and the applicant complies with statutory, regulatory and administrative eligibility requirements for loan assistance.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 5.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,095.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–01611 Filed 1–26–16; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

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: International Trade Administration.

Title: Foreign-Trade Zone Applications.

OMB Control Number: 0625–0139.

Form Number(s): N/A.

Type of Request: Regular Submission.

Number of Respondents: 248.

Average Hours per Response: New Zone Application, 131 hours; Subzone Application, 4.5 hours; Reorganization/Expansion Application, 99 hours; Production Notification, 5.5 hours; Production Application, 34 hours; Minor Boundary Modifications, 3.5 hours; Waivers, 9 hours.

Burden Hours: 3,128.

Needs and Uses: The Foreign-Trade Zone Application is the vehicle by which individual firms or organizations apply for foreign-trade zone (FTZ) status, for subzone status, production authority, or for expansion/reorganization of an existing zone. The FTZ Act and Regulations require that an application with a description of the proposed project be made to the FTZ Board (19 U.S.C. 81b and 81f; 15 CFR 400.24–26) before a license can be issued or a zone can be expanded. The Act and Regulations require that applications contain detailed information on facilities, financing, operational plans, proposed production operations, need, and economic impact. Production activity in zones or subzones, can involve issues related to domestic industry and trade policy impact. Such applications must include specific information on the customs tariff-related savings that result from zone procedures and the economic consequences of permitting such savings. The FTZ Board needs complete and accurate information on the proposed operation and its economic effects because the Act and Regulations authorize the Board to restrict or prohibit operations that are detrimental to the public interest.

Affected Public: State, local or tribal governments or not-for-profit institutions that are FTZ grantees, as well as private companies.

Frequency: As necessary to receive FTZ benefits.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at 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* or fax to (202) 395–5806.

Sheleen Dumas,

Departmental PRA Lead, Office of the Chief Information Officer.

[FR Doc. 2016–01607 Filed 1–26–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews; 2014–2015

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

SUMMARY: The Department of Commerce is initiating new shipper reviews of the antidumping duty order on multilayered wood flooring from the People's Republic of China for Jiangsu Keri Wood Co., Ltd. (''Keri Wood'') and Zhejiang Simite Wooden Co., Ltd. (''Simite Wooden''). The period of review (''POR'') is December 1, 2014, through November 30, 2015.

DATES: *Effective Date:* January 27, 2016.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor, AD/CVD Operations, Office 4, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–5831.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (''Department'') published the AD order on multilayered wood flooring from the PRC on December 8, 2011.[1] On December 31, 2015, the Department received timely new shipper review requests from Keri Wood and Simite Wooden, respectively, in accordance with section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(c).[2]

In their submissions, Keri Wood and Simite Wooden stated that they are both the producers and exporters of the subject merchandise upon which their respective review requests were based.[3] Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Keri Wood and Simite Wooden certified that they did not export multilayered wood flooring to the United States during the period of investigation (''POI'').[4] In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Keri Wood and Simite Wooden certified that, since the initiation of the investigation, they have never been affiliated with any producer or exporter that exported multilayered wood flooring to the United States during the POI, including those not individually examined during the investigation.[5] As required by 19 CFR 351.214(b)(2)(iii)(B), Keri Wood and Simite Wooden also certified that their export activities were not controlled by the central government of the PRC.[6]

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Keri Wood and Simite Wooden submitted documentation establishing the following: (1) The date on which each company first shipped multilayered wood flooring for export to the United States and the date on which

[1] *See Multilayered Wood Flooring from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 76 FR 76690 (December 8, 2011) (''*Order*''), as amended *Multilayered Wood Flooring from the People's Republic of China: Amended Antidumping and Countervailing Duty Orders,* 77 FR 5484 (February 3, 2012).

[2] *See* Letter from Keri Wood to the Secretary of Commerce ''Multilayered Wood Flooring from the People's Republic of China: New Shipper Review,'' dated December 31, 2015 (''Keri Wood Initiation Request''); *see also* Simite Wooden to the Secretary of Commerce ''Multilayered Wood Flooring from the People's Republic of China; A–570–970; Request for Antidumping Duty New Shipper Review,'' dated December 31, 2015 (''Simite Wooden Initiation Request'').

[3] *See* Keri Wood Initiation Request at 2 and Exhibit 2; *see also* Simite Wooden Initiation Request at 1–2.

[4] *See* Keri Wood Initiation Request at 2 and Exhibit 2; *see also* Simite Wooden Initiation Request at 2 and Exhibit Req-3.

[5] *See* Keri Wood Initiation Request at Exhibit 2; *see also* Simite Wooden Initiation Request at 2–3 and Exhibit Req-3.

[6] *See* Keri Wood Initiation Request at Exhibit 2; *see also* Simite Wooden Initiation Request at 3 and Exhibit Req-3.

the multilayered wood flooring was first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.[7]

The Department conducted U.S. Customs and Border Protection (''CBP'') database queries and confirmed that Keri Wood and Simite Wooden's shipments of subject merchandise had entered the United States for consumption and that liquidation of such entries had been properly suspended for antidumping duties. The Department also confirmed by examining CBP data that Keri Wood and Simite Wooden entries were made during the POR specified by the Department's regulations.[8]

Period of Review

Pursuant to 19 CFR 351.214(g)(1)(i)(A), the POR for the new shipper reviews of Keri Wood and Simite Wooden is December 1, 2014, through November 30, 2015.

Initiation of New Shipper Reviews

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(b), and the information on the record, the Department finds that the requests submitted by Keri Wood and Simite Wooden meet the threshold requirements for initiation of new shipper reviews for the shipments of multilayered wood flooring from the PRC produced and exported by these companies.[9] However, if the information supplied by Keri Wood and Simite Wooden is later found to be incorrect or insufficient during the course of this proceeding, the Department may rescind the review or apply adverse facts available pursuant to section 776 of the Act, depending upon the facts on record.

Pursuant to 19 CFR 351.221(c)(1)(i), the Department will publish the notice of initiation of a new shipper review no later than the last day of the month following the anniversary or semiannual anniversary month of the order. The Department intends to issue the preliminary results of these new shipper reviews no later than 180 days from the date of initiation, and the final results no later than 90 days from the issuance of the preliminary results.[10]

It is the Department's usual practice, in cases involving non-market economies, to require that a company seeking to establish eligibility for an AD rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, the Department will issue questionnaires to Keri Wood and Simite Wooden which will include a section requesting information with regard to these companies' export activities for separate rates purposes. The review of each exporter will proceed if the response provides sufficient indication that it is not subject to either *de jure* or *de facto* government control with respect to its export of subject merchandise.

We will instruct CBP to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from Keri Wood and Simite Wooden, in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because Keri Wood and Simite Wooden claimed that they produced and exported the subject merchandise, the Department will apply the bonding privilege only for subject merchandise that the respondent both produced and exported. To assist in its analysis of the *bona fides* of Keri Wood and Simite Wooden sales, upon initiation of this new shipper review, the Department will require Keri Wood and Simite Wooden to submit on an ongoing basis complete transaction information concerning any sales of subject merchandise to the United States that were made subsequent to the POR.

Interested parties requiring access to proprietary information in these new shipper reviews should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 19 CFR 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 19 CFR 351.221(c)(1)(i).

Dated: January 21, 2016.

Gary Taverman,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–01644 Filed 1–26–16; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See* Keri Wood Initiation Request at Exhibit 1; *see also* Simite Wooden Initiation Request at Exhibit Req-1.

[8] *See* January 15, 2016, Memoranda to the File, regarding ''U.S. Customs and Border Protection Data'' for Keri Wood and Simite Wooden; *see also* Memorandum to the File entitled, ''Initiation of Antidumping New Shipper Review of Multilayered Wood Flooring from the People's Republic of China: Jiangsu Keri Wood Co., Ltd. (''Keri Wood Initiation Checklist'') dated concurrently with this notice; Memorandum to the File entitled, ''Initiation of Antidumping New Shipper Review of Multilayered Wood Flooring from the People's Republic of China: Zhejiang Simite Wooden Co., Ltd.'' (''Simite Wooden Initiation Checklist'') dated concurrently with this notice. As noted in the Simite Wooden Initiation Checklist, the Department is seeking additional information regarding the entry forming the basis for Simite Wooden's new shipper review.

[9] *See* Keri Wood Initiation Checklist; *see also* Simite Wooden Initiation Checklist.

[10] *See* section 751(a)(2)(B)(iv) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–905]

Certain Polyester Staple Fiber From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2013–2014

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

SUMMARY: The Department of Commerce (the ''Department'') has conducted an administrative review of the antidumping duty order on certain polyester staple fiber from the People's Republic of China (''PRC''), for the period of review (''POR''), June 1, 2013, to May 31, 2014. On July 22, 2015, the Department published the preliminary results of this review, and received no comments from interested parties. Therefore, the final results do not differ from the preliminary results. The Department continues to determine that Zhaoqing Tifo New Fibre Co., Ltd. (''Zhaoqing Tifo'') failed to establish its eligibility for a separate rate for the POR, and thus, is a part of the PRC-wide entity, and that Takayasu Industrial (Jiangyin) Co., Ltd. (''Takayasu'') had no reviewable entries during the POR.

DATES: *Effective Date:* January 27, 2016.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone, 202.482.2243.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the order is certain polyester staple fiber. The product is currently classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') numbers 5503.20.0045 and 5503.20.0065. Although the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope of the order remains dispositive.[1]

[1] For a full description of the scope, *see* Decision Memorandum from Christian Marsh, Deputy

Continued

Background

On July 22, 2015, the Department published the *Preliminary Results* of this administrative review.[2] On November 17, 2015, we extended the final results to January 18, 2016.[3] No party submitted comments on the *Preliminary Results.*

Final Results of Review

A. Takayasu

As noted in the *Preliminary Results,* Takayasu submitted a no-shipment letter which stated that it only had one entry of subject merchandise during the POR, which was a sample sale.[4] For these final results, because the record contains no evidence to the contrary, we continue to find Takayasu's single entry constitutes a sample shipment that lacked consideration, and thus Takayasu did not have any reviewable transactions during the POR.

Consistent with the Department's assessment practice in non-market economy (''NME'') cases,[5] where a respondent has no entries during the period of review, it is appropriate not to rescind the review in part in this circumstance but, rather, to complete the review with respect to that respondent and issue appropriate instructions to CBP based on the final results of the review.[6] Accordingly, the Department has completed the review with respect to Takayasu and will issue appropriate instructions to CBP based on the final results of the review.[7] For the final results, we will instruct CBP to liquidate Takayasu's sample entry without regard to antidumping duties.

B. Zhaoqing Tifo

As noted in the *Preliminary Results,* Zhaoqing Tifo did not respond to the antidumping duty questionnaire and failed to establish its eligibility for a separate rate.[8] As such, consistent with the Department's practice regarding conditional review of the PRC-wide entity,[9] we determine that Zhaoqing Tifo remains part of the PRC-wide entity. Under this practice, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity, the entity is not under review and the entity's rate is not subject to change. Therefore, for the final results, we will instruct CBP to liquidate Zhaoqing Tifo's entries at the rate previously established for the PRC-wide entity, 44.30 percent.

Assessment Rates

Because Takayasu was found to have no reviewable transactions, and because Zhaoqing Tifo did not respond to the antidumping duty questionnaire, and is thus a part of the PRC-wide entity, we have not calculated any assessment (or cash deposit) rates in this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the ''Act''): (1) For previously investigated or reviewed PRC and non-PRC exporters that received a separate rate in a prior completed segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (2) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity, which is 44.30 percent; and (3) 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 final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 15, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–01646 Filed 1–26–16; 8:45 am]

BILLING CODE 3510–DS–P

Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Preliminary Results of 2013–2014 Antidumping Duty Administrative Review: Certain Polyester Staple Fiber from the People's Republic of China,'' dated June 30, 2015 (''Preliminary Decision Memorandum'').

[2] *See Certain Polyester Staple Fiber from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2013–2014,* 80 FR 43392 (July 22, 2015) (''*Preliminary Results*'').

[3] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary, through James Doyle, Office Director, from Javier Barrientos, Case Analyst, ''Polyester Staple Fiber from the People's Republic of China: Extension of Deadline for the Final Results of Antidumping Duty Administrative Review,'' dated November 17, 2015.

[4] *See* Preliminary Decision Memorandum at 4–5; *see also* Takayasu's September 29, 2014 submission.

[5] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (''*NME Reseller Policy*'').

[6] *See, e.g., Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission, In Part, of Administrative Review and Final Results of New Shipper Review; 2013,* 80 FR 34619 (June 17, 2015).

[7] *See NME Reseller Policy.*

[8] *See* Preliminary Decision Memorandum at 4.

[9] *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, 65970 (November 4, 2013).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Intent To Grant Exclusive License

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), intends to

grant to Handix, LLC of Boulder, Colorado, an exclusive global license to manufacture and distribute its ''OPEN PATH OPTICAL CELL''.

DATES: Comments must be received on or before February 29, 2016.

ADDRESSES: Send comments to NOAA Technology Partnerships Office, SSMC4 Room 7605, 1305 East West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Derek Parks, NOAA Technology Transfer Program Manager, at: *derek.parks@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Federal Government's rights in this invention are assigned to the United States of America, as represented by the Secretary of Commerce. It is in the public interest to so license this invention, as Handix, LLC of Boulder, Colorado, has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the NOAA Technology Partnerships Office receives written evidence and argument which establishes the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Dated: January 21, 2016.

Jason Donaldson,

Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2016–01614 Filed 1–26–16; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE132

NOAA Commercial Space Policy

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of the NOAA Commercial Space Policy.

SUMMARY: NOAA has released the final NOAA Commercial Space Policy (Policy). On September 1, 2015, NOAA released a draft Commercial Space Policy for a 30-day public comment period. During this comment period, 15 sets of comments were received (see *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0109*). All comments were reviewed, adjudicated and, where appropriate, incorporated or reflected in the final Policy.

ADDRESSES: To obtain copies of the Policy please go to: *http://www.corporateservices.noaa.gov/ames/administrative_orders/chapter_217/217-109.html* or *www.regulations.gov* and search NOAA–NMFS–2015–0109, or contact Mr. Troy Wilds, Executive Director, Office of the Under Secretary, U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Suite 51032, 14th and Constitution Avenue NW., Washington DC 20230. (Phone: 202–482–3193, *troy.wilds@noaa.gov*).

FOR FURTHER INFORMATION CONTACT: For additional information regarding the Policy, please contact Mr. Troy Wilds, Executive Director, Office of the Under Secretary, U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Suite 51032, 14th and Constitution Avenue NW., Washington DC 20230. (Phone: 202–482–3193, *troy.wilds@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Background

NOAA's Commercial Space Policy sets a broad framework for use of commercial space-based approaches by the agency to meet its observational requirements. Changes in the commercial space services arena are happening rapidly, yielding new technical and business approaches to building, launching, and operating satellites, and selling private satellite capabilities as services. NOAA is interested in exploring these emerging commercial capabilities to better understand how they might complement the agency's current offerings.

The draft policy was published on September 1, 2015 (80 FR 52745). The final policy establishes critical components for improved engagement with the commercial sector: Designating the Office of Space Commerce as a single point of entry for commercial providers thereby streamlining the process for easier engagement; establishes an open and transparent marketplace; defines guiding principles, implementation considerations, and strategic planning for potential commercial data buys; and establishes the possibility of demonstration projects, where appropriate, to test and evaluate new potential data sources, and provides an avenue to operational commercial data buys.

As demand for information about the changing state of our planet grows, NOAA strives to support and grow an observing enterprise that is flexible, responsive to evolving technologies, and economically sustainable. This policy will allow NOAA to seek solutions that meet these needs while also supporting and upholding the international data sharing commitments upon which we depend for global data and data products.

Dated: January 15, 2016.

Manson K. Brown,

Deputy Administrator, National Oceanic and Atmospheric Administration.

[FR Doc. 2016–01653 Filed 1–26–16; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2016–OS–0006]

Privacy Act of 1974; System of Records

AGENCY: National Guard Bureau, DoD.

ACTION: Notice to add a new system of records.

SUMMARY: The National Guard Bureau proposes to add a new system of records, INGB 005, entitled ''Special Investigation Reports and Files''. Information is collected and maintained for the purpose of conducting investigations on allegations of sexual assault, fraud, or other complex incidents involving National Guard forces when requested by an Adjutant General of a State, Territory, or the District of Columbia or by other appropriate authority and approved IAW Chief of the National Guard Bureau authorities and policy.

DATES: Comments will be accepted on or before February 26, 2016. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for

comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Nikolaisen, NGB/JA–OIP, AHS-Bldg 2, Suite T319B, 111 South George Mason Drive, Arlington, VA 22204–1373 or telephone: (703) 601–6884.

SUPPLEMENTARY INFORMATION: The National Guard Bureau notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/* The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 15, 2015, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 21, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

INGB 005

SYSTEM NAME:

Special Investigation Reports and Files.

SYSTEM LOCATION:

National Guard Bureau (NGB), Office of the Chief Counsel (JA), Office of Complex Investigations (OCI), AHS-Bldg 2, Suite T319B, 111 South George Mason Drive, Arlington, VA 22204–1373.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former civilian, military, or contract personnel and members of the public who make allegations or reports that are investigated by the NGB OCI, the subjects of such investigation and relevant witnesses to such an investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative files and reports to include assigned investigation number, date of investigation, request from State Adjutant General to conduct an investigation, documented findings and conclusions, an executive summary, witness statements, results from witness interviews, including name, home/work address and contact information, and other Personally Identifiable Information that a witness may provide during an interview, but is not routinely collected or used to retrieve information; audio or video recorded interviews and interview summations; supporting documentation and evidence gathered while conducting the investigation; investigative reports of Federal, state, and local law enforcement agencies; local command investigations; general correspondence; legal research and memoranda; personnel and medical records; case tracking programs and files; and forms to comply with the DoD Sexual Assault Prevention and Response Program; information regarding actions taken by commands after receipt of an OCI Report of Investigation (ROI), including disciplinary actions and other actions taken in response to an ROI; information concerning allegations of reprisal or retaliation for making a complaint of sexual assault, or participating in investigations of sexual assault; information pertaining to retaliation or reprisal for making any other type of complaint or cooperating with an OCI investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 10502, Chief of the NGB; 10 U.S.C. 10503, Functions of the NGB; DoD Directive 5105.77, NGB; DoD Directive 6495.01, Sexual Assault Prevention and Response (SAPR) Program; DoD Instruction 6495.02, Sexual Assault Prevention and Response Program Procedures; Chief NGB Instruction 0400.01, Chief, NGB Office of Complex Administrative Investigations; Chief NGB Manual 0400.01, Chief, NGB Office of Complex Administrative Investigations; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

Information is being collected and maintained for the purpose of conducting investigations on allegations of sexual assault, fraud, or other complex incidents involving National Guard forces when requested by an Adjutant General of a State, Territory, or the District of Columbia or by other appropriate authority and approved in accordance with Chief of the NGB authorities and policy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under the Privacy Act (5 U.S.C. 552a(b)) the records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records may be disclosed to state officials in the state or states that requested the investigation be conducted or which have any criminal or administrative jurisdiction over individuals impacted by the investigation.

To Federal, state, local agency or an individual or organization, if there is reason to believe that such agency, individual or organization possesses information relating to the investigation and the disclosure is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant.

To attorney or other professional or job-specific licensing, accreditation, and/or disciplinary authorities as required to support relevant investigations and proceedings.

Any release of information contained in this system of records outside of DoD will be compatible with the purposes for which the information is being collected and maintained.

The DoD Blanket Routine Uses set forth at the beginning of the NGB's compilation of systems of records notices may apply to this system. The complete list of DoD blanket routine uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx.*

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

Retrieved by individual's name and/or investigation number.

SAFEGUARDS

Paper and electronic records are maintained in security-controlled areas accessible only to authorized persons with a need to know in the performance of official duties.

RETENTION AND DISPOSAL:

Records are pending a disposition from the National Archives and Records Administration (NARA). Records will be treated as permanent until NARA approves a retention and disposition of these records.

SYSTEM MANAGER(S) AND ADDRESS:

NGB/JA–OCI, AHS–Bldg 2, Suite T319B, 111 South George Mason Drive, Arlington, VA 22204–1373.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to NGB/JA–OIP Attn: OCI PA Request, AHS–Bldg 2, Suite T319B, 111 South George Mason Drive, Arlington, VA 22204–1373.

Written requests must include the requester's name and full mailing address they want the response sent to along with as much detail as known regarding the following: The investigation number, approximate date of the investigation, and name of state or State Adjutant General that requested the investigation.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves should address written inquiries to NGB/JA–OIP Attn: OCI PA Request, AHS–Bldg 2, Suite T319B, 111 South George Mason Drive, Arlington, VA 22204–1373.

Written requests must include the requester's name and full mailing address they want the response sent to along with as much detail as known regarding the following: The investigation number, approximate date of the investigation, and name of state or State Adjutant General that requested the investigation.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The NGB rules for accessing records, and for contesting contents and appealing initial agency determinations are published at 32 CFR part 329 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Reported perpetrators/subjects; witnesses; victims; various Department of Defense, federal, state, and local investigative agencies; State National Guard offices; any other individual or organization that supplies pertinent information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(k)(2); provided, however, if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section [September 27, 1975], under an implied promise that the identity of the source would be held in confidence.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3),(c), and (e) and published in 32 CFR part 329. For additional information contact the system manager or the NGB Privacy Office.

[FR Doc. 2016–01517 Filed 1–26–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–OS–0095]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by February 26, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Militarily Critical Technical Data Agreement, DD Form 2345, OMB Control Number 0704–0207.

Type of Request: Extension.

Number of Respondents: 8,000.

Responses per Respondent: 1.

Annual Responses: 8,000.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 2,666.

Needs and Uses: The information collection requirement is necessary to serve as a basis for certifying enterprises of individuals to have access to DoD export-controlled militarily critical technical data subject to the provisions of 32 CFR 250. Enterprises and individuals that need access to unclassified DoD-controlled military critical technical data must certify on DD Form 2345, Militarily Critical Technical Data Agreement, that data will be used only in ways that will inhibit unauthorized access and maintain the protection afforded by U.S. export control laws. The information collected is disclosed only to the extent consistent with prudent business practices, current regulations, and statutory requirements and is so indicated on the DD Form 2345.

Affected Public: Business or other for profit, Not-for-profit institutions, individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are

received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: January 21, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–01504 Filed 1–26–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years, an information collection request with the Office of Management and Budget (OMB). Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before March 28, 2016. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to Eric Mulch at 1000 Independence Ave. SW., Washington, DC 20585 or by email at *eric.mulch@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Eric F. Mulch, Attorney-Adviser, at (202) 287–5746, or via email at *eric.mulch@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1910–5115; (2) Information Collection Request Title: Contractor Legal Management Requirements; (3) Type of Review: extension; (4) Purpose: the information collection to be extended has been and will be used to form the basis for DOE actions on requests from the contractors for reimbursement of litigation and other legal expenses. The information collected related to annual legal budget, staffing and resource plans, and initiation or settlement of defensive or offensive litigation is and will be similarly used; (5) Annual Estimated Number of Respondents: 45; (6) Annual Estimated Number of Total Responses: 154; (7) Annual Estimated Number of Burden Hours: 1150; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: 0.

Statutory Authority: Section 161 of the Atomic Energy Act of 1954, 42 U.S.C. 2201, the Department of Energy Organization Act, 42 U.S.C 7101, *et seq.,* and the National Nuclear Security Administration Act, 50 U.S.C. 2401, *et seq.*

Issued in Washington, DC on Janaury 20, 2016.

Steven Croley,

General Counsel, United States Department of Energy.

[FR Doc. 2016–01640 Filed 1–26–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. 92–463), and in accordance with Title 41 of the Code of Federal Regulations, section 102–3.65(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Environmental Management Advisory Board (Board) will be renewed for a two-year period beginning January 22, 2016.

The Board provides the Assistant Secretary for Environmental Management (EM) with information and strategic advice on a broad range of corporate issues affecting the EM program. These corporate issues include, but are not limited to, project management and oversight activities, cost/benefit analyses, program performance, human capital development, and contracts and acquisition strategies.

Additionally, the renewal of the Board has been determined to be essential to conduct DOE's business and to be in the public interest in connection with the performance of duties imposed on DOE by law and agreement. The Board will operate in accordance with the provisions of the Federal Advisory Committee Act, and rules and regulations issued in implementation of that Act.

FOR FURTHER INFORMATION CONTACT: Ms. Kristen G. Ellis, Designated Federal Officer, at (202) 586–5810 or *kristen.ellis@em.doe.gov.*

Issued in Washington, DC on January 21, 2016.

LaTanya R. Butler,

Acting Committee Management Officer.

[FR Doc. 2016–01647 Filed 1–26–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces the subcommittee meetings of the Deactivation and Decommissioning/Facilities Subcommittee, the Environmental Remediation Subcommittee, and the Community Engagement Subcommittee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah (known locally as the Paducah Citizens Advisory Board [Paducah CAB]). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, February 18, 2016, 5:00 p.m.–8:00 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Jennifer Woodard, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6825.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Purpose of the Deactivation and Decommissioning (D&D)/Facility Subcommittee: The mission of the D&D/Facilities Subcommittee is to evaluate and make recommendations on DOE's planning and implementation of future D&D cleanup at the Paducah Gaseous Diffusion Plant (PGDP).

Purpose of the Environmental Remediation Subcommittee: The mission of the Environmental Remediation Subcommittee is to evaluate and make recommendations on DOE's approach to remedial alternatives associated with burial grounds, groundwater treatment, and soils remediation located on the PGDP site. The Subcommittee will facilitate public participation in providing feedback to DOE on these decisions considering human health and the environment. DOE complex-wide concerns and impacts related to DOE's missions will also be considered.

Purpose of the Community Engagement Subcommittee: The mission of the Community Engagement Subcommittee is to make recommendations regarding the short and long term vision for preserving and archiving the role of the PGDP in the community and the nation that represents the communities' interest.

Tentative Agendas

D&D/Facilities Subcommittee—5:00 p.m.–6:30 p.m.

- Call to Order, Introductions, Review of Agenda
- Next Steps and Actions
- Public Comments (15 minutes)
- Adjourn

Environmental Remediation Subcommittee—5:00 p.m.–6:30 p.m.

- Call to Order, Introductions, Review of Agenda
- Next Steps and Actions
- Public Comments (15 minutes)
- Adjourn

Community Engagement Subcommittee—6:30 p.m.–8:00 p.m.

- Call to Order, Introductions, Review of Agenda
- Next Steps and Actions
- Public Comments (15 minutes)
- Adjourn

Breaks Taken As Appropriate

Public Participation: The Paducah CAB's Committees welcome the attendance of the public at their committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jennifer Woodard as soon as possible in advance of the meeting at the telephone number listed above. Written statements may be filed with the Committees either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jennifer Woodard at the telephone number listed above. Requests must be received as soon as possible prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. The Paducah CAB's Committees will hear public comments pertaining to its scope (clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities). Comments outside of the scope may be submitted via written statement as directed above.

Minutes: Minutes will be available by writing or calling Jennifer Woodard at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.energy.gov/2016Meetings.html.*

Issued at Washington, DC on January 21, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–01650 Filed 1–26–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Laboratory. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, February 17, 2016, 8:00 a.m.–4:15 p.m.

The opportunity for public comment is at 11:30 a.m. and 4:00 p.m.

This time is subject to change; please contact the Federal Coordinator (below) for confirmation of times prior to the meeting.

ADDRESSES: Hilton Garden Inn, 700 Lindsay Boulevard, Idaho Falls, ID 83401.

FOR FURTHER INFORMATION CONTACT: Robert L. Pence, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1203, Idaho Falls, Idaho 83415. Phone (208) 526–6518; Fax (208) 526–8789 or email: *pencerl@id.doe.gov* or visit the Board's Internet home page at: *http://inlcab.energy.gov/.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Topics (agenda topics may change up to the day of the meeting; please contact Robert L. Pence for the most current agenda):

- Recent Public Involvement
- Idaho Cleanup Project Progress to Date
- Update on Integrated Waste Treatment Unit (IWTU)
- Nuclear Regulatory Commission Contract
- Supplemental Environmental Projects
- EM Budget
- 5-Year Review
- Spent Fuel Storage—Wet to Dry

Public Participation: The EM SSAB, Idaho National Laboratory, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Robert L. Pence at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Robert L. Pence at the address or telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Robert L. Pence,

Federal Coordinator, at the address and phone number listed above. Minutes will also be available at the following Web site: *http://inlcab.energy.gov/pages/meetings.php.*

Issued at Washington, DC, on January 21, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–01652 Filed 1–26–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy.

ACTION: Agency information collection activities: information collection extension with no changes; notice and request for comments.

SUMMARY: The EIA invites public comment on the proposed collection of information, EIA–882T, ''Generic Clearance for Questionnaire Testing, Evaluation, and Research'' that EIA is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (1) 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; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before February 26, 2016. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to Jacob Bournazian, Energy Information Administration, 1000 Independence Avenue SW., Washington DC 20585 or by fax at 202–586–0552 or by email at *jacob.bournazian@eia.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jacob Bournazian, Energy Information Administration, 1000 Independence Avenue SW., Washington DC 20585, phone: 202–586–5562, email: *jacob.bournazian@eia.gov.*

SUPPLEMENTARY INFORMATION:

This information collection request contains:

(1) *OMB No.:* 1905–0186;

(2) *Information Collection Request Title:* Generic Clearance for Questionnaire Testing, Evaluation, and Research;

(3) *Type of Request:* Renewal;

(4) *Purpose:* The U.S. Energy Information Administration (EIA) is planning to request a three-year approval from the Office of Management and Budget (OMB) to utilize qualitative and quantitative methodologies to pretest questionnaires and validate the quality of the data collected on EIA forms. This authority would allow EIA to conduct pretest surveys, pilot surveys, respondent debriefings, cognitive interviews, usability interviews, and focus groups. Through the use of these methodologies, EIA will improve the quality of data being collected for measuring market activity and assessing supply conditions in energy markets, reduce or minimize respondent burden, increase agency efficiency, and improve responsiveness to the public. This authority also improves EIA's ability to collect relevant and timely information that meets the data needs of EIA's customers.

(5) *Annual Estimated Number of Respondents:* 2,000;

(6) *Annual Estimated Number of Total Responses:* 2,000;

(7) *Annual Estimated Number of Burden Hours:* 2,000;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* There are no additional costs associated with these survey methods other than the burden hours. The information is maintained in the normal course of business. The cost of burden hours to the respondents is estimated to be $144,040 (2,000 burden hours times $72.02 per hour), which represents a reduction of 1,006 burden hours from the prior renewal of this collection. Therefore, other than the cost of burden hours, EIA estimates that there are no additional costs for generating, maintaining and providing the information.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Public Law 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, on January 21, 2016.

Nanda Srinivasan,

Director, Office of Survey Development and Statistical Integration, U. S. Energy Information Administration.

[FR Doc. 2016–01645 Filed 1–26–16; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9941–71 OLEM]

Access to Confidential Business Information By Eastern Research Group, Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of access to data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will authorize its contractor Eastern Research Group, Incorporated (ERG) to access Confidential Business Information (CBI) which has been submitted to EPA under the authority of all sections of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended. EPA has issued regulations that outline business confidentiality provisions for the Agency and require all EPA Offices that receive information designated by the submitter, as CBI to abide by these provisions.

DATES: Access to confidential data submitted to EPA will occur no sooner than February 8, 2016.

FOR FURTHER INFORMATION CONTACT: LaShan Haynes, Document Control Officer, Office of Resource Conservation and Recovery, (5305P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, 703–605–0516.

SUPPLEMENTARY INFORMATION:

1. Access to Confidential Business Information

Under EPA Contract No. EP–W–10–055, ERG, Incorporated will assist the Office of Resource Conservation and Recovery (ORCR), Resource Conservation and Sustainability Division (RCSD) in developing the Advancing Sustainable Materials Management: Facts and Figures Report to analyze the composition and amounts of the United States' Municipal Solid Waste (MSW) and other wastes, and how these materials are recycled, combusted, and landfilled. The methodology used in this report is a ''top-down'' materials flow approach to estimate the size of the waste stream

data. This report may typically involve one or more of the following statutes: CAA, CWA, RCRA, TSCA, FIFRA, EPCRA and the SDWA. Some of the data collected voluntarily from industry, may be claimed by industry to contain trade secrets or CBI. In accordance with the provisions of 40 CFR part 2, subpart B, ORCR has established policies and procedures for handling information collected from industry, under the authority of RCRA, including RCRA Confidential Business Information Security Manuals.

ERG, Incorporated shall protect from unauthorized disclosure all information designated as confidential and shall abide by all RCRA CBI requirements, including procedures outlined in the RCRA CBI Security Manual.

The U.S. Environmental Protection Agency has issued regulations (40 CFR part 2, subpart B) that outline business confidentiality provisions for the Agency and require all EPA Offices that receive information designated by the submitter as CBI to abide by these provisions. ERG, Incorporated will be authorized to have access to RCRA CBI under the EPA ''Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual.''

EPA is issuing this notice to inform all submitters of information under all sections of RCRA that ERG, Incorporated under the contract may have access to RCRA CBI. Access to RCRA CBI under this contract will take place at ERG's Chantilly, Virginia and Prairie View, Kansas offices, and when necessary, EPA Headquarters only. Contractor personnel at each location will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to confidential information.

Dated: November 17, 2015.

Barnes Johnson,

Director, Office of Resource Conservation & Recovery.

[FR Doc. 2016–01568 Filed 1–26–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2014–0736; FRL–9941–60–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; EPA's Safer Choice Partner of the Year Awards Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA): ''EPA's Safer Choice Partner of the Year Awards Program'' and identified by EPA ICR No. 2450.02 and OMB Control No. 2070–0184. The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized in this document. EPA has addressed the comments received in response to the previously provided public review opportunity issued in the **Federal Register** on October 2, 2015 (80 FR 59773). With this submission, EPA is providing an additional 30 days for public review.

DATES: Comments must be received on or before February 26, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2014–0736, to both EPA and OMB as follows:

- To EPA online using *http://www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- To OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket: Supporting documents, including the ICR that explains in detail the information collection activities and the related burden and cost estimates that are summarized in this document, are available in the docket for this ICR. The docket can be viewed online at *http://www.regulations.gov* or in person at the EPA Docket Center, West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is (202) 566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

ICR status: This ICR is currently scheduled to expire on January 31, 2016. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. Under PRA, 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 currently valid OMB control number. The OMB control numbers are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA developed the Partner of the Year Awards to recognize Safer Choice stakeholders who have furthered the goals of Safer Choice through active and exemplary participation in and promotion of the Safer Choice program. Making the mission of the Safer Choice program known to the widest possible audience, through its safer product label and in other forms of communication, is critical to fully realizing the program's goals of protecting human health and the environment, promoting a sustainable economy, and creating green jobs, especially in the small business sector.

The Partner of the Year Awards will be an annual event, with recognition for Safer Choice stakeholder organizations from five broad categories: (1) Formulators/product manufacturers (of both consumer and institutional/industrial (I/I) products), (2) purchasers and distributors, (3) retailers, (4) supporters (*e.g.,* non-governmental organizations, including environmental and health advocates, trade associations, academia, sports teams, and others), and (5) innovators (*e.g.,* chemical manufacturers, technology developers, and others). Within these categories and based on the criteria, EPA may elect to give additional awards in the subcategories of ''small business'' and ''sustained excellence.'' This information collection activity addresses the reporting burden associated with completing the

application to EPA for recognition in the Partner of the Year Awards program.

Responses to this information collection are voluntary. Respondents may claim all or part of a response confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Respondents/Affected Entities: Entities potentially affected by this ICR are establishments engaged in the production, use, and/or advancement of safer chemicals, that have furthered the goals of EPA's Safer Chemical program through active and exemplary participation in and promotion of the program, and that wish to receive recognition for their achievements.

Respondent's obligation to respond: Voluntary.

Estimated total number of potential respondents: 50.

Frequency of response: Annual.

Estimated total burden: 750 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Estimated total costs: $45,486 (per year), includes no annualized capital investment or maintenance and operational costs.

Changes in the estimates: There is a decrease of 900 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

This decrease reflects the experience of EPA's Safer Choice program since OMB first approved this information collection. The Safer Choice program conducted its first Partner of the Year Awards in 2015, at which time EPA had received applications from 35 respondents. Based upon revised estimates, EPA has reduced the estimated number of respondents from 110 to 50, with a corresponding decrease in the associated burden. This change is an adjustment.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2016–01523 Filed 1–26–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0517; FRL–9941–77–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999 (40 CFR Part 60, Subpart BBBB)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''NSPS for Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999 (40 CFR part 60, subpart BBBB) (Renewal)'' (EPA ICR No. 1901.06, OMB Control No. 2060–0424) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through January 31, 2016. Public comments were previously requested via the **Federal Register** (80 FR 32116) on June 5, 2015 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 26, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–2012–2012–0517, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: These emission guidelines apply to small municipal waste combustors (MWCs) constructed on or before August 30, 1999, that combust greater than 35 tons per day (tpd) but less than 250 tpd of municipal solid waste. The emission guidelines regulate organics (dioxin/furans), metals (cadmium, lead, mercury, and particulate matter), and acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides). The emission guidelines require initial reports, semiannual reports, and annual reports. Owners or operators also are required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility or any period during which the monitoring system is inoperative. Owners or operators subject to these regulations are required to maintain records of measurements and reports for at least five years.

Form Numbers: None.

Respondents/affected entities: Small municipal waste combustion units.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart BBBB).

Estimated number of respondents: 23 (total).

Frequency of response: Initially, semiannually and annually.

Total estimated burden: 102,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $11,200,000 (per year), includes $1,040,000 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in the respondent

burden from the most recently approved ICR. The increase in respondent labor hour is caused by a change in assumption; in this ICR, we assume all existing sources will take some time each year to re-familiarize themselves with the rule requirements. There is also a small increase in the total O&M cost due to rounding of all calculated values to three significant digits.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2016–01635 Filed 1–26–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0525; FRL–9941–78–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Chemical Manufacturing Area Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''NESHAP for Chemical Manufacturing Area Sources (40 CFR part 63, subpart VVVVVV)'' (EPA ICR No. 2323.06, OMB Control No. 2060–0621) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through January 31, 2016. Public comments were previously requested via the **Federal Register** (80 FR 32116) on June 5, 2015 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 26, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0525, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: These standards apply to the area source NESHAP for chemical manufacturing (40 CFR part 63, subpart VVVVVV). There are nine area source categories in the chemical manufacturing sector: Agricultural Chemicals and Pesticides Manufacturing, Cyclic Crude and Intermediate Production, Industrial Inorganic Chemical Manufacturing, Industrial Organic Chemical Manufacturing, Inorganic Pigments Manufacturing, Miscellaneous Organic Chemical Manufacturing, Plastic Materials and Resins Manufacturing, Pharmaceutical Production, and Synthetic Rubber Manufacturing. The requirements apply to process vents, storage tanks, equipment leaks, wastewater systems, transfer operations, and heat exchange systems at affected sources in each area source category and are combined in one subpart. The standards are based on EPA's determination of generally available control technology (GACT) or management practices for each area source category.

Form Numbers: None.

Respondents/affected entities: Chemical manufacturing area source facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart VVVVVV).

Estimated number of respondents: 498 (total).

Frequency of response: Initially and semiannually.

Total estimated burden: 9,590 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $2,220,000 (per year), includes $1,250,000 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an adjustment decrease in the respondent burden and number of responses from the most recently approved ICR. The decrease occurred because the rule has been in effect for three years, and the burden associated with initial compliance (*e.g.* initial performance tests and notification reports) differ from the burden for ongoing compliance (*e.g.* submittal of semiannual reports). However, there is an adjustment increase in the total capital and O&M cost. This is primarily due to two reasons: (1) The previous ICR presented capital costs as annualized costs over 15 years, rather than one-time costs; and (2) the total number of sources with O&M cost (*i.e.* maintain systems and monitors) has increased now that the rule is fully implemented.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2016–01636 Filed 1–26–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2014–0643; FRL–9941–32]

Sulfoxaflor; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Texas Department of Agriculture to use the insecticide sulfoxaflor (CAS No. 946578–00–3) to treat up to 3,000,000 acres of sorghum to control sugarcane aphid. The applicant proposes a use of a pesticide, sulfoxaflor, which is now considered to be unregistered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) owing to the

vacature of sulfoxaflor registrations by the United States District Court for the Central District of California. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making a decision whether or not to grant the exemption.

DATES: Comments must be received on or before February 11, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2014–0643, by one of the following methods:

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

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

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

II. What action is the Agency taking?

Under section 18 of the FIFRA (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. The Texas Department of Agriculture has requested the EPA Administrator to issue a repeat specific exemption for the use of sulfoxaflor on sorghum to control sugarcane aphid. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant asserts that an emergency situation exists based on unusually high populations of sugarcane aphid (*Melanaphis sacchari*), which can cause direct plant death from aphid feeding as well as indirect damage and harvesting problems from the aphid honeydew residue in Texas sorghum fields. Based on information provided by the states in previous submissions, sugarcane aphid is either a new pest or new biotype of *M. sacchari.* Currently, there are no registered insecticides or any economically or environmentally feasible alternative control practices available to adequately control this non-routine pest infestation. The state has asserted that without the use of sulfoxaflor, uncontrolled aphid infestations are likely to result in significant economic losses.

The applicant proposes to make no more than two applications at a rate of 0.75–1.5 ounces of product (0.023–0.047 lb a.i.) per acre or a seasonal maximum application rate of 3.0 ounces of product (0.094 lb a.i.) per acre per year, resulting in the use of 70,314 gallons of product. A maximum of 3,000,000 acres of sorghum fields (grain and forage) may be treated in Texas. Applications would potentially be made through November 30, 2016.

This notice does not constitute a decision by EPA on the application itself. The regulations governing FIFRA section 18 do not expressly require publication of a notice of receipt of an application for a specific exemption proposing a use of a pesticide that has been subject to a judicial vacatur, however, EPA considers public notice appropriate in this instance. Accordingly, this notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the Texas Department of Agriculture.

Authority: 7 U.S.C. 136 *et seq.*

Dated: January 15, 2016.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2016–01571 Filed 1–26–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0849; FRL–9941–48]

Receipt of Application for Emergency Exemptions for Oxytetracycline and Streptomycin; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a request from the Florida Department of Agriculture and Consumer Services for specific exemptions to use the pesticides oxytetracycline calcium (CAS No. 7179–50–2), oxytetracycline hydrochloride (CAS No. 2058–46–0), and streptomycin sulfate (CAS No. 3810–74–0) to treat up to 388,534 acres of citrus to control *Candidatus Liberibacter asiaticus* the bacteria which causes Huanglongbing (HLB), also referred to as citrus greening disease. Because the applicant proposes use of pesticides which are also used as human and animal antibiotic drugs, EPA is soliciting public comment before making decisions whether or not to grant the exemptions.

DATES: Comments must be received on or before February 11, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2015–0849, by one of the following methods:

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

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

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. The Florida Department of Agriculture and Consumer Services has requested the EPA Administrator to issue specific exemptions for the uses of oxytetracycline calcium, oxytetracycline hydrochloride, and streptomycin sulfate on citrus to control *Candidatus Liberibacter asiaticus,* the bacteria which causes HLB, also referred to as citrus greening disease. Information in accordance with 40 CFR part 166 was submitted as part of the requests.

As part of the requests, the applicant states that Florida's citrus production will be seriously jeopardized if HLB cannot be adequately controlled. The disease has been known in China for more than 100 years, and is considered to be the most serious disease of citrus worldwide, affecting all citrus species and their hybrids. Since the discovery of HLB in Florida in 2005, it has rapidly spread to all 34 commercial production areas in the state, and the applicant claims that the severity of HLB far exceeds that of any previously known citrus disease. HLB causes decreases in fruit yield and quality, and infected trees decline and eventually die, even when producers incorporate all management options currently available. Thus far, efforts to control the disease have focused on removal of diseased trees, nutritional support, and rigorous efforts to control the Asian citrus psyllid (the vector of the HLB bacteria). However, research over the past several years on use of agricultural antimicrobial agents has shown promise for suppressing the disease and improving tree health. The applicant is now requesting use of three antimicrobials, oxytetracycline calcium, oxytetracycline hydrochloride, and streptomycin sulfate, and indicates that the recent research suggests that multiple bactericide applications will be necessary to improve tree health and suppress the effects of HLB disease year-long on infected citrus trees. The HLB disease has caused significant economic losses as well as losses of jobs related to citrus production. The applicant states that millions of trees have been lost in both commercial and residential citrus, and the long-term viability of Florida's citrus production is threatened if the disease cannot be effectively managed.

The proposed application method for all three materials is foliar spray using ground application equipment. The applicant proposes to make up to three applications of streptomycin sulfate at a rate of 0.45 lb. per acre on up to 388,534 acres of citrus, for a maximum use of 520,540 lbs. of streptomycin sulfate. The applicant also proposes up to eight applications of oxytetracycline calcium at a rate of 0.255 lb. per acre on up to

388,534 acres of citrus for a maximum of 762,309 lbs. Additionally, the applicant proposes up to three applications of oxytetracycline hydrochloride at a rate of 0.27 lb. per acre on up to 388,534 acres of citrus, for a maximum use of 314,712 lbs. Applications are proposed statewide in citrus production areas.

This notice does not constitute a decision by EPA on the application itself. The regulations governing FIFRA section 18 allow publication of a notice of receipt of an application for a specific exemption if the Administrator determines that publication of a notice of receipt is appropriate. The application proposes use of three pesticides which are also used as human and animal antibiotic drugs, and therefore this notice provides an opportunity for public comment on the application.

The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemptions requested by the Florida Department of Agriculture and Consumer Services.

Authority: 7 U.S.C. 136 *et seq.*

Dated: January 15, 2016.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2016–01659 Filed 1–26–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2011–0997; FRL–9939–85–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Recordkeeping and Reporting Related to Diesel Fuel Sold in 2001 and Later Years; Tax-Exempt (Dyed) Highway Diesel Fuel; and Non-Road Locomotive & Marine Diesel Fuel (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Recordkeeping and Reporting Related to Diesel Fuel Sold in 2001 & Later Years; for Tax-Exempt (Dyed) Highway Diesel Fuel; & Non-Road Locomotive & Marine Diesel Fuel'' (EPA ICR No. 1718.10, OMB Control No. 2060–0308) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through May 29, 2015. Public comments were previously requested via the **Federal Register** (80 FR 30677) on May 29, 2015 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 26, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2007–1121, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Geanetta Heard, Fuel Compliance Center, 64106J, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–343–9017; fax number: 202–565–2085; email address: *heard.geanetta@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The EPA's diesel fuel regulations under 40 CFR part 80, subpart I, are applicable to highway (''motor vehicle'' or ''MV'') diesel fuel and non-road, locomotive and marine diesel fuel (NRLM) and heating oil (HO). Most of the information collected under this ICR is used to evaluate compliance with the requirements of the regulations. Since virtually all MV diesel fuel was required to meet a 15 part per million (ppm) standard as of June 1, 2010, very little reporting related to MV diesel fuel remains. However, reporting related to NRLM and HO will continue throughout the course of this proposed ICR renewal. The activities associated with this ICR include: Registration (all parties have registered; updates to existing registrations are still possible); compliance reports (mostly covering NRLM and HO; updates to prior compliance reports for MV diesel are still possible); research and development (R&D) exemptions; generation and retention of quality assurance (QA) records; foreign refiner recordkeeping and reporting; placement of PTD codes (a typically automated process, to indicate the presence of dye in tax-exempt fuel and/or sulfur content). This ICR renewal contains provisions related to qualification of laboratories on performance-based test methods. Virtually all applications have already been received from laboratories and acted upon by EPA.

Form Numbers: EPA Forms 5900–351, 5900–333, 5900–352, 5900–323, 5900–324, 5900–325, 5900–326, 5900–327, 5900–328, 5900–329, 5900–350, and 420–B–14–066a.

Respondents/affected entities: Refiners, importers, testing labs.

Respondent's obligation to respond: Mandatory (40 CFR part 80).

Estimated number of respondents: 5753 (total).

Frequency of response: Yearly and semiannually.

Total estimated burden: 11,078 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1,118,878 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 7,872 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This is due to the decreased number of reports required.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2016–01634 Filed 1–26–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

[Petition No. P1–16]

Petition of COSCO Container Lines Company Limited for an Exemption From Commission Regulations; Notice of Filing and Request for Comments

This is to provide notice of filing and to invite comments on or before February 12, 2016, with regard to the Petition described below.

COSCO Container Lines Company Limited (''COSCON'') (Petitioner), has petitioned the Commission pursuant to 46 CFR 502.76 of the Commission's Rules of Practice and Procedure, for an exemption from the Commission's rules requiring individual service contract amendments, 46 CFR 530.10. Specifically, Petitioner explains that ''[o]n or about March 1, 2016, COSCON will acquire by time charter the containerships and certain other assets of China Shipping Container Lines Co. (''China Shipping'')'' and, as such, requests that the Commission permit the submission of a ''universal notice to the Commission and to the service contract parties'' instead of filing an amendment for each of the seven hundred (700) service contracts that will be assigned to COSCON. In addition COSCON proposes to send electronic notice to each shipper counter party. Because China Shipping tariffs will be taken over by COSCON and renumbered and republished, COSCON also seeks a waiver to avoid amending each contract with the new tariff number, by publishing a notice of the change in the existing China Shipping and COSCON tariffs.

The Petition in its entirety is posted on the Commission's Web site at *http://www.fmc.gov/p1-16.* Comments filed in response to this Petition will be posted on the Commission's Web site at this location.

In order for the Commission to make a thorough evaluation of the Petition, interested persons are requested to submit views or arguments in reply to the Petition no later than February 12, 2016. Commenters must send an original and 5 copies to the Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, and be served on Petitioner's counsel, Robert B. Yoshitomi, or Eric C. Jeffrey, Nixon Peabody LLP, 799 9th Street NW., Washington, DC 20001. A PDF copy of the reply must also be sent as an attachment to *Secretary@fmc.gov.* Include in the email subject line ''Petition No P1–16.''

Karen V. Gregory,

Secretary.

[FR Doc. 2016–01579 Filed 1–26–16; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

The comment period for this notice has been extended. Comments regarding the notice must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 16, 2016.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *New York Community Bancorp, Inc. Westbury, New York;* to acquire 100 percent of the voting shares of Astoria Financial Corporation, Lake Success, New York, and indirectly acquire Astoria Bank, Long Island City, New York, and thereby engage in extending credit and services loans, and in operating a saving association, pursuant to § 225.28(b)(1) and (b)(4)(ii).

Board of Governors of the Federal Reserve System, January 21, 2016.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2016–01546 Filed 1–26–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Administration on Intellectual and Developmental Disabilities, President's Committee for People With Intellectual Disabilities Meeting

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

DATES: Monday, February 22, 2016 from 9:00 a.m. to 4:30 p.m.; and Tuesday, February 23, 2016 from 9:00 a.m. to 2:00 p.m.

These meetings will be open to the general public.

ADDRESSES: These meetings will be held in the U.S. Department of Health and Human Services/*Hubert H. Humphrey Building* located at 200 Independence Avenue SW., *Conference Room 800,* Washington, DC 20201.

Individuals who would like to participate via conference call may do so by dialing toll-free #: 888–469–0957, when prompted enter pass code: 8955387. Individuals whose full participation in the meeting will require special accommodations (*e.g.,* sign language interpreting services, assistive listening devices, materials in alternative format such as large print or Braille) should notify Dr. MJ Karimi, PCPID Team Lead, via email at *MJ.Karimie@acl.hhs.gov,* or via telephone at 202–795–7374, *no later than* Tuesday, February 16, 2016. The PCPID will attempt to accommodate requests made after this date, *but cannot guarantee the ability to grant requests received after the deadline.* All meeting sites are barrier free, consistent with the Americans with Disabilities Act (ADA) and the Federal Advisory Committee Act (FACA).

FOR FURTHER INFORMATION CONTACT: For further information, please contact Dr. MJ Karimi, Team Lead, President's Committee for People with Intellectual Disabilities, 330 C Street SW., 1108 A, Washington, DC 20201. Telephone: 202–795–7374. Fax: 202–205–0402. Email: *MJ.Karimie@acl.hhs.gov*.

SUPPLEMENTARY INFORMATION: The PCPID acts in an advisory capacity to the President and the Secretary of Health and Human Services on a broad range of topics relating to programs, services and support for individuals with intellectual disabilities. The PCPID executive order stipulates that the Committee shall: (1) Provide such advice concerning intellectual disabilities as the President or the Secretary of Health and Human Services

may request; and (2) provide advice to the President concerning the following for people with intellectual disabilities: (A) Expansion of educational opportunities; (B) promotion of homeownership; (C) assurance of workplace integration; (D) improvement of transportation options; (E) expansion of full access to community living; and (F) increasing access to assistive and universally designed technologies.

Agenda: The Committee Members will discuss preparation of the PCPID 2016 Report to the President, including its contents and format, and related data collection and analysis required to complete the writing of the Report in the following focus areas:

Family engagement early on in the process to support high expectations for students with disabilities.

Federal policies and enforcement strategies to end segregation in schools and other aspects of community living beyond graduation.

Transition as a critical area for pathways to higher education and career development.

Self-determination/Supported decision-making from early childhood throughout the individual's lifespan.

Dated: January 14, 2016.

Aaron Bishop,

Commissioner, Administration on Disabilities.

[FR Doc. 2016–01586 Filed 1–26–16; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0559]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Public Health Service Guideline on Infectious Disease Issues in Xenotransplantation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by February 26, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0456. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

PHS Guideline on Infectious Disease Issues in Xenotransplantation

OMB Control Number 0910–0456—Extension

The statutory authority to collect this information is provided under sections 351 and 361 of the PHS Act (42 U.S.C. 262 and 264) and the provisions of the Federal Food, Drug, and Cosmetic Act that apply to drugs (21 U.S.C. 301 *et seq.*). The PHS guideline recommends procedures to diminish the risk of transmission of infectious agents to the xenotransplantation product recipient and to the general public. The PHS guideline is intended to address public health issues raised by xenotransplantation, through identification of general principles of prevention and control of infectious diseases associated with xenotransplantation that may pose a hazard to the public health. The collection of information described in this guideline is intended to provide general guidance on the following topics: (1) The development of xenotransplantation clinical protocols; (2) the preparation of submissions to FDA; and (3) the conduct of xenotransplantation clinical trials. Also, the collection of information will help ensure that the sponsor maintains important information in a cross-referenced system that links the relevant records of the xenotransplantation product recipient, xenotransplantation product, source animal(s), animal procurement center, and significant nosocomial exposures. The PHS guideline describes an occupational health service program for the protection of health care workers involved in xenotransplantation procedures, caring for xenotransplantation product recipients, and performing associated laboratory testing. The PHS guideline is intended to protect the public health and to help ensure the safety of using xenotransplantation products in humans by preventing the introduction, transmission, and spread of infectious diseases associated with xenotransplantation.

The PHS guideline also recommends that certain specimens and records be maintained for 50 years beyond the date of the xenotransplantation. These include: (1) Records linking each xenotransplantation product recipient with relevant health records of the source animal, herd or colony, and the specific organ, tissue, or cell type included in or used in the manufacture of the product (section 3.2.7.1); (2) aliquots of serum samples from randomly selected animal and specific disease investigations (section 3.4.3.1); (3) source animal biological specimens designated for PHS use (section 3.7.1); animal health records (section 3.7.2), including necropsy results (section 3.6.4); and (4) recipients' biological specimens (section 4.1.2). The retention period is intended to assist health care practitioners and officials in surveillance and in tracking the source of an infection, disease, or illness that might emerge in the recipient, the source animal, or the animal herd or colony after a xenotransplantation.

The recommendation for maintaining records for 50 years is based on clinical experience with several human viruses that have presented problems in human to human transplantation and are therefore thought to share certain characteristics with viruses that may pose potential risks in xenotransplantation. These characteristics include long latency periods and the ability to establish persistent infections. Several also share the possibility of transmission among individuals through intimate contact with human body fluids. Human immunodeficiency virus (HIV) and human T-lymphotropic virus are human retroviruses. Retroviruses contain ribonucleic acid that is reverse-transcribed into deoxyribonucleic acid (DNA) using an enzyme provided by the virus and the human cell machinery. That viral DNA can then be integrated into the human cellular DNA. Both viruses establish persistent infections and have long latency periods before the onset of disease; 10 years and 40 to 60 years, respectively. The human hepatitis viruses are not retroviruses, but several share with HIV the characteristic that they can be transmitted through body

fluids, can establish persistent infections, and have long latency periods, *e.g.,* approximately 30 years for hepatitis C.

In addition, the PHS guideline recommends that a record system be developed that allows easy, accurate, and rapid linkage of information among the specimen archive, the recipient's medical records, and the records of the source animal for 50 years. The development of such a record system is a one-time burden. Such a system is intended to cross-reference and locate relevant records of recipients, products, source animals, animal procurement centers, and nosocomial exposures.

Respondents to this collection of information are the sponsors of clinical studies of investigational xenotransplantation products under investigational new drug applications (INDs) and xenotransplantation product procurement centers, referred to as source animal facilities. There are an estimated three respondents who are sponsors of INDs that include protocols for xenotransplantation in humans and five clinical centers doing xenotransplantation procedures. Other respondents for this collection of information are an estimated four source animal facilities which provide source xenotransplantation product material to sponsors for use in human xenotransplantation procedures. These four source animal facilities keep medical records of the herds/colonies as well as the medical records of the individual source animal(s). The burden estimates are based on FDA's records of xenotransplantation-related INDs and estimates of time required to complete the various reporting, recordkeeping, and third-party disclosure tasks described in the PHS guideline.

FDA is requesting an extension of OMB approval for the following reporting, recordkeeping, and third-party disclosure recommendations in the PHS guideline:

TABLE 1—REPORTING RECOMMENDATIONS

PHS guideline section	Description
3.2.7.2	Notify sponsor or FDA of new archive site when the source animal facility or sponsor ceases operations.

TABLE 2—RECORDKEEPING RECOMMENDATIONS

PHS guideline section	Description
3.2.7	Establish records linking each xenotransplantation product recipient with relevant records.
4.3	Sponsor to maintain cross-referenced system that links all relevant records (recipient, product, source animal, animal procurement center, and nosocomial exposures).
3.4.2	Document results of monitoring program used to detect introduction of infectious agents which may not be apparent clinically.
3.4.3.2	Document full necropsy investigations including evaluation for infectious etiologies.
3.5.1	Justify shortening a source animal's quarantine period of 3 weeks prior to xenotransplantation product procurement.
3.5.2	Document absence of infectious agent in xenotransplantation product if its presence elsewhere in source animal does not preclude using it.
3.5.4	Add summary of individual source animal record to permanent medical record of the xenotransplantation product recipient.
3.6.4	Document complete necropsy results on source animals (50-year record retention).
3.7	Link xenotransplantation product recipients to individual source animal records and archived biologic specimens.
4.2.3.2	Record baseline sera of xenotransplantation health care workers and specific nosocomial exposure.
4.2.3.3 and 4.3.2	Keep a log of health care workers' significant nosocomial exposure(s).
4.3.1	Document each xenotransplant procedure.
5.2	Document location and nature of archived PHS specimens in health care records of xenotransplantation product recipient and source animal.

TABLE 3—DISCLOSURE RECOMMENDATIONS

PHS guideline section	Description
3.2.7.2	Notify sponsor or FDA of new archive site when the source animal facility or sponsor ceases operations.
3.4	Standard operating procedures (SOPs) of source animal facility should be available to review bodies.
3.5.1	Include increased infectious risk in informed consent if source animal quarantine period of 3 weeks is shortened.
3.5.4	Sponsor to make linked records described in section 3.2.7 available for review.
3.5.5	Source animal facility to notify clinical center when infectious agent is identified in source animal or herd after xenotransplantation product procurement.

In the **Federal Register** of October 5, 2015 (80 FR 60153), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one comment from the public. The comment was supportive of the extended recordkeeping requirements in case it would be necessary to track the source of any long-term developing infections as result of xenotransplantation.

FDA estimates the burden for this collection of information as follows:

TABLE 4—ESTIMATED ANNUAL REPORTING BURDEN [1]

PHS guideline section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
3.2.7.2 [2]	1	1	1	0.5 (30 minutes)	0.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] FDA is using 1 animal facility or sponsor for estimation purposes.

TABLE 5—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

PHS guideline section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
3.2.7 [2]	1	1	1	16	16
4.3 [3]	3	1	3	0.75 (45 minutes)	2.25
3.4.2 [4]	3	10.67	32	0.25 (15 minutes)	8
3.4.3.2 [5]	3	2.67	8	0.25 (15 minutes)	2
3.5.1 [6]	3	0.33	1	0.50 (30 minutes)	0.5
3.5.2 [6]	3	0.33	1	0.25 (15 minutes)	0.25
3.5.4	3	1	3	0.17 (10 minutes)	0.51
3.6.4 [7]	3	2.67	8	0.25 (15 minutes)	2
3.7 [7]	4	2	8	0.08 (5 minutes)	0.64
4.2.3.2 [8]	5	25	125	0.17 (10 minutes)	21.25
4.2.3.2 [6]	5	0.20	1	0.17 (10 minutes)	0.17
4.2.3.3 and 4.3.2 [6]	5	0.20	1	0.17 (10 minutes)	0.17
4.3.1	3	1	3	0.25 (15 minutes)	0.75
5.2 [9]	3	4	12	0.08 (5 minutes)	0.96
Total					55.45

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] A one-time burden for new respondents to set up a recordkeeping system linking all relevant records. FDA is using one new sponsor for estimation purposes.
[3] FDA estimates there is minimal recordkeeping burden associated with maintaining the record system.
[4] Monitoring for sentinel animals (subset representative of herd) plus all source animals. There are approximately 6 sentinel animals per herd × 1 herd per facility × 4 facilities = 24 sentinel animals. There are approximately 8 source animals per year (see footnote 7 of this table); 24 + 8 = 32 monitoring records to document.
[5] Necropsy for animal deaths of unknown cause estimated to be approximately 2 per herd per year × 1 herd per facility × 4 facilities = 8.
[6] Has not occurred in the past 3 years and is expected to continue to be a rare occurrence.
[7] On average 2 source animals are used for preparing xenotransplantation product material for one recipient. The average number of source animals is 2 source animals per recipient × 4 recipients annually = 8 source animals per year. (See footnote 5 of table 6.)
[8] FDA estimates there are 5 clinical centers doing xenotransplantation procedures × approximately 25 health care workers involved per center = 125 health care workers.
[9] Eight source animal records + 4 recipient records = 12 total records.

TABLE 6—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN

PHS guideline section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
3.2.7.2 [2]	1	1	1	0.5 (30 minutes)	0.5
3.4 [3]	4	0.25	1	0.08 (5 minutes)	0.08
3.5.1 [4]	4	0.25	1	0.25 (15 minutes)	0.25
3.5.4 [5]	4	1	4	0.5 (30 minutes)	2
3.5.5 [4]	4	0.25	1	0.25 (15 minutes)	0.25
Total					3.08

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] FDA is using one animal facility or sponsor for estimation purposes.
[3] FDA's records indicate that an average of 1 IND is expected to be submitted per year.
[4] To our knowledge, has not occurred in the past 3 years and is expected to continue to be a rare occurrence.
[5] Based on an estimate of 12 patients treated over a 3-year period, the average number of xenotransplantation product recipients per year is estimated to be 4.

Because of the potential risk for cross-species transmission of pathogenic persistent virus, the guideline recommends that health records be retained for 50 years. Since these records are medical records, the retention of such records for up to 50 years is not information subject to the PRA (5 CFR 1320.3(h)(5)). Also, because of the limited number of clinical studies with small patient populations, the number of records is expected to be insignificant at this time.

Information collections in this guideline not included in tables 1 through 6 can be found under existing regulations and approved under the

OMB control numbers as follows: (1) ''Current Good Manufacturing Practice for Finished Pharmaceuticals,'' 21 CFR 211.1 through 211.208, approved under OMB control number 0910–0139; (2) ''Investigational New Drug Application,'' 21 CFR 312.1 through 312.160, approved under OMB control number 0910–0014; and (3) information included in a biologics license application, 21 CFR 601.2, approved under OMB control number 0910–0338. (Although it is possible that a xenotransplantation product may not be regulated as a biological product (*e.g.,* it may be regulated as a medical device), FDA believes, based on its knowledge and experience with xenotransplantation, that any xenotransplantation product subject to FDA regulation within the next 3 years will most likely be regulated as a biological product.) However, FDA recognized that some of the information collections go beyond approved collections; assessments for these burdens are included in tables 1 through 6.

In table 7, FDA identifies those collections of information activities that are already encompassed by existing regulations or are consistent with voluntary standards which reflect industry's usual and customary business practice.

TABLE 7—COLLECTION OF INFORMATION REQUIRED BY CURRENT REGULATIONS AND STANDARDS

PHS guideline section	Description of collection of information activity	21 CFR section (unless otherwise stated)
2.2.1	Document offsite collaborations	312.52.
2.5	Sponsor ensures counseling patient + family + contacts	312.62(c).
3.1.1 and 3.1.6	Document well-characterized health history and lineage of source animals.	312.23(a)(7)(a) and 211.84.
3.1.8	Registration with and import permit from the Centers for Disease Control and Prevention.	42 CFR 71.53.
3.2.2	Document collaboration with accredited microbiology labs	312.52.
3.2.3	Procedures to ensure the humane care of animals	9 CFR parts 1, 2, and 3 and PHS Policy.[1]
3.2.4	Procedures consistent for accreditation by the Association for Assessment and Accreditation of Laboratory Animal Care International (AAALAC International) and consistent with the National Research Council's (NRC) Guide.	AAALAC International Rules of Accreditation[2] and NRC Guide.[3]
3.2.5, 3.4, and 3.4.1	Herd health maintenance and surveillance to be documented, available, and in accordance with documented procedures; record standard veterinary care.	211.100 and 211.122.
3.2.6	Animal facility SOPs	PHS Policy.[1]
3.3.3	Validate assay methods	211.160(a).
3.6.1	Procurement and processing of xenografts using documented aseptic conditions.	211.100 and 211.122.
3.6.2	Develop, implement, and enforce SOPs for procurement and screening processes.	211.84(d) and 211.122(c).
3.6.4	Communicate to FDA animal necropsy findings pertinent to health of recipient.	312.32(c).
3.7.1	PHS specimens to be linked to health records; provide to FDA justification for types of tissues, cells, and plasma, and quantities of plasma and leukocytes collected.	312.23(a)(6).
4.1.1	Surveillance of xenotransplant recipient; sponsor ensures documentation of surveillance program life-long (justify >2 yrs.); investigator case histories (2 yrs. after investigation is discontinued).	312.23(a)(6)(iii)(f) and (g), and 312.62(b) and (c).
4.1.2	Sponsor to justify amount and type of reserve samples	211.122.
4.1.2.2	System for prompt retrieval of PHS specimens and linkage to medical records (recipient and source animal).	312.57(a).
4.1.2.3	Notify FDA of a clinical episode potentially representing a xenogeneic infection.	312.32.
4.2.2.1	Document collaborations (transfer of obligation)	312.52.
4.2.3.1	Develop educational materials (sponsor provides investigators with information needed to conduct investigation properly).	312.50.
4.3	Sponsor to keep records of receipt, shipment, and disposition of investigative drug; investigator to keep records of case histories.	312.57 and 312.62(b).

[1] The ''Public Health Service Policy on Humane Care and Use of Laboratory Animals'' (*http://www.grants.nih.gov/grants/olaw/references/phspol.htm*).
[2] AAALAC International Rules of Accreditation (*http://www.aaalac.org/accreditation/rules.cfm*).
[3] The NRC's ''Guide for the Care and Use of Laboratory Animals.''

Dated: January 22, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–01638 Filed 1–26–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–4803]

Public Notification of Emerging Postmarket Medical Device Signals ('Emerging Signals'); Draft Guidance for Industry and Food and Drug Administration Staff; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or Agency) is extending the comment period for the draft guidance for Industry and Food and Drug Administration Staff entitled ''Public Notification of Emerging Postmarket Medical Device Signals ('Emerging Signals').'' A notice of the availability of the draft guidance and our request for comments appeared in the **Federal Register** of December 31, 2015. We initially established February 29, 2016, as the deadline for the submission of requested comments that can help improve the Agency's policy for notifying the public about medical device ''emerging signals.'' The Agency is taking this action due to the unanticipated high-level of interest from external stakeholders and the medical device community and will allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the ''Public Notification of Emerging Postmarket Medical Device Signals ('Emerging Signals')''; Draft Guidance for Industry and Food and Drug Administration Staff; Availability, which was announced in the Notice published December 31, 2015 (80 FR 81829). 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 of 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 March 29, 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–4803 for ''Public Notification of Emerging Postmarket Medical Device Signals ('Emerging Signals').'' 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.

An electronic copy of the draft guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Public Notification of Emerging Postmarket Medical Device Signals ('Emerging Signals')'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Rebecca Nipper, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1540, Silver Spring, MD 20993–0002, 301–796–6527.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 31, 2015, FDA published a notice announcing the availability of a draft guidance entitled ''Public Notification of Emerging Postmarket Medical Device Signals ('Emerging Signals'),'' with a 60-day comment period to request comments on the Agency's policy for

notifying the public about medical device ''emerging signals.''

FDA is extending the comment period for the publication notification of ''emerging signals'' for 30 days, until March 29, 2016. The Agency believes that a 30-day extension allows adequate time for interested persons to submit comments.

II. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* Persons unable to download an electronic copy of ''Public Notification of Emerging Postmarket Medical Device Signals ('Emerging Signals')'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1500027 to identify the guidance you are requesting.

Dated: January 21, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–01610 Filed 1–26–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest, which is determined and fixed by the Secretary of the Treasury after considering private consumer rates of interest on the date that the Department of Health and Human Services becomes entitled to recovery. The rate cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities'' unless the Secretary waives interest in whole or part, or a different rate is prescribed by statute, contract, or repayment agreement. The Secretary of the Treasury may revise this rate quarterly. The Department of Health and Human Services publishes this rate in the **Federal Register**.

The current rate of 9¾%, as fixed by the Secretary of the Treasury, is certified for the quarter ended December 31, 2015. This rate is based on the Interest Rates for Specific Legislation, ''National Health Services Corps Scholarship Program (42 U.S.C. 254o(b)(1)(A))'' and ''National Research Service Award Program (42 U.S.C. 288(c)(4)(B)).'' This interest rate will be applied to overdue debt until the Department of Health and Human Services publishes a revision.

Dated: January 13, 2016.

David C. Horn.

Director, Office of Financial Policy and Reporting.

[FR Doc. 2016–01649 Filed 1–26–16; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[CMS–9935–N2]

HHS-Operated Risk Adjustment Methodology Meeting; March 31, 2016

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces the rescheduling of the March 25, 2016 meeting on the HHS-operated risk adjustment program, which is open to the public. The purpose of this stakeholder meeting is to solicit feedback on the HHS-operated risk adjustment methodology and to discuss potential improvements to the HHS risk adjustment methodology for the 2018 benefit year and beyond. This meeting, the ''HHS-operated Risk Adjustment Methodology Conference,'' will allow issuers, States, and other interested parties to discuss the contents of a White Paper to be published in advance of this meeting. This meeting will also provide an opportunity for participants to ask clarifying questions. The comments and information HHS obtains through this meeting may be used in future policy making for the HHS risk adjustment program.

DATES: *Date of Meeting:* March 31, 2016 from 9:00 a.m. to 4:30 p.m., Eastern daylight time (e.d.t.).

Deadline for Onsite Participation: March 23, 2016, 5:00 p.m., e.d.t.

Deadline for Webinar Meeting Participation: March 28, 2016, 5:00 p.m. e.d.t.

Deadline for Requesting Special Accommodations: March 23, 2016, 5:00 p.m. e.d.t.

ADDRESSES: The meeting will be held at the CMS Single Site campus, 7500 Security Boulevard, Baltimore, MD 21244.

Registration: Registration will be on a first-come, first-serve basis, limited to two (2) participants per organization for the onsite location participation, and three (3) participants per organization for the webinar participation. Each individual can only register for either the onsite location participation or webinar participation. To change a registration option from onsite to webinar participation, the registrant must cancel the existing registration (onsite or webinar) before attempting to register for the other option.

Registration Instructions: To register to attend the meeting either onsite or through webinar participation, visit the Registration for Technical Assistance Portal (REGTAP) at *www.REGTAP.info.* If not already a REGTAP user, register as a new user, log in and go to ''My Dashboard'' and select ''Training Events'' to register for the onsite or webinar event for the HHS-operated Risk Adjustment Methodology Meeting. Registrants can only register to attend the meeting onsite at CMS *or* remotely by webinar.

FOR FURTHER INFORMATION CONTACT: For further information, please send inquiries about the logistics of the meeting to *registrar@REGTAP.info.* Users should submit inquiries and comments pertaining to content covered during the meeting to *www.REGTAP.info.* To submit an inquiry in REGTAP, select ''Submit an Inquiry'' from ''My Dashboard'' then select ''HHS-operated Risk Adjustment Methodology Meeting'' from the Event Title dropdown menu and enter the question or comment. Users can submit their comments and upload attachments as needed. REGTAP will send the user an acknowledgement upon receipt of the comment.

The CCIIO's Press Office at (202) 690–6145 will handle all press inquiries.

SUPPLEMENTARY INFORMATION:

I. Background

This notice announces a meeting on the HHS-operated risk adjustment program to discuss potential improvements to the HHS risk adjustment methodology for the 2018 benefit year and beyond. This meeting will focus on the permanent risk adjustment program under section 1343 of the Affordable Care Act when HHS is operating a risk adjustment program on behalf of a State (referred to as the HHS-operated risk adjustment program).

We are committed to stakeholder engagement in developing the detailed processes of the HHS-operated risk

adjustment program. The purpose of this meeting is to share information with issuers, States, and interested parties about the risk adjustment methodology, offer an opportunity for these stakeholders to comment on key elements of the risk adjustment methodology, and discuss potential improvements to the HHS risk adjustment methodology for the 2018 benefit year and beyond.

II. Provisions of This Notice

In the January 11, 2016 **Federal Register** (81 FR 1193), we published a notice announcing a March 25, 2016 meeting on the HHS-operated risk adjustment program. In this notice, we are notifying interested parties we are rescheduling the meeting to March 31, 2016. The agenda for the March 31, 2016 meeting will include the following:

- The HHS-operated Risk Adjustment Methodology Conference will share information with stakeholders including issuers, States, and interested parties about the HHS-operated risk adjustment methodology and gather feedback on a White Paper on the HHS-operated risk adjustment methodology that will be issued in advance of this meeting.
- The HHS-operated Risk Adjustment Methodology Conference will focus on an overview of the HHS-operated risk adjustment methodology and other international risk adjustment models, what we have learned from the 2014 benefit year of the risk adjustment program and specific areas of potential refinements to the methodology.

The meeting is open to the public, but attendance is limited to the space available. There are capabilities for remote access. Persons wishing to attend this meeting must register by the date listed in the **DATES** section, and register using the information in the ''REGISTRATION'' section.

III. Security, Building, and Parking Guidelines

The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register by using the instructions in the ''REGISTRATION'' section of this notice by the date specified in the **DATES** section of this notice.

This meeting will be held in a Federal government building; therefore, Federal security measures are applicable. We recommend that confirmed registrants arrive reasonably early, but no earlier than 45 minutes prior to the start of the meeting, to allow additional time to clear security. Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Inspection of vehicle's interior and exterior (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Inspection, via metal detector or other applicable means of all persons brought entering the building. We note that all items brought into CMS, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 45 minutes prior to the convening of the meeting.

All visitors must be escorted in areas other than the lower and first floor levels in the Central Building.

Dated: January 19, 2016.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2016–01584 Filed 1–26–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; CIDR Contract Review.

Date: February 16, 2016.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Human Genome Research Institute, 5635 Fishers Lane, 3rd Floor Conference Room, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402–0838, *pozzattr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: January 20, 2016.

Sylvia Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01528 Filed 1–26–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Point of Care Diagnosis for Sickle Cell Disease.

Date: February 19, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7200, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael P. Reilly, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7200, Bethesda, MD 20892, 301–496–9659, *reillymp@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Effect of Age on Heart, Lung, Blood, and Sleep Disorders.

Date: February 19, 2016.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Giuseppe Pintucci, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892, 301–435–0287, *Pintuccig@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 21, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01526 Filed 1–26–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Omnibus SBIR Topic 97 Review.

Date: February 23, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: YingYing Li-Smerin, MD, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892–7924, 301–435–0275, *lismerin@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI SBIR Topic 96: Bioabsorbable Stents for Neonatal Aortic Coarctation, Phase I.

Date: February 23, 2016.

Time: 1:30 p.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tony L. Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892–7924, 301–435–0725, *creazzotl@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI SBIR Topic 96: Bioabsorbable Stents for Neonatal Aortic Coarctation, Phase II.

Date: February 23, 2016.

Time: 2:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tony L. Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892–7924, 301–435–0725, *creazzotl@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 21, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01525 Filed 1–26–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel; Training and Career Development.

Date: February 29, 2016.

Time: 10:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, Suite 703, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Yujing Liu, Ph.D., MD, Chief, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Suite 710, Bethesda, MD 20892, (301) 451–5152, *yujing_liu@nih.gov.*

Name of Committee: National Institute of Nursing Research Special Emphasis Panel; Centers Meeting.

Date: March 3–4, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Mario Rinaudo, MD, Scientific Review Officer, Office of Review, Division of Extramural Activities, National Institutes of Nursing Research, National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Suite 710, Bethesda, MD 20892, 301–594–5973, *mrinaudo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: January 20, 2016.

Sylvia Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01527 Filed 1–26–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U. S. C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Screening, Brief Intervention, and Referral to Treatment (SBIRT) Cross-Site Evaluation—New

SAMHSA is conducting a cross-site external evaluation of the impact of programs of screening, brief intervention (BI), brief treatment (BT), and referral to treatment (RT) on

patients presenting at various health care delivery units with a continuum of severity of substance use. SAMHSA's SBIRT program is a cooperative agreement grant program designed to help states and Tribal Councils expand the continuum of care available for substance misuse and use disorders. The program includes screening, BI, BT, and RT for persons at risk for dependence on alcohol or drugs. This evaluation will provide a comprehensive assessment of SBIRT implementation; the effects of SBIRT on patient outcomes, performance site practices, and treatment systems; and the sustainability of the program. This information will allow SAMHSA to determine the extent to which SBIRT has met its objectives of implementing a comprehensive system of identification and care to meet the needs of individuals at all points along the substance use continuum.

To evaluate the success of SBIRT implementation at the site level, a web-based survey will be administered to staff in sites where SBIRT services are being delivered—referred to as performance sites. The Performance Site Survey will be distributed to individuals who directly provide SBIRT services and staff who interact regularly with SBIRT providers and patients receiving SBIRT services. The types of staff surveyed will include intake staff, medical providers, behavioral health providers, social workers, and managerial and administrative staff who oversee these staff. Since cross-site evaluation team members will be traveling to selected SBIRT providers and coordinating with state and site administrators on a yearly basis, there is an opportunity to complete a near-census of all SBIRT-related staff at performance sites with a minimal level of burden.

The 78 question web survey includes the collection of basic demographic information, questions about the organization's readiness to implement SBIRT, and questions about the use of health information technology (HIT) to deliver SBIRT services. The demographic questions were tailored from a previous cross-site evaluation survey to fit the current set of cross-site grantees. The organizational readiness questions were developed through a review of the extant implementation science research literature (*e.g.*, Chaudoir, Dugan, & Barr, 2013; Damschroder et al., 2009; Garner, 2009; Greenhalgh, MacFarlane, & Kyriakidou, 2004; Weiner, 2009; Weiner, Belden, Bergmire, & Johnston, 2011). Based on this review, the Organizational Readiness for Implementation Change (ORIC) (Shea, Jacobs, Esserman, Bruce, & Weiner, 2014) and the Implementation Climate Scale (ICS) (Jacobs, Weiner, & Bunger, 2014) were identified as the two most appropriate instruments. In addition to questions from these two instruments, the survey includes questions to assess satisfaction, capacity, and infrastructure to implement SBIRT screening, BI, and BT.

To identify relevant HIT measures, the cross-site evaluation team modified measures from socio-technical frameworks (Kling, 1980), including the DeLone and McClean framework (DeLone & McLean, 2004), the Public Health Informatics Institute Framework (PHII, 2005), and the Human Organization and Technology (Hot)-FIT Framework (Yusof, 2008). Across these three frameworks, the survey captures measures of system availability, information availability, organizational structure and environment, utilization, and user satisfaction.

TOTAL BURDEN HOURS FOR THE PERFORMANCE SITE SURVEY

Respondent	Number of respondents (a)	Number of responses/respondent	Total number of responses	Hours per response (b)	Annual burden hours
Intake/front desk staff	215	1	215	0.22	47.30
Performance site administrators	191	1	191	0.22	42.02
Clinical supervisors	101	1	101	0.22	22.22
Medical providers	571	1	571	0.22	125.62
Behavioral health providers	211	1	211	0.22	46.42
Social workers	118	1	118	0.22	25.96
TOTAL	1,407		1,407		309.54

(a) The maximum number of annual respondents has been based on estimates from cross-site evaluation site visits.
(b) The average burden per response was estimated based on independent review of the instrument by contractor staff.

Written comments and recommendations concerning the proposed information collection should be sent by February 26, 2016 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U. S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, D C 20503.

Summer King,

Statistician.

[FR Doc. 2016–01671 Filed 1–26–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5914–N–01]

60-Day Notice of Proposed Information Collection: ''Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally-Owned Residential Properties and Housing Receiving Federal Assistance''

AGENCY: Office of Lead Hazard Control and Healthy Homes, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for renewal of the information

collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date: March 28, 2016.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for renewal of the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: ''Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally-Owned Residential Properties and Housing Receiving Federal Assistance''.

OMB Approval Number: 2539–0009.

Type of Request: Renewal with some changes due to program changes.

Form Number: N/A.

Description of the need for the information and proposed use: provision of a pamphlet on lead poisoning prevention to tenants and purchasers, provision of a notice to occupants on the results of hazard evaluation and hazard reduction activities, special reporting requirements for a child with an environmental intervention blood lead level residing in the unit, and record keeping and periodic summary reporting requirements.

Respondents: residential property owners, housing agencies, Federal grantees, tribally designated housing entities or participating jurisdictions.

The revised hour burden estimates are presented in the table below. In that table, the $15.36 hourly cost per response reflects the weighted average of cases, first, in which the respondent is simply giving someone a pamphlet, putting something in a file, or retrieving something from a file, and sending summary information from it to the Department, valued at $10.61 per hour; and second, processing notices as above as well as providing information in cases of lead-poisoned children, valued at $16.97 per hour. (These labor rates have been escalated by 3% from 2013 based on the Census Bureau's constant quality housing construction price index, since the work is in the housing trades.)

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Total	62,295	as needed	Various	2.2	136,692	$15.36	$2,099,593

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: January 21, 2016.

Michelle M. Miller,

Deputy Director, OLHCHH.

[FR Doc. 2016–01628 Filed 1–26–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5913–N–03]

60-Day Notice of Proposed Information Collection: Requisition for Disbursements of Sections 202 & 811 Capital Advance/Loan Funds

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* March 28, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Adia Hayes, Program Analyst, Multifamily Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email: *adia.s.hayes@hud.gov* or telephone 202–402–2463. This is not a

toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Requisition for Disbursement of Sections 202 & 811 Capital Advance/Loan Funds.

OMB Approval Number: 2502–0187.

Type of Request: Extension of a currently approved collection.

Form Number: HUD–92403–CA & HUD–92403–EH.

Description of the need for the information and proposed use: Owner entities submit requisitions to HUD during construction to obtain Section 202/811 capital advance/loan funds. This collection helps to identify the owner, project, type of disbursement, items covered, name of the depository, and account number.

Respondents (i.e. affected public): Affected public.

Estimated Number of Respondents: 112.

Estimated Number of Responses: 224.

Frequency of Response: 4.

Average Hours per Response: 1.

Total Estimated Burden: 112.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Date: January 19, 2016.

Janet M. Golrick,

Associate General Deputy Assistant Secretary for Housing—Associate Deputy Federal Housing Commissioner.

[FR Doc. 2016–01512 Filed 1–26–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–NAL–2016–N002; FXGO1660091NALO156FF09D02000]

Native American Policy for the U.S. Fish and Wildlife Service

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of final policy.

SUMMARY: We, the Fish and Wildlife Service (Service or FWS), announce that we have established a new Native American policy, which will replace the 1994 policy at 510 FW 1 in the Fish and Wildlife Service Manual. The purpose of the policy is to carry out the United States' trust responsibility to Indian tribes by establishing a framework on which to base our continued interactions with federally recognized tribes and Alaska Native Corporations. The policy recognizes the sovereignty of federally recognized tribes; states that the Service will work on a government-to-government basis with tribal governments; and includes guidance on co-management, access to and use of cultural resources, capacity development, law enforcement, and education.

DATES: The policy is effective as of January 20, 2016.

ADDRESSES: The Native American policy is available in the Fish and Wildlife Service Manual at *http://www.fws.gov/policy/510fw1.html.*

FOR FURTHER INFORMATION CONTACT: Scott Aikin, Native American Programs Coordinator, by mail at U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, OR 97232; or via email at *scott_aikin@fws.gov.*

SUPPLEMENTARY INFORMATION: This Native American policy is available at *http://www.fws.gov/policy/510fw1.html, which is within part* 510 of the Fish and Wildlife Service Manual, the part titled ''Working with Native American Tribes.'' The purpose of the policy is to articulate principles and serve as a framework for government-to-government relationships and interactions between the Service and federally recognized tribes to conserve fish and wildlife and protect cultural resources. The policy includes guidance on:

- The relationship between the Service and federally recognized tribes and Alaska Native Claims Settlement Act (ANC) corporations,
- Service employee responsibilities,
- Government-to-government consultation and relations,
- Communication,
- Co-management and collaborative management,
- Tribal access to Service lands and Service-managed resources for cultural and religious practices,
- Tribal cultural use of plants and animals,
- Law enforcement,
- Training and education,
- Capacity building and funding, and
- Guidance for implementing and monitoring the policy.

This policy is not meant to stand on its own. To effectively implement this policy, the Service will update its *U.S. Fish and Wildlife Service Tribal Consultation Handbook,* establish an Alaska Regional Native American policy, and develop training so that Service employees will be better able to perform duties related to this policy.

Overview of the Policy

We recognize that when the Service and tribes work together on resource matters, our longstanding relationship is strengthened and resources are better served. This policy provides guidance on recognition of tribal sovereign status, Service responsibilities, and opportunities for the Service and tribes to work together toward natural and cultural resource conservation and access. The purpose of this policy is to provide Service employees with guidance when working with tribes and ANCs.

Section 1 of this policy recognizes the unique relationship that Federal governmental agencies have with federally recognized tribes and the U.S. Government's trust responsibility toward those tribes. It explains that while this is a nationwide policy, the Service maintains flexibility for Service Regions and programs to work more specifically with the tribes and ANCs in their Regions.

Section 2 recognizes tribes' sovereign authority over their members and territory, the tribes' rights to self-govern, and that government-to-government communication may occur at various levels within the Service and the tribes.

Section 3 describes communication, consultation, and information sharing among the Service, tribes, and ANCs.

Section 4 sets out a range of collaborative management and co-management opportunities where tribes, Alaska Native Organizations (ANO), the Service, and others have shared responsibility.

Section 5 recognizes that, for meaningful cultural and religious practices, tribal members may need to access Service lands and to use plants and animals for which the Service has management responsibility.

Section 6 recognizes tribal law enforcement responsibilities for managing Indian lands and tribal resources and encourages cooperative law enforcement between the Service and tribes.

Section 7 invites tribal governments to work with the Service to develop and present training for Service employees. It also makes available Service technical experts to help tribes develop technical expertise, supports tribal self-determination, encourages cross-training of Service and tribal personnel, and supports Native American professional development.

Section 8 establishes monitoring and implementation guidance for the policy.

Section 9 describes the policy's scope and limitations.

Exhibit 1 includes the definitions of terms we use in the policy.

Exhibit 2 describes the responsibilities of employees at all levels of the Service to carry out this policy.

Exhibit 3 lists the authorities under which the Service is able to take the actions we describe in the policy.

Background and Development of This Policy

On June 28, 1994, the Service first enacted its Native American Policy to guide our government-to-government relations with federally recognized tribal governments in conserving fish and wildlife resources and to ''help accomplish its mission and concurrently to participate in fulfilling the Federal Government's and Department of the Interior's trust responsibilities to assist Native Americans in protecting, conserving, and utilizing their reserved, treaty guaranteed, or statutorily identified trust assets.''

In July 2013, the Service convened a Native American Policy Team (team) to review and update the policy. The team is comprised of Service representatives from the Regions and programs. We also invited all federally recognized tribal governments across the United States to nominate representatives to serve on the team. A total of 16 self-nominated tribal representatives from all of the major Regions across the country joined the team to provide input and tribal perspective.

Although Service and tribal team members took part in writing the draft, full agreement was not possible on every issue and some differences remain. Understanding those issues, tribal representatives continued to participate in an effort to improve the policy.

In November 2014, the Service invited federally recognized tribal governments in each of its Regions and ANCs to consult on a government-to-government basis. The Service provided an early working draft of the updated policy for their review and input. A total of 23 of the tribal representatives submitted written comments to further develop and refine the draft updated policy.

From December 2014 to April 2015, the Service held 24 consultation meetings and webinars within the Regions and nationally. Representatives from approximately 100 tribes attended these meetings. In March 2015, the Service revised the working draft of the updated policy and distributed it for internal Service review throughout all levels, Regions, and programs within the agency. We incorporated feedback from the internal Service review and additional comments received from tribal governments into a draft that we published in the **Federal Register**.

Summary of Comments and Changes to the Final Policy

On August 3, 2015, we announced the availability of a draft of this policy in a **Federal Register** notice (80 FR 46043) and requested public comments by September 2, 2015. The Service reopened the comment period for an additional 30 days in a **Federal Register** document published on September 21, 2015 (80 FR 57014). The second comment period closed on October 21, 2015.

We received approximately 34 comment letters on the draft policy. The comments were from Federal and State government agencies, tribes, ANCs, nongovernmental organizations, and individuals. Most of the comments addressed specific elements, while some comments were more general. We considered all of the information and recommendations for improvement included in the comments and made appropriate changes to the draft policy. We also made some additions and clarifications to the policy that were not addressed in the public comments, but were discovered through internal briefings and reviews during the policy revision period. The following summarizes our responses to public comments received.

Many of these topics are related to one another, and it is sometimes difficult to categorize each into one discrete area of the policy that it addresses. We have grouped similar comments together to help readers understand our rationale.

Many commenters were pleased with many aspects of the new policy. Several commenters noted that the policy was ''clearly the product of a careful and deliberative effort to involve tribes' input and integrate their concerns.'' Several commenters noted that the Native American Policy Team that worked for 2½ years on this policy was formed at the earliest stages of policy consideration and consisted of tribal members and Service employees who worked very closely together on all aspects of the policy. One specific commenter stated that tribes and ANCs ''applaud[ed] FWS for its extensive efforts working with representatives from tribes across the country to put together this new policy.''

Tribes and ANCs commented that FWS's recognition of the importance of sharing the traditional knowledge, experience, and perspectives of Native Americans will ultimately lead to better management of shared fish, wildlife, and cultural resources. Tribes and ANCs supported the Service's recognition of the need for flexibility to allow for regional diversity. Tribes stated that they appreciate that the Service did not group them together with other stakeholders, but instead treats them as sovereign governments. Tribes appreciate that the Service took tribal comments from a pre-public comment period and incorporated them into the published draft. Several commenters commended the Service for incorporating the table of responsibilities, which describes specific responsibilities for Service employees.

Commenters support the promotion of cultural competency awareness within the Service. Likewise, they support that the draft policy makes a clear and honest reference to Service limitations with respect to protecting sensitive tribal information from public release (*e.g.,* via Freedom of Information Act (FOIA) requests).

ANCs stated that they support and appreciate the Service's inclusion and acknowledgement of ANCs as significant stakeholders that require policies guiding and encouraging the Service's interaction with them.

The following categorizes comments by policy section, followed by comments on the content of the three

exhibits, and finally those comments received specific to Alaska.

General Comments

1. As a ''consultation policy'' this has shortcomings. *Response:* This is not a ''consultation policy.'' Consultation is a part of this policy, which covers more than consultation.

2. The draft policy repeatedly uses multiple qualifiers in the text such as, ''to the extent practicable,'' ''not inconsistent with essential Service functions,'' ''as necessary or appropriate,'' and ''as resources and priorities allow.'' The repeated use of these qualifiers appears to vest discretion in the individual Service official or staffer as to whether or not, at any given point, consultation will occur. *Response:* This is not meant to undermine the Service's responsibility to consult with tribes and ANCs. The Service understands the importance of and our responsibility for working with tribes. However, we cannot promise more than we can deliver. The Service must act within the authorities Congress has given us, and we can only perform as much work as the resources supplied by Congress will allow.

Section 1. Introduction

1. Some commenters objected to the qualifier that this policy applies to those whose official duties may affect tribal interests, and not to all employees. *Response:* While most employees have responsibilities that may affect tribes, some employees may have completely unrelated jobs, such as employee payroll or janitorial services for Service properties. Even so, the Service will try to deliver some degree of tribal training to all employees through regular internal Service training. The Service will ensure that all employees will be aware of their responsibilities under this policy.

2. The Service should show how tribal input was considered and incorporated into final decisions. *Response:* Implementation will include Regional teams that are better able to communicate with the tribes in their area. There is no one-size-fits-all for all Service programs. Many times, tribes are present throughout the process and will have ongoing dialogue concerning how their comments have been included in decisionmaking.

Section 2. Sovereignty and Government-to-Government Relations

1. This section of the policy should be first. In the existing 1994 policy, sovereignty is the very first principle. In this revised draft, it is relegated to subheading 5. The placement of this guiding principle diminishes what was once highlighted. *Response:* We have moved this section up from section 5 to section 2 and have moved what were preceding sections into exhibits.

2. The policy needs to make clear that the Service cannot make decisions or take actions that impact or diminish treaty-reserved rights of tribes and incorporate the principles that serve as the foundation for Secretary's Order 3206. *Response:* In section 3, the policy states that communication with tribes will begin early in the planning process. We will continue to develop relationships and communicate with tribes at the appropriate levels.

3. The Service should implement a consensus-based process with the tribes to identify treaty and trust obligations and to develop programs and actions to meet those obligations. *Response:* The Service looks for opportunities to consult and collaborate with tribes as is stated throughout the policy. We understand that the tribal consultation process goes beyond the requirements of public involvement. We discuss this in section 4.

4. The policy should support development and implementation of agreements with tribes or regional tribal groups to reflect needs tailored to capabilities. *Response:* The Service will form Regional tribal-Service implementation teams to collaboratively address issues that arise on a more local level.

5. We received several comments relating to the fact that some Indian tribes have delegated a portion of their authority to inter-tribal agencies. Commenters stated that the Service should acknowledge that delegation and, if allowed by that delegation, provide those agencies with relevant technical and policy-related information. They also stated that the Service should develop cooperative relationships with those agencies to carry out the programmatic goals of the Service and to better serve Indian tribes. Other commenters raised concerns that the Service should be aware that each tribe in an inter-tribal agency may not have delegated full authority on an issue. Another commenter explained that tribal consortia provide a powerful opportunity for the Service to ''get the word out'' to affected tribes. *Response:* Tribes have delegated varying ranges of authority to inter-tribal organizations acting for them. The policy cannot address each specific delegation, and so we address this issue in section 2 as follows: ''We will consult with inter-tribal organizations to the degree that tribes have authorized such an organization to consult on the tribe's behalf.'' During implementation, we plan to reach out to these groups and the tribes whom they represent when forming regional implementation teams. The Service will continue to engage consortia to contact tribes, get the word out, and become involved in other programs.

6. Several commenters asked that we revise language to limit this section to where there are ''federally recognized tribal rights.'' *Response:* We have not adopted this comment. The Service exercises due care where our actions affect the exercise of tribal rights.

Section 3. Communications and Relationships

1. Substitute ''strive to the greatest extent possible to incorporate'' instead of ''consider'' traditional knowledge. *Response:* The language in the policy clearly states that the Service will ''consider'' traditional knowledge, which means that we will take it seriously and truly consider the traditional knowledge shared.

2. Several commenters raised concern that tribal members may not be free to share information on specific cultural locations, practices, or actions that could be useful to the Service, and asked the Service to accommodate that privacy. *Response:* We understand there may be limitations on tribal members' abilities to share information with us. They may not be able to share any information, or they may be able to share information only if we keep that information confidential. The Service respects that tribes, ANCs, or tribal members may not be able to share information that could be disclosed to the public if required by FOIA. As the policy states, we will work collaboratively to protect confidential information and protect disclosure when possible. If the Service relies on any such information as a basis for agency action to protect resources, however, that information will become an agency record subject to FOIA and must be released unless it falls under an exemption. This potential disclosure must be balanced with the fact that if we are unaware of this information, we cannot use it as a basis to protect those cultural resources or practices.

3. One commenter shared that certain tribes require consultation to occur on those tribes' reservations, and that the Service should state that they will consult with each tribe according to those requirements. In addition, many tribes require a two-tiered process where technical staff discuss management issues and elevate policy discussions to formal government-to-government consultation when

necessary. *Response:* The Service understands that each tribe may have its own requirements and standards for interacting with Federal agencies at both the government-to-government level and on technical issues. In developing relationships with tribes in their areas, Service employees will better understand and appropriately meet with tribal governments. The table of responsibilities in Exhibit 2 anticipates coordination at all levels.

4. One commenter stated that to ensure that the Service is engaging with ANCs and tribes in a meaningful way that fulfills its consultation obligations, we should establish firm guidelines for what actions the agency will take when preparing for a consultation, including information on how much notice we must give tribes and ANCs before a consultation occurs, what information is provided to these groups in advance of consultation, and how the Service will incorporate comments gathered at consultations into the official record and decisionmaking process. *Response:* While this policy discusses a wide range of consultation and engagement possibilities, how to carry out proper consultation is beyond its scope. The ''how to'' is covered in the *U.S. Fish and Wildlife Service Tribal Consultation Handbook* and will be a topic of ongoing training.

5. If the Service is to request full cooperation and assistance regarding shared information, the final draft must include strong language to protect tribal information, Traditional Ecological Knowledge (TEK), site-specific information, and any information deemed sensitive by the tribes, as being totally protected and not subject to FOIA requests. *Response:* The Service will coordinate with tribes individually on this issue. We strive to balance our responsibility to the American public to release all information on which we base our decisions with respect for tribal concerns about keeping information confidential. While we will work with tribes to help protect sensitive cultural information, as a Federal agency, the Service is subject to the FOIA and has no discretion to protect from disclosure tribal information that does not qualify under any of FOIA's statutory exemptions.

6. We received many comments voicing concerns about treaty rights. One commenter believed that the language in the policy gives excessive discretion to Service staff to limit the exercise of treaty rights. *Response:* Throughout the policy, we recognize tribal treaty rights. Where treaty rights exist, employees do not have the discretion to allow or disallow their exercise. Where there are disagreements as to interpretation of how far those treaty rights reach, the Service will communicate with the affected tribe or tribes, but we must continue to carry out our activities as required by law.

7. Other commenters, while recognizing that not all tribes have treaty rights, were concerned that the policy does not specifically support the rights of tribal members to use fish and wildlife resources on Service lands. *Response:* There are numerous statements about recognition of tribal treaty rights in the policy. Where treaty rights exist that extend to Service lands, such as fishing rights, those are recognized in the policy.

Section 4. Resource Management

1. The Service should assist and facilitate tribal participation in co-management venues where there are areas of jurisdictional overlap amongst multiple government interests. *Response:* Where the Service is involved in resource management, we will engage all of the governmental parties involved. There are areas where the Service might not have such authority, particularly where States manage wildlife, so we may not have resources involved in such a jurisdiction.

2. Several commenters asked us to add language stating that tribes are the primary natural resource managers on Indian lands, and that tribes are co-managers for shared resources off-reservation for treaty-reserved resources. *Response:* The first part of this statement goes beyond the scope of this policy. The second part of this statement is too broad a concept and does not apply in all situations, so we did not include it as part of the policy.

3. Several commenters stated that the 1994 policy had stronger language in certain areas, in particular about our participation in fulfilling the Federal Government's and the Department of the Interior's trust responsibilities to assist Native Americans in protecting, conserving, and using tribal reserved, treaty-guaranteed, or statutorily identified trust assets. *Response:* We revised the language of the first and fifth paragraphs in section 1 to address these concerns.

4. Several commenters discussed reserved rights on non-reservation lands. Some stated that the policy should reflect that various Indian tribes enjoy reserved rights on non-reservation lands, which allows those tribes to harvest natural resources pursuant to tribal law. One stated that the draft policy should reflect the obligation that the Service has, when considering actions affecting those lands and their natural resources, to meaningfully involve affected Indian tribes and their delegated inter-tribal agencies, where applicable. Other commenters asked for language clarifying that tribal members who are exercising tribal reserved rights have access to Service-managed or controlled lands for fishing and harvesting resources pursuant to tribal law or a memorandum of agreement between the tribe and Service. *Response:* Section 2 states that we will exercise due care where our actions affect the exercise of tribal rights. We work on a government-to-government basis to address issues concerning management of tribal trust resources and Indian tribal treaty and other rights. In addition, where a tribe has developed an agreement with the Service, the tribe can carry out these activities in accordance with the agreement. Not all Service lands are open to all such uses.

5. One commenter stated that the policy needs to include stronger language regarding the use of tribal partners in assuming direct management over Service lands near reservations or where they have a significant interest on the landscape. *Response:* Congress has not given us the authority to give tribes management authority over Service lands. Management of Service lands is an inherently Federal function.

6. Several commenters voiced concern that tribes should not bear a disproportionate burden for the conservation of species, and to consider whether conservation measures on non-tribal lands and regulating non-Indian activities can achieve those goals. In addition, they stated that the policy needs to reinforce the principle message of Secretary's Order 3206 and clearly place the burden of proof on the Service to demonstrate a designation of critical habitat is required within a reservation. *Response:* The Service acts as required by the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and Secretary's Order 3206. We added language from our ESA section 4(b)(2) policy to this policy as follows: ''We will always consider exclusions of tribal lands under section 4(b)(2) of the ESA before finalizing a designation of critical habitat. We will also give great weight to tribal concerns in analyzing the benefits of exclusion.''

7. One commenter requested a stronger statement in the policy requiring that system directors, managers, and staff accommodate requests by tribes to access system lands in a manner consistent with other members of the public or State governments. For example, if a particular refuge permits State big game hunts, then tribes should be able to

access those same lands for hunting purposes. *Response:* This is too broad of a request to address in the policy. In short, not all tribes have treaty-reserved hunting and gathering rights. In certain geographic areas, tribes retain those treaty rights, but the rights might not extend to carrying out those activities on a refuge. We will work with tribes in the geographic area where hunting is authorized on a refuge.

8. One commenter was concerned that the administration of various wildlife laws cuts against the tribes, like the administration of Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) for furbearing mammals, where the Service requires a tribe to meet an unrealistic standard before it can continue its traditional practices of making cultural use of harvested animals. The resource management section needs to make it clear to Service employees that it expects its employees to treat tribes with respect and equity when they are making decisions about gathering of subsistence foods and natural resources. *Response:* The policy stresses respect and coordination with tribes. Issues surrounding native rights to hunt and gather on non-Indian lands vary. These issues will be addressed in training. In addition, we will have an Alaska policy to address subsistence issues in Alaska.

9. We received comments stating that while the policy talks about management and conservation of resources, it does not clearly reflect tribal ''use'' of resources. *Response:* We had addressed this in many places in the draft policy, including in the opening paragraph, in statements about Alaska subsistence uses, in the section on using cultural resources, and in the definition of ''Fish and wildlife and cultural resource management.'' To address this comment, we have added ''use'' of resources in two additional places—in the definitions of co-management and collaborative management.

10. Several commenters stated that the policy must consider other governmental jurisdiction and interests, especially where litigation or laws recognize States as the primary managers of the resources, especially on ceded territories. *Response:* With respect to developing agreements to manage and conserve resources, we added a reference to ''States and other co-managers.'' The policy also recognizes State jurisdiction under both the Indian lands and non-Indian lands subsections of section 4.

11. Some commenters believed that the Service's role in managing non-Indian lands is limited to federally owned lands, and then only where such uses have been established by Federal law or adjudication. *Response:* The Service's jurisdiction goes beyond federally owned non-Indian lands, particularly when the Service manages ESA-listed species, eagles, and other migratory birds. Further, tribal rights need not have been formally adjudicated to be valid; therefore, we have not altered this language in the policy.

12. Several commenters asked that we clarify ''where there is a legal basis for such use'' when talking about tribal members using fish and wildlife resources on non-Indian lands. *Response:* Clarifying this term would require a very lengthy section that would, at a minimum, include reviewing treaties, statutes, and case law from around the country, which goes beyond the scope of this policy.

13. Commenters noted that the language in the Non-Indian Lands section might allow Service employees to participate in matters that are strictly between States and tribes. *Response:* We have added the phrase, ''and where Service jurisdiction is involved'' to this paragraph. In addition, the definition of fish and wildlife resources encompasses only those that the Service is responsible for managing and conserving.

14. Commenters asked that we clarify the role the Service would play if there are disagreements between tribal governments and State or local resource management agencies. *Response:* Section 4 states, ''certain tribal governments and State governments may have shared responsibilities to co-manage fish and wildlife resources. In such cases, we will consult and collaborate with tribal governments and affected State or local resource management agencies to help meet the objectives of all parties while honoring the Federal trust responsibility.''

Section 5. Culture/Religion

1. Some commenters found it offensive that the Service would prioritize scientific investigation over a tribe's religious, ceremonial, or cultural needs. *Response:* In 1975, Interior Secretary Morton recognized Indians' ''legitimate interest in expressing their cultural and religious way of life, and at the same time, share the responsibility to conserve wildlife resources including federally protected birds.'' The Attorney General's 2012 policy tiers from the Morton policy and recognizes that the tribes and the United States share an interest in and responsibility for protecting wildlife resources: ''It is a federal priority to prosecute those who violate federal laws by engaging in commercial activities involving federally protected birds, bird feathers, and remains. . . . The Department of Justice is committed to robust enforcement of federal laws protecting birds while respecting tribal interests in the use of eagle feathers and other federally protected birds, bird feathers, and other bird parts for cultural and religious purposes'' (Attorney General Holder policy, October 12, 2012).

2. Several commenters asked that the policy include use of natural resources within the section on cultural resources. *Response:* While tribal members may not distinguish between natural and cultural resources, the Service follows a separate set of laws in each area. We address use of natural resources in section 4.

3. One commenter stated that tribes need to be provided timely notification when any actions are proposed on their ancestral homelands, so that they can make early, informed decisions on when and how to become involved. *Response:* The policy states, ''The Service will meaningfully involve tribal governments in our actions when we or the tribal government determine the actions may affect their cultural or religious interest . . .''

4. Several commenters pointed out that while many instances of the words ''may'' and ''should'' were strengthened from an earlier draft of the policy, a few remaining ''shoulds'' could still be strengthened to make them absolute requirements. *Response:* Where the Service is able to state that it will act, it so stated. We do not, however, want to make representations that we are unable to perform.

5. One commenter asked that we delete ''expression'' and replace it with ''practices'' when talking about religion. *Response:* Based on respectful discussion within the tribal-Service policy team, we have kept the term ''expression.''

Section 6. Law Enforcement

1. Several commenters wrote asking for support for formal agreements, such as cross-deputation. *Response:* We have explained that the Service will work with tribes to the limits of the law. At this time, however, Federal law does not allow the Service to cross-deputize tribal officers.

2. Some commenters stated that they were concerned that Service officers should not assume that State or Federal law applies to Indian tribal members without first consulting the Indian tribes that may have jurisdiction in a particular area. In cases where Service

officers determine that there have been possible violations committed by Indian tribal members, those officers should immediately contact tribal law enforcement to determine whether the members' tribe has jurisdiction. *Response:* In cases where Service officers determine that there have been possible violations of Federal law committed by tribal members, officers have a responsibility to investigate such violations. Service law enforcement officers are trained on the topics of Federal, State, and tribal jurisdictions. In situations where a question of tribal rights arises in the course of an investigation, the Service has a review process in place to determine whether or not to pursue a case. Service law enforcement officers are committed to working cooperatively with tribal game-enforcement authorities whenever they can in pursuing specific investigations. We also have added language in section 6 that the Service will provide its law enforcement staff additional cross-cultural training.

Section 7. Tribal Capacity Building, Assistance, and Funding

1. Several commenters asked that the Service commit to helping tribes receive a consistent level of funding to sustain ongoing tribal wildlife management projects. Several also asked that we make educating tribal staff an affirmative priority. *Response:* The Service funds tribal wildlife projects through several funding mechanisms. We do not, however, have the resources to commit to set levels of funding. The Service is able to act only within the constraints of its available resources.

2. Several commenters focused on training for tribal members by asking the Service to facilitate training opportunities, promote its training facilities (*e.g.,* at the National Conservation Training Center (NCTC)), and provide scholarships and funding to assist in the development of staff in areas of need. In addition, several commenters were concerned with language that stated that the Service would carry out certain functions, such as providing technical assistance, ''as resources and priorities allow.'' These commenters believe that these activities are a priority and were concerned that they not be left to the discretion of individual offices. *Response:* The Service offers many kinds of training in many locations. We include tribal members in many of our training courses, including those at NCTC. We cannot make representations that we can fund all desired activities that we may not have the resources to support.

3. Commenters encouraged the Service to provide joint training to increase awareness and understanding for implementation of the policy for tribal and Service staff to ensure they both receive consistent information and to foster collaborative learning and strong working relationships. *Response:* We agree. We have added language to section 8 that we will form both national and Regional tribal-Service teams to assess the priorities for training and other priorities in each area. Also, we have added language to section 8 as follows: ''The Service will encourage and support joint training with tribes to promote common understanding about implementing the policy within the context of Region-specific circumstances.'' Section 7 states: ''The Service will provide tribal governments and their staff access to our fish and wildlife resource training programs in the same manner that we provide access to other government agencies. In addition, we plan to work with tribes to develop, conduct, and attend joint training programs to increase awareness and sensitivity and to cross-train our employees and tribal staff on each other's responsibilities for resource stewardship.''

4. One commenter asked that the Service re-evaluate the Tribal Wildlife Grant (TWG) funding program and explore other options for providing stable, long-term funding to tribes like the Service currently provides to States. *Response:* Re-evaluating such programs goes beyond the scope of this policy.

5. Several commenters asked for stronger language regarding recruitment of Native Americans. *Response:* Both sections 6 and 7 address this issue. The policy encourages qualified Native Americans to apply for Service jobs. It additionally states that, ''[w]e will collaborate with tribal governments to recruit Native Americans for Service law enforcement positions . . .''

6. We received many comments about the Indian Self-Determination and Education Assistance Act (ISDEAA; 25 U.S.C. 450 *et seq.*) and how it applies to the Service.

One commenter stated that the Service should first come out with a national policy regarding annual funding agreements (AFA) at national wildlife refuges before entering into any ISDEAA contracts at refuges. *Response:* That is beyond the scope of this policy.

Other commenters stated that multi-year funding agreements for refuge management are not statutorily authorized, and that 15 U.S.C. 458cc does not authorize multi-year funding agreements. *Response:* The Service will consider the full range of contracts and grants that are available to tribes within applicable law. Multi-year agreements do not authorize multi-year funding. Funding is allocated through AFAs. Title 25 of the Code of Federal Regulations (CFR) at § 100.146 allows an agency to negotiate a self-governance funding agreement with a performance period that exceeds 1 year.

Another commenter stated that they believed that all information about AFAs should be made available under FOIA requests. Should there be an AFA, the Service must maintain records that it will be able to produce upon public request. *Response:* All documents in the Service's custody and control are subject to FOIA. Tribes are not subject to FOIA.

One commenter stated that refuge management should not be available to tribes under an AFA where the Service has not finalized a Comprehensive Conservation Plan (CCP), and that the Service cannot contract inherently Federal functions. *Response:* Refuge management has been identified as an inherently Federal function and is not available to tribes under an AFA.

7. Under the subsection on Professional Development, include a commitment to implement and expand tribal internship opportunities and programs for Native American students at colleges, universities, tribal colleges, and other institutions to provide expanded opportunities for Native American students to gain experience in wildlife resource management. *Response:* At this time, making this additional commitment in response to this request goes beyond the scope of the Service's resources.

8. Add language committing the Service to strategize with tribes about possible funding opportunities that would be available through statutory amendments to existing programs. *Response:* The Service in not authorized to pursue statutory amendments on behalf of tribes.

9. Several commenters asked that the policy clarify that when offering assistance to tribes, the Service should limit its offer of expertise to the fish and wildlife resources defined by the policy. These commenters stated that the Service may not be qualified to review and assess tribal conservation measures for species under State jurisdiction without State involvement. Also, where there are instances of court-established processes for developing species management plans, Service involvement might be inappropriate. *Response:* We added the following language: ''Service involvement may be limited where litigation or other court actions have established a specific process for the

development of species management plans and tribal codes.''

Section 8. Implementation and Monitoring

1. Several commenters hoped to see operational plans within the policy. They stated that the policy should contain more detail and directly address how it will be implemented. They stated that the policy seems to be a framework that needs to be transformed into operational plans for local level implementation. *Response:* The policy becomes operational through the table of employee responsibilities. In addition, the Service has a tribal consultation handbook that we will be updating. We added additional language to section 8 calling for national and Regional teams comprised of both Service and tribal representatives to implement the policy in a way that is meaningful at a more localized level. The policy also calls for training at all levels of the Service.

2. Commenters recommended that the Service establish a tribal committee that would monitor and evaluate the effectiveness of the policy and make recommendations to improve its implementation. Commenters asked that we require Regional and field offices to carry out training for staff and leadership on the culture and legal rights of Indian tribes in their areas, with invitations extended to those Indian tribes and tribal agencies to assist in the planning and execution of those trainings. *Response:* We have added language to section 8 that describes how we will form both national and Regional tribal-Service teams to assess the priorities for training and other priorities in each area. We have also added the following language to section 8: ''The Service will encourage and support joint training with tribes to promote common understanding about implementing the policy within the context of Region-specific circumstances.'' Implementation will continue through tribal-Service teams that will address training and other needs in each area. These teams will nurture strong collaborative working relationships that will address communication, training, implementation, and monitoring.

3. One commenter stated that there should be a clear process for recourse if tribal consultation is denied or mishandled by Service officials and staff. *Response:* Section 8 addresses the manner by which the Service will address disagreements regarding the implementation of this policy.

Section 9. Scope and Limitations

Several commenters were concerned that some of the language from the 1994 policy that clarified State wildlife agencies' roles and authorities was missing from the draft. *Response:* We have recognized State authority throughout the policy and have added the following, ''Nothing in this policy may be construed as affecting the authority, jurisdiction, or responsibility of States to manage, control, or regulate fish and resident wildlife under State law or regulations.''

Exhibit 1. Definitions

1. Several commenters stated that the definition for ''Indian lands'' should include land held in fee by an Indian or a tribe, or land owned by an ANC. *Response:* The tribal-U.S. relationship is a political one. We cannot extend the legal protections of trust land to non-trust land through this policy. For ANCs, we plan to develop an Alaska regional policy that addresses the issue further.

2. Several commenters asked that we include a definition of ''trust responsibility.'' *Response:* We have taken language describing the contours of the trust responsibility from Secretary's Order 3335 and inserted it into the first section of the policy.

3. Several commenters pointed out that in Alaska, co-management can take place between the Service and non-governmental entities, and that our proposed co-management definition did not include these situations. Other commenters asked that we make the definition more restrictive by including entities that have authority ''legally established by federal law or adjudication.'' *Response:* We have changed the definition of ''co-management'' as follows: ''two or more entities, each having legally established management responsibilities, working collaboratively to achieve mutually agreed upon, compatible objectives to protect, conserve, use, enhance, or restore natural and cultural resources.'' We have also added a definition for ''collaborative management'' as follows: ''two or more entities working together to actively protect, conserve, use, enhance, or restore natural and cultural resources.'' We believe these clarifications will cover management scenarios both in Alaska and throughout the country.

4. Several commenters asked for clarity in the definition of fish and wildlife resources, stating that many fish and wildlife species found on refuges are managed under State rather than Federal authority. These commenters recommended that we state that the Service's responsibility is limited to the purpose for which the refuge was designated and to federally managed species. *Response:* The Service has responsibility for all resources within refuge boundaries. We enter into agreements with States and other entities for co-management and cooperative management, where appropriate.

5. Many commenters objected to the definition of ''sacred site'' and offered alternative definitions. One commenter asked that we use the term ''sacred place'' and offered a definition. Another commenter stated that it would be more appropriate to use a definition they offered for ''cultural landscapes,'' which the National Park Service had used. *Response:* We understand that this definition may not fit tribal concepts of sacred sites. We will address these concerns during training. We continue to use this definition, which we took directly from Executive Order 13007 and the Departmental Manual at 512 DM 3. Concern about accessing cultural sites is further discussed in section 8 under the Access for Cultural, Archeological, and Historic Resources, and Indian Sacred Sites subsection.

6. One commenter stated that it was unclear whether the ''sacred site'' definition would require a prior identification of sacred sites. *Response:* We have clarified the language, changing the tense to clarify that that a tribe does not need to identify a sacred site prior to the inception of the project under discussion. The tribe does need to identify the site to us in order for us to consider its sensitivity in our planning or review of the project. While a sacred site may exist to a tribe, we cannot consider a sacred site that we do not know about. In addition to the definition, the subsection on access addresses the need to avoid adversely affecting the physical integrity of sacred sites and to accommodate Indians' access to and use of sacred sites.

Exhibit 2. Responsibilities

1. Some commenters recommended moving this section farther back in the document, perhaps including it as an appendix to highlight the importance of the policy rather than the roles of various Federal positions. *Response:* We agree and have moved the table into an exhibit. The use of exhibits is consistent with other Service Manual policies.

2. Several commenters asked that the policy identify the Service officials who have responsibility to liaison with non-tribal governments, agencies, or other entities. *Response:* This policy is focused on working with Native

Americans, so this request is beyond its scope.

Exhibit 3. Authorities

1. Many commenters asked that we list each treaty in which the United States and tribes have recognized reserved rights to natural resources. Some commenters noted that we mention treaties quite a bit, without recognizing that many tribes do not have treaties. Some commenters asked that we include particular statutes through which Congress has stated the United States' legal relationship with tribes. *Response:* We are unable to add references to all the treaties and statutes that refer to individual tribes. They are too numerous to list in this document. Many tribes have several treaties or statutes, or both, with some overturning or modifying earlier citations. Individual treaties and statutes are more appropriately addressed through training at the local level.

2. Several commenters recommended we include the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*) to the authorities section. *Response:* We have added the Fish and Wildlife Coordination Act.

3. The authorities section should include the Memorandum of Understanding (MOU) among the U.S. Department of Defense, U.S. Department of the Interior, U.S. Department of Agriculture, U.S. Department of Energy, and the Advisory Council on Historic Preservation Regarding Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites, December 6, 2012. *Response:* We have added this MOU to the exhibit.

Alaska-Specific Concerns

1. We received several comments that focused on concerns specific to Alaska. Many commenters stated that while ANCs are not tribal governments and are not treated as sovereigns, the United States has a responsibility to consult with ANCs on the same basis as Indian tribes under Executive Order 13175. They recommended that we include the Consolidated Appropriations Act of 2004 (Pub. L. 108–199) in the authorities section. In addition, several commenters noted that, while the Service has stated that it will adopt an Alaska regional policy, the national policy must also address the Service's relationship with ANCs. Commenters pointed out that many national level proposals and plans have a substantial and direct impact on ANCs and other Alaska Native entities, so ANCs should be considered on the national level. *Response:* We have adopted these comments. We have added authorities about consultation with ANCs to the authorities exhibit. We have included the requirement to consult with ANCs in sections 1 and 3 of the policy. In addition, the Alaska Region (Region 7) is in the process of drafting an Alaska-specific policy. Also in response to these comments, we have added a definition of Alaska Native Corporation to the definitions exhibit.

2. Commenters from Alaska voiced concern that because the term ''inter-tribal organization'' is undefined, this provision might be interpreted as a limit on the agency's ability to consult with any group that is not a tribe or authorized by a tribe to consult on its behalf. *Response:* We have broadened the scope of ''Alaska Native Organization (ANO)'' to include a broad array of organizations that represent Alaska Natives, including, but not limited to, ANOs under the Marine Mammal Protection Act.

3. Commenters asked that the training and professional development opportunities anticipated by the Service for tribal governments should be extended to ANCs. Some stated that ANCs are valuable sources of traditional knowledge, have significant interests in receiving technical information, and asked that these policy provisions be expanded to include them. *Response:* We will consult with ANCs on the same basis as we consult with tribes, and we will also work with ANCs in all areas permissible by law.

4. Some commenters believe that under ISDEAA, ANCs have the same status as tribes for the provision of many contract services. *Response:* ANCs are entitled to contract under title I of the ISDEAA. With respect to title IV self-governance funding agreements, 25 U.S.C. 458bb establishes that tribes are eligible to participate in the Department's Tribal Self-Governance Program. The regulations for the Program also allow consortia, defined as ''an organization of Indian tribes that is authorized by those tribes to participate in self-governance.''

Dated: January 20, 2016.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–01615 Filed 1–26–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20039; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate a Cultural Item: Binghamton University, State University of New York, Binghamton, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Binghamton University, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural item listed in this notice meets the definition of a sacred object. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to Binghamton University. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural item should contact Binghamton University at the address below by February 26, 2016.

ADDRESSES: Nina M. Versaggi, Public Archaeology Facility, Binghamton University, Binghamton, NY 13902–6000, telephone (607) 777–4786.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of Binghamton University that meets the definition of sacred object under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural item. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item(s)

During the middle to late 1960s, the Anthropology Department at Binghamton University acquired a False Face mask made by an artist from the Six Nations, in Ontario, Canada. A typed index card accompanying the

mask reads: ''Broken Nose, Seneca Nation, Snapping Turtle Clan, Six Nations Reservation—Ontario.'' The mask is carved wood with a black face with a red mouth, with a hole on one side (right side, facing out), and a pointed chin. The mask face has holes in the nose and metal eye inlays surrounding center eyeholes. The face is framed with yellow hair, and there are carved lines on the face.

On March 11, 2003, Binghamton University hosted a consultation meeting for federally recognized tribes to review NAGPRA summaries as part of the process of determining cultural affiliation. A group of traditional representatives from the Cayuga Nation; Saint Regis Mohawk Tribe (previously listed as the St. Regis Band of Mohawk Indians of New York); Seneca Nation of Indians (previously listed as the Seneca Nation of New York); Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York); and the Tuscarora Nation, met privately after the open consultation. In January of 2013, letters were sent to Seneca representatives asking for comments or claims on the mask. On September 22, 2015, Scott Abrams, Acting Director of the Seneca Nation of Indians Tribal Historic Preservation Officer contacted Binghamton University and formally requested repatriation of the Seneca mask. Binghamton University asked other Seneca representatives if they agreed. No comments were received.

Determinations Made by Binghamton University

Officials of Binghamton University have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the one cultural item described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred object and the Seneca Nation.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred object should contact Nina M. Versaggi, Public Archaeology Facility, Binghamton University, Binghamton, NY 13902–6000, telephone (607) 777–4786, before February 26, 2016. Repatriation of the sacred object to the Seneca Nation of Indians (previously listed as the Seneca Nation of New York) Tribal Historic Preservation Office may proceed after that date if no additional claimants come forward.

Binghamton University is responsible for notifying the Cayuga Nation; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Oneida Nation of New York; Oneida Tribe of Indians of Wisconsin; Onondaga Nation; Saint Regis Mohawk Tribe (previously listed as the St. Regis Band of Mohawk Indians of New York); Seneca Nation of Indians (previously listed as the Seneca Nation of New York); Seneca-Cayuga Tribe of Oklahoma; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York); and Tuscarora Nation that this notice has been published.

Dated: December 28, 2015.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–01591 Filed 1–26–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20020; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Fowler Museum at the University of California Los Angeles, Los Angeles, CA, and California Department of Transportation, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Fowler Museum at the University of California Los Angeles (UCLA) and the California Department of Transportation have completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and have determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the California Department of Transportation. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the California Department of Transportation at the address in this notice by February 26, 2016.

ADDRESSES: Tina Biorn, California Department of Transportation, P.O. Box 942874 MS 27, Sacramento, CA 94271–0001, telephone (916) 653–0013, email *tina.biorn@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the physical custody of the Fowler Museum at UCLA and under the control of the California Department of Transportation. The human remains and associated funerary objects were removed from Santa Barbara and Ventura Counties, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Fowler Museum at UCLA professional staff in consultation with representatives of Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California, and the following nonfederally recognized Indian groups: Barbareno Chumash Council; Barbareno/Ventureno Band of Mission Indians; Coastal Band of the Chumash Nation; Fernandeño Tataviam Band of Mission Indians; Gabrielino/Tongva Indians of California Tribe; Gabrielino/Tongva Nation; Gabrieleno/Tongva Tribal Council; Northern Chumash Tribe; San Gabriel Band of Mission Indians; Ti'at Society; and the Traditional Council of Pimu.

History and Description of the Human Remains and Associated Funerary Objects

In 1966 and 1967, human remains representing at minimum, 108 individuals were removed from Xucu

(CA–SBA–1) in Santa Barbara County, CA. Excavations were undertaken by a UCLA field course directed by Patrick Finnerty for the State Division of Highways prior to construction of Highway 101. This work continued in 1967, in addition to excavations led by Gary Stickel within an adjacent cemetery. Both sets of collections were curated upon completion of analysis as provided in the permits. Not all of the 1966 burials were curated at UCLA, and their current location is unknown. Radiocarbon dates have occupation from 5500 B.C. through Spanish contact periods. In 1966, formal burials and fragmentary human remains were discovered and removed for curation. The total minimum number of individuals represented are 28, identified as 16 adults (1 male, 1 female, and 14 unidentified), 2 sub-adults, 2 juvenile, and 3 infants. Another 5 individuals were too fragmentary to identify age or sex. In 1967, 43 burials were formally identified, however several where left in-situ after recording them. In addition, fragmentary human remains were recovered. In total, a minimum number of 80 individuals can be identified as 60 adults, 3 sub-adults, 12 juveniles, 3 infants, and 2 perinatal. In addition 21 were identifiable as male and 11 as female. No known individuals were identified. No associated funerary objects were identified for the burials found in 1966. The 726 associated funerary objects excavated in 1967 included 19 pieces and 1 bag of asphaltum fragments; 20 pieces of worked bone; 189 pieces and 3 bags of unmodified animal bone; 1 piece of charcoal; 12 pieces of hematite; 14 pieces of limonite; 1 fragment of a paper candlewick; 2 bags of soil samples; 1 wood fragment; 123 pieces and 2 bags of unmodified shell; 2 asphaltum plugged abalone shells; 22 shell beads; 7 bowl/mortar fragments; 167 groundstone tools and fragments; 139 chipped stone tools and flakes; and 1 steatite pipe.

In 1969–1970, human remains representing, at minimum, one individual were removed from Kasil (CA–SBA–87) in Santa Barbara County, CA. Excavations by G. James West occurred at the request of the Division of Highways as a salvage project undertaken prior to highway construction on Highway 101. Collections were accessioned at UCLA as they returned from the field. The village dates from A.D. 300 to 1500. Human remains consist of a single burial representing an adult male. The burial was disturbed when a bulldozer cut a trench on the upper terrace. Further investigation of the trench failed to show the exact burial location. No known individuals were identified. No associated funerary objects were identified.

From 1961 to 1963, human remains representing, at minimum, five individuals were removed from Rincon Point (CA–SBA–119) in Santa Barbara County, CA. Excavations in 1961 and 1962 were led by Patrick Finnerty while still in high school. Most of the human remains and artifacts have not been located, however at least some of three burials and objects have been found and curated at the Fowler Museum at UCLA. In 1963, excavations were directed by Keith Johnson with the UCLA Archaeological Survey preliminary as a salvage excavation due to the re-location of U.S. Highway 101 which would pass through the site. The collection was curated at UCLA upon completion of the field work. The site dates from 1735 to 1320 B.C. The human remains consist of a single burial with a minimum of two individuals: A sub-adult male and an adult, sex unknown. The three relocated burials represent a minimum of three individuals, one adult male, one juvenile, and one adult with undetermined sex. No known individuals were identified. The 16 associated funerary objects include 8 sandstone mortar fragments from a 1962 burial and 2 shell fragments, 1 bone hairpin, 3 biface, 1 unmodified animal bone, and 1 serpentine pendant from a 1963 burial.

In 1968 and 1969, human remains representing, at minimum, 16 individuals were removed from Pitas Point (CA–VEN–27) in Ventura County, CA. Excavations were conducted by a University of California Archaeological Survey crew under the direction of Chester King. The excavation was part of a salvage project for the realignment of Highway 101, and took place on land owned by Caltrans. This collection was curated at UCLA after analysis was complete. Analysis of the artifacts places the site occupation to A.D. 1000–1550. Three formal burials and fragmentary human remains recovered from midden contexts include 13 adults (2 male, 1 female, and 10 unidentified), 1 juvenile, and 1 infant. One fragmentary remain could not be aged or sex determined. No known individuals were identified. The 50 associated funerary objects include 2 bags and 6 pieces of unmodified animal bone, 2 worked bone fragments, 1 bag of charcoal, 6 bags of asphaltum, 1 bag and 2 individual tarring pebbles, 5 bags of unmodified shell, 1 shell fishhook fragment, 1 shell bead fragment, 21 chipped stone flakes and tools, 1 fire cracked rock, and 1 pestle.

The sites detailed in this notice have been identified through tribal consultation to be within the traditional territory of the Chumash people. These locations are consistent with ethnographic and historic documentation of the Chumash people.

The Chumash territory, anthropologically defined first on the basis of linguistic similarities, and subsequently on broadly shared material and cultural traits, reaches from San Luis Obispo to Malibu on the coast, inland to the western edge of the San Joaquin Valley, to the edge of the San Fernando Valley, and includes the four Northern Channel Islands. At the southern and southeastern boundaries of the territory there is evidence of the physical co-existence of Chumash, Tataviam, and Gabrielino/Tongva languages and beliefs systems. At the northern boundary of the territory there is evidence of the physical co-existence of Chumash and Salinan groups. The sites in this notice are located in Ventura and Santa Barbara counties and fall within the geographical area identified as Chumash. Some tribal consultants state that these areas were the responsibility of regional leaders, who were themselves organized into a pan-regional association of both political power and ceremonial knowledge. Further, these indigenous areas are identified by some tribal consultants to be relational with clans or associations of traditional practitioners of specific kinds of indigenous medicinal and ceremonial practices. Some tribal consultants identified these clans as existing in the pre-contact period and identified some clans as also existing in the present day. Other tribal consultants do not recognize present-day geographical divisions to be related to clans of traditional practitioners. However, they do state that Chumash, Tataviam, and Gabrielino/Tongva territories were and are occupied by socially distinct, yet interrelated, groups which have been characterized by anthropologists. Ethnographic evidence suggests that the social and political organization of the pre-contact Channel Islands were primarily at the village level, with a hereditary chief, in addition to many other specialists who wielded power.

The associated funerary objects described in this notice are consistent with those of groups ancestral to the present-day Chumash, Tataviam, and Gabrielino/Tongva people. The material cultures of earlier groups living in the geographical areas mentioned in this notice are characterized by archeologists

as having passed through stages over the past 10,000 years. Many local archeologists assert that the changes in the material culture reflect evolving ecological adaptations and related changes in social organization of the same populations and do not represent population displacements or movements. The same range of artifact types and materials were used from the early pre-contact period until historic times. Tribal consultants explicitly state that population mixing, which did occur on a small scale, would not alter the continuity of the shared group identities of people associated with specific locales. Based on this evidence, continuity through time can be traced for all sites listed in this notice with present-day Chumash people, specifically the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Determinations Made by the California Department of Transportation

Officials of the California Department of Transportation have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 130 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 792 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Tina Biorn, California Department of Transportation, P.O. Box 942874 MS 27, Sacramento, CA 94271–0001, telephone (916) 653–0013, email *tina.biorn@dot.ca.gov,* by February 26, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California, may proceed.

The California Department of Transportation is responsible for notifying the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California, that this notice has been published.

Dated: December 21, 2015.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–01594 Filed 1–26–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20021; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Fowler Museum at the University of California Los Angeles, Los Angeles, CA, and California Department of Transportation, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Fowler Museum at the University of California Los Angeles (UCLA) and California Department of Transportation, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, have determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the California Department of Transportation. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the California Department of Transportation at the address in this notice by February 26, 2016.

ADDRESSES: Tina Biorn, California Department of Transportation, P.O. Box 942874 MS 27, Sacramento, CA 94271–0001, telephone (916) 653–0013, email *tina.biorn@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the California Department of Transportation that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In February 1997, 4,280 burial objects were removed from CA–LAN–2233 in Los Angeles County, CA. The California Department of Transportation initiated an emergency recovery effort of burials in the path of construction to improve State Route 126. An archeologist had previously found a burial on an adjacent private property and notified the California Department of Transportation (Caltrans) as construction began. During staff efforts to locate the burial, evidence of additional burials were found. Staff terminated the exploratory effort and came back with a crew consisting of trained osteologists from the Archaeological Research Center, California State University, Sacramento, and Caltrans staff, under the direction of Dr. Georgie Waugh, to recover the burials. In August 1997, six more burials were found during highway construction and additional recovery excavations were conducted by Dr. Phillip Walker and students of University of California (UC) Santa Barbara. Over the course of the project, a total of 45 burials were located and transported to UC Santa Barbara for analysis. All human remains and non-artifactual and artifactual grave associated items identified were reburied as directed by the Most Likely Descendant designated by the California Native American Heritage Commission. Recent consultations resulted in the identification of additional funerary objects because of their proximity to the burials. The unassociated funerary objects are 1 stone core, 1,415 pieces of stone debitage, 3 pieces of modified bone, 2,828 pieces of unmodified faunal bone, 1 soil sample, 6 bags of charcoal samples, and 24 fragments and 2 bags of seed/nut pieces. Two components were identified: An earlier Millingstone adaptation that occurred at least prior to 2000 years ago, and perhaps as early as 3000–4000 years ago, and a later component securely dated to at least

2000 to 1630 years ago. The burials are associated with this later component.

In 1966 and 1967, 502 burial items were removed from Xucu (CA–SBA–1) in Santa Barbara County, CA. Excavations were undertaken by a UCLA field course directed by Patrick Finnerty for the State Division of Highways prior to construction of Highway 101. This work continued in 1967, in addition to excavations led by Gary Stickel within an adjacent cemetery. Both sets of collections were curated upon completion of analysis as provided in the permits. Not all of the 1966 burials were curated at UCLA, and their current location is unknown. Radiocarbon dates have occupation from 5500 B.C. through Spanish contact periods. In 1966, formal burials and fragmentary human remains were discovered and removed for curation. While the catalog lists some associated funerary objects for ''Burial 1, 2, 3, and 5,'' none of the formal burials have been located, and therefore all burial objects are recorded as unassociated funerary objects. The total number of objects from these features is 328, which includes 280 fragments and 3 bags of unmodified animal bones, 1 worked bone, 1 atlatl, 1 core, 10 flakes, 26 fragments and 1 bag of unmodified shell, 1 stone fragment, 1 hammerstone, 1 mortar fragment, 1 net weight, and 1 spire-lopped shell bead. The 1967 excavations derive from a cemetery context. In addition to the burials there were also many features found directly above or close to the burials, but not in direct association. The total number of objects from these features is 174, which include 67 unmodified animal bone, 12 unmodified shell fragments, 1 discoidal, 14 chipped stone tools and flakes, 72 groundstone tools and fragments, and 8 mortar fragments.

From 1961–1963, two burial objects were removed from Rincon Point (CA–SBA–119) in Santa Barbara County, CA. Excavations in 1961 and 1962 were led by Patrick Finnerty, while still in high school. Most of the human remains and artifacts have not been located, however, at least some of three burials and objects have been found and curated at the Fowler Museum at UCLA. The site dates from 1735–1320 B.C. A few of the burial objects associated with the 1961 field season have been curated at UCLA. Since the associated human remains have not been located, these objects are included here as unassociated funerary objects. They are one abrading stone and one megathura shell ornament.

The sites detailed in this notice have been identified through tribal consultation to be within the traditional territory of the Chumash people. These locations are consistent with ethnographic and historic documentation of the Chumash people.

The Chumash territory, anthropologically defined first on the basis of linguistic similarities, and subsequently on broadly shared material and cultural traits, reaches from San Luis Obispo to Malibu on the coast, inland to the western edge of the San Joaquin Valley, to the edge of the San Fernando Valley, and includes the four Northern Channel Islands. At the southern and southeastern boundaries of the territory there is evidence of the physical co-existence of Chumash, Tataviam, and Gabrielino/Tongva languages and beliefs systems. At the northern boundary of the territory there is evidence of the physical co-existence of Chumash and Salinan groups. The sites in this notice are located in the northwestern Los Angeles County and Santa Barbara County and fall within the geographical area identified as Chumash. Some tribal consultants state that these areas were the responsibility of regional leaders, who were themselves organized into a pan-regional association of both political power and ceremonial knowledge. Further, these indigenous areas are identified by some tribal consultants to be relational with clans or associations of traditional practitioners of specific kinds of indigenous medicinal and ceremonial practices. Some tribal consultants identified these clans as existing in the pre-contact period and identified some clans as also existing in the present day. Other tribal consultants do not recognize present-day geographical divisions to be related to clans of traditional practitioners. However, they do state that Chumash, Tataviam, and Gabrielino/Tongva territories were and are occupied by socially distinct, yet interrelated, groups which have been characterized by anthropologists. Ethnographic evidence suggests that the social and political organization of the pre-contact Channel Islands were primarily at the village level, with a hereditary chief, in addition to many other specialists who wielded power.

The unassociated funerary objects described in this notice are consistent with those of groups ancestral to the present-day Chumash, Tataviam, and Gabrielino/Tongva people. The material cultures of earlier groups living in the geographical areas mentioned in this notice are characterized by archeologists as having passed through stages over the past 10,000 years. Many local archeologists assert that the changes in the material culture reflect evolving ecological adaptations and related changes in social organization of the same populations and do not represent population displacements or movements. The same range of artifact types and materials were used from the early pre-contact period until historic times. Tribal consultants explicitly state that population mixing, which did occur on a small scale, would not alter the continuity of the shared group identities of people associated with specific locales. Based on this evidence, continuity through time can be traced for all sites listed in this notice with present-day Chumash people, specifically Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Determinations Made by the California Department of Transportation

Officials of the California Department of Transportation have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 4,784 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Tina Biorn, California Department of Transportation, P.O. Box 942874 MS 27, Sacramento, CA 94271–0001, telephone 916–653–0013, email *tina.biorn@dot.ca.gov,* by February 26, 2016. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California, may proceed.

The California Department of Transportation is responsible for notifying the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California, that this notice has been published.

Dated: December 21, 2015.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–01605 Filed 1–26–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20042]

Notice of Inventory Completion: San Diego Museum of Man, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The San Diego Museum of Man has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit written request to the San Diego Museum of Man. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organization stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the San Diego Museum of Man at the address in this notice by February 26, 2016.

ADDRESSES: Ben Garcia, Deputy Director, San Diego Museum of Man, 1350 El Prado, San Diego, CA 92101, telephone (619) 239–2001 ext. 17, email *bgarcia@museumofman.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the San Diego Museum of Man, San Diego, CA. The human remains and associated funerary objects were removed from various locations in the La Jolla area of San Diego, San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by the San Diego Museum of Man professional staff in consultation with representatives of the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California: (Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California); Ewiiaapaayp Band of Kumeyaay Indians, California; Iipay Nation of Santa Ysabel, California (previously listed as the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation); Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Indian Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; and the Sycuan Band of the Kumeyaay Nation, hereafter referred to as ''The Tribes.''

History and Description of the Human Remains and Associated Funerary Objects

Between 1925 and 1929, human remains representing, at minimum, 15 individuals were recovered by Malcom J. Rogers from CA–SDI–39 and CA–SDI–18307 (W–1 and W–2). At an unknown date prior to 1941, Rogers transferred this collection to the San Diego Museum of Man. No known individuals were identified. The 3 associated funerary objects are 1 lot of 11 faunal remains and 2 olivella shell beads.

In 1971, human remains representing, at minimum, 1 individual were recovered in a salvage operation from CA–SDI–18307 (W–2). This individual was collected by Rose Tyson on behalf of the San Diego Museum of Man. No known individuals were identified. No associated funerary objects are present.

Between 1929 to 1945, human remains representing, at minimum, 3 individuals were recovered from CA–SDI–4670 (W–5) by Malcolm J. Rogers on behalf of the San Diego Museum of Man as a part of salvage archeology operations. The 4 associated funerary objects are 1 metate, 1 mano, 1 scraper/plane, and 1 lot of olivella shell beads.

On an unknown date, human remains representing, at minimum, 1 individual were removed from an unknown location. These human remains lack specific information on the date of collection/donation, name of the collector, or collection documentation beyond their association with CA–SDI–4670 (W–5). No known individuals were identified. The 2 associated funerary objects are 1 stone fragment and 1 shell.

In 1943, human remains representing, at minimum, 32 individuals were recovered from CA–SDI–525 (W–9) by Malcolm J. Rogers on behalf of the San Diego Museum of Man as a part of salvage archeology operations conducted during World War II Army construction. No known individuals were identified. The 12 associated funerary objects include 3 utilized flakes, 4 olivella shell beads, 2 olivella shells, 1 lot of olivella shell beads, 1 core tool, and 1 protothaca shell.

Between 1958 and 1959, human remains representing, at minimum, 2 individuals were collected from CA–SDI–525 (W–9) by Carl L. Hubbs, G. Shumway, J. Moriarity, and C. Warren during the home construction of two Scripps Estate Association Lots. In 1972, these remains were donated to the San Diego Museum of Man by Carl Hubbs. No known individuals were identified. No associated funerary objects are present.

Between 1929 and 1952, human remains representing, at minimum, 8 individuals were recovered from CA–SDI–4669 (W–12) by Malcolm J. Rogers during numerous recoveries due to construction on the William H. Black Estate. These collections were either recovered on behalf of the San Diego Museum of Man or transferred by Rogers to the Museum of Man prior to 1953. No known individuals were identified. The 5 associated funerary objects are 4 metates and 1 mano.

In 1948, human remains representing, at minimum, 3 individuals were collected from CA–SDI–4669 (W–12) during San Diego Museum of Man field work. No known individuals were identified. The 55 associated funerary objects are 4 battered stones, 4 utilized

flakes, 6 stones, 1 core tools, 2 bone awls, 1 ring stone, 24 flakes, and 13 shells.

In 1950, human remains representing, at minimum, 1 individual were collected from CA–SDI–4669 (W–12) by Carr Tuthill on behalf of the San Diego Museum of Man due to construction on the William H. Black Estate. No known individuals were identified. The 1 associated funerary object is 1 lot of stone beads.

These five sites were originally identified by Malcolm J. Rogers and designated as: W–1 (CA–SDI–39) and W–2 (CA–SDI–18307), known as the Spindrift/La Jolla Shores sites; W–5 (CA–SDI–4670) known as the Middle Midden; W–9 (CA–SDI–525), later named the Cemetery; and W–12 (CA–SDI–4669) known as Skeleton Hill. Excavations from these sites were conducted by Rogers, as well as other individuals, including San Diego Museum of Man staff. Many of these excavations occurred while Rogers was employed by the San Diego Museum of Man. These five sites are all located within well-known and documented aboriginal territories of the Kumeyaay Nation. Based on archeological evidence, geographic location, ethnographic information, and oral history evidence, these remains have been identified as Native American.

Determinations Made by the San Diego Museum of Man

Officials of the San Diego Museum of Man have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 66 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 82 associated funerary objects described in this notice are reasonably believed to have been placed with or near individual human remains at time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Kumeyaay Nation, as represented by The Tribes.

Additional Requestors and Disposition

Lineal descendants and representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Ben Garcia, Deputy Director, San Diego Museum of Man, 1350 El Prado, San Diego, CA 92101, telephone (619) 239–2001 ext. 17, email *bgarcia@museumofman.org,* February 26, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The San Diego Museum of Man is responsible for notifying The Tribes that this notice has been published.

Dated: December 29, 2015.

Amberleigh Malone,

Acting Manager, National NAGPRA Program.

[FR Doc. 2016–01588 Filed 1–26–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20018; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Fowler Museum at the University of California Los Angeles, Los Angeles, CA, and California Department of Parks and Recreation, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Fowler Museum at the University of California Los Angeles (UCLA) and California Department of Parks and Recreation, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, have determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the California Department of Parks and Recreation. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the California Department of Parks and Recreation at the address in this notice by February 26, 2016.

ADDRESSES: Leslie Hartzell, Ph.D., NAGPRA Coordinator, Cultural Resources Division Chief, California State Parks, P.O. Box 942896, Sacramento, CA 94296–0001, telephone (916) 653–9946, email *leslie.hartzell@parks.ca.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the California Department of Parks and Recreation that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In 1954, two burial objects were removed from Arroyo Sequit (CA–LAN–52) in Los Angeles County, CA. Excavations were conducted by Clement Meighan as a UCLA Department of Anthropology and Sociology field school to salvage information from portions of the site that were to be lost due to highway widening. This collection was curated at UCLA after analysis was complete. The excavations were located on lands belonging to the California Department of Parks and Recreation. Arroyo Sequit is also recorded as the village of Lisiqshi with a radiocarbon date of A.D. 610 ±100, placing occupation in the Late Period through Spanish contact. The excavation notes indicate that an adult female burial was excavated (Burial 1). The human remains from this burial were not curated at UCLA and notes indicate the human remains were donated to Freddie Curtis in 1958. The current location of these human remains is unknown to UCLA. The two objects, a projectile point and a flake scraper associated with Burial 1, are present in the collection. Because the human remains are not at UCLA, these objects are considered unassociated funerary objects under NAGPRA.

In 1970 and 1971, 8,475 cultural items were removed from Humaliwu (CA–LAN–264) in Malibu, Los Angeles County, CA. Nelson N. Leonard obtained permission to have a UCLA Anthropology field course conduct research, which included excavation of

the historic cemetery on California Department of Parks and Recreation property. Collections were accessioned at UCLA as they returned from the field. The village dates from A.D. 550–1805. Excavations included the village's historic cemetery, and while all items identified as being associated with a particular burial were included in a separate Notice of Inventory Completion, excavators further identified objects recovered from the cemetery in general. In consultation with descendent communities, all items from the cemetery were requested for repatriation and are included as unassociated funerary objects. The unassociated funerary objects are 191 lumps, plugs, and fragments, 30 bags of asphaltum fragments many with basketry, wood, and fabric impressions, 698 pieces and 19 bags of unmodified animal bone, 14 pieces of worked bone, 1 ceramic fragment, 7 bags of charcoal, 1 bag of clay fragments with basketry impression, 1 adobe fragment, 3 glass bottle fragments, 1 worked glass piece, 1 cordage fragment, 24 whole and fragmented unmodified shells, 214 worked shell objects, 3 asphaltum plugged shell dishes, 2 steatite pendants, 1 elbow pipe, 1 soil sample bag, 6,524 individual stone, shell, and glass beads, 72 pieces of ochre, 10 bags and 9 wood fragments, 26 metal objects, 4 bullet shells, 1 bag of iron fragments, 1 column sample bag, 6 soapstone comals, 94 stone bowl fragments, 3 tarring pebbles, 414 chipped stone flakes and tools, 36 ground stone tools, and 63 stone fragments.

The sites detailed in this notice have been identified through tribal consultation to be within the traditional territory of the Chumash people. These locations are consistent with ethnographic and historic documentation of the Chumash people.

The Chumash territory, anthropologically defined first on the basis of linguistic similarities, and subsequently on broadly shared material and cultural traits, reaches from San Luis Obispo to Malibu on the coast, inland to the western edge of the San Joaquin Valley, to the edge of the San Fernando Valley, and includes the four Northern Channel Islands. At the southern and southeastern boundaries of the territory there is evidence of the physical co-existence of Chumash, Tataviam, and Gabrielino/Tongva languages and beliefs systems. At the northern boundary of the territory there is evidence of the physical co-existence of Chumash and Salinan groups. The sites in this notice are located in northwestern Los Angeles County and fall within the geographical area identified as Chumash. Some tribal consultants state that these areas were the responsibility of regional leaders, who were themselves organized into a pan-regional association of both political power and ceremonial knowledge. Further, these indigenous areas are identified by some tribal consultants to be relational with clans or associations of traditional practitioners of specific kinds of indigenous medicinal and ceremonial practices. Some tribal consultants identified these clans as existing in the pre-contact period and identified some clans as also existing in the present day. Other tribal consultants do not recognize present-day geographical divisions to be related to clans of traditional practitioners. However, they do state that Chumash, Tataviam, and Gabrielino/Tongva territories were and are occupied by socially distinct, yet interrelated, groups which have been characterized by anthropologists. Ethnographic evidence suggests that the social and political organization of the pre-contact Channel Islands were primarily at the village level, with a hereditary chief, in addition to many other specialists who wielded power.

The unassociated funerary objects described in this notice are consistent with those of groups ancestral to the present-day Chumash, Tataviam, and Gabrielino/Tongva. The material cultures of earlier groups living in the geographical areas mentioned in this notice are characterized by archeologists as having passed through stages over the past 10,000 years. Many local archeologists assert that the changes in the material culture reflect evolving ecological adaptations and related changes in social organization of the same populations and do not represent population displacements or movements. The same range of artifact types and materials were used from the early pre-contact period until historic times. Tribal consultants explicitly state that population mixing, which did occur on a small scale, would not alter the continuity of the shared group identities of people associated with specific locales. Based on this evidence, continuity through time can be traced for all sites listed in this notice with present-day Chumash people, specifically the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Determinations Made by the California Department of Parks and Recreation

Officials of the California Department of Parks and Recreation have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 8,477 cultural items described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Leslie Hartzell, Ph.D., NAGPRA Coordinator, Cultural Resources Division Chief, California State Parks, P.O. Box 942896, Sacramento, CA 94296–0001, telephone (916) 653–9946, email *leslie.hartzell@parks.ca.gov,* by February 26, 2016. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California, may proceed.

The California Department of Parks and Recreation is responsible for notifying the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California, that this notice has been published.

Dated: December 21, 2015.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–01597 Filed 1–26–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20022; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Fowler Museum at the University of California Los Angeles, Los Angeles, CA, and California Department of Transportation, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Fowler Museum at the University of California Los Angeles (UCLA) and the California Department

of Transportation have completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and have determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the California Department of Transportation. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the California Department of Transportation at the address in this notice by February 26, 2016.

ADDRESSES: Tina Biorn, California Department of Transportation, P.O. Box 942874 MS 27, Sacramento, CA 94271–0001, telephone (916) 653–0013, email *tina.biorn@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the physical custody of the Fowler Museum at UCLA and under the control of the California Department of Transportation. The human remains and associated funerary objects were removed from Los Angeles County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Fowler Museum at UCLA professional staff in consultation with representatives of Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California; San Manuel Band of Mission Indians, California (previously listed as the San Manual Band of Serrano Mission Indians of the San Manual Reservation); and the following nonfederally recognized Indian groups: Fernandeño Tataviam Band of Mission Indians; Gabrielino/Tongva Indians of California Tribe; Gabrielino/Tongva Nation; Gabrieleno/Tongva Tribal Council; San Gabriel Band of Mission Indians; Ti'at Society; and the Traditional Council of Pimu.

History and Description of the Human Remains and Associated Funerary Objects

In 1945, 1963, 1967, and 1968, human remains representing, at minimum, seven individuals were removed from Big Tujunga Wash (CA–LAN–167) in Los Angeles County, CA. The site was excavated in 1963 by Jay Ruby of the UCLA Archaeological Survey. The excavation was carried out as a salvage project after a dragline digging operation for a sewer line exposed and damaged one burial within the highway right-of-way. The human remains from this burial were recovered at that time. Subsequent review of the collection also identified fragmentary remains from midden contexts. A second burial, excavated from the site sometime between 1945–1951, by Edwin Walker of the Southwest Museum, was included along with the 1963 collection under Accession Number 501 and is included here. In all, a minimum of four adults, an infant, and a juvenile are represented. Sex was unable to be determined for any of the human remains. Nelson N. Leonard led a second project during the summers of 1967 and 1968 as mitigation for the building of the Foothill Freeway over the site. From the 1967–68 project, a juvenile human molar was identified. Ruby dated the site to A.D. 435 to 1800. No known individuals were identified. The 14 associated funerary objects are animal bones recovered in proximity to the burial recovered in 1945.

In 1965, human remains representing, at minimum, three individuals were removed from the Hammack Street site in Los Angeles County, CA (CA–LAN–194). The site was excavated by Chester King of the University of California Davis Anthropology Department for the California Department of Transportation. The project was designed for mitigation of impacts to the site from freeway construction for the Marina Freeway. The collection was curated at UCLA after analysis. Site CA–LAN–194 dates to the historic period based on the artifact analyses. The human remains consists of three human bone removed from midden contexts representing at least three individuals. No age or sex could be determined due to their fragmentary nature. No known individuals were identified. Collection documentation does not indicate any burials or associated funerary objects.

The sites detailed in this notice have been identified through tribal consultation to be within the traditional territory of the Tataviam/Fernandeno and Tongva/Gabrielino people. These locations are consistent with ethnographic and historic documentation of the Tataviam/Fernandeno and Tongva/Gabrielino people.

Linguistic and ethnohistoric evidence shows that these Takic-speaking peoples moved into the San Fernando Valley and greater Los Angeles area by at least 3000 B.C. These groups have a common heritage, but began to diverge after arrival. Analysis of historical records from missions in the Greater Los Angeles area shows that at the time of mission recruitment, in the 18th and 19th centuries, the occupants of the area were descended from the populations living in the area since 3000 B.C.

The associated funerary objects described in this notice are consistent with those of groups ancestral to the present-day Tataviam/Fernandeno and Tongva/Gabrielino people. The material cultures of earlier groups living in the geographical areas mentioned in this notice are characterized by archeologists as having passed through stages over the past 5,000 years. Many local archeologists assert that the changes in the material culture reflect evolving ecological adaptations and related changes in social organization of the same populations and do not represent population displacements or movements. The same range of artifact types and materials were used from the early pre-contact period until historic times. Tribal consultants explicitly state that population mixing, which did occur on a small scale, would not alter the continuity of the shared group identities of people associated with specific locales. Based on this evidence, continuity through time can be traced for all sites listed in this notice with present-day Tataviam/Fernandeno and Tongva/Gabrielino people. However, the Tataviam/Fernandeno and Tongva/Gabrielino people currently lack federal recognition within a single unified tribe.

At the time of the excavation and removal of these human remains and associated funerary objects, the land from which the human remains and

associated funerary objects were removed was not the tribal land of any Indian tribe or Native Hawaiian organization. In 2014 and 2015, the Fowler Museum at UCLA consulted with Indian tribes who are recognized as aboriginal to the area from which these Native American human remains and associated funerary objects were removed. None of these Indian tribes agreed to accept control of the human remains and associated funerary objects. In October 2015, the Fowler Museum at UCLA and California Department of Transportation agreed to transfer control of the human remains and associated funerary objects to San Manuel Band of Mission Indians, California (previously listed as the San Manual Band of Serrano Mission Indians of the San Manual Reservation).

Determinations Made by the California Department of Transportation

Officials of the California Department of Transportation have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 10 individuals of Native American ancestry based on metric and non-metric analysis.
- Pursuant to 25 U.S.C. 3001(3)(A), the 14 items described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.
- Pursuant to 43 CFR 10.11(c)(2)(i), the disposition of the human remains and associated funerary objects may be to San Manuel Band of Mission Indians, California (previously listed as the San Manual Band of Serrano Mission Indians of the San Manual Reservation).

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Tina Biorn, California Department of Transportation, P.O. Box 942874 MS 27, Sacramento, CA 94271–0001, telephone (916) 653–0013; email *tina.biorn@dot.ca.gov,* by February 26, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the San Manuel Band of Mission Indians, California (previously listed as the San Manual Band of Serrano Mission Indians of the San Manual Reservation), may proceed.

The California Department of Transportation is responsible for notifying the San Manuel Band of Mission Indians, California (previously listed as the San Manual Band of Serrano Mission Indians of the San Manual Reservation), that this notice has been published.

Dated: December 21, 2015.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–01603 Filed 1–26–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–19979; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of Defense, Army Corps of Engineers, Charleston District, Charleston, SC; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The U.S. Army Corps of Engineers, Charleston District has corrected an inventory of human remains and associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** on March 16, 2015. This notice corrects the number of associated funerary objects.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Charleston District at the address in this notice by February 26, 2016.

ADDRESSES: Mr. Alan Shirey, U.S. Army Corps of Engineers, Charleston District, ATTN: CESAC–PM–PL, 69A Hagood Avenue, Charleston, SC 29403–5107, telephone (843) 329–8166, email *alan.d.shirey@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the Charleston District of the U.S. Army Corp of Engineers. The human remains and associated funerary objects were removed from Berkeley County, SC.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects The National Park Service is not responsible for the determinations in this notice.

This notice corrects the number of associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** (80 FR 13614, March 16, 2015). Additional boxes of material that contained associated funerary objects were identified by the repository after the original inventory. These items were inventoried in March 2015, after the publication of the initial Notice. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (80 FR 13615, March 16, 2015), column 1, sentence 6, under the heading ''History and Description of the Remains,'' is corrected by substituting the following sentence:

> The 113,227 associated funerary objects are 3 beads, 323 ceramic sherds, 350 concretions, 106,771 faunal fragments, 60 fossils (shell and coral), 2,281 lithic flakes (orthoquartzite, chert, and quartz), 23 lithic tool fragments, 29 lots of faunal fragments, 95 lots of screened material, 99 soil samples, 228 lots of processed flotation. 4 lots of phytolith samples, 25 organics (wood, seeds, and snail shell), 1 piece of groundstone, 2,569 pieces of miscellaneous stone/pebbles, 97 pieces of charcoal, 1 glass fragment, 10 shell fragments, and 258 pieces of ochre (red and yellow).

In the **Federal Register** (80 FR 13615, March 16, 2015), column 2, bullet 3, is corrected by substituting the following sentence:

> Pursuant to 25 U.S.C. 3001(3)(A) the 113,227 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Mr. Alan Shirey, U.S. Army Corps of Engineers, Charleston District, ATTN: CESAC–PM–PL, 69A Hagood Avenue, Charleston, SC 29403–

5107, telephone (843) 329–8166, email *alan.d.shirey@usace.army.mil* by February 26, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Catawba Indian Nation may proceed.

The Charleston District of the U.S. Army Corp of Engineers is responsible for notifying the Catawba Indian Nation that this notice has been published.

Dated: December 10, 2015.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–01590 Filed 1–26–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20015; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Fowler Museum at the University of California Los Angeles, Los Angeles, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Fowler Museum at the University of California Los Angeles (UCLA), in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Fowler Museum at UCLA. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Fowler Museum at UCLA at the address in this notice by February 26, 2016.

ADDRESSES: Wendy G. Teeter, Ph.D., Fowler Museum at UCLA, Box 951549, Los Angeles, CA 90095–1549, telephone (310) 825–1864, email *wteeter@arts.ucla.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Fowler Museum at UCLA that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

Sometime before 1972 and in 1991, 2,948 cultural items were removed from Encinal Canyon (CA–LAN–114) in Malibu, Los Angeles County, CA. Accession 752 contains 49 cultural items identified as being associated with the burial found in Encinal Canyon. The site has been dated through diagnostic artifacts and radiocarbon dating to the Late Period (A.D. 700–1769) through Historic contact. The human remains were not curated at the Fowler Museum, and therefore the burial items are identified as unassociated funerary objects. The unassociated funerary objects are 15 shell beads, 28 unmodified shell fragments, 5 groundstone fragments, and 1 marine animal bone. Accession 871 contains 2,899 cultural items removed by Brian Dillon during mitigation work in 1991 on a single parcel that was given to UCLA in 2001. All human remains were reinterred on site along with many of the funerary objects. There were many more funerary objects that were not interred and under NAGPRA are unassociated funerary objects. The unassociated funerary objects are 2,779 pieces of shell, 1 bag of shell fragments, 1 bag of charcoal, 2 pieces of worked bone, 1 piece of ochre, 10 shell beads, 22 grinding stones, 5 metate fragments, 45 pieces of flaked-stone tools and debitage, 1 metal button, 26 glass fragments, 1 cement fragment, and 5 pieces of historic tools.

Between 1950 and 1969, 70 cultural items were removed from the Zuma Creek Site (CA–LAN–174) in Los Angeles County, CA. Salvage excavations were conducted at the site during 1968 and 1969 by Sally MacFadyen and Jinny McKenzie, as well as Thomas King and the University of California (UC) Archaeological Survey crew. Human remains from five burials were accessioned by UCLA in 1969 and 1986 and are contained in a separate Notice of Inventory Completion. The site produced a radiocarbon date of circa 3000 B.C. The field notes discuss human remains from the same excavations not curated at UCLA; funerary objects from these burials are, however, present in the collection and under NAGPRA are unassociated funerary objects. The unassociated funerary objects are 1 bag of shell fragments, 1 soil sample bag, 6 pieces of unmodified animal bone, 6 shell beads, 1 piece of burned clay, 24 ground stone tools, 7 stone fragments, 14 chipped-stone tools, 5 flaking cores, and 5 cobble fragments.

In 1967, seven cultural items were removed from Russell Valley (CA–LAN–186) in Thousand Oaks, Los Angeles County, CA. Excavations were conducted by Chester King during a salvage operation of this Late Period site (A.D. 700–1500) initiated to recover as much information as possible before it was destroyed by development. Field notes indicate seven artifacts unearthed by contractors were pulled from a cairn in association with Burial 1 as well as other isolated human remains. The human remains were left at the site, but the curated burial items—6 mortar fragments and 1 metate fragment—are unassociated funerary objects under NAGPRA.

Between March and June 1968, one cultural item was removed from Trancas Canyon Cemetery (CA–LAN–197) in Malibu, Los Angeles County, CA, by the UC Archaeology Survey under the direction of John Beaton and aided by the Malibu Archaeological Society. The excavations took place on land owned by the Reco Land Company as a salvage project due to erosion and the construction of a shopping center. The collection was accessioned by UCLA in 1978. Radiocarbon dating from the cemetery estimates the site age to 370 B.C. The unassociated funerary object is one siltstone slab that was associated with Burial 5 (the human remains are not present in the collection).

In March of 1960, 309 cultural items were removed from the Village of Sumo (CA–LAN–207) in Malibu, Los Angeles County, CA. This site, located along an eroding cliff face, was excavated by a UCLA archeological field course led by M.B. McKusick. The land where the excavation took place was owned by a private mobile home park at the time of excavation. The collection was accessioned by UCLA in 1960. The cemetery is dated to circa 3050 B.C. Field notes indicate that a ''scattered reburial'' of human remains was found near Pit 4 with a concentration of shell

beads and discs. The human remains were never brought to UCLA, although the 309 shell beads and discs were. Under NAGPRA, these items are unassociated funerary objects.

In 1962 and 1963, 40 cultural items were removed from Paradise Cove (CA–LAN–222) in Malibu, Los Angeles County, CA. The first excavations were undertaken by a Pasadena City College field school, supervised by Richard H. Brooks, in the spring of 1962. During this time excavations were also undertaken jointly by a Santa Monica City College and UCLA field course supervised by Jack Smith. These collections were accessioned by UCLA after receiving them from Richard Brooks of the Department of Anthropology, University of Nevada, Las Vegas, in 1987. In 1963, excavations continued with the joint Santa Monica City College and UCLA Anthropology field course directed by Chester King and Jack Smith. The resulting collection was accessioned by UCLA in 1964. Radiocarbon dating estimates age of the site is 2350 B.C. Accession 291 includes 30 cultural items labeled as being found in association with human remains not in the possession of the Fowler Museum. The unassociated funerary objects are 1 awl fragment, 14 manos, 4 stone balls, 1 projectile point, 6 stone flakes, 2 hammerstones, and 2 stone fragments. Accession 338 includes 10 cultural items. The unassociated funerary objects are 1 sandstone metate that was collected from an unexcavated burial and 3 pestles and 6 mortar fragments from the general burial area that were disturbed by bulldozer activities.

In 1963, 26 cultural items were removed when Alex Apostolides directed a salvage project at the Mulholland Site (CA–LAN–246) in Los Angeles County, CA, before the construction of housing and to offset the pervasive vandalism that was occurring at the time. Dating of the site is to the Late Period (A.D. 1200–1500). The collection was accessioned by UCLA in November 1978. A number of burials and fragmentary human remains were found at the Mulholland Site. In addition, a number of items were identified as associated with burials although the human remains were either not curated at the Fowler Museum or not further excavated. The unassociated funerary objects are 20 shell ornaments, 4 unmodified animal bones, and 2 bags of charcoal.

In 1955, 1958, and 1959, 328 cultural items were removed from Simo'mo (CA–VEN–24 aka VEN–26) in Ventura County, CA. UCLA field school excavations on private land were undertaken by Clement Meighan in 1955, David M. Pendergast in 1958, and by M.B. McKusick in 1959. The excavations were all accessioned by UCLA by 1959. The estimated age of the site is A.D. 300–1100. There are 328 cultural items that are associated with identified burials, but the human remains are not curated at UCLA. The unassociated funerary objects are 34 pieces of unmodified animal bone, 5 shell fragments, 39 shell inlaid bone tubes, 6 shell pendant fragments, 1 projectile point, 212 shell beads, 27 river cobbles, and 4 bowl fragments.

In the summer of 1982, one cultural item was removed from CA–VEN–312 in Ventura County, CA. The collection derived from excavations directed by Brian Dillon in front of construction for Wildwood Homes. The collection was received at the Fowler Museum at UCLA in two parts. A small portion arrived in March of 1985, and a second portion in August of 1997. Other than a catalog, no other documentation was received for the collection. The catalog indicates that there were human remains excavated from Feature 1, however, no remains were curated by Dr. Dillon for this collection. A projectile point fragment was identified as being ''in-situ associated'' with the missing remains and is therefore classified as an unassociated funerary object.

The sites detailed in this notice have been identified through tribal consultation to be within the traditional territory of the Chumash people. These locations are consistent with ethnographic and historic documentation of the Chumash people.

The Chumash territory, anthropologically defined first on the basis of linguistic similarities, and subsequently on broadly shared material and cultural traits, reaches from San Luis Obispo to Malibu on the coast, inland to the western edge of the San Joaquin Valley, to the edge of the San Fernando Valley, and includes the four Northern Channel Islands. The sites in this notice are located in northwestern Los Angeles County and Ventura County and fall within the geographical area identified as Chumash. Some tribal consultants state that these areas were the responsibility of regional leaders, who were themselves organized into a pan-regional association of both political power and ceremonial knowledge. Further, these indigenous areas are identified by some tribal consultants to be relational with clans or associations of traditional practitioners of specific kinds of indigenous medicinal and ceremonial practices. Some tribal consultants identified these clans as existing in the pre-contact period and identified some clans as also existing in the present day. Other tribal consultants do not recognize present-day geographical divisions to be related to clans of traditional practitioners. Ethnographic evidence suggests that the social and political organization of the pre-contact Channel Islands were primarily at the village level, with a hereditary chief, in addition to many other specialists who wielded power.

The unassociated funerary objects described in this notice are consistent with those of groups ancestral to the present-day Chumash people. The material cultures of earlier groups living in the geographical areas mentioned in this notice are characterized by archeologists as having passed through stages over the past 10,000 years. Many local archeologists assert that the changes in the material culture reflect evolving ecological adaptations and related changes in social organization of the same populations and do not represent population displacements or movements. The same range of artifact types and materials were used from the early pre-contact period until historic times. Tribal consultants explicitly state that population mixing, which did occur on a small scale, would not alter the continuity of the shared group identities of people associated with specific locales. Based on this evidence, continuity through time can be traced for all sites listed in this notice with present-day Chumash people, specifically the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Determinations Made by the Fowler Museum at UCLA

Officials of the Fowler Museum at UCLA have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 3,730 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian

organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Wendy G. Teeter, Ph.D., Fowler Museum at UCLA, Box 951549, Los Angeles, CA 90095–1549, telephone (310) 825–1864, email *wteeter@arts.ucla.edu,* by February 26, 2016. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California, may proceed.

The Fowler Museum at UCLA is responsible for notifying the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California, that this notice has been published.

Dated: December 21, 2015.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–01593 Filed 1–26–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20019; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Fowler Museum at the University of California Los Angeles, Los Angeles, CA, and California Department of Parks and Recreation, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Fowler Museum at the University of California Los Angeles (UCLA) and California Department of Parks and Recreation have completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and have determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the California Department of Parks and Recreation. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the California Department of Parks and Recreation at the address in this notice by February 26, 2016.

ADDRESSES: Leslie Hartzell, Ph.D., NAGPRA Coordinator, Cultural Resources Division Chief, California State Parks, P.O. Box 942896, Sacramento, CA 94296–0001, telephone (916) 653–9946, email *leslie.hartzell@parks.ca.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the physical custody of the Fowler Museum at UCLA and under the control of the California Department of Parks and Recreation. The human remains and associated funerary objects were removed from Ventura and Los Angeles counties, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Fowler Museum at UCLA professional staff in consultation with representatives of Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California, and the following nonfederally recognized Indian groups: Barbareno Chumash Council; Barbareno/Ventureno Band of Mission Indians; Coastal Band of the Chumash Nation; Fernandeño Tataviam Band of Mission Indians; Gabrielino/Tongva Indians of California Tribe; Gabrielino/Tongva Nation; Gabrieleno/Tongva Tribal Council; Northern Chumash Tribe; San Gabriel Band of Mission Indians; Ti'at Society; and the Traditional Council of Pimu.

History and Description of the Human Remains and Associated Funerary Objects

In 1954 and 1970, human remains representing, at minimum, 40 individuals were removed from Arroyo Sequit (CA–LAN–52) in Los Angeles County, CA. Excavations were conducted by Clement Meighan as a UCLA Department of Anthropology and Sociology field school to salvage information from portions of the site that were to be lost due to highway widening. This collection was curated at UCLA after analysis was complete. Thomas King also conducted excavations at the site in 1970 with volunteers, and these artifacts were curated at UCLA after analysis as well. The excavations occurred on lands belonging to the California Department of Parks and Recreation. Arroyo Sequit is also recorded as the village of Lisiqshi with a radiocarbon date of A.D. 610 +/−100, placing occupation in the Late Period through Spanish contact. No formal burials were curated at UCLA, but fragmentary human remains were identified from midden contexts totaling 31 individuals from the 1954 excavations, of which 21 were distinguished as adult, 7 as infants, and 2 as juvenile. One individual could not be aged and none of the human remains could be identified to sex. Human remains from the 1970 excavations represent a minimum of 9 individuals (4 adults, 2 juveniles, and 3 unidentified). Since most the human remains are single elements, none could be attributed to sex. No known individuals were identified. No associated funerary objects were identified.

In 1970 and 1971, human remains representing, at minimum, 220 individuals were removed from Humaliwu (CA–LAN–264) in Malibu, Los Angeles County, CA. Nelson N. Leonard obtained permission to have a UCLA Anthropology field course, which included excavation of the historic cemetery on California Department of Parks and Recreation property. Collections were accessioned at UCLA as they returned from the field. The village dates from A.D. 550–1805. The excavations identified 159 formal burials as well as additional fragmentary human remains from midden contexts. In total, a minimum of 220 individuals were identified (130 adults, 39 juveniles, 35 infants, 3 neonates, 5 perinates, and 8 unidentified), of which 20 adults were distinguishable as males and 16 females. No known individuals were identified. The 54,655 associated funerary objects include 1,192 fragments, lumps, and plugs of

asphaltum; 15 bags of asphaltum many with basketry, wood, and fabric impressions; 366 pieces and 14 bags of unmodified animal bone; 17 pieces of worked bone; 2 pieces of ceramic; 27 fragments and 1 bag of charcoal; 1 glass pendant; 2 cordage fragments; 56 whole and fragmented shells; 264 worked shell objects; 29 bags of soil samples; 1 shell and 11 copper buttons; 51,849 individual stone, shell, and glass beads; 1 copper cup; 1 apothecary jar; 2 leather fragments; 2 possible plaster fragments; 77 pieces and 1 bag of ochre; 1 bag and 136 wood fragments; 31 metal objects; 1 bag of iron fragments; 8 comal fragments; 1 steatite bowl; 30 bowl fragments; 361 chipped stone flakes and tools; 97 ground stone tools; and 58 stone fragments.

In 1983, human remains representing, at minimum, one individual was removed from CA–LAN–454 near Point Dume, Los Angeles, CA. Doug Armstrong and a UCLA Archaeological Survey crew conducted excavations on land owned by the California State Parks and Recreation. At some unknown time, a burial was loaned to the Natural History Museum of Los Angeles County for display. The museum returned the burial in 2000. The site dates from A.D. 0 to 800. The burial represents an adult female. No known individuals were identified. No associated funerary objects were distinguished.

In 1981, human remains representing, at minimum, one individual was removed from CA–LAN–1111, near Corral Canyon, Los Angeles County, CA. Fred Ghiradelli led excavations for the State Department of Beaches and Parks at this prehistoric village site. After analysis, the collection was accessioned at UCLA. A single human phalanx was removed from the surface represented an individual of unknown age or sex. No known individuals were identified. No associated funerary objects were identified.

In the summer of 1967, human remains representing, at minimum, two individuals were removed from Big Sycamore Canyon (CA–VEN–89) in Ventura County, CA. The site was excavated by Chester King and a University of California (UC) Archaeological Survey crew on land owned by the California State Parks in preparation for the construction of recreational facilities that would impact the site. The collection was accessioned at UCLA after analysis. The site is estimated to date to the Late Period (A.D. 700–1869) through Spanish contact, as the site was recorded as the village of Shuwalashu. Fragmentary human remains represent two adult individuals of unknown sex. No known individuals were identified. No associated funerary objects were identified.

In 1974, human remains representing, at minimum, one individual was removed from CA–VEN–101 in Ventura County, CA. Nelson N. Leonard and a UC Archaeological Survey crew excavated the site as part of a larger survey project in the La Jolla Valley at Point Mugu State Park. The collection was curated at UCLA upon completion of analysis. The site dates from A.D. 200–400. Two human bone elements from a shell midden represent a single adult individual of unknown sex. No known individuals were identified. No associated funerary objects were identified.

The sites detailed in this notice have been identified through tribal consultation to be within the traditional territory of the Chumash people. These locations are consistent with ethnographic and historic documentation of the Chumash people.

The Chumash territory, anthropologically defined first on the basis of linguistic similarities, and subsequently on broadly shared material and cultural traits, reaches from San Luis Obispo to Malibu on the coast, inland to the western edge of the San Joaquin Valley, to the edge of the San Fernando Valley, and includes the four Northern Channel Islands. At the southern and southeastern boundaries of the territory there is evidence of the physical co-existence of Chumash, Tataviam, and Gabrielino/Tongva languages and beliefs systems. At the northern boundary of the territory there is evidence of the physical co-existence of Chumash and Salinan groups. The sites in this notice are located in northwestern Los Angeles County and Ventura County and fall within the geographical area identified as Chumash. Some tribal consultants state that these areas were the responsibility of regional leaders, who were themselves organized into a pan-regional association of both political power and ceremonial knowledge. Further, these indigenous areas are identified by some tribal consultants to be relational with clans or associations of traditional practitioners of specific kinds of indigenous medicinal and ceremonial practices. Some tribal consultants identified these clans as existing in the pre-contact period and identified some clans as also existing in the present day. Other tribal consultants do not recognize present-day geographical divisions to be related to clans of traditional practitioners. However, they do state that Chumash, Tataviam, and Gabrielino/Tongva territories were and are occupied by socially distinct, yet interrelated, groups which have been characterized by anthropologists. Ethnographic evidence suggests that the social and political organization of the pre-contact Channel Islands were primarily at the village level, with a hereditary chief, in addition to many other specialists who wielded power.

The associated funerary objects described in this notice are consistent with those of groups ancestral to the present-day Chumash, Tataviam, and Gabrielino/Tongva. The material cultures of earlier groups living in the geographical areas mentioned in this notice are characterized by archeologists as having passed through stages over the past 10,000 years. Many local archeologists assert that the changes in the material culture reflect evolving ecological adaptations and related changes in social organization of the same populations and do not represent population displacements or movements. The same range of artifact types and materials were used from the early pre-contact period until historic times. Tribal consultants explicitly state that population mixing, which did occur on a small scale, would not alter the continuity of the shared group identities of people associated with specific locales. Based on this evidence, continuity through time can be traced for all sites listed in this notice with present-day Chumash people, specifically the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Determinations Made by the California Department of Parks and Recreation

Officials of the California Department of Parks and Recreation have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 265 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 54,655 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Leslie Hartzell, Ph.D., NAGPRA Coordinator, Cultural Resources Division Chief, California State Parks, P.O. Box 942896, Sacramento, CA 94296–0001, telephone (916) 653–9946, email *leslie.hartzell@parks.ca.gov,* by February 26, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California, may proceed.

The California Department of Parks and Recreation is responsible for notifying the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California, that this notice has been published.

Dated: December 21, 2015.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–01595 Filed 1–26–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20017; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Fowler Museum at the University of California Los Angeles, Los Angeles, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Fowler Museum at the University of California Los Angeles (UCLA) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Fowler Museum at UCLA. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Fowler Museum at UCLA at the address in this notice by February 26, 2016.

ADDRESSES: Wendy G. Teeter, Ph.D., Fowler Museum at UCLA, Box 951549, Los Angeles, CA 90095–1549, telephone (310) 825–1864, email *wteeter@arts.ucla.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Fowler Museum at UCLA, Los Angeles, CA. The human remains and associated funerary objects were removed from sites within Los Angeles County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Fowler Museum at UCLA professional staff in consultation with representatives of Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California; San Manuel Band of Mission Indians, California (previously listed as the San Manual Band of Serrano Mission Indians of the San Manual Reservation); and the following nonfederally recognized Indian groups: Fernandeño Tataviam Band of Mission Indians; Gabrielino/Tongva Indians of California Tribe; Gabrielino/Tongva Nation; Gabrieleno/Tongva Tribal Council; San Gabriel Band of Mission Indians; Ti'at Society; and the Traditional Council of Pimu.

History and Description of the Human Remains and Associated Funerary Objects

In the spring of 1961, human remains representing, at minimum, 10 individuals were removed from Sa'angna, the Admiralty Site in Los Angeles County, CA (CA–LAN–47). The site was excavated by Keith Johnson and F. Brauer in a volunteer salvage effort to preserve archeological human remains after sewer trenching initiated by the owner disturbed and exposed Burial 1. More burials were uncovered by workmen during construction of the Warehouse Restaurant in Marina Del Rey. The human remains were sent to UCLA's Archaeological Survey for analysis. The Admiralty Site is estimated to date to between A.D. 470 and 645, based on radiocarbon dating. Upon completion of analysis, the collection was accessioned at the Fowler Museum at UCLA in 1969. The human remains from all excavations at the site consist of a minimum of 10 individuals from six formally identified burials. Further analysis identified four adult females; one adult male; one adult, sex unknown; one juvenile (8–9 years old); and three sets of human remains that were too fragmentary to provide age or sex. No known individuals were identified. The 140 associated funerary objects are 1 modified object, 112 unmodified animal bones, 2 chert flakes, 2 projectile points, 11 bone harpoons, 1 tarring pebble, 1 modified pebble, 1 worked serpentine fragment, 2 modified crystals, 1 unmodified shell fragment, and 6 worked shell fragments.

In 1983 and 1984, human remains representing, at minimum, three individuals were removed from Playa del Rey Site #1 (CA–LAN–59), also known as the Hughes Site, in Los Angeles County, CA. The site was excavated using a combination of heavy machinery and wet screening by Brian D. Dillon, David M. Van Horn, and James R. Murray. In 1994, fragmentary human remains were identified among the faunal remains during analysis at the UCLA Institute of Zooarchaeology Laboratory by Susan Colby. Upon notification of the situation in 1996, Van Horn indicated that he did not want the material returned. The entire collection was then accessioned into the Fowler Museum at UCLA for inclusion in UCLA's NAGPRA inventory as per the suggestion of Larry Myers, Executive Secretary of the California Native American Heritage Commission. Radiocarbon dating from Playa del Rey Site #1 is estimated to date to A.D. 430–870, with diagnostic artifacts from the

Early Period (5000–600 B.C.) present in the collection. There are three extremely fragmentary individuals of unknown age or sex. No known individuals were identified. No associated funerary objects are present.

In 1984, human remains representing, at minimum, one individual was removed from Playa del Rey Site #2 (CA–LAN–61), also known as the Loyola Marymount Site, in Los Angeles County, CA. The site was excavated by the Archaeological Associates of Sun City. Fragmentary human remains were identified among faunal remains from the collection during analysis at the UCLA Institute of Zooarchaeology Laboratory by Susan Colby. Upon notification of the situation in 1996, Van Horn indicated that he did not want the material returned. The entire collection was accessioned into the Fowler Museum at UCLA for inclusion in UCLA's NAGPRA inventory as per the suggestion of Larry Myers, Executive Secretary of the California Native American Heritage Commission. Radiocarbon dating at Playa del Rey Site #2 estimates occupation to between 1390 B.C. and A.D. 440. One juvenile individual of unknown sex is represented by a single tooth. No known individuals were identified. No associated funerary objects are present.

In 1986, human remains representing, at minimum, 12 individuals were removed from Playa del Rey Site #4 (CA–LAN–63), also known as The Del Rey Site, in Los Angeles County, CA. The site was excavated by the Archaeological Associates of Sun City. Fragmentary human remains were identified among faunal remains from the collection during analysis at the UCLA Institute of Zooarchaeology Laboratory by Susan Colby. Upon notification of the situation in 1996, Van Horn indicated that he did not want the material returned. The entire collection was accessioned into the Fowler Museum at UCLA for inclusion in UCLA's NAGPRA inventory as per the suggestion of Larry Myers, Executive Secretary of the California Native American Heritage Commission. The Playa del Rey Site #4 is estimated to have had mostly continuous occupation from 1000 B.C. to A.D. 1000. Fragmentary human remains represent one adult, one juvenile, and ten individuals that could not be identified to age or sex. No known individuals were identified. No associated funerary objects are present.

In 1986, human remains representing, at minimum, four individuals were removed from Playa del Rey Site #5 (CA–LAN–64), also known as The Bluff Site, in Los Angeles County, CA. The site was excavated by the Archaeological Associates of Sun City. Fragmentary human remains were identified among faunal remains from the collection during analysis at the UCLA Institute of Zooarchaeology Laboratory by Susan Colby. Upon notification of the situation in 1996, Van Horn indicated that he did not want the material returned. The entire collection was accessioned into the Fowler Museum at UCLA for inclusion in UCLA's NAGPRA inventory as per the suggestion of Larry Myers, Executive Secretary of the California Native American Heritage Commission. The Playa del Rey Site #5 is estimated to have had mostly continuous occupation from 1000 B.C. to A.D. 1000. Extremely fragmentary human remains represent a minimum of three juveniles and one individual that could not be identified to age or sex. No known individuals were identified. No associated funerary objects are present.

At some time before 1950, human remains representing, at minimum, one individual were removed from 5802 Parapet Street, Lakeside Village (CA–LAN–131) in Long Beach, Los Angeles County, CA. The site was excavated by Hal Eberhart after discovery of human remains on private property. The human remains were brought to UCLA from the Norwalk Police Station after they were determined to be Native American and received at UCLA in 1950. Very little information accompanied the human remains to the Fowler Museum, but later excavations identified the location as from a Prehistoric site. Human remains from Burial A–3 represent a male individual of approximately 20 years of age. No known individuals were identified. No associated funerary objects are present.

Sometime before 1946, human remains representing, at minimum, three individuals were removed from 827 N. Glendale Avenue (CA–LAN–132) in Glendale, Los Angeles County, CA. Upon discovery of the human remains at the property, the police were notified, who in turn contacted the Southwest Museum when it was determined that the human remains were burials of Native Americans. Excavations were carried out by Donald Costans and Mr. Talk, during which time three more burials were uncovered, making a total of five. All burials were originally donated to the Southwest Museum in 1946, and it is thought that Hal Eberhart arranged for two of the burials to be transferred to UCLA. Burials 3 and 5 were received at UCLA around 1949. Very little information accompanied the human remains to the Fowler Museum and none of the artifacts. Osteology analysis confirmed the human remains are Native American and the excavations of the time confirmed a Prehistoric age. Burial 3 represents an adult individual of unknown sex, while Burial 5 represents an adult female and a second individual of unknown sex. No known individuals were identified. No associated funerary objects are present.

In 1939, human remains representing, at minimum, seven individuals were removed from Centinela Creek (CA–LAN–193) northeast of Ballona Point, in Malibu, Los Angeles County, CA. This site was excavated in the spring of 1939 by Ralph Beals, the first UCLA Anthropology Professor, and accessioned into UCLA's Anthropology collections sometime before 1945. The site age is estimated to be from the Late Period. Fragmentary human remains recovered from midden contexts represent six individuals of unknown age and sex, and one adult individual of unknown sex. No known individuals were identified. No associated funerary objects are present.

In 1969, human remains of, at minimum, two individuals were removed from between 109 and 111 Street along the west side of Alameda Street (CA–LAN–385) in Los Angeles County, CA. According to Melinda Horne of Applied Earthworks, the site was recorded and excavated by Thomas King during the construction of buildings associated with the Jorgensen Steel Company in 1969. The collection was received at UCLA after analysis. Occupation of the site dates to at least Historic contact based on diagnostic artifacts and the site is identified as the ethnohistorically recorded village site of Ha'utnga. Human remains from Burial 1 represent one adult female individual and one individual of unknown age and sex. No known individuals were identified. The 6 associated funerary objects include 1 glass fragment, 2 pieces and 1 bag of unmodified faunal bone, 1 bag of unmodified shell fragments, and 1 bag of fire-cracked rock.

In 1975 and 1979, human remains representing, at minimum, eight individuals were removed from Sims Pond Site (CA–LAN–702) in Los Alamitos, Los Angeles County, CA. This collection is the result of salvage excavations completed by Marie Cottrell in 1975, and Lawrence P. Allen in 1979, before construction began at the site. In 1975, Archaeological Research Incorporated conducted a Test Level investigation under the direction of Cottrell. In 1983, Cottrell contracted with UCLA for the collection to be curated in perpetuity at the Fowler Museum. The site is estimated to date

from 1300 B.C. through A.D. 1399. Fragmentary human remains recovered from midden contexts represent five individuals of unknown age and sex, two adult individuals of unknown sex, and one juvenile individual of unknown sex. No known individuals were identified. No associated funerary objects are present.

In 1979, human remains representing, at minimum, one individual were removed from the Burrell Site (CA–LAN–999) in Torrance, Los Angeles, CA. The site, on Palos Verdes Peninsula, is on former U.S. Army Missile site property. It is important to note that a portion of LAN–999 was destroyed during the missile site construction. A.V. Eggers discovered the site in May 1978, while an archeological reconnaissance of the property was being conducted. At the request of Burrell Ltd., Martin D. Rosen, Survey Archaeologist at UCLA, excavated the site in 1979. The estimated site age is Late Period (A.D. 700–1769). Human remains from Burial 1 represent an adult individual of unknown sex. No known individuals were identified. The 121 associated funerary objects include 72 shell artifacts, 46 stone flakes, and 3 unworked animal bones.

In 1987, human remains representing, at minimum, one individual were removed from a Prehistoric site in Palos Verdes (CA–LAN–1351), Los Angeles County, CA. Robert Rechtman led a surface survey in front of development on private land. This collection was received for curation at UCLA in April of 1988. Fragmentary human remains collected during survey represent one individual of unknown age or sex. No known individuals were identified. No associated funerary objects were identified.

In 1982, human remains representing, at minimum, one individual were removed from Mulholland Drive, Beverly Hills, Los Angeles County, CA. The collection was a set of human remains identified as Native American by Frank R. Webb, M.D., of the Los Angeles Coroner's Office in July 1942. The only documentation, a hand written note, indicates that the Southwest Museum received the collection in 1942 and later transferred it to UCLA around 1950. The exact location of the excavation or any other information concerning the circumstances of the excavation is unknown. The Coroner cataloged the human remains as Prehistoric without further information. Osteological analysis confirmed the human remains as being of a Native American adult male. No known individuals were identified. No associated funerary objects are present.

The sites detailed in this notice have been identified through consultation to be within the traditional territories of the Tataviam/Fernandeno and Tongva/Gabrielino people. These locations are consistent with ethnographic and historic documentation of the Tataviam/Fernandeno and Tongva/Gabrielino people.

Linguistic and ethnohistoric evidence shows that these Takic-speaking peoples moved into the San Fernando Valley and greater Los Angeles area by at least 3000 B.C. These groups have a common heritage, but began to diverge after arrival. Analysis of historical records from missions in the Greater Los Angeles area shows that at the time of mission recruitment, in the 18th and 19th centuries, the occupants of the area were descended from the populations living in the area since 3000 B.C.

The associated funerary objects described in this notice are consistent with those of groups ancestral to the present-day Tataviam/Fernandeno and Tongva/Gabrielino people. The material cultures of earlier groups living in the geographical areas mentioned in this notice are characterized by archeologists as having passed through stages over the past 5,000 years. Many local archeologists assert that the changes in the material culture reflect evolving ecological adaptations and related changes in social organization of the same populations and do not represent population displacements or movements. The same range of artifact types and materials were used from the early pre-contact period until historic times. Tribal consultants explicitly state that population mixing, which did occur on a small scale, would not alter the continuity of the shared group identities of people associated with specific locales. Based on this evidence, continuity through time can be traced for all sites listed in this notice with present-day Tataviam/Fernandeno and Tongva/Gabrielino people. However, the Tataviam/Fernandeno and Tongva/Gabrielino people currently lack federal recognition within a single unified tribe.

At the time of the excavation and removal of these human remains and associated funerary objects, the land from which the human remains and associated funerary objects were removed was not the tribal land of any Indian tribe or Native Hawaiian organization. In 2014 and 2015, the Fowler Museum at UCLA consulted with Indian tribes who are recognized as aboriginal to the area from which these Native American human remains and associated funerary objects were removed. None of these Indian tribes agreed to accept control of the human remains and associated funerary objects. In October 2015, the Fowler Museum at UCLA agreed to transfer control of the human remains and associated funerary objects to San Manuel Band of Mission Indians, California (previously listed as the San Manual Band of Serrano Mission Indians of the San Manual Reservation).

Determinations Made by the Fowler Museum at UCLA

Officials of the Fowler Museum at UCLA have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 54 individuals of Native American ancestry based on metric and non-metric analysis.
- Pursuant to 25 U.S.C. 3001(3)(A), the 267 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.
- Pursuant to 43 CFR 10.11(c)(2)(i), the disposition of the human remains and associated funerary objects may be to San Manuel Band of Mission Indians, California (previously listed as the San Manual Band of Serrano Mission Indians of the San Manual Reservation).

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Wendy G. Teeter, Ph.D., Fowler Museum at UCLA, Box 951549, Los Angeles, CA 90095–1549, telephone (310) 825–1864, email *wteeter@arts.ucla.edu*, by February 26, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the San Manuel Band of Mission Indians, California (previously listed as the San Manual Band of Serrano Mission Indians of the San Manual Reservation), may proceed.

The Fowler Museum is responsible for notifying the San Manuel Band of Mission Indians, California (previously listed as the San Manual Band of Serrano Mission Indians of the San Manual Reservation), that this notice has been published.

Dated: December 21, 2015.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–01600 Filed 1–26–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–19978; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Lake Mead National Recreation Area, Boulder City, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Lake Mead National Recreation Area has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Lake Mead National Recreation Area. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Lake Mead National Recreation Area at the address in this notice by February 26, 2016.

ADDRESSES: Lizette Richardson, Superintendent, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, NV 89005, telephone (702) 293–8920, email *lizette_richardson@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the U.S. Department of the Interior, National Park Service, Lake Mead National Recreation Area, Boulder City, NV. The human remains were removed from site X:8:7, Yuma County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Lake Mead National Recreation Area.

Consultation

A detailed assessment of the human remains was made by Lake Mead National Recreation Area professional staff in consultation with representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona (hereafter referred to as ''The Tribes'').

History and Description of the Remains

In March 1951, human remains representing, at minimum, one individual were removed from site X:8:7 on private land in Yuma County, AZ. National Park Service archeologist Albert H. Schroeder collected the fragmentary cremation with the permission of the landowner during an archeological survey of the Lower Colorado River. Three artifacts—two three-quarter groove, double-bitted polished axes and one small triangular obsidian point—may also have been removed, but their location is unknown. The cremation has been in the possession of Lake Mead National Recreation Area since its removal. No known individuals were identified. No associated funerary objects are present.

Mr. Schroeder's 1952 report identified the cremation as a prehistoric Native American individual of unspecified gender, likely Hohokam. All available lines of evidence support the archeological identification of the remains as Hohokam. The Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona are known to be descendants of the Hohokam people. During consultation, representatives from each of these tribes stated that their oral traditions show cultural affiliation with the Hohokam. The ethnographic, archeological, and historical evidence supports that affiliation.

Determinations Made by Lake Mead National Recreation Area

Officials of Lake Mead National Recreation Area have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and The Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Lizette Richardson, Superintendent, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, NV 89005, telephone (702) 293–8920, email *lizette_richardson@nps.gov,* by February 26, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

Lake Mead National Recreation Area is responsible for notifying The Tribes that this notice has been published.

Dated: December 10, 2015.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–01589 Filed 1–26–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20016; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Fowler Museum at the University of California Los Angeles, Los Angeles, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Fowler Museum at the University of California Los Angeles (UCLA) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian

organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Fowler Museum at UCLA. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Fowler Museum at UCLA at the address in this notice by February 26, 2016.

ADDRESSES: Wendy G. Teeter, Ph.D., Fowler Museum at UCLA, Box 951549, Los Angeles, CA 90095–1549, telephone (310) 825–1864, email *wteeter@arts.ucla.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Fowler Museum at UCLA, Los Angeles, CA. The human remains and associated funerary objects were removed from Santa Barbara, San Luis Obispo, Ventura, and Los Angeles Counties, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Fowler Museum at UCLA professional staff in consultation with representatives of Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California, and the following nonfederally recognized Indian groups: Barbareno Chumash Council; Barbareno/Ventureno Band of Mission Indians; Coastal Band of the Chumash Nation; Fernandeño Tataviam Band of Mission Indians; Gabrielino/Tongva Indians of California Tribe; Gabrielino/Tongva Nation; Gabrieleno/Tongva Tribal Council; Northern Chumash Tribe; San Gabriel Band of Mission Indians; Ti'at Society; and the Traditional Council of Pimu.

History and Description of the Human Remains and Associated Funerary Objects

In 1957, human remains representing, at minimum, three individuals were removed from the Lower Tank Site (CA–LAN–2) near Topanga, Los Angeles County, CA, where Keith Johnson led a UCLA field school course on privately owned land. The Lower Tank Site is estimated to date between 1000 and 0 B.C., based on radiocarbon dating. After analysis, the collection was accessioned by UCLA in 1961. Three formal burials were identified and consist of two adults and a juvenile. One adult could be further identified as male. No known individuals were identified. The seven associated funerary objects include five unmodified faunal bones, one metate, and one mano.

In 1967, human remains representing, at minimum, four individuals were removed from the Puerco Site (CA–LAN–19) near Malibu, Los Angeles, CA, where James West lead a UCLA field course on privately-owned land as part of the University of California (UC) Archaeological Survey in preparation for proposed freeway work. The Puerco Site is estimated to date between 600 B.C. and A.D. 1769, based on the presence of artifact types in the collection. After analysis, the collection was accessioned in 1977. Fragmentary human remains represent four adult individuals of unknown sex. No known individuals were identified. No associated funerary objects were identified.

In 1963, human remains representing, at minimum, two individuals were removed from CA–LAN–45 near Topanga, Los Angeles County, CA, where Keith Johnson lead a UCLA field course on privately-owned land. The site, CA–LAN–45, dates to between A.D. 1250 and 1769, based on the artifact types in the collection. After analysis, the collection was accessioned in the fall of 1963. Fragmentary human remains represent a minimum of two adult individuals. No known individuals were identified. No associated funerary objects were identified.

At an unknown date between 1900 and 1950, human remains representing, at minimum, three individuals were removed from Sequit Creek Indian Mound (CA–LAN–52) in Los Angeles County, CA. The human remains were received at an unknown date by the UCLA Biology Department as part of the Dickey Bird and Mammal Collection and were subsequently transferred to the Cotsen Institute of Archaeology and Zooarchaeology Lab in August 1995, and then to Fowler Museum in September 1995 to be inventoried for NAGPRA compliance. Being that there is little to no original documentation for the human remains, they have been attributed to CA–LAN–52 because they are labeled with location information, and the site is known to have been heavily looted since at least the late 1800s. The human remains are estimated to date to A.D. 610 +/ − 100, based on radiocarbon dating. The fragmentary human remains represent two adult individuals, sex unknown, and one infant individual. No known individuals were identified. No associated funerary objects were identified.

Sometime before 1950, human remains representing, at minimum, one individual were removed from CA–LAN–95 in San Fernando, Los Angeles County, CA. Excavations were undertaken by USC students after the human remains of a Native American individual were found to be eroding from private property. At an unknown date, the collection was received by the Hancock Foundation, who subsequently donated the collection to UCLA sometime around 1950. Very little information accompanied the collection to the Fowler Museum, but the human remains were determined to be Native American based on osteological analysis. Fragmentary human remains represent a juvenile between four and six years of age. No known individuals were identified. The one associated funerary object is an unmodified faunal bone fragment.

Sometime before 1972, human remains representing, at minimum, one individual were removed from Encinal Canyon (CA–LAN–114) in Malibu, Los Angeles County, CA. The human remains are thought to have been excavated by John Beaton and were accessioned in 1972. Although the site has been excavated several times, no specific age for the site has been determined other than prehistoric. Fragmentary human remains represent one individual of unknown age and sex. No known individuals were identified. No associated funerary objects were identified.

Sometime before 1952, human remains representing, at minimum, one individual were removed from Pacific Coast Highway (CA–LAN–133, formerly CA–LAN–190), in Malibu, Los Angeles County, CA. The collection was received by UCLA in 1952 from Mr. Gonzales, who had excavated the burial on private property. The human remains

of an adult male were determined to be Native American based on osteological analysis. No known individuals were identified. No associated funerary objects were identified.

In 1978 and 1979, human remains representing, at minimum, 11 individuals were removed from Stunt Ranch (CA–LAN–153) in Los Angeles County, CA. Clement Meighan led two field courses with the cooperation of the Jennings Engineering Company, who was developing the property before the land was acquired by UCLA. Clement Meighan dated the site to between A.D. 1250 and 1769, based on the presence of diagnostic artifact types. During excavations, six formal burials were identified in addition to fragmentary human remains. The human remains could be further identified as representing five adult and one infant of unknown sex. At least three individuals were cremated, and two others were too fragmentary to identify either age or sex. No known individuals were identified. The 80 associated funerary objects are 6 pieces and 1 bag of unmodified animal bone, 60 unmodified shell fragments, 12 stone fragments, and 1 obsidian biface.

In 1987, human remains representing, at minimum, two individuals were removed from the Santa Maria Site (CA–LAN–162) in Topanga Canyon, Los Angeles County, CA. At the request of the Montevideo Country Club, excavations were conducted throughout 1987 by Dr. Brian Dillon and assistant Justin Hyland for compliance with proposed development of the site. The collection was accessioned in April 1997. The site age is estimated to span from between 600 B.C. and A.D. 1769. Fragmentary human remains from Burials 1 and 2 represent two adult individuals of unknown sex. No known individuals were identified. No associated funerary objects were identified.

Between 1950 and 1969, human remains representing, at minimum, 27 individuals were removed from the Zuma Creek Site (CA–LAN–174) in Los Angeles County, CA. The site was first excavated in 1950 by Stuart Peck. It was excavated again in 1952 and 1957 by Clement Meighan as part of a UCLA field school. From these excavations, human remains from seventeen burials were accessioned in 1957. Later salvage excavations were conducted at the site during 1968 and 1969 by Sally MacFadyen and Jinny McKenzie, as well as by Thomas King and the UC Archaeological Survey crew. Human remains from five burials deriving from these excavations were accessioned by UCLA in 1969, after analysis was completed. The site produced a radiocarbon date of 3000 B.C. ± 200 years. The first set of excavations included human remains of 13 adults (6 female, 4 male, and 3 indeterminate), 4 juveniles, and 2 infants. The second set of excavations included six adults (2 female, 1 male, and 3 indeterminate), a juvenile, and an infant. No known individuals were identified. From both sets of excavations, the 178 associated funerary objects are 14 stone fragments, 5 cobbles, 32 groundstone artifacts, 65 flaked stone artifacts, 16 pieces and 3 bags of unmodified shell, 23 pieces and 1 bag of unmodified animal bone, 2 worked bone artifacts, 2 glass fragments, 3 ochre fragments, 5 worked shell artifacts, 1 bag of soil, 5 asphaltum fragments, and 1 bag of asphaltum with basketry impressions.

In 1967, human remains representing, at minimum, one individual were removed from Russell Valley (CA–LAN–186), in Thousand Oaks, Los Angeles County, CA. Excavations were conducted by Chester King during a salvage operation of this Late Period site (A.D. 700–1500). Fragmentary human remains were identified from midden contexts representing at least one individual of unknown age or sex. The collection was accessioned in 1967. No known individuals were identified. No associated funerary objects were identified.

In 1951, human remains representing, at minimum, two individuals were removed from Pacific Coast Highway (CA–LAN–195) in Malibu, Los Angeles County, CA. The human remains had been exposed during construction and were disinterred by the Los Angeles County Sheriff's Office, Malibu Sub-station. UCLA received the human remains in 1951. Based on osteological analysis the human remains were identified as an adult female and an adult individual of unknown sex. No known individuals were identified. A single unmodified sea mammal bone was recovered and is assumed to be an associated funerary object.

Between March and June 1968, human remains representing, at minimum, 129 individuals were removed from Trancas Canyon Cemetery (CA–LAN–197) in Malibu, Los Angeles County, CA, by the UC Archaeology Survey under the direction of John Beaton and aided by the Malibu Archaeological Society. The excavations took place on land owned by the Reco Land Company as a salvage project due to erosion and the construction of a shopping center. The collection was accessioned by UCLA in 1978. Radiocarbon dating produced from the cemetery estimate the site age to 370 B.C. ± 58 years but continues through Spanish contact. Human remains from these excavations were further identified to age and sex, when possible, including 78 adults (32 male, 21 female, and 25 indeterminate), 4 sub-adults, 28 juveniles, and 14 infants were identified. Another five individuals were too fragmentary to determine age or sex. No known individuals. The 718 associated funerary objects include: 28 pieces and 1 bag of asphaltum fragments, 87 pieces and 1 bag of unmodified animal bone, 27 worked bone fragments, 1 charcoal fragment, 50 pieces and 1 bag of flaked stone artifacts, 4 copper fragments, 15 pieces and 1 bag of ochre fragments, 11 groundstone pieces, 84 shell beads, 182 pieces and 1 bag of unmodified shell, 206 pieces and 4 bags of cobbles/pebbles, and 14 stone fragments.

In 1953, human remains representing, at minimum, five individuals were removed from Zuma Creek, also known as Zuma Creek ''G'' (CA–LAN–201, LAN–19) near Point Dume in Los Angeles County, CA. The collection was excavated by Clement W. Meighan as a UCLA research project. The estimated age of the site was not determined. The human remains were from a known prehistoric site and determined to be Native American based on osteological analysis. Fragmentary human remains from Burial A–13 represents one adult female individual, one adult possible female individual, one juvenile individual of unknown sex, and two adult individual of unknown sex. No known individuals were identified. No associated funerary objects were identified.

In 1962 and 1963, human remains representing, at minimum, 45 individuals were removed from Paradise Cove (CA–LAN–222) in Malibu, Los Angeles County, CA. The first set of excavations was undertaken by a Pasadena City College field school, supervised by Richard H. Brooks, in the spring of 1962. During this time excavations were also undertaken jointly with a Santa Monica City College and UCLA field course supervised by Jack Smith. These collections were accessioned by UCLA after receiving them from Richard H. Brooks of the Department of Anthropology, University of Nevada, Las Vegas in 1987. In 1963, excavations continued with the joint Santa Monica City College and UCLA Anthropology field school course directed by Chester King and Jack Smith. The resulting collection was accessioned by UCLA in 1964. The estimated age of the site based on radiocarbon dating is 2350 B.C. ± 80 years. Fragmentary human remains recovered from midden contexts in 1962

represent a minimum of 10 individuals: 6 adults, a juvenile, and 3 individuals of unknown age or sex. From the 1963 excavations, human remains were recovered from 8 burials and from midden contexts. These human remains represent a minimum of 35 individuals: 17 adults (2 male, 2 female, and 13 indeterminate), 1 sub-adult, 8 juveniles, 3 infants, and 6 individuals whose age and sex could not be determined. No known individuals were identified. The 39 associated funerary objects were recovered from the second set of excavations and include: 6 unmodified animal bones, 3 worked bones, 2 limestone cobble unifaces, 3 chert scrapers, 1 limestone hammerstone, 1 sandstone metate fragment, 12 asphaltum basketry impression fragments, 3 manos, 1 quartz crystal fragment, 1 quartzite chopper, 1 sandstone mortar fragment, 4 shell fragments, and 1 wood handle fragment.

From 1961 through 1963, human remains representing, at minimum, 13 individuals were removed from Century Ranch (CA–LAN–225) in Malibu, Los Angeles County, CA. The site was excavated by UCLA student volunteers under the direction of Jayne Harbinger. The site was also excavated in 1963 by a Santa Monica City College class under the direction of Chester King and Thomas Blackburn. The excavations took place on land that was then owned by the Twentieth Century-Fox Film Corporation and is now part of Malibu Creek State Park. Human remains were recovered from burial and midden contexts. Burial contexts included 9 adults (2 of which are possibly male), an infant, and one individual of unknown age and sex. Fragmentary human remains from midden contexts represent two individuals of unknown age and sex. No known individuals were identified. The 60 associated funerary objects are 14 stone fragments, 10 flaked-stone tools, 20 ground stone artifacts, 12 cobble artifacts, and 4 unmodified faunal bone pieces.

In 1960 and 1961, human remains representing, at minimum, 53 individuals were removed from Century Ranch (CA–LAN–227), in Malibu Canyon, Los Angeles County, CA. Excavations were conducted by Thomas Blackburn and Ernest Chandonet with UCLA archeology students. The excavations were conducted on land owned by Twentieth Century-Fox Film Corporation, now part of Malibu Creek State Park. The collection was accessioned by UCLA in 1961. The site is estimated to date to the Late Period, with a radiocarbon date of circa A.D. 1530. The burials include a minimum of 53 individuals that were further identified as 23 adults (10 males, 2 females, and 11 indeterminate), 1 sub-adult, 13 juveniles, 15 infants, and 1 individual too fragmented to determine age or sex. No known individuals were identified. The 821 associated funerary objects include 678 shell beads, 19 shell pendants, 7 worked bone artifacts, 7 flaked-stone artifacts, 3 groundstone artifacts, 91 asphaltum fragments with basketry impressions, 7 shell dishes, one ochre fragment, and 8 unmodified shell fragments.

In 1966, 1967, and 1969, human remains representing, at minimum, 906 individuals were removed from Medea Creek village and cemetery (CA–LAN–243) in Thousand Oaks, Los Angeles County, CA. Excavations were conducted in 1966–1967, in the cemetery area by UC Archaeological Survey volunteers and a UCLA field course directed by Linda B. King and Linda Hasten. In 1969, the Medea Creek village area was excavated by a crew of volunteers under the direction of Clay A. Singer. Both efforts were part of a volunteer salvage project prior to the site's destruction. The collections were accessioned by UCLA in 1969. The estimated age of the site is Late Period/Historic (A.D. 1500–1785). Human remains from the 1969 excavations represent two adult individuals of unknown sex. Human remains from 1966–1967 excavations of the cemetery represent a minimum number of 904 individuals from 467 burials. All human remains from these burials were assessed for age, sex, pathology, and completeness. To summarize, a total of 524 adults (88 male, 86 female, and 350 indeterminate), 217 juveniles, 97 infants, and 9 prenatal were identified, and the human remains of 59 individuals were too fragmentary to identify by age or sex. No known individuals were identified. The 23,922 associated funerary objects include: 213 pieces and 8 bags of unmodified faunal remains and artifacts, 925 pieces and 2 bags of shell unmodified fragments and artifacts, 414 pieces and 7 bags of asphaltum fragments, 21,243 shell, glass, and stone beads, 78 flaked-stone artifacts, 62 ground stone artifacts, 179 pieces and 4 bags of organic materials, 2 metal artifacts, 435 pieces and 3 bags of stone fragments, 321 cobble and pebble artifacts, 7 fragments and 1 bag of charcoal, 17 bags of soil, and 1 glass pendant.

In 1963, human remains representing, at minimum, 102 individuals were removed when Alex Apostolides directed a salvage project at the Mullholland Site (CA–LAN–246) before the construction of housing and to offset the pervasive vandalism that was occurring at the time. Dating of the site is to the Late Period (A.D. 1200–1500). The collection was accessioned by UCLA in November 1978. Eighteen formal burials were included in the collection, but fragmentary human remains were also identified from midden contexts that result in a minimum number of 102 individuals being represented. The human remains were further identified as 56 adults (11 males, 6 females, and 39 indeterminate), 27 juveniles, 14 infants, and 5 individuals too fragmentary to identify further. No known individuals were identified. The 2,640 associated funerary objects include: 27 flaked-stone artifacts, 8 groundstone artifacts, 1 carved clay fragment, 13 pieces of worked bone, 1 ceramic sherd, 30 charcoal fragments, 4 ochre fragments, 1 pecked pebble, 2,321 shell beads and ornaments, 16 unmodified shell fragments, 10 soapstone ornaments, 203 pieces and 3 bags of unmodified animal bone, and 2 bags of soil samples.

In 1964, 1971–1972, and 1973–1975, human remains representing, at minimum, 247 individuals were removed from Humaliwu (CA–LAN–264) in Malibu, Los Angeles County, CA. UCLA conducted several field seasons under the direction of Clement Meighan on private property. Excavations also took place on land controlled by the California Department of Parks and Recreation, but that is filed under a separate inventory. Collections were accessioned by UCLA as they returned from the field under Accession numbers 505 (1964 excavations) and 573 (1971–75 excavations). The village dates from A.D. 550–1805. Three formal burials were identified during the 1964 excavations, and additional fragmentary human remains were recovered from midden contexts. There are a minimum of 27 individuals identified as 19 adults (one male, two female, and 16 indeterminate), one sub-adult, four juveniles, one infant, and two perinatal. Excavations in the 1970s uncovered 83 formal burials, and with the addition of fragmentary human remains recovered from midden contexts, a minimum number of 220 individuals were identified. Of this total, identification was possible for 110 adults (34 male, 34 female, and 42 indeterminate), 13 sub-adults, 36 juvenile, 36 infants, 13 neonatal individuals, and 10 perinatal individuals. Two individuals were too fragmentary to determine age or sex. No known individuals were identified. The 15,917 associated funerary objects include: 7 bone awl fragments, 21 worked bone fragments, 1 bone barb, 2 bone pin fragments, 7 bone tube beads,

1 bone wedge, 1 bone whistle, 2 red stone ear spools, 1 pipe, 1,869 pieces and 39 bags of unmodified animal bones, 13 bags of soil samples, 3 pieces and 1 bag of metal items, 4 pieces of ochre, 5 charcoal fragments, 7 quartz crystals, 1 fluorite crystal, 158 *Megathura* (limpet) rings, 3 fishhook fragments, 1 glass fragment, 4 perforated shells, 3 inlayed abalone shells, 13,040 shell beads, 54 pieces and 10 bags of unmodified shell fragments, 42 effigies, 4 stone tube beads, 30 stone beads, 1 bead blank, 3 stone pendants, 24 cobbles, 20 stone cores, 480 flaked-stone tools and debitage, 18 ground stone tools, 1 tarring pebble, 8 asphaltum fragments, 1 wood fragment, and 24 pieces and 3 bags of stone fragments.

Between 1961 and 1963, human remains representing, at minimum, five individuals were removed from Sweetwater Mesa (CA–LAN–267) in Malibu, Los Angeles County, CA. Excavations on private property took place under the direction of Chester King, Tom Blackburn, and Earnest Chadonet as part of the UC Archaeological Survey, along with UCLA students and members of the Archaeological Research Association. The collection was accessioned by UCLA in 1963. The site is estimated to date to 4920–4360 B.C. Fragmentary human remains recovered from midden contexts represent a minimum of four adults and a juvenile individual of unknown sex. No known individuals were identified. No associated funerary objects were identified.

In 1986, human remains representing, at minimum, one individual were removed from Tobillo (CA–LAN–311) in Malibu, Los Angeles County, CA. The site was excavated as part of the Malibu Wastewater Project under the direction of Brian Dillon on private property. The collection was given to UCLA on April 24, 1997. The site is estimated to date to the Late Period (A.D. 700–1769) and Historic (after A.D. 1769) time periods. Fragmentary human remains represent an individual of unknown age and sex. No known individuals were identified. No associated funerary objects were identified.

In 1965, human remains representing, at minimum, one individual were removed from the Topanga Canyon Area (CA–LAN–330) in Los Angeles County, CA. This site was excavated by Clement Meighan with UCLA field school students inside a Late Period (A.D. 700–1769) rock shelter on privately owned land. The collection was accessioned by UCLA between 1966 and 1969. Fragmentary human remains represent a juvenile individual of unknown sex. No known individuals were identified. No associated funerary objects were identified.

In 1967, human remains representing, at minimum, 10 individuals were removed from San Nicholas Canyon Site (CA–LAN–352, formerly CA–LAN–27) in Triunfo Pass, Los Angeles County, CA. The collection resulted from excavations by James West and a crew of volunteers, testing a portion of the site on private land that was in the right-of-way for the proposed Coast Freeway, US 101A. The collection was received at UCLA in 1967. The site is estimated to date to 5550–2050 B.C., through radiocarbon dating. Although burials were uncovered at the site, the site had been heavily disturbed, and thus human remains were also found in midden contexts. Human remains from a minimum of 5 adults were identified (1 female and 4 indeterminate), two juveniles, and three other individuals too fragmentary to identify further. No known individuals were identified. The 28 associated funerary objects include: 2 cobble tools, 2 flaked-stone tools, 6 unmodified animal bones, 9 ground stone artifacts, a worked sandstone disk, 4 shell artifacts, a wood fragment, and 3 bags of soil.

In 1970, human remains representing, at minimum, one individual were removed from Highland Cave (CA–LAN–388) in Los Angeles County, CA. This site was excavated as a salvage project conducted by Grif Coleman and the UCLA Archaeological Survey for research purposes on private property in front of development activities. The collection was accessioned by UCLA in 1977. The site is estimated to date to A.D. 1500–1800 based on artifact types. Human remains from one formal burial represent an adult female. No known individuals were identified. One bag of unmodified animal bones was identified as an associated funerary object.

In 1977 and 1978, human remains representing, at minimum, two individuals were removed from Horse Flats (LAN–474B), also referred to as Porter Ranch, Los Angeles County, CA. John Romani as part of Northridge Archaeology Research Center (contract #VS–175) was hired to conduct testing in preparation for development in the spring and fall of 1977. Salvage excavation was completed in 1978 by Clay A. Singer, and the resulting collection was submitted to UCLA for curation in May 1979. The site is estimated to date to 3000 B.C. to A.D. 1800, based on radiocarbon dating and diagnostic artifacts. Fragmentary human remains represent an adult of unknown sex and an additional individual of unknown age or sex. No known individuals were identified. No associated funerary objects were identified.

In 1981, human remains representing, at minimum, three individuals were removed from Saddle Rock Ranch (CA–LAN–717) in Malibu, Los Angeles County, CA. This site was excavated by a UCLA field school directed by Brian Dillon on the privately owned ranch. The collection was partially received for curation at UCLA in September of 1984, with additional materials arriving later in April 1997. The site is estimated to date from the Early Period to Historic, circa 4500 B.C. to A.D. 1785. Human remains from Burial 1 represent an adult male and an adult individual of unknown sex. Additional fragmentary human remains represent one individual of unknown age and sex. No known individuals were identified. The 23 associated funerary objects include 1 incised siltstone fragment, 1 stone flake, and 21 unworked animal bones.

In 1980, human remains representing, at minimum, one individual were removed from the Cazador Site, also known as Three Springs Valley (CA–LAN–807) in Westlake Village, Los Angeles County, CA. This site was excavated by a UCLA archeology field course directed by Brian Dillon. Excavations occurred on land privately owned by the Pacifica Corporation. The collection was accessioned by UCLA in March of 1985. The site is estimated to date to the Late Period, after A.D. 1000–1769. Human remains from Burial 1 represent one adult individual of unknown sex. No known individuals were identified. No associated funerary objects were identified.

In 1976, human remains representing, at minimum, 44 individuals were removed from Century Ranch (CA–LAN–840) in Los Angeles County, CA. Excavations at the site were a joint field-school project between UCLA (directed by Clement Meighan) and California State University at Northridge (directed by Lou Tartaglia) on land owned by the Hunter family. Each university had a portion of the collection until Kathy Pedrick gathered the CSUN materials in 1978 to incorporate into one collection for analysis and curation. Susan Hector accessioned the UCLA collection August 1977. The area was likely a cemetery featuring both inhumations and cremations, and as such, fragmentary human remains were found in almost every unit. Twelve formal burials were identified by the excavators, but they acknowledged that potential overlapping existed. Of the 44 human individuals identified, 26 are adults (one male, one female, and 24 indeterminate), 6 are juveniles, 4 are infants, and 1 is a perinatal individual.

Seven additional individuals were cremations where age and sex could not be determined. No known individuals were identified. The 493 associated funerary objects include: 284 pieces of unmodified animal bones, 9 worked bone artifacts, 3 bags and 4 fragments of charcoal, 34 pieces of chipped-stone tools and flakes, 7 pieces of ochre, 7 wood fragments, 57 pieces of unmodified shell, and 85 pieces and 3 bags of ground stone fragments and tools.

In 1978, human remains representing, at minimum, two individuals were removed from Agoura Hills (CA–LAN–972) in Los Angeles County, CA. Excavations were undertaken by Ancient Enterprises under C. William Clewlow in 1978 on private land being developed for housing. The site is estimated to date from the Late Period to Historic (A.D. 700–1769). The collection arrived at UCLA for curation in 1978. All fragmentary human remains were pulled from midden contexts and represent two adult individuals of unknown sex. No known individuals were identified. No associated funerary objects were identified.

At some unknown date, human remains representing, at minimum, one individual were removed from the Hansen Dam in Los Angeles County, CA. A memo indicated that UCLA loaned human remains from a prehistoric site in the Hansen Dam area to the City of Los Angeles Park Rangers in the 1960s and that they were returned in 1981, but no further information about this loan could be found. The human remains were identified by osteological analysis as an adult male of Native American ancestry. No known individuals were identified. No associated funerary objects were identified.

At an unknown date, human remains representing, at minimum, one individual were removed from a mile South of Carpentaria (CA–SBA–1) in Santa Barbara County, CA, by unknown individuals and given to Loye Miller of the UCLA Biology Department between 1900 and 1950, and accessioned within the Dickey Bird and Mammal Collection. After NAGPRA was enacted, all Native American remains under UCLA's control were transferred to the Fowler Museum for inventory and compliance purposes. The Dickey Bird and Mammal Collection transferred these human remains and several others to the Cotsen Institute of Archaeology, Zooarchaeology Lab in August 1995, and then to the Archaeology Collections Facility of the Fowler Museum at UCLA on September 18, 1995. The site dates from the Early to Late Periods (5000 B.C. to A.D. 1769). The fragmentary human remains represent one juvenile individual. No known individuals were identified. No associated funerary objects were identified.

In 1982, human remains representing, at minimum, one individual was found eroding from the shoreline at the south end of Santa Cruz Island in Santa Barbara County, CA, on land likely belonging to the Nature Conservancy. They were donated to UCLA in 1984, and represent one adult male individual. No date was assigned, but an osteologist determined the human remains to be of Native American ancestry. No known individuals were identified. No associated funerary objects were identified.

In 1985, 1992, and 1995, human remains representing, at minimum, four individuals were removed from Shawa Village (CA–SCRI–192) on Santa Cruz Island in Santa Barbara County, CA, on land belonging to the Nature Conservancy. Excavations by Jeanne Arnold took place on Santa Cruz in the summers of 1990–1992 and 1994–1997. All collections were curated at UCLA after completion of the field analysis. The site dates from the Late Period (A.D. 700–1769) through Historic contact. Extremely fragmentary human remains were identified from midden contexts and represent 1 infant and 2 adult individuals. One additional individual could not be distinguished by age. None of the human remains could be identified by sex. No known individuals were identified. No associated funerary objects were identified.

In 1995, human remains representing, at minimum, two individuals were removed from Christy Ranch (CA–SCRI–236) on Santa Cruz Island in Santa Barbara County, CA, with permission of the private land owner. Excavations by Jeanne Arnold took place on Santa Cruz in the summers of 1990–1992 and 1994–1997. All collections were curated at UCLA upon completion of the field analysis. Radiocarbon dates from site indicate at least intermittent occupation from as early as 2485 B.C. into the Late Period. Human teeth were identified from midden contexts and represent a minimum number of two individuals, of which one could be identified as an adult. One could not be further distinguished by age. None of the human remains could be identified by sex. No known individuals were identified. No associated funerary objects were identified.

In 1995, human remains representing, at minimum, seven individuals were removed from Xaxas Village (CA–SCRI–240) on Santa Cruz Island in Santa Barbara County, CA, on land belonging to the Nature Conservancy. Excavations by Jeanne Arnold took place on Santa Cruz in the summers of 1990–1992 and 1994–1997. All collections were curated at UCLA upon completion of the field analysis. Radiocarbon dates obtained from site CA–SCRI–240 indicate it was occupied between 2480 B.C. and A.D. 1425. Its presence in mission documents also indicates that it was occupied into the Historic Period. Fragmentary human remains (many of them teeth) were identified from midden contexts and represent 2 neonatal and 4 infant individuals. One could not be further distinguished by age. None of the human remains could be identified to sex. No known individuals were identified. No associated funerary objects were identified.

In 1968, human remains representing, at minimum, two individuals were removed from CA–SLO–267/268 in San Luis Obispo County, CA. Excavations were conducted by Ronald P. Sekkel of UCLA on land owned by the Hearst Corporation. The site dates to the Late Period (A.D. 1200–1500). The human remains consist of one formal burial and fragmentary human remains representing a minimum of 2 individuals, an adult male and a juvenile individual. No known individuals were identified. The 10 burial associated objects consist of one animal bone, one shell fragment, and 8 chert flakes that were pulled from the burial matrix.

At an unknown date, human remains representing, at minimum, two individuals were removed from San Miguel Island (CA–SMI–xxx) in Santa Barbara County, CA, from private ranching land, likely in the 1920s, by unknown individuals and given to Loye Miller of the UCLA Biology Department and accessioned within the Dickey Bird and Mammal Collection. After NAGPRA was enacted, all Native American remains under UCLA's control were transferred to the Fowler Museum for inventory and compliance purposes. The Dickey Bird and Mammal Collection transferred these human remains and several others to the Cotsen Institute of Archaeology, Zooarchaeology Lab in August 1995, and then to the Archaeology Collections Facility of the Fowler Museum at UCLA on September 18, 1995. No date was assigned, but an osteologist determined the human remains to be of Native American ancestry. The fragmentary human remains represent two individuals of unknown age and sex. No known individuals were identified. No associated funerary objects were identified.

In December 1926, human remains representing, at minimum, one individual were removed from Little Sycamore Canyon Site (CA–VEN–1) in Ventura County, CA, by A.W. Schmuck, H.T. Cartio, and W.A. Starrett, who collected these human remains from a shellmound at the mouth of Little Sycamore Canyon. According to the accession records, these human remains were received by the UCLA Biology Department through Loye Miller on September 13, 1956. After NAGPRA was enacted, all Native American remains under UCLA's control were transferred to the Fowler Museum for inventory and compliance purposes. The Dickey Bird and Mammal Collection transferred these human remains and several others to the Cotsen Institute of Archaeology, Zooarchaeology Lab in August 1995, and then to the Archaeology Collections Facility of the Fowler Museum at UCLA on September 18, 1995. Later excavators dated the site to the Early Period (5000–600 B.C.). The fragmentary human remains represent an adult male. No known individuals were identified. No associated funerary objects were identified.

In 1959 and 1960, human remains representing, at minimum, 16 individuals were removed from Little Sycamore Canyon Site (CA–VEN–1) in Ventura County, CA. The collection was donated by David L. Jennings, Chair of the Earth Sciences Department, Los Angeles City College. Field school excavations conducted by Dr. Jerry Jordan, Jr., led to recovery of the collection, but no final report was ever compiled and no field documentation could be found with the collection. The original catalog listed six burials along with fragmentary human remains from midden contexts that included 10 adults (of which 4 were identified as male), two juveniles, and four individuals of unknown age and sex. No known individuals were identified. No associated funerary objects were identified.

In the spring of 1964, human remains representing, at minimum, 34 individuals were removed from the Deer Creek Site (CA–VEN–7 and CA–VEN–10) in Ventura County, CA. This site was excavated by a UCLA field school course directed by Clement Meighan and Gene Sterud on private property as ongoing construction was impacting both sites. The excavation was conducted primarily at CA–VEN–7, however, additional excavations occurred at nearby CA–VEN–10. They are likely loci of the same village site along with VEN–2, 6, and 205 and grouped together for NAGPRA as such. The collection was received by UCLA in 1964. A single radiocarbon date and artifact types recovered indicate the site was occupied as early as A.D. 1 until after A.D. 1000. Human remains from seven formal burials as well as fragmentary human remains from midden contexts were identified from the collection and represent 17 adults (2 male, 4 female, and 11 indeterminate), 9 juveniles (1 male), 5 infants, and 2 perinatal individuals. Another individual was too fragmentary to determine age or sex. No known individuals were identified. Associated funerary objects were only recovered from the formal burials at VEN–7. The 55 associated funerary objects include: 1 shell bead, 3 ground stone artifacts, 1 projectile point, 30 pieces and 3 bags of unmodified faunal bone, 6 pebbles, 9 shell fragments, and 2 wood fragments.

In 1955, 1958, and 1959, human remains representing, at minimum, 35 individuals were removed from Simo'mo (CA–VEN–24 aka VEN–26) in Ventura County, CA. The first set of excavations was undertaken by UCLA field courses supervised by Clement Meighan in 1955, and by David M. Pendergast in 1958. A second set of excavations were conducted by a UCLA field course taught by M.B. McKusick on private land in 1959. The excavation materials were all accessioned by UCLA by 1959. The estimated age of the site is A.D. 300–1100. While a report by Meighan discusses finding two formal burials, neither were accessioned by UCLA. Their current location is unknown. A single drawing was found referencing work done in 1958 under David Pendergast. It includes information about Burials 9–13 and states that they are located at San Fernando Valley State College along with their artifacts (although some of the artifacts are included on UCLA's catalog and are present). While no formal burials were found, fragmentary human remains were identified within the faunal bone from the 1956 and 1958 excavations. In addition, faunal remains returned from UCSB included two sets of proveniences that could not be traced to UCLA excavations, which also included fragmentary human remains. Accession 117 includes 15 adults, 5 juveniles, 6 infants, 2 perinatal, and 1 individual that was too fragmentary to determine age or sex. The identified burial associated items are from burials not currently at UCLA and are therefore not included on this notice. Accession 219 consists of two excavated burials and fragmentary human remains representing a minimum number of six individuals (4 adults and 2 juveniles). No known individuals were identified. There are 22 unmodified animal bones removed from the burials and identified as associated funerary objects.

Between 1966 and 1968, human remains representing, at minimum, four individuals were removed from La Robleda (CA–VEN–39) at Medea Creek in Ventura County, CA. This collection resulted from excavations carried out by a UCLA field school course on land owned by the Metropolitan Development Corporation under the direction of James N. Hill and Michael Glassow to test different excavation strategies. The collection was accessioned by UCLA in 1971. The site is estimated to date from 815 B.C. to A.D. 1890. Fragmentary human remains represent two adults and two juvenile individuals of unknown sex. No known individuals were identified. No associated funerary objects were identified.

In 1960 and 1961, human remains representing, at minimum, nine individuals were removed from Soule Park Site (CA–VEN–61) in Ventura County, CA. The site was excavated by Margaret Susia and a UC Archaeological Survey crew during a salvage project, after being granted permission by the Ventura County of Public Works. The collection was accessioned by UCLA in 1961. The site is estimated to date to between A.D. 1 and 1500. Fragmentary human remains represent six adults and three juveniles of unknown sex. No known individuals were identified. No associated funerary objects were identified.

In 1964, 1965, and 1977, human remains representing, at minimum, two individuals were removed from Potrero Valley (CA–VEN–70) in Ventura County, CA. The site was excavated by Nelson N. Leonard and the UCLA Archaeological Survey from December 1964 through May 1965, and by Clay Singer in 1977, on land owned by the Janss Corporation. The collections were accessioned by UCLA after each excavation. The site is estimated to date to the Late Period (A.D. 700–1769). Fragmentary human remains represent two adult individuals of unknown sex. No known individuals were identified. No associated funerary objects were identified.

In 1971, human remains representing, at minimum, two individuals were removed from Little Sycamore Canyon (CA–VEN–86) in Ventura County, CA. Bob Gibson directed excavations in the summer and fall of 1971 for the UC Archaeological Survey on private property and under contract with CEDAM International. The contract gave ownership of the collection to UCLA, and the collection was received in

August 1971. The site dates to the Late Period (A.D. 700–1769). The human remains from Burial 1 represent an adult female and an individual of unknown age or sex. No known individuals were identified. The 87 associated funerary objects include: 1 shell bead, 2 worked bone fragments, 2 ground stone artifacts, 42 flaked-stone artifacts, 5 pieces and 4 bags of unmodified faunal bones, 19 unmodified shell fragments, 10 pieces and 1 bag of stone fragments, and 1 cobble.

In 1978, human remains representing, at minimum, three individuals were removed from CA–VEN–122 in Oak Park, Ventura County, CA. The collection derives from excavations conducted by a UCLA field class under the direction of C. William Clewlow, Jr., and supervised by Marilyn Beaudry. The site is located on land owned by the Metropolitan Development Corporation. The collection was curated at UCLA in August 1978. This site dates to A.D. 700–1785. A formal burial was designated at the site and left in situ at the request of the Native American monitors. However, additional fragmentary human remains were identified from midden contexts that represent two adults, sex unknown, and another individual represented by an incisor. No known individuals were identified. No associated funerary objects were identified.

In 1965–1966, human remains representing, at minimum, nine individuals were removed from CA–VEN–138 in Ventura County, CA, by students from Mira Monte Elementary School, under the direction of their teacher Dr. John Hook during the school year. The collection from this Late Period (A.D. 700–1769) through Historic contact site was donated to UCLA in 1985 by the elementary school. Fragmentary human remains removed from the site include a minimum of 9 individuals: One adult male; one adult, sex unknown; one juvenile, sex unknown; and six other extremely incomplete individuals, age and sex unknown. No known individuals were identified. The collection of 101 associated funerary objects consists of 4 ground stone artifacts, 35 worked stone fragments, 40 unmodified shell fragments, 19 pieces of unmodified animal bones, 1 charcoal fragment, 1 ceramic fragment, and 1 metal knife.

In 1970, human remains representing, at minimum, eight individuals were removed from Big Sycamore Rock Shelters (CA–VEN–195) in Ventura County, CA. The site was excavated under the direction of Robert Gibson with a UC Archaeological Survey crew on private property. This site dates to the Late Period, circa A.D. 1500. Fragmentary human remains represent two incomplete adult individuals of unknown sex, and six individuals of unknown age and sex. No known individuals were identified. No associated funerary objects were identified.

In the summer of 1975, human remains representing, at minimum, four individuals were removed from the Running Springs Ranch Site (CA–VEN–261) in Ventura County, CA. This collection derives from a boundary test conducted by C. William Clewlow and Allen Pastron. The site is estimated to date to A.D. 800–1800. Human remains from Burial 1 represent a sub-adult female individual. In addition fragmentary human remains represent three adult individuals, sex unknown. No known individuals were identified. The two associated funerary objects are a shell fragment and a stone flake.

In 1977, human remains representing, at minimum, one individual were removed from Conejo Valley (CA–VEN–272) in Thousand Oaks, Ventura County, CA. The site was discovered by a crew of archeologists from the UCLA Archaeological Survey in 1972, and reevaluated in 1976 by Pamela Ivie and David Whitley as part of an environmental impact report on the MGM Ranch. The Late Period site (A.D. 700–1769) was excavated in August of 1977, by a UCLA research team on MGM property. Fragmentary human remains were recovered from a midden context representing one individual of unknown age or sex. No known individuals were identified. No associated funerary objects were identified.

In the fall of 1976 and the summer of 1977, human remains representing, at minimum, 12 individuals were removed from Oak Park (CA–VEN–294) in Ventura County, CA. Salvage excavations were conducted on land owned by the Metropolitan Development Corporation and directed by Robert Lopez and C. William Clewlow with the UCLA Archaeological Survey. The site dates to between 48 B.C. and A.D. 1400. Human remains were recovered from five burials as well as midden contexts. They include 6 adults, sex unknown; 3 juveniles, sex unknown; 2 infants, sex unknown; and 1 individual of unknown sex and age. No known individuals were identified. The 697 associated funerary objects are 9 worked bones, 1 shell pendant fragment, 106 unmodified animal bones, 44 unmodified shell fragments, 52 flaked stone artifacts, 1 metal ball, 466 shell beads, 5 serpentine beads, 1 stone pestle, 5 cobble tools, 3 bags of soil samples, and 4 stone fragments.

In 1975, human remains representing, at minimum, one individual were removed from CA–VEN–340 in Ventura County, CA. Nelson N. Leonard led salvage excavations after the Late Period site (A.D. 700–1769) was heavily impacted by construction in the 1970s leaving only a portion of the deposit intact. The collection arrived at UCLA soon after excavations, between 1975 and 1976. Fragmentary human remains represent a minimum of one adult individual, sex unknown. No known individuals were identified. No associated funerary objects were identified.

Sometime in 1976 or 1977, human remains representing, at minimum, eight individuals were removed from Ferndale Ranch (CA–VEN–404) in Ventura County, CA. Excavations were conducted in 1976 by the UC Archaeological Survey in conjunction with the University of Santa Clara, directed by C.W. Clewlow, Jr., in advance of site development. During the course of excavations, burials were found but left in situ at the request of the Candelaria Indian Tribal Council. There were also two short periods of field excavations again in 1977 by Dr. C. Moser. The excavations were closed at the request of the Candelaria Indian Council as more burials were encountered, and they were reinterred. Construction damaged part of the Late Period (A.D. 700–1769) through Historic contact cemetery after excavations were concluded. A summary report states that the location of the Moser 1977 work is currently unknown and not included in this collection. The collection in the possession and control of the Fowler Museum presumably derives from after the 1977 excavations and comprises 6 burials including 5 adults (2 of which are identified as female), a juvenile, an infant of unknown sex, and an individual of unknown age or sex. No known individuals were identified. The 111 associated funerary objects consist of 8 pieces and 4 bags of unmodified faunal bones, 6 pebbles, 1 organic fragment, 1 bone tool, 2 bags of flakes, 49 pieces and 1 bag of stone fragments, 15 pieces and 2 bags of unmodified shell, 20 beads, and 2 ceramic fragments.

In 1978, human remains representing, at minimum, one individual were removed from Medea Creek (CA–VEN–542) in Oak Park, Thousand Oaks, Ventura County, CA. The collection was excavated by researchers from the UCLA Archaeological Survey under the direction of Dr. C. William Clewlow, Jr., on land owned by the Metropolitan

Development Corporation. The collection was accessioned by UCLA in July 1978. This site was dated to the Late Period (A.D. 700–1769). Fragmentary human remains represent one juvenile individual of unknown sex. No known individuals were identified. No associated funerary objects were identified.

In 1982, human remains representing, at minimum, one individual were removed from Newbury Park (CA–VEN–544) in Ventura County, CA. The collection is from excavations on Grace Properties by Brian Dillon in the summer of 1982. There was no documentation provided when the human remains were received at UCLA in 1985. The site is dated to the Early Millingstone Period (circa 600–0 B.C.). Fragmentary human remains represent one adult individual of unknown sex. No known individuals were identified. No associated funerary objects were identified.

In 1978, human remains representing, at minimum, three individuals were removed from Lindero Canyon (CA–VEN–606) in Ventura County, CA. Collections from the site derive from survey and excavation during the North Ranch Inland Chumash research project led by Dr. William Clewlow, Jr. The second investigation was conducted the same year under the direction of Holly Love and Rheta Resnick. Excavations took place on land privately owned by the Prudential Insurance Company. The collections were curated at UCLA in 1979. The site has been dated to the Late Period, A.D. 1300–1650. Fragmentary human remains represent one adult individual of unknown sex and two infants of unknown sex. No known individuals were identified. No associated funerary objects were identified.

The sites detailed in this notice have been identified through consultation to be within the traditional territory of the Chumash people. These locations are consistent with ethnographic and historic documentation of the Chumash people.

The Chumash territory, anthropologically defined first on the basis of linguistic similarities, and subsequently on broadly shared material and cultural traits, reaches from San Luis Obispo to Malibu on the coast, inland to the western edge of the San Joaquin Valley, to the edge of the San Fernando Valley, and includes the four Northern Channel Islands. The sites in this notice are located in northwestern Los Angeles, Ventura, southwestern San Luis Obispo, and Santa Barbara counties and fall within the geographical area identified as Chumash. Some tribal consultants state that these areas were the responsibility of regional leaders, who were themselves organized into a pan-regional association of both political power and ceremonial knowledge. Further, these indigenous areas are identified by some tribal consultants to be relational with clans or associations of traditional practitioners of specific kinds of indigenous medicinal and ceremonial practices. Some tribal consultants identified these clans as existing in the pre-contact period and identified some clans as also existing in the present day. Other tribal consultants do not recognize present-day geographical divisions to be related to clans of traditional practitioners. However, they do state that Chumash, Tataviam, and Gabrielino/Tongva territories were and are occupied by socially distinct, yet interrelated, groups which have been characterized by anthropologists. Ethnographic evidence suggests that the social and political organization of the pre-contact Channel Islands were primarily at the village level, with a hereditary chief, in addition to many other specialists who wielded power.

The associated funerary objects described in this notice are consistent with those of groups ancestral to the present-day Chumash people. The material cultures of earlier groups living in the geographical areas mentioned in this notice are characterized by archeologists as having passed through stages over the past 10,000 years. Many local archeologists assert that the changes in the material culture reflect evolving ecological adaptations and related changes in social organization of the same populations and do not represent population displacements or movements. The same range of artifact types and materials were used from the early pre-contact period until historic times. Tribal consultants explicitly state that population mixing, which did occur on a small scale, would not alter the continuity of the shared group identities of people associated with specific locales. Based on this evidence, continuity through time can be traced for all sites listed in this notice with present-day Chumash people, specifically the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Determinations Made by the Fowler Museum at UCLA

Officials of the Fowler Museum at UCLA have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 1,802 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 46,015 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Wendy G. Teeter, Ph.D., Fowler Museum at UCLA, Box 951549, Los Angeles, CA 90095–1549, telephone (310) 825–1864, email *wteeter@arts.ucla.edu,* by February 26, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California, may proceed.

The Fowler Museum is responsible for notifying the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California, that this notice has been published.

Dated: December 21, 2015.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–01592 Filed 1–26–16; 8:45 am]

BILLING CODE 4312–50–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments; Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Diaper Disposal Systems and Components Thereof, Including Diaper Refill Cassettes, DN 3115;* the Commission is soliciting comments on any public interest issues

raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Edgewell Personal Care Brands, LLC and International Refills Company Ltd. on January 21, 2016. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain diaper disposal systems and components thereof, including diaper refill cassettes. The complaint names as respondents Munchkin, Inc. of Van Nuys, CA; Munchkin Baby Canada Ltd. of Canada; and Lianyungang Brilliant Daily Products Co. Ltd. of China. The complainant requests that the Commission issue a limited exclusion order, and cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3115'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures[4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.
Issued: January 21, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–01627 Filed 1–26–16; 8:45 am]

BILLING CODE 7020–02–P

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

[Docket No. ODAG 157]

Notice of Public Comment Period on Revised; Federal Advisory Committee Work Products

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: This notice announces the opening of the comment period on revised subcommittee draft work products of the National Commission on Forensic Science.

DATES: Written public comment regarding revised subcommittee draft work products of the National Commission on Forensic Science meeting materials should be submitted through *www.regulations.gov* before February 26, 2016.

FOR FURTHER INFORMATION CONTACT: Andrew J. Bruck, Senior Counsel to the Deputy Attorney General and Designated Federal Official, 950 Pennsylvania Avenue NW., Washington, DC 20530, phone (202) 305–3481.

SUPPLEMENTARY INFORMATION: On November 10, 2015, the Department of Justice published in the **Federal Register** a Notice announcing the December 7–8, 2015, Federal Advisory Committee Meeting of the National Commission on Forensic Science (80 FR 69698). During the Commission proceedings on December 7–8, 2015, subcommittees were provided an

opportunity to revise existing draft work products. This Notice announces a public comment period to provide an opportunity for submitting comments for the revised work products.

Pursuant to section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written comments to the Commission in response to the revised draft work products. Work products are available on the Commission's Web site: *http://www.justice.gov/ncfs/work-products* and on *www.regulations.gov.*

Dated: January 21, 2016.

Andrew J. Bruck,

Designated Federal Official, National Commission on Forensic Science.

[FR Doc. 2016–01656 Filed 1–26–16; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0197]

Occupational Safety and Health State Plans; Extension of the Office of Management and Budget's (OMB's) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its request for an extension of the OMB's approval of the collections of information associated with its regulations and program regarding State Plans for the development and enforcement of state occupational safety and health standards (29 CFR parts 1902, 1953, 1954 and 1956).

DATES: Comments must be submitted (postmarked, sent, or received) by March 28, 2016.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using these methods, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0197, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m. e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2011–0197) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.* For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** Notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Douglas Kalinowski at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Douglas Kalinowski, Directorate of Cooperative and State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3700, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1978; email: *kalinowski.doug@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* the State Plans) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimized, collection instruments are understandable, and OSHA's estimate of the information collection burden is accurate. Currently, OSHA is soliciting comments concerning the extension of the information collection requirements contained in the series of regulations establishing requirements for the submission, initial approval, continuing approval, final approval, monitoring, and evaluation of OSHA-approved State Plans:

- 29 CFR part 1902, State Plans for the Development and Enforcement of State Standards;
- 29 CFR part 1953, Changes to State Plans for the Development and Enforcement of State Standards;
- 29 CFR part 1954, Procedures for the Evaluation and Monitoring of Approved State Plans; and
- 29 CFR part 1956, State Plans for the Development and Enforcement of State Standards Applicable to State and Local Government Employees in States Without Approved Private Employee Plans.

Section 18 of the Occupational Safety and Health Act (29 U.S.C. 667) offers an opportunity to the states to assume responsibility for the development and enforcement of state standards through the mechanism of an OSHA-approved State Plan. Absent an approved plan, states are precluded from enforcing occupational safety and health standards in the private sector with respect to any issue for which Federal OSHA has promulgated a standard. Once approved and operational, the state adopts standards and provides most occupational safety and health enforcement and compliance assistance in the state under the authority of its plan, instead of Federal OSHA. States also must extend their jurisdiction to cover state and local government employees and may obtain approval of State Plans limited in scope to these workers. To obtain and maintain State Plan approval, a state must submit various documents to OSHA describing its program structure and operation, including any modifications thereto as they occur, in accordance with the identified regulations. OSHA funds 50 percent of the costs required to be incurred by an approved State Plan, with the state at least matching and providing additional funding at its discretion.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the

Agency's functions, including whether the information is useful;

▪ The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;

▪ The quality, utility, and clarity of the information collected; and

▪ Ways to minimize the burden on participating states who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the collection of information requirements associated with its State Plan regulations. The Agency is requesting an adjustment increase to adjust the number of burden hours associated with the developmental steps necessary for states in the developmental process, including Maine, Illinois and the Virgin Islands. Maine received initial approval on August 5, 2015 and has been moved to the developmental category. As a result, the total burden hours have increased slightly from 11,369 to 11,519 burden hours (an increase of 150 burden hours). The Agency will summarize the comments submitted in response to this notice and will include this summary in its request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Occupational Safety and Health State Plans.

OMB Control Number: 1218–0247.

Affected Public: Designated state government agencies that are seeking or have submitted and obtained approval for State Plans for the development and enforcement of occupational safety and health. standards.

Number of Respondents: 28.

Frequency of Response: On occasion; quarterly; annually.

Total Responses: 1,309.

Average Time per Response: Varies from 30 minutes (.5 hour) to respond to an information inquiry to 80 hours to document state annual performance goals.

Estimated Total Burden Hours: 11,519.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2011–0197). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the OSHA docket number, so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information, such as their social security number and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the Web site and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on January 21, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2016–01537 Filed 1–26–16; 8:45 am]

BILLING CODE 4510–26–P

OFFICE OF MANAGEMENT AND BUDGET

Revision of OMB Circular No. A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities''

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of availability.

SUMMARY: The Office of Management and Budget (OMB) has revised Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' in light of changes that have taken place in the world of regulation, standards, and conformity assessment since the Circular was last revised in 1998. The revised Circular is available at *http://www.whitehouse.gov/omb/inforeg_infopoltech.*

DATES: Effective upon publication as of January 27, 2016, OMB is making revised Circular A–119 available to the public.

FOR FURTHER INFORMATION CONTACT: Jasmeet Seehra, Office of Management and Budget, Office of Information and Regulatory Affairs, at *CircularA-119@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Public Law 104–113, the ''National Technology Transfer and Advancement Act of 1995,'' codified the existing policies in A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' established reporting requirements, and authorized the National Institute of Standards and Technology to coordinate conformity assessment activities of the agencies. In 1998, OMB revised the Circular in order to make the terminology of the Circular consistent with the National Technology Transfer and Advancement Act of 1995, to issue guidance to the agencies on making their reports to OMB, to direct the Secretary of Commerce to issue policy guidance for conformity assessment, and to make changes for clarity.

OMB has issued a revision of Circular A–119 in light of changes that have taken place in the world of regulation, standards, and conformity assessment since the Circular was last revised in 1998. The revised Circular is available at *http://www.whitehouse.gov/omb/inforeg_infopoltech.* OMB's revisions are meant to provide more detailed guidance to agencies to take into

account several issues, including the Administration's current work in Open Government, developments in regulatory policy and international trade, and changes in technology.

Howard Shelanski,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 2016–01606 Filed 1–26–16; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (16–003)]

NASA Advisory Council; Science Committee; Ad Hoc Task Force on Big Data; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Ad Hoc Task Force on Big Data. This task force reports to the NASA Advisory Council's Science Committee. The meeting will be held for the purpose of soliciting and discussing, from the scientific community and other persons, scientific and technical information relevant to big data.

DATES Tuesday, February 16, 2016, 8:00 a.m. to 5:00 p.m., Local Time.

ADDRESS: NASA Headquarters, Glennan Conference Center, Room 1Q39, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Delo, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0750, fax (202) 358–2779, or *ann.b.delo@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The meeting will also be available telephonically and by WebEx. You must use a touch tone phone to participate in this meeting. Any interested person may call the USA toll free conference call number 1–800–988–9663, passcode 4718658, to participate in this meeting by telephone. A toll number also is available, 1–517–308–9427 passcode 4718658. The WebEx link is *https://nasa.webex.com/*; the meeting number is 999 765 122 and the password is BigD@T@16. The agenda for the meeting includes the following topics:

—NASA's science data cyber-infrastructure
—Access to NASA science mission data repositories
—Big data best practices in government, academia and industry
—Federal big data initiatives

Attendees will be required to sign a register and comply with NASA Headquarters security requirements, including the presentation of a valid picture ID before receiving access to NASA Headquarters. Due to the Real ID Act, any attendees with drivers licenses issued from non-compliant states must present a second form of ID. [Federal employee badge; passport; active military identification card; enhanced driver's license; U.S. Coast Guard Merchant Mariner card; Native American tribal document; school identification accompanied by an item from LIST C (documents that establish employment authorization) from the ''List of the Acceptable Documents'' on Form I–9]. Non-compliant states are: American Samoa, Arizona, Louisiana, Maine, Minnesota, New York, Oklahoma and Washington. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, expiration date, country); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Ann Delo via email at *ann.b.delo@nasa.gov* or by fax at (202) 358–2779. U.S. citizens and Permanent Residents (green card holders) are requested to submit their name and affiliation no less than 3 working days prior to the meeting to Ann Delo. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2016–01514 Filed 1–26–16; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Request for Comment Regarding National Credit Union Administration Operating Fee Schedule Methodology

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA Operating Budget has two primary funding mechanisms: (1) An Overhead Transfer, which is funded by federal credit unions (FCUs) and federally insured state-chartered credit unions (FISCUs); and (2) annual Operating Fees, which are charged only to FCUs. In a voluntary effort to invite input from stakeholders representing federal and state-chartered credit unions, the NCUA Board (Board) is simultaneously requesting comments on the methodologies for both funding mechanisms in separate notices in the **Federal Register**.

This request for comments focuses on the methodology NCUA uses to determine the aggregate amount of Operating Fees charged to federal credit unions, including the fee schedule that allocates the Operating Fees at different rates among FCUs according to various asset thresholds. While the NCUA Board is interested in all comments from the public and stakeholders, commenters are also asked to consider the following questions when responding: (1) Are the asset determination thresholds reasonable; and (2) is the method for forecasting projected asset growth for the credit union system reasonable? Responding to these questions will provide valuable insight to the NCUA Board with respect to how the Operating Fee is administered. To be most instructive to the Board, commenters are encouraged to provide the specific basis for their comments and recommendations, as well as documentation to support their proposed adjustments or alternatives.

DATES: Comments must be received on or before April 26, 2016 to be assured of consideration.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *NCUA Web site: http://www.ncua.gov.* Please follow the instructions for submitting comments under the ''Board Comments'' section of the NCUA Web site.
- *Email:* Address to *boardcomments@ncua.gov.* Include ''[Your name]—Comments on Operating Fee Schedule Methodology'' in the email subject line.
- *Fax:* (703) 518–6319. Include your name and the following subject line: ''Comments on Operating Fee Schedule.''
- *Mail:* Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: You can view all public comments on NCUA's Web site

at *http://www.ncua.gov/about/pages/board-comments.aspx* as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments at NCUA's headquarters at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6570 or send an email to *OCFOComments@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Rendell Jones, Chief Financial Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6570.

Authority: 12 U.S.C. 1755.

SUPPLEMENTARY INFORMATION:

I. Legal Background
II. Historical Practice in Assessing the Operating Fee
III. Methodology for Determining the Aggregate Operating Fee Amount
IV. Methodology for Determining the Operating Fee Schedule

I. Legal Background

NCUA charters, regulates and insures deposits in federal credit unions (FCUs) and insures deposits in state-chartered credit unions that have their shares insured through the National Credit Union Share Insurance Fund (Share Insurance Fund). To cover expenses related to its statutory mission, the Board adopts an Operating Budget in the fall of each year (Operating Budget). The Federal Credit Union Act (FCU Act) authorizes two primary sources to fund the Operating Budget: (1) Requisitions from the Share Insurance Fund ''for such administrative and other expenses incurred in carrying out the purposes of [Title II of the FCU Act] as [the Board] may determine to be proper''; [1] and (2) ''fees and assessments (including income earned on insurance deposits) levied on insured credit unions under [the FCU Act].'' [2] The latter of fees are referred to herein as annual Operating Fees, which ''may be expended by the Board to defray the expenses incurred in carrying out the provisions of [the FCU Act,] including the examination and supervision of [FCUs].'' [3]

With regard to the Operating Fee, the FCU Act requires each FCU to, ''in accordance with rules prescribed by the Board, . . . pay to the [NCUA] an annual operating fee which may be composed of one or more charges identified as to the function or functions for which assessed.'' [4] The fee must ''be determined according to a schedule, or schedules, or other method determined by the Board to be appropriate, which gives due consideration to the expenses of the [NCUA] in carrying out its responsibilities under the [FCU Act] and to the ability of [FCUs] to pay the fee.'' [5] The statute requires the Board to, among other things, ''determine the periods for which the fee shall be assessed and the date or dates for the payment of the fee or increments thereof.'' [6]

Accordingly, the FCU Act imposes three requirements on the Board in connection with assessing an Operating Fee on FCUs: (1) The fee must be assessed according to a schedule or schedules, or other method that the Board determines to be appropriate, which gives due consideration to NCUA's responsibilities in carrying out the FCU Act and the ability of FCUs to pay the fee; (2) the Board must determine the period for which the fee will be assessed and the due date for payment; and (3) the Board must deposit collected fees into the Treasury to defray the Board's expenses in carrying out the FCU Act.

The Operating Fee methodology that this document describes meets all three legal requirements. First, the Board is assessing the Operating Fee under a schedule presented later in this document. The schedule sets forth assessment rates for FCUs based on asset size and takes account of NCUA's responsibilities in carrying out the FCU Act as well as the ability of FCUs to pay. Specifically, the schedule reflects consideration of NCUA's expenses in various areas of responsibility under the FCU Act and is scaled by asset size to account for the ability to pay. Second, this document specifies the applicable time period for the assessment, 2016, and notes that a later publication will update the due date. Third, NCUA will deposit collected fees in the United States Treasury, and the collected fees will fund some of NCUA's expenses in carrying out its responsibilities under the FCU Act.

II. Historical Practice in Assessing the Operating Fee

NCUA has a regulation that governs Operating Fee processes.[7] The regulation establishes (i) the basis for charging Operating Fees (*i.e.,* total assets), (ii) a notice process, (iii) rules for new charters, conversions, mergers, and liquidations, and (iv) administrative fees and interest for late payment, among other principles and processes.[8] Certain aspects of and adjustments to the Operating Fee process, such as the asset tier of FCUs that are exempt from Operating Fees and the multipliers that are used to determine fees applicable to higher asset tiers, are usually not published in the **Federal Register**. Instead, the Board traditionally set the Operating Fee during an open meeting each November, after determining the Operating Budget and Overhead Transfer at the same open meeting. At an open meeting in November 2015, the Board delegated authority to the Chief Financial Officer to administer the Board-approved Operating Fee methodology, and to set the Operating Fees as calculated per the approved methodology each annual budget cycle beginning with 2016.[9]

Although it is not required to do so under the Administrative Procedure Act, the Board now chooses to specifically solicit public comments on the methodology and process NCUA uses for the fee schedule through this **Federal Register** publication, as it has done on occasion in the past.

The Board adopted the current Operating Fee methodology in 1979, after Congress passed the Financial Institutions Regulatory and Interest Rate Control Act of 1978.[10] This legislation permitted the Board to consolidate previously separate chartering, supervision, and examination fees into a single Operating Fee, charged ''in accordance with schedules, and for time periods, as determined by the Board, in an amount necessary to offset the expenses of the Administration at a rate consistent with a credit union's ability to pay.'' [11] In combination with a proposed change to NCUA Regulation 12 CFR 701.6 in 1979, the Board proposed an initial fee schedule in the **Federal Register**, including rates for 12 asset tiers.[12] It later published a final rule in the **Federal Register**, which also included a finalized fee schedule for 1979.[13]

On three additional occasions, the Board has requested comments on potential changes to the Operating Fee schedule through a **Federal Register** notice, independent of any changes to 12 CFR 701.6. First, in 1990, the Board

[1] 12 U.S.C. 1783(a).

[2] 12 U.S.C. 1766(j)(3). Other sources of income for the Operating Budget include interest income, funds from publication sales, parking fee income, and rental income.

[3] 12 U.S.C. 1755(d).

[4] 12 U.S.C. 1755(a).

[5] 12 U.S.C. 1755(b).

[6] *Id.*

[7] 12 CFR 701.6.

[8] *Id.*

[10] 44 FR 11786 (Mar. 2, 1979).

[11] *Id.*

[12] *Id.* at 11787.

[13] 44 FR 27379 (May 10, 1979).

provided notice to the public that it was considering consolidating the Operating Fee schedule from 14 asset tiers to two asset tiers, retaining an exemption for FCUs under $50,000 in assets and implementing a $100 minimum fee.[14] The Board provided a 60-day comment period.[15]

In 1990, the Board determined that current 14 asset tier Operating Fee scale was sharply regressive. In looking at the issue of fairness, the Board concluded the previous scale was no longer based fairly on the ability to pay, as evidenced by the rate for the smallest credit unions being $2.41 per $1,000 in assets, compared to $0.07 per $1,000 in assets for the largest credit unions, so that the burden on smaller credit unions had become significantly greater than on larger credit unions. In 1989, the Operating Fee was an average of 3.96 percent of expenses for credit unions in the lowest asset bracket, compared to 0.23 percent of expenses for the largest credit union. While a single rate was initially considered to be potentially more equitable, the fees from a single rate would have more than tripled for the largest credit unions. In 1990, the Board instead adopted a final two-bracket, two-rate structure proposal as the most feasible solution. In general, larger federal credit unions pay a higher dollar Operating Fee, but based on a lower (regressive) rate. The Board considered this regressive rate approach to be the fairest method of balancing the competing concepts and views of larger federal credit unions' higher dollar fees paid as subsidizing smaller federal credit unions, and larger federal credit unions not receiving proportionally more service from NCUA for the fees they pay. The Board-adopted proposal in 1990 exempted credit unions with assets under $50,000, set a minimum fee of $100, established two brackets with $250 million in assets as the dividing line between the two, and allowed the dividing points to be changed based on projected asset growth. The proposed fee structure did even out the effect on credit unions. For credit unions between $250,000 and $1 million in assets, the fee was 0.58 percent of expenses, down from 3.00 percent, and for credit unions over $1 billion in assets, the fee was 0.33 percent of expenses, up from 0.25 percent.

In restructuring the scale in 1990, the Board also established a policy that the asset level dividing points between the brackets be adjusted annually or ''indexed'' in accordance with the projected asset growth of federal credit unions. This indexing was made in order to preserve the same relative relationship of the scale to the asset base to which it is applied.

Two years later, the Board adopted a new third bracket at its open Board meeting in late 1992 that applied to assets exceeding $1 billion. The Board made this change in the interest of fairness to all credit unions. At that time, there were four federal credit unions with assets over $1 billion. The current approach to the fee schedule for natural-person FCUs continues to use three asset tiers.

Second, also in 1992, the Board requested comments on a plan to limit Operating Fees to the first $1 million of each FCU's assets.[16] The Board provided a 30-day comment period.[17] It later extended the comment period by an additional 20 days.[18]

Third, in 1995, the Board requested comments on a plan to restructure the Operating Fee schedule for natural-person FCUs, to exempt FCUs with assets of $500,000 or less.[19] It also requested comments on imposing a minimum fee of $100 on all natural-person FCUs with assets over $500,000 but less than or equal to $750,000.[20] The Board provided a 30-day comment period.[21]

The Board did not publish a response to the comments in the **Federal Register** in any of the cases referenced above. Instead, it adopted changes at open Board meetings. At its open meeting on November 12, 1992, for example, rather than eliminating fees for FCUs with assets under $1 million as proposed in the **Federal Register**, the Board adopted a third rate of 0.0003 for that asset tier.[22] At its open meeting on November 16, 1995, after a discussion of the comments received, the Board adopted changes as proposed in the **Federal Register**, exempting FCUs under $500,000 in assets and imposing a $100 fee on FCUs with between $500,000 and $750,000 in assets.[23]

In general, since 1995, the Board has not used **Federal Register** notices in connection with the annual adjustments to the asset tiers and rates of the Operating Fee schedule. In the past, the Board has opted to adopt such changes at open meetings. As recently as 2012, for example, the Board increased the asset threshold used to exempt FCUs from Operating Fees from $500,000 to $1 million at an open meeting without requesting advance comment in the **Federal Register**.[24] While the Board has varied its practice with respect to fee schedule changes, it has done so within the FCU Act's broad directive that the fee schedule should be as ''determined by the Board to be appropriate,'' subject to its consideration of its expenses and the ability of FCUs to pay.[25] In addition, NCUA's existing regulation on Operating Fee processes includes a standing invitation for written comments from FCUs on existing fee schedules.[26]

III. Methodology for Determining the Aggregate Operating Fee Amount

The Board adopts an Operating Budget in the fall of each year. The Operating Budget provides the resources required to execute the goals and objectives as outlined in NCUA's strategic plan. NCUA develops its Operating Budget using zero-based budgeting techniques, which ensure each activity is properly justified before the Board considers it for funding.[27] As discussed above, two primary sources fund the Operating Budget: (1) The Overhead Transfer Rate (OTR); and (2) FCU Operating Fees. The following summarizes the various adjustments to arrive at the FCU Operating Fee and is illustrated below in Table 1.

Adjustments to the Budget. When calculating the aggregate annual Operating Fee requirements, the Board first subtracts amounts transferred for operational expenses from the Share Insurance Fund through the Overhead Transfer Rate and other expected income amounts from the operating budget for that year.

Overhead Transfer Rate: The FCU Act authorizes NCUA to expend funds from the Share Insurance Fund for administrative and other expenses related to federal share insurance.[28] An Overhead Transfer from the Share Insurance Fund covers the expenses associated with insurance-related functions of NCUA's operations. The Overhead Transfer is one of the funding sources for the budget, but the Overhead Transfer Rate does not affect the amount

[14] 55 FR 29857 (July 23, 1990).

[15] *Id.*

[16] 57 FR 34152 (Aug. 3, 1992).

[17] *Id.*

[18] 57 FR 38329 (Aug. 24, 1992).

[19] 60 FR 32925 (June 26, 1995).

[20] *Id.*

[21] *Id.*

[22] Board Action Memorandum on Operating Fee Assessment for Fiscal Year 1993 (Nov. 12, 1992).

[23] Minutes of Board Meeting, National Credit Union Administration, p. 2 (Nov. 16, 1995); Board Action Memorandum on Fiscal Years 1995 and 1996 Budget (Nov. 16, 1995).

[24] Board Action Memorandum on 2013 Operating Fee (Nov. 15, 2012).

[25] 12 U.S.C. 1755(b).

[26] 12 CFR 701.6(c).

[27] Additional information on the NCUA budget may be found at the following Web address: *http://www.ncua.gov/About/Pages/budget-strategic-planning/supplementary-materials.aspx.*

[28] 12 U.S.C. 1783(a).

of the budget. The Board approves the budget separately and without regard to the Overhead Transfer Rate. The Overhead Transfer Rate is applied to actual expenses incurred each month.[29]

Other Income: Other income reduces the required Operating Fees by providing an additional source of funds to cover regulatory (*i.e.,* non-insurance) related aspects of operating NCUA. Other income is projected based on the latest financial statements and includes interest income and miscellaneous revenues. Interest income includes interest on investments of annual Operating Fees not needed for current operations. Such investments may be made only in interest-bearing securities of the United States, with maturities requested by the Board, bearing interest at rates determined by the Secretary of the Treasury.[30] Other income includes miscellaneous revenues, such as proceeds from publication sales, parking fee income, and rental income. Publication sales include proceeds from the sale of printed publications and brochures. NCUA leases office space to commercial tenants in its Central Office building and recognizes rental income in accordance with generally accepted accounting principles (GAAP). NCUA's Central Office has a parking garage and NCUA collects income on parking fees, which are divided among the complex owners according to the percentage of parking garage space owned by each.

Adjustments for cash and non-cash needs. The balance remaining after removing the Overhead Transfer amount and other expected income is then adjusted for cash and non-cash needs. Cash needs include additions for capital acquisitions and the payment of the note payable for the NCUA Central Office building on King Street. Non-cash needs include deductions for accrued annual leave and depreciation. Additional deductions or additions to cash needs are necessary to maintain a sufficient cash reserve to continue NCUA's operations. Operating Fund Mid-Session adjustments may also result in changes to cash needs, normally in the form of a reduction.

Sufficient Cash Reserves: NCUA's policy for the Operating Fund is to maintain cash reserves of at least one month for contingencies.[31] Cash requirements are projected to last approximately 15 months from the end of the current budget year, until the subsequent Operating Fee collections are received from FCUs. NCUA sends an annual Letter to FCUs that establishes the Operating Fees for the coming year.[32] It then provides invoices that require payment by April 15.

Accrued Annual Leave: Accrued annual leave is the change in the economic value of earned, but unpaid annual leave for current NCUA employees. It is a non-cash expense under GAAP and therefore is excluded when determining the required Operating Fees. NCUA uses historical data to determine the annual amount of accrued annual leave.

Depreciation: Capital acquisitions are investments in assets including information technology software and building improvement projects. Depreciation is a reduction in the value of an asset with the passage of time. For NCUA's Operating Budget, depreciation expenses are included for assets such as NCUA's Central Office building, furniture and equipment, and leasehold improvements. The Share Insurance Fund covers a percentage of the depreciation expenses based on the OTR. The cash needs of all budgeted capital acquisitions are added to the FCU Operating Fee requirements.

Repayment of NCUA Central Office on King Street, Note Payable. In 1992, the Operating Fund entered into a commitment to borrow up to $42.0 million in a 30-year secured term note with the Share Insurance Fund to fund the costs of constructing NCUA's Central Office in 1993. Since the Operating Fund borrowed monies from the Share Insurance Fund, the annual scheduled principal payments are excluded from the OTR and Overhead Transfer amount. The annual scheduled principal payments are treated as a cash need and applied as an increase to Operating Fee requirements.

Operating Fee Requirements. The amount remaining after adjustments for all cash and non-cash needs is the total budgeted Operating Fee requirements. The total budgeted Operating Fee requirements (*i.e.,* line 11 below) represents Operating Fees for both natural-person and corporate FCUs. The natural-person FCU Operating Fees required (*i.e.* line 13 below) is determined by deducting the corporate FCU Operating Fees (*i.e.* line 12 below) from the total budgeted Operating Fee requirements (*i.e.,* line 11 below).

TABLE 1—OPERATING FEE CALCULATION FACTORS AND EXPLANATION

Natural-person Federal Credit Union operating fee calculation factors and explanation	Calculation formula	
1	Proposed Annual Operating Fund Budget amount determines the baseline fee requirement.	
2	Overhead Transfer Rate calculated from the examiner time survey results, determines the amount of the budget to be reimbursed by the Share Insurance Fund. This amount is subtracted from the proposed budget amount.	*OTR% × − 1.*
3	Interest Income projected for the year is estimated based on the latest financial statements, and is subtracted from the budget.	
4	Miscellaneous (rents, publication fees, FOIA fees) is estimated based on the latest financial statements, and is subtracted from the budget.	
5	Net Adjustment to Budget	Sum lines 1–4.
6	Reduction of any Operating Fund Mid-Session return adjustment.	*reduce cash collections.*

[29] In November 2015, the Board delegated authority to the Director of the Office of Examination and Insurance to administer the methodology approved by the Board for calculating the Overhead Transfer Rate, and set the rate as calculated per the approved methodology and validated by the Chief Financial Officer each budget cycle, beginning with the rate for 2016. Board Action Memorandum on Overhead Transfer Rate Delegation (Nov. 19, 2015), *https://www.ncua.gov/About/Documents/Agenda%20Items/AG20151119Item5a.pdf.*

[30] 12 U.S.C. 1755(e)(2).

[31] 2016 Operating Fee BAM.

[32] *https://www.ncua.gov/Resources/Documents/LFCU2015-01.pdf.*

TABLE 1—OPERATING FEE CALCULATION FACTORS AND EXPLANATION—Continued

Natural-person Federal Credit Union operating fee calculation factors and explanation	Calculation formula	
7	Reduction of Accrued Annual Leave (based on historical annual amounts).	*reduce cash collections.*
8	Depreciation (e.g. building, leasehold, and equipment estimate).	*reduce cash collections.*
9	New investment projects requested in capital budget	*increase cash collections.*
10	Annual payment of King Street Note Payable (scheduled principal payments).	*increase cash collections.*
11	Budgeted Operating Fee/Capital Requirements	Sum lines 5–10.
12	Corporate federal credit union fees are collected and subtracted from natural-person credit union fee requirement (based on corporate credit union scale).	
13	Natural-Person Federal Credit Union Operating Fees Required.	Sum lines 11–12.
14	Estimated Fee collections for end of year (December 31). This projection uses the current Operating Fee scale with estimated asset growth from an internal NCUA economic forecasting models. Based on the June 30 assets, the year-end assets are projected using the estimated asset growth to calculate fee collection estimates for the following year. The Operating Fee assessment is applied against the year-end credit union asset value.	
15	Difference between estimated Operating Fee collections and projected collections based on estimated asset growth.	Difference between lines 13 and 14.
16	Average Rate Adjustment Indicated	Line 15 divided by 14.

IV. Methodology for Determining the Operating Fee Schedule

The corporate credit union fee schedule was established in 1979 and has changed little over the years. In fact, for many years, the Operating Fee scale remained virtually unchanged. The main driver for no change is the concept that corporate FCUs hold assets of natural-person credit unions, which are already assessed under the natural-person Operating Fees. Assessing corporate FCUs at the same rate would, effectively, assess the same assets twice. Corporate FCUs return a large portion of their earnings to natural-person FCUs in the form of lower fees and higher dividends. Raising Operating Fee assessments for corporate FCUs would result in higher expenses for corporate FCUs. Corporate FCUs would need to pass the higher expenses to natural-person FCUs in the form of higher fees and lower investment yields. The corporate credit union fee schedule is a method of charging corporate FCUs a supervisory fee to defray costs. Table 2 below outlines the 2016 corporate FCU Operating Fee schedule:

TABLE 2—CORPORATE FEDERAL CREDIT UNION OPERATING FEE SCHEDULE

If total assets are over	But not over	The Operating Fee assessment is:
$50,000,000	$100,000,000	$10,593.90 plus 0.0001987 of the total assets over $50,000,000.
$100,000,000	No limit	$20,528.90 plus 0.0000123 of the total assets over $100,000,000.

As stated above, the Board delegated authority to the Chief Financial Officer to administer the methodology approved by the Board for calculating the Operating Fees and to set the fee schedule as calculated per the approved methodology beginning in 2016. After determining the Operating Fee requirements for natural-person FCUs (i.e., line 13 above), the Chief Financial Officer creates the natural-person FCU Operating Fee schedule for the upcoming year. Table 3 below outlines the 2016 Operating Fee schedule for natural-person FCUs.

TABLE 3—NATURAL-PERSON FEDERAL CREDIT UNION OPERATING FEE SCHEDULE

If total assets are more than $1,000,000, the Operating Fee assessment is:			
Assessment rates		**Asset tiers**.	
0.00018198	on the first	$1,275,170,573	of assets, plus.
0.00005304	on the next	2,583,476,422	of assets, plus.

TABLE 3—NATURAL-PERSON FEDERAL CREDIT UNION OPERATING FEE SCHEDULE—Continued

0.00001771	on assets over	3,858,646,995.	

A different assessment rate is applied to each tier. FCUs with $1 million or less in assets pay no Operating Fee.

There are two primary steps used to determine the adjustments to the Operating Fee schedule for the upcoming year. They are: (1) Updating the prior year asset tiers using the projected asset growth rate; and (2) updating the prior year assessment rates for each asset tier by determining the average assessment rate adjustment.

Updating prior year asset levels. The first step in determining the new Operating Fee schedule is to increase each asset tier from the prior year by the projected asset growth rate. Assets are indexed annually to preserve the same relative relationship of the scale to the applicable asset base.

The projected asset growth rate is a forecast of FCU asset growth rates for a year. NCUA's Office of Chief Economist (OCE) uses three different methods to forecast asset growth and combines them to generate an overall asset growth rate forecast.

Forecasting Method #1: Uses Call Report data for the first half of the year to predict full-year asset growth. This is done by first calculating the ratio of first-half asset growth to full-year asset growth. The percentage of full-year growth accounted for by first-half asset growth varies from year to year but, on average, nearly 80 percent of the asset growth for FCUs occurs in the first half of the year. Using the growth rate in the first half of the year, OCE projects the full-year growth rate.

Forecasting Method #2: Uses Call Report data to determine the most recent four-quarter growth rate and sets this rate to the full-year asset growth rate. This approach is based on the idea that an FCU is likely to establish and maintain a relatively constant growth rate over a short period, after accounting for variations in the growth rate that is attributable to seasonal fluctuations. This implies that a good forecast of full-year asset growth is the most recently available four-quarter asset growth.

Forecasting Method #3: Uses a time series statistical model. Using quarterly Call Report data, OCE predicts future four-quarter asset growth using the four-quarter growth in assets for the period ending two quarters earlier (that is, four-quarter asset growth lagged two quarters).

Combined Forecast: In general, forecasting literature shows that combining forecasts from different approaches can improve forecast accuracy and decrease the likelihood of forecast errors. Using the root mean squared error statistic to calculate the accuracy of the individual approaches and combined forecast approaches, OCE has found that the combined forecast approach is better at predicting the final asset growth rate than any of the individual approaches. OCE therefore averages the forecasts from the three approaches to maximize accuracy.

Updating the prior year's assessment rates. After updating the prior year asset tiers, the next step is to project Operating Fees using the updated asset tiers and the prior year assessment rates charged to each tier. The percentage difference between the projected Operating Fees (*i.e.,* line 14 above) and the required Operating Fees (*i.e.,* line 13 above) is the average rate adjustment (*i.e.,* line 16 above).

The average rate adjustment (*i.e.,* line 16 above) is used to amend the prior year's assessment rates for each asset tier either upwards or downwards. If the projected amount of Operating Fees is less than the required amount, then the assessment rates for each asset tier are adjusted upwards. If the projected amount is more than the required amount, then the assessment rates for each asset tier are adjusted downwards.

The resulting new Operating Fee schedule and due date are communicated via a Letter to Federal Credit Unions and posted to *www.NCUA.gov* at least 30 days in advance of the due date. No later than March of each year, natural-person FCUs with assets greater than $1 million will receive an invoice for their Operating Fee. Operating Fees are based on actual assets reported as of December 31 of the previous year. NCUA combines the annual Operating Fee and capitalization deposit adjustment into a single invoice normally due in April. As required by the FCU Act, NCUA will deposit the collected fees in the United States Treasury.

By the National Credit Union Administration Board on January 21, 2016.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2016–01623 Filed 1–26–16; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Request for Comment Regarding National Credit Union Administration Draft 2017–2021 Strategic Plan

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The NCUA Board (Board) is requesting comment on its 2017–2021 Draft Strategic Plan. The *NCUA Draft Strategic Plan 2017–2021* summarizes our analysis of the internal and external environment impacting NCUA; evaluates NCUA programs and risks; and provides goals and objectives for the next five years. While the Board welcomes all comments from the public and stakeholders, it specifically invites comments and input on the proposed goals and objectives of the strategic plan.

DATES: Comments must be received on or before March 28, 2016 to be assured of consideration.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *NCUA Web site: https://www.ncua.gov/about/pages/board-comments.aspx.* Follow the instructions for submitting comments.
- *Email:* Address to *boardcomments@ncua.gov.* Include ''[Your name]—Comments on NCUA 2017–2021 Draft Strategic Plan'' in the email subject line.
- *Fax:* (703) 518–6319. Include your name and the following subject line: ''Comments on NCUA 2017–2021 Draft Strategic Plan.''
- *Mail:* Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: You can view all public comments on NCUA's Web site at *https://www.ncua.gov/about/pages/board-comments.aspx* as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments at NCUA's headquarters at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment,

call (703) 518–6570 or send an email to *boardcomments@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Melissa Lowden, Performance Analyst, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–1182.

Authority: 5 U.S.C. 306.

SUPPLEMENTARY INFORMATION: The Government Performance and Results Act of 1993 (GPRA) requires agencies to prepare strategic plans, annual performance plans and annual performance reports with measurable performance indicators to address the policy, budgeting and oversight needs of both Congress and agency leaders, partners/stakeholders, and program managers. In 2010, Congress passed the GPRA Modernization Act of 2010, which further requires a leadership-driven governance model with emphasis on quarterly reviews and transparency. The GPRA Modernization Act requires agencies to set priority goals linked to longer-term Agency strategic goals. Part 6 of Office of Management and Budget (OMB) Circular A–11 provides additional guidance and requirements for federal agencies to implement these laws.

The *NCUA Draft Strategic Plan 2017–2021* is issued pursuant to the GPRA, the GPRA Modernization Act, and OMB Circular A–11.

It highlights the agency's three strategic goals and supporting strategic objectives, which reflect the outcome or greater impact of the broader strategic goals. The three strategic goals for 2017–2021 are to:

- Ensure a Safe and Sound Credit Union System.
- Promote Consumer Protection and Financial Literacy.
- Cultivate an Inclusive, Collaborative Workplace at NCUA that Maximizes Productivity and Enhances Impact.

The draft *NCUA Draft Strategic Plan 2017–2021* is available at the following Web address: *https://www.ncua.gov/regulation-supervision/Pages/board-comments.aspx.*

By the National Credit Union Administration Board on January 21, 2016.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2016–01625 Filed 1–26–16; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0234]

Draft NUREG/CR–7209, A Compendium of Spent Fuel Transportation Package Response Analyses to Severe Fire Accident Scenarios

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG/CR; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft NUREG/CR–7209, ''A Compendium of Spent Fuel Transportation Package Response Analyses to Severe Fire Accident Scenarios.'' This report summarizes studies of rail and truck transport accidents involving fires, relative to regulatory requirements for shipment of commercial spent nuclear fuel (SNF).

DATES: Submit comments by March 28, 2016. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0234. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- Mail comments to: Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jimmy Chang, Office of Nuclear Material Safety and Safeguards; U.S. Nuclear Regulatory Commission, Washington, DC 20005–000; telephone: 301- 415–7427; email: *jimmy.chang@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0234 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0234.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Draft NUREG/CR–7209, ''A Compendium of Spent Fuel Transportation Package Response Analyses to Severe Fire Accident Scenarios,'' is available in ADAMS under Accession No. ML16015A016.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2015–0234 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Discussion

The NRC is issuing draft NUREG/CR–7209, ''A Compendium of Spent Fuel Transportation Package Response Analyses to Severe Fire Accident Scenarios.'' This report summarizes studies of truck and rail transport accidents involving fires, relative to regulatory requirements for shipment of commercial spent nuclear fuel (SNF). The fire accident scenarios were based on the most severe historical railway and roadway fires in terms of their potential impact on SNF containers. The accident scenarios that were analyzed include one railway tunnel fire, two roadway tunnel fires, and one roadway enclosed overpass fire. The combined summary of this work demonstrates that the current NRC regulations and packaging standards provide a high degree of protection to the public health and safety against release of radioactive material in real-world transportation accidents, were such events to involve SNF containers.

The purpose of this notice is to provide the public with an opportunity to review and provide comments on draft NUREG/CR–7209. Any comments received will be considered in the final version or subsequent revisions of the draft NUREG/CR.

Dated at Rockville, Maryland, this 21 day of January, 2016.

For the Nuclear Regulatory Commission.

Christian Araguas,

Chief, Containment, Structural, and Thermal Branch, Division of Spent Fuel Management, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. 2016–01654 Filed 1–26–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0079]

Information Collection: NRC's Policy Statement on Cooperation With States at Commercial Nuclear Power Plants and Other Nuclear Production and Utilization Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production and Utilization Facilities, Policy Statement.''

DATES: Submit comments by February 26, 2016.

ADDRESSES: Submit comments directly to the OMB reviewer at: Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150–0163), NEOB–10202, Office of Management and Budget, Washington, DC 20503; telephone: 202–395–7315; email: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Kristen Benney, Acting NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6355; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0079 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0079.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement is available in ADAMS under Accession No. ML15342A105.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Acting Clearance Officer, Kristen Benney, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6355; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

I. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production and Utilization Facilities, Policy Statement.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on August 26, 2015 (80 FR 51847).

1. *The title of the information collection:* Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production and Utilization Facilities, Policy Statement.
2. *OMB approval number:* 3150–0163.
3. *Type of submission:* Extension.
4. *The form number if applicable:* N/A.
5. *How often the collection is required or requested:* On occasion, when a State or Tribe wishes to observe NRC inspection or perform inspections for the NRC or when a State or Tribe wishes to negotiate an agreement to observe or perform inspections. States with an agreement and State Resident Engineer have both regular reporting and occasion-specific reporting.
6. *Who will be required or asked to respond:* States and Tribes interested in observing or performing inspections.

7. *The estimated number of annual responses:* 213.

8. *The estimated number of annual respondents:* 36.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 1,380.

10. *Abstract:* States and Tribes are involved and interested in monitoring the safety status of nuclear power plants and radioactive materials. This involvement is, in part, in response to the States' and Tribes' public health and safety responsibilities and, in part, in response to their citizens' desire to become more knowledgeable about the safety of nuclear power plants and radioactive materials. States have identified NRC inspections as one possible source of knowledge for their personnel regarding plant and materials licensee activities, and the NRC, through the policy statement on Cooperation with States, has been amenable to accommodating the States' needs in this regard. Additionally, the NRC has been able to accommodate Tribal interests in the same way. The NRC has also entered into reimbursable Agreements with certain States under Section 274i of the Act, as amended, to employ their resources to conduct radioactive materials security inspections against NRC Orders.

Dated at Rockville, Maryland, this 20th day of January 2016.

For the Nuclear Regulatory Commission.

Kristen Benney,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2016–01617 Filed 1–26–16; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76965; File No. SR–BYX–2016–01]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.24, Retail Price Improvement Program, To Extend the Pilot Period

January 22, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 12, 2016, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to extend the pilot period for the Exchange's Retail Price Improvement (''RPI'') Program (the ''Program''), which is currently set to expire on January 31, 2016, for 6 months, to expire on July 31, 2016.

The text of the proposed rule change is available at the Exchange's Web site at *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

In November 2012, the Commission approved the RPI Program on a pilot basis.[3] The Program is designed to attract retail order flow to the Exchange, and allows such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than $1.00 per share. Under the Program, all Exchange Users[4] are permitted to provide potential price improvement for Retail Orders[5] in the form of non-displayed interest that is better than the national best bid that is a Protected Quotation (''Protected NBB'') or the national best offer that is a Protected Quotation (''Protected NBO'', and together with the Protected NBB, the ''Protected NBBO'').[6]

The Program was approved by the Commission on a pilot basis running one-year from the date of implementation.[7] The Commission approved the Program on November 27, 2012.[8] The Exchange implemented the Program on January 11, 2013, and has extended the pilot period two times.[9] The pilot period for the Program is scheduled to end on January 31, 2016.

Proposal to Extend the Operation of the Program

The Exchange established the RPI Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. The Exchange believes that the Program promotes competition for retail order flow by allowing Exchange members to submit Retail Price Improvement Orders (''RPI Orders'')[10] to interact with Retail Orders. Such competition has the ability to promote efficiency by facilitating the price discovery process and generating

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (''RPI Approval Order'') (SR–BYX–2012–019).

[4] A ''User'' is defined in BYX Rule 1.5(cc) as any member or sponsored participant of the Exchange who is authorized to obtain access to the System.

[5] A ''Retail Order'' is defined in Rule 11.24(a)(2) as an agency order that originates from a natural person and is submitted to the Exchange by a RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any computerized methodology. *See* Rule 11.24(a)(2).

[6] The term Protected Quotation is defined in BYX Rule 1.5(t) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The terms Protected NBB and Protected NBO are defined in BYX Rule 1.5(s). The Protected NBB is the best-priced protected bid and the Protected NBO is the best-priced protected offer. Generally, the Protected NBB and Protected NBO and the national best bid (''NBB'') and national best offer (''NBO'', together with the NBB, the ''NBBO'') will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the Protected NBB or Protected NBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

[7] *See* RPI Approval Order, *supra* note 3 at 71652.

[8] *Id.*

[9] *See* Securities Exchange Act Release Nos. 71249 (January 7, 2014), 79 FR 2229 (January 13, 2014) (SR–BYX–2014–001) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for the Retail Price Improvement Program); 74111 (January 22, 2015), 80 FR 4598 (January 28, 2015) (SR–BYX–2015–05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for BATS Y-Exchange, Inc.'s Retail Price Improvement (''RPI'') Program for 12 Months, To Expire on January 31, 2016).

[10] A ''Retail Price Improvement Order'' is defined in Rule 11.24(a)(3) as an order that consists of non-displayed interest on the Exchange that is priced better than the Protected NBB or Protected NBO by at least $0.001 and that is identified as such. *See* Rule 11.24(a)(3).

additional investor interest in trading securities, thereby promoting capital formation. The Exchange believes that extending the pilot is appropriate because it will allow the Exchange and the Commission additional time to gather and analyze data regarding the Program that the Exchange has committed to provide.[11] As such, the Exchange believes that it is appropriate to extend the current operation of the Program.[12] Through this filing, the Exchange seeks to extend the current pilot period of the Program until July 31, 2016.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[13] In particular, the Exchange believes the proposed change furthers the objectives of Section 6(b)(5) of the Act,[14] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that extending the pilot period for the RPI Program is consistent with these principles because the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders. Additionally, as previously stated, the competition promoted by the Program may facilitate the price discovery process and potentially generate additional investor interest in trading securities. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the Program for its potential effects on public price discovery, and on the broader market structure.

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 proposed rule change extends an established pilot program for 6 months, thus allowing the RPI Program to enhance competition for retail order flow and contribute to the public price discovery process.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6)[16] thereunder. Because the foregoing proposed rule does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,[17] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19]

Under Rule 19b–4(f)(6) of the Act,[20] a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period after which a proposed rule change under Rule 19b–4(f)(6) becomes operative so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot program to continue uninterrupted. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[21]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BYX–2016–01 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–BYX–2016–01. 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

[11] *See* RPI Approval Order, *supra* note 3 at 71655.

[12] Concurrently with this filing, the Exchange has submitted a request for an extension of the exemption under Regulation NMS Rule 612 previously granted by the Commission that permits it to accept and rank the RPI orders in sub-penny increments. *See* Letter from Anders Franzon, SVP, Associate General Counsel, BATS Y-Exchange, Inc. to Brent J. Fields, Secretary, Securities and Exchange Commission dated January 12, 2016.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] The Exchange has fulfilled this requirement.

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6).

[20] *Id.*

[21] For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2016–01, and should be submitted on or before February 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Brent J. Fields,

Secretary.

[FR Doc. 2016–01664 Filed 1–26–16; 8:45 am]

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[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76956; File No. SR–NASDAQ–2016–005]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Adopt a Limit Order Protection and a Market Order Protection

January 21, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 12, 2016, The Nasdaq Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Nasdaq's Rule 4757, entitled ''Book Processing'' to adopt a Limit Order Protection or ''LOP'' and a Market Order Protection for members accessing the Nasdaq Market Center.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt two new mechanisms to protect against erroneous orders which are entered into the Nasdaq Market Center. Specifically, these features address risks to market participants of human error in entering Orders at unintended prices. LOP and the Market Order Protection would prevent certain Orders from executing or being placed on the Order Book at prices outside pre-set standard limits. The System would not accept such Orders, rather than executing them automatically. The proposed LOP and Market Order Protection features are similar to risk features which exist today on the NASDAQ Options Market LLC (''NOM'') [3] and are available for Options Participants.

Background

Today, the National Market System Plan to Address Extraordinary Market Volatility (the ''Plan'') [4] provides a limit up-limit down (''LULD'') mechanism designed to prevent trades in NMS securities from occurring outside of specified price bands. The bands are set at a percentage level above and below the average transaction price of the security over the immediately preceding five-minute period, and are calculated on a continuous basis during regular trading hours.[5] Rule 4120, entitled ''Limit Up-Limit Down Plan and Trading Halts,'' describes this process for the Nasdaq Market Center.

The Exchange proposes to adopt two new features, LOP for Limit Orders and Market Order Protection for Market Orders, which would cancel these Orders back to the member when the order exceeds certain defined logic. These two new features would be in addition to the LULD protections, which exist today.[6] Each mechanism is explained further below.

LOP

The Exchange proposes to adopt a new LOP feature on the Nasdaq Market Center to prevent certain Limit Orders at prices outside of pre-set standard limits (''LOP Limit Table'') from being accepted by the System. LOP shall apply to all Quotes and Orders,[7] including any modified Orders.[8] LOP would not apply to Market Orders. LOP would be operational each trading day, except during opening and closing crosses, initial public offerings and trading halts.[9] Since Nasdaq Rules provided controls for the opening, closing and initial public offering processes within the Rulebook, the proposed protections are rendered ineffective for those processes.[10]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* NOM Rules at Chapter VI, Section 6(c) and Section 18.

[4] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving, on a Pilot Basis, the National Market System Plan To Address Extraordinary Market Volatility). *See also* Rule 608 of Regulation NMS under the Act.

[5] If the National Best Offer (''NBO'') equals the lower price band without crossing the NBBO, or National Best Bid (''NBB'') equals the upper price band without crossing the NBBO, then the stock will enter a limit state quotation period of 15 seconds during which no new reference prices or price bands will be calculated. A stock will exit the limit state when the entire size of all quotations are executed or cancelled. If the limit state exists and trading continues to occur at the price band, or no trading occurs within the price band, for more than 15 seconds, then a five minute trading pause will be enacted.

[6] While LULD bands are in place from 9:30 to 4:00 p.m. E.T. each trading day, these new protections will be in place for each trading session.

[7] An Intermarket Sweep or ISO Order, which is an Order that is immediately executable within the Nasdaq Market Center against Orders against which they are marketable, is subject to LOP. *See* NASDAQ Rule 4702.

[8] If an Order is modified, LOP will review the order anew and, if LOP is triggered, such modification will not take effect and the original order will not be accepted.

[9] LOP has the ability to suspend by symbol or system wide. The Exchange would notify market participants of any suspension that may be in place via an alert.

[10] The Nasdaq Rulebook provides specific rules for certain auction mechanisms, such as the opening, closing and initial public offering process. The mechanisms contain their own protections with respect to the entry of Orders within those mechanisms. The addition of the proposed

Members will be subject to certain parameters when submitting Orders into the Order Book.

The Exchange proposes to not accept incoming Limit Orders that exceed the LOP Reference Threshold. The LOP Limit Table contains upper limits and lower limits, for a particular security, across all trading sessions. For example, today, if the NBO is at $50 and a Limit Buy Order was entered into the System at $500, the Limit Buy Order would execute at $50 and then would continue to be executed at other applicable price levels within the Order Book until the Limit Buy Order was canceled or halted. The Exchange proposes LOP to avoid a series of improperly priced aggressive orders transacting in the Order Book.

With respect to Market Maker Peg Orders,[11] the applicable limits shall be two times greater than the limits stated in the LOP Limit Table. A Market Maker Peg Order is a passive Order type which will not otherwise remove liquidity from the Order Book. This Order type was designed to assist Market Makers with meeting their quoting obligations which may require quoting at levels that are not standardized with LULD guidelines. Market Makers have a diverse business model as compared with other market participants. Widening the applicable limits for these market participants serves to promote market making. The Exchange believes that because Market Makers have other risk protections in place to prevent them from quoting outside of their financial means, the risk level for erroneous trades is not the same as with other market participants. Market Makers have more sophisticated infrastructures than other market participants and are able to manage their risk, particularly with quoting, utilizing other tools which may not be available to other market participants.

The Exchange will send an Equity Trader Alert in advance of implementation with the initial LOP Limit Table and, thereafter, to modify the LOP Limit Table. The initial LOP Limit Table utilizes the same limits as LULD to compare against the LOP Reference Threshold. The Exchange believes that utilizing the same tiers and bands will seek to provide additional market protection to Nasdaq members that submit erroneous trades, prior to reaching LULD limits. The initial LOP table is below.

Securities	Time period	Price band percentage
Tier 1 and Tier 2 NMS Securities Reference Price > $3.00.	Market Hours, excluding Open/Close (9:45 a.m. to 3:35 p.m.).	5% (Tier 1) & 10% (Tier 2).
Tier 1 and Tier 2 NMS Securities Reference Price equal to $0.75 to and including $3.00.	Market Hours, excluding Open/Close (9:45 a.m. to 3:35 p.m.).	20%.
Tier 1 & 2 NMS Securities Reference Price Less than $0.75.	Market Hours, excluding Open/Close (9:45 a.m. to 3:35 p.m.).	The lesser of $0.15 or 75%.
Tier 1 and Tier 2 NMS Securities Reference Price > $3.00.	During Market Open/Close 4:00 a.m. and 9:45 a.m. 3:35 p.m. and 8:00 p.m.	10% & 20% Note: Band % is doubled during these times.
Tier 1 and Tier 2 NMS Securities Reference Price equal to $0.75 to and including $3.00.	During Market Open/Close 4:00 a.m. and 9:45 a.m. 3:35 p.m. and 8:00 p.m. Same as above.	40% Note: Band % is doubled during these times.
Tier 1 and Tier 2 NMS Securities Reference Price less than $0.75.	During Market Open/Close 4:00 a.m. and 9:45 a.m. 3:35 p.m. and 8:00 p.m.	Lesser of $0.30 or 150% (upper band only) Note: Band % is doubled during these times.

LOP will cause Limit Orders to not be accepted if the price of the Limit Order is greater than the LOP Reference Threshold for a buy Limit Order. Limit Orders will also not be accepted if the price of the Limit Order is less than the LOP Reference Threshold for a sell Limit Order.

The Exchange believes that doubling the band percentage for pre-open and post-close sessions is reasonable due to the volatility which may occur in the market during those trading sessions. The LULD Plan also doubles the percentages for pre-open and post-close thereby aligning this protection with the LULD Plan.[12]

The LOP Reference Price shall be the current consolidated national Best Bid or Best Offer (consolidated NBBO), the Bid for sell orders and the Offer for buy orders. If there is no consolidated NBBO for a security, or if there is a one-sided market, the last regular way consolidated sale, adjusted for corporate actions, if any, will be the LOP Reference Price. If there is no last regular way consolidated sale on that trade date, then the prior day's adjusted close will be the LOP Reference Price.

The LOP Reference Threshold for buy orders will be the LOP Reference Price (offer) plus the applicable percentage specified in the LOP Limit Table. The LOP Reference Threshold for sell orders will be the LOP Reference Price (bid) minus the applicable percentage specified in the LOP Limit Table.

Market Order Protection

With respect to Market Orders, these Orders will not be accepted if the security is in an LULD Straddle State.[13] If the offer is in a Straddle State then all buy Market Orders will not be accepted. If the bid is in a Straddle State than all

protections does not add value in the Exchange's analysis of those structures.

[11] A ''Market Maker Peg Order'' is an Order Type designed to allow a Market Maker to maintain a continuous two-sided quotation at a displayed price that is compliant with the quotation requirements for Market Makers set forth in Rule 4613(a)(2). The displayed price of the Market Maker Peg Order is set with reference to a ''Reference Price'' in order to keep the displayed price of the Market Maker Peg Order within a bounded price range. A Market Maker Peg Order may be entered through RASH, FIX or QIX only. A Market Maker Peg Order must be entered with a limit price beyond which the Order may not be priced. The Reference Price for a Market Maker Peg Order to buy (sell) is the then-current National Best Bid (National Best Offer) (including Nasdaq), or if no such National Best Bid or National Best Offer, the most recent reported last-sale eligible trade from the responsible single plan processor for that day, or if none, the previous closing price of the security as adjusted to reflect any corporate actions (*e.g.,* dividends or stock splits) in the security. *See* Nasdaq Rule 4702(b)(7).

[12] The LULD Plan provides that between 9:30 a.m. and 9:45 a.m. ET, and 3:35 p.m. and 4:00 p.m. ET, or in the case of an early scheduled close, during the last 25 minutes of trading before the early scheduled close, the Price Bands shall be calculated by applying double the Percentage Parameters set forth in Appendix A. *See* Rule 608 of Regulation NMS under the Act.

[13] The LULD Plan defines a Straddle State as when the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State. For example, assume the Lower Price Band for an NMS Stock is $9.50 and the Upper Price Band is $10.50, such NMS stock would be in a Straddle State if the National Best Bid were below $9.50, and therefore non-executable, and the National Best Offer were above $9.50 (including a National Best Offer that could be above $10.50). If an NMS Stock is in a Straddle State and trading in that stock deviates from normal trading characteristics, the Primary Listing Exchange may declare a Trading Pause for that NMS Stock. *See* Section VII(A)(2) of the Plan.

sell market orders will not be accepted. The Exchange believes that this Market Order Protection feature will prevent Participants from executing Market Orders that stray widely from the LULD defined reference price.

The Exchange also notes that both LOP and Market Order Protection will be applicable to all protocols.[14] Both the LOP and Market Order Protection features will be mandatory for all Nasdaq members. The Exchange proposes to implement this rule within ninety (90) days of the implementation date. The Exchange will issue an Equities Trader Alert in advance to inform market participants of such implementation date.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[15] in general, and furthers the objectives of Section 6(b)(5) of the Act[16] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by mitigating risks to market participants of human error in entering Orders at clearly unintended prices. Also, the Market Order Protection feature would protect Market Orders from being executed in very wide markets when those prices are compared to the reference price. The Exchange believes that the proposals are appropriate and reasonable, because they offer protections to both Limit and Market Orders which should encourage price continuity and, in turn, protect investors and the public interest by reducing executions occurring at dislocated prices.

The Exchange believes that the proposed LOP and Market Order Protection features would assist with the maintenance of fair and orderly markets by mitigating the risks associated with errors resulting in executions at prices that are away from the Best Bid or Offer and potentially erroneous. Further the proposal protects investors from potentially receiving executions away from the prevailing prices at any given time.

The Exchange believes that the LOP Limit Table is appropriate because it is based on the current LULD bands. The Exchange believes that the proposed specified percentages are appropriate because LOP and is designed to reduce the risk of, and to potentially prevent, the automatic execution of Orders at prices that may be considered clearly erroneous. The System will only execute Limit Orders priced within the LOP Limit Table or within the upper (lower) band of LULD, if the latter is more conservative.

The Exchange believes that the proposal to not accept System Orders in a Straddle State will prevent Market Orders from being entered by market participants at erroneous prices which the Exchange believes would stray widely from the LULD defined reference price.

The Exchange believes LOP and Market Order Protection will remove impediments to and perfect the mechanisms of a free and open market because these features will operate in tandem with LULD.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the LOP and Market Order Protection features will provide market participants with additional protection from anomalous executions, in addition to LULD protections. Thus, the Exchange does not believe the proposal creates any significant impact on competition. These types of risk protections are in place today for NOM Participants.[17] The Exchange believes that offering these protections to the Nasdaq Market Center will not impose any undue burden on intra-market competition, rather, it would permit equities and options members to be protected in a similar manner from erroneous executions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2016–005 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–2016–005.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number *SR–NASDAQ–2016–005* and should be

[14] Nasdaq maintains several communications protocols for Participants to use in entering Orders and sending other messages to the Nasdaq Market Center, such as: OUCH, RASH, QIX, FLITE and FIX.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *See* NOM Rules at Chapter VI, Section 6(c) and Section 18.

submitted on or before February 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Brent J. Fields,

Secretary.

[FR Doc. 2016–01538 Filed 1–26–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76950; File No. SR–NASDAQ–2016–003]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Options Regulatory Fee

January 21, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 8, 2016, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter XV, entitled ''Options Pricing,'' at Section 5, entitled ''NASDAQ Options Regulatory Fee,'' which governs pricing for Exchange Participants using the NASDAQ Options Market (''NOM''), the Exchange's facility for executing and routing standardized equity and index options. The Exchange proposes to increase the current Options Regulatory Fee.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on February 1, 2016.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (1) increase the ORF from $0.0015 to $0.0019 as of February 1, 2016 to balance the Exchange's regulatory revenue against the anticipated costs; and (2) remove the requirement that the ORF may only be modified semi-annually.

Background

The ORF is assessed to each Participant for all options transactions executed or cleared by the Participant that are cleared at The Options Clearing Corporation (''OCC'') in the Customer range (*i.e.,* that clear in the Customer account of the Participant's clearing firm at OCC). The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. The ORF is imposed upon all transactions executed by a Participant, even if such transactions do not take place on the Exchange.[3] The ORF also includes options transactions that are not executed by a Participant but are ultimately cleared by a Participant.[4] The ORF is not charged for Participant proprietary options transactions because Participants incur the costs of owning memberships and through their membership are charged transaction fees, dues and other fees that are not applicable to non-members. The dues and fees paid by Participants go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. The ORF is collected indirectly from Participants through their clearing firms by OCC on behalf of the Exchange.

The ORF is designed to recover a portion of the costs to the Exchange of the supervision and regulation of its Participants, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission.

ORF Adjustments

The Exchange proposes to increase the ORF from $0.0015 to $0.0019 as of February 1, 2016 in order to balance the Exchange's regulatory revenue against the anticipated costs. The Exchange regularly reviews its ORF to ensure that the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The Exchange believes this adjustment will permit the Exchange to cover a material portion of its regulatory costs, while not exceeding regulatory costs.

Semi-Annual Changes to ORF

Currently, the ORF specifies the Exchange may only increase or decrease the ORF semi-annually, and any such fee change will be effective on the first business day of February or August.[5] The Exchange is proposing to eliminate this requirement because the Exchange believes it requires the flexibility to amend its ORF to meet its regulatory requirements and adjust its ORF to account for the regulatory revenue that it receives and the costs that it incurs, as needed. While the Exchange is eliminating the requirement to adjust only semi-annually, it will continue to submit a rule proposal with the Commission for each modification to the ORF and notify participants via an Options Trader Alert of any anticipated

[3] The ORF applies to all ''C'' account origin code orders executed by a Participant on the Exchange.

[4] In the case where one Participant both executes a transaction and clears the transaction, the ORF is assessed to the Participant only once on the execution. In the case where one Participant executes a transaction and a different Participant clears the transaction, the ORF is assessed only to the Participant who executes the transaction and is not assessed to the Participant who clears the transaction. In the case where a non-member executes a transaction and a Participant clears the transaction, the ORF is assessed to the Participant who clears the transaction.

[5] *See* NOM Rules at Chapter XV, Section 5.

change in the amount of the fee at least thirty (30) calendar days prior to the effective date. The Exchange believes that the prior notification to market participants will provide guidance on the timing of any changes to the ORF and ensure market participants are prepared to configure their systems to properly account for the ORF. The Exchange notified Participants of this ORF adjustment thirty (30) calendar days prior to the proposed operative date.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that increasing the ORF from $0.0015 to $0.0019 as of February 1, 2016 is reasonable because the Exchange's collection of ORF needs to be balanced against the amount of regulatory revenue collected by the Exchange. The Exchange believes that the proposed adjustments noted herein will serve to balance the Exchange's regulatory revenue against the anticipated regulatory costs.

The Exchange believes that increasing the ORF from $0.0015 to $0.0019 as of February 1, 2016 is equitable and not unfairly discriminatory because this adjustment would be applicable to all members on all of their transactions that clear as Customer at OCC. In addition, the ORF seeks to recover the costs of supervising and regulating members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

The ORF is not charged for member proprietary options transactions because members incur the costs of owning memberships and through their memberships are charged transaction fees, dues and other fees that are not applicable to non-members. Moreover, the Exchange believes the ORF ensures fairness by assessing higher fees to those members that require more Exchange regulatory services based on the amount of Customer options business they conduct.

Regulating Customer trading activity is more labor intensive and requires greater expenditure of human and technical resources than regulating non-Customer trading activity. Surveillance, regulation and examination of non-Customer trading activity generally tends to be more automated and less labor intensive. As a result, the costs associated with administering the Customer component of the Exchange's overall regulatory program are anticipated to be higher than the costs associated with administering the non-Customer component of its regulatory program. The Exchange proposes assessing higher fees to those members that will require more Exchange regulatory services based on the amount of Customer options business they conduct.[8] Additionally, the dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. The Exchange has in place a regulatory structure to surveil for, exam [sic] and monitor the marketplace for violations of Exchange Rules. The ORF assists the Exchange to fund the cost of this regulation of the marketplace.

The Exchange believes that the proposed rule change to remove the limit to amend the ORF only semi-annually, with advance notice, is reasonable because the Exchange will continue to provide market participants with thirty (30) days advance notice of amending its ORF. Also, the Exchange is required to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. Therefore, the Exchange believes it is reasonable to remove the semi-annual limit to amend its ORF in order to permit the Exchange to make amendments to its ORF as necessary to comply with the Exchange's obligations.

The Exchange believes that the proposed rule change to remove the limit to amend the ORF only semi-annually, with advance notice, is equitable and not unfairly discriminatory because it will apply in the same manner to all members that are subject to the ORF. Also, all members will continue to receive advance notice of changes to the ORF.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The Exchange does not believe that increasing its ORF creates an undue burden on intra-market competition because the adjustment will apply to all members on all of their transactions that clear as Customer at OCC. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs. Additionally, the dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. The Exchange's members are subject to ORF on other options markets.[9]

The Exchange does not believe that removing the limit to amend the ORF semi-annually, with advance notice, creates an undue burden on competition. The Exchange will continue to provide the same advance notice of changes to the ORF as it does today.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] The ORF is not charged for orders that clear in categories other than the Customer range at OCC (*e.g.,* NOM Market Maker orders) because members incur the costs of memberships and through their memberships are charged transaction fees, dues and other fees that go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation.

[9] The following options exchanges assess an ORF, [sic] Chicago Board Options Exchange, Incorporated (''CBOE''), C2 Options Exchange, Inc. (''C2''), the International Securities Exchange, LLC (''ISE''), NYSE Arca, Inc. (''NYSEArca'') and [sic] NYSE AMEX LLC (''NYSEAmex''), BATS Exchange, Inc. (''BATS'') and NASDAQ OMX PHLX LLC (''Phlx' [sic]'').

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2016–003 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–2016–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–003 and should be submitted on or before February 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Brent J. Fields,

Secretary.

[FR Doc. 2016–01532 Filed 1–26–16; 8:45 am]

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[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76968; File No. SR–NYSEArca–2016–10]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing the NYSE Arca Order Imbalances Proprietary Market Data Product

January 22, 2016.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b-4 thereunder,[3] notice is hereby given that on January 13, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish the NYSE Arca Order Imbalances proprietary market data product. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish the NYSE Arca Order Imbalances datafeed as a separate, stand-alone market data product. The NYSE Arca Order Imbalances product would be a real-time datafeed of the information that the Exchange provides in advance of an auction.

The Exchange is establishing the NYSE Arca Order Imbalances product in connection with the implementation of Pillar, the Exchange's proposed new technology trading platform.[4] Pillar is the integrated trading technology platform designed to use a single specification for connecting to the equities and options markets operated by NYSE Arca and its affiliates, New York Stock Exchange LLC (''NYSE'') and NYSE MKT LLC (''NYSE MKT''). NYSE Arca Equities would be the first trading

[4] *See* Securities Exchange Act Release Nos. 74951 (May 13, 2015), 80 FR 28721 (May 19, 2015) (Notice) and 75494 (July 20, 2015), 80 FR 44170 (July 24, 2015) (Order) (SR–NYSEArca-2015–38) (''Pillar I Filing''); 75497 (July 21, 2015), 80 FR 45022 (July 28, 2015) (Notice) and 76267 (Oct. 26, 2015), 80 FR 66951 (Oct. 30, 2015) (Order) (SR–NYSEArca-2015–56)(''Pillar II Filing''); 75467 (July 16, 2015), 80 FR 43515 (July 22, 2015) (Notice) and 76198 (Oct. 20, 2015), 80 FR 65274 (Oct. 26, 2015) (Order) (SR–NYSEArca-2015–58) (''Pillar III Filing''); and 76085 (Oct. 6, 2015), 80 FR 61513 (Oct. 13, 2015) (Notice) and 76869 (Jan. 11, 2016) (Order) (SR–NYSEArca-2015–86) (''Pillar Auction Filing'').

system to migrate to Pillar. Rule 7.35P(a)(4)(C) provides that the Exchange will disseminate Auction Imbalance Information via a proprietary data feed during the times specified in the rule, and through this filing, the Exchange proposes to establish the NYSE Arca Order Imbalances feed as the proprietary data feed to which Rule 7.35P(a)(4)(C) refers.

Rule 7.35P(a)(4) defines Auction Imbalance Information as the information disseminated by the Exchange for an auction. As set forth in Rule 7.35P, Auction Imbalance information includes, if applicable, the Total Imbalance, Market Imbalance, Indicative Match Price and Matched Volume, each as defined in Rule 7.35P(a). The Auction Imbalance Information would be disseminated on a time frame specified in Rule 7.35P. The NYSE Arca Order Imbalances market data product would provide Auction Imbalance Information with respect to symbols migrated to the Pillar platform.

NYSE Arca order imbalance information, as defined in Rule 7.35, is currently available through the NYSE ArcaBook and NYSE Arca Integrated proprietary market data products and would continue to be disseminated on these data feeds when symbols migrate to Pillar.[5] When a symbol migrates to Pillar, the NYSE Arca order imbalance information available through NYSE ArcaBook and NYSE Arca Integrated proprietary market data products would be based on Rule 7.35P.

The Exchange proposes to offer the NYSE Arca Order Imbalances product through networks in the Exchange's Mahwah, New Jersey data center that are available to users of the Exchange's co-location services. The Exchange also would offer the NYSE Arca Order Imbalances product through the Exchange's Secure Financial Transaction Infrastructure (SFTI) network, through which all other users and member organizations access the Exchange's trading and execution systems and other proprietary market data products.

The Exchange will file a separate rule filing to establish the fees for the NYSE Arca Order Imbalances product. As noted above, the Exchange is establishing the NYSE Arca Order Imbalances product in conjunction with the implementation of Pillar, the Exchange's proposed new technology trading platform,[6] and the Exchange will announce the date that the product will be available through an NYSE Market Data Notice.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)[7] of the Act, in general, and furthers the objectives of section 6(b)(5)[8] 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 transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of the NYSE Arca Order Imbalances market data product to those interested in receiving it.

The Exchange also believes this proposal is consistent with section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with new options for receiving market data as requested by market data vendors and purchasers. The proposed rule change would benefit investors by facilitating their prompt access to the real-time information contained in the NYSE Arca Order Imbalances market data product.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the NYSE Arca Order Imbalances market data product is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS would itself further the Act's goals of facilitating efficiency and competition:

Efficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[9]

The Exchange further notes that the existence of alternatives to the Exchange's product, including order imbalances products offered by the Exchange's affiliates, NYSE and NYSE MKT,[10] and by the Nasdaq Stock Market (''NASDAQ''),[11] as well as real-time consolidated data, free delayed consolidated data, and proprietary data from other sources, ensures that the Exchange is not unreasonably discriminatory because vendors and subscribers can elect these alternatives as their individual business cases warrant. This proposed new data feed provides investors with new options for receiving market data, which was a primary goal of the market data amendments adopted by Regulation NMS.[12]

The NYSE Arca Order Imbalances market data product will help to protect a free and open market by providing additional data to the marketplace and by giving investors greater choices. In addition, the proposal would not permit unfair discrimination because the product will be available to all of the Exchange's customers and broker-dealers through both SFTI and the Liquidity Center Network.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act,[13] 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. Because other exchanges already offer similar products, the Exchange's proposed NYSE Arca Order Imbalances market data product will enhance

[5] *See* Pillar Auction Filing Notice, footnotes 22 and 23. *See also* Securities Exchange Act Release Nos. 59039 (Dec. 2, 2008), 73 FR 74770 (Dec. 9, 2008) (NYSE ArcaBook); and 65669 (Nov. 2, 2011), 76 FR 69311 (Nov. 8, 2011) (NYSE Arca Integrated Data Feed).

[6] *See* note 4, *supra.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (''Regulation NMS Adopting Release'').

[10] *See* Securities Act Release Nos. 59543 (March 9, 2009), 74 FR 11159 (March 16, 2009) (SR–NYSE–2008–132) (NYSE Order Imbalances) and 59743 (April 9, 2009), 74 FR 17699 (April 16, 2009) (SR–NYSEAmex-2009–11)(NYSE Amex Order Imbalances, n/k/a NYSE MKT Order Imbalances).

[11] *See* Nasdaq TotalView-ITCH, *http://www.nasdaqtrader.com/Trader.aspx?id=Totalview2* (last visited November 25, 2015)(displays the full order book depth for Nasdaq market participants and also disseminates the Net Order Imbalance Indicator (NOII) for the Nasdaq Opening and Closing Crosses and Nasdaq IPO/Halt Cross).

[12] *See* Regulation NMS Adopting Release, *supra,* at 37503.

[13] 15 U.S.C. 78f(b)(8).

competition. The NYSE Arca Order Imbalances product will foster competition by providing an alternative to similar products offered by other exchanges, including order imbalances products offered by the Exchange's affiliates, NYSE and NYSE MKT,[14] and by NASDAQ.[15] This proposed new data feed provides investors with new options for receiving market data, which was a primary goal of the market data amendments adopted by Regulation NMS.[16]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[17] and Rule 19b-4(f)(6) thereunder.[18]

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act[19] normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)[20] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that it anticipates migrating symbols to Pillar beginning February 1, 2016, and that waiver of the operative delay would permit market data that would be available in existing products for symbols that have migrated to Pillar to also be available in a stand-alone product, which would offer an alternative to currently available proprietary data products. The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–10, and should be submitted on or before February 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Brent J. Fields,

Secretary.

[FR Doc. 2016–01667 Filed 1–26–16; 8:45 am]

BILLING CODE 8011–01–P

[14] *See* note 10, *supra.*

[15] *See* note 11, *supra.*

[16] *See* Regulation NMS Adopting Release, *supra,* at 37503.

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76946; File No. SR–NASDAQ–2016–006]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Subsection (a)(7) of Rule 7003, Registration and Processing Fees

January 21, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that, on January 13, 2016, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend subsection (a)(7) of Rule 7003, Registration and Processing Fees.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make changes to the continuing education fees section of Rule 7003 to provide that the continuing education session fee will be $55 if the session is conducted via Web delivery. The continuing education session fee will remain $100 if the session is conducted at a testing center. The Exchange is also eliminating the $60 session fee for the S501 continuing education Regulatory Element, which FINRA eliminated as of January 4, 2016.[3]

On August 8, 2015, the Commission approved SR–FINRA–2015–015 amending FINRA Rule 1250 to provide a Web-based delivery method for completing the Regulatory Element of the continuing education requirements.[4] Pursuant to the rule change, effective October 1, 2015, the Regulatory Element of the Continuing Education Programs for the S201 for Registered Principals and Supervisors is now administered through Web-based delivery or such other technological manner and format as specified by FINRA. FINRA launched Web-based delivery of the S101 Regulatory Element program on January 4, 2016.[5]

Pursuant to the approval order for SR–FINRA–2015–015, the fee for test-center delivery of the Regulatory Elements of the S101 and S201 Continuing Education programs will continue to be $100 per session through no later than six months after January 4, 2016 when the programs will no longer be offered at testing centers. However, under the SR–FINRA–2015–015 approval order the fee for Web-based delivery of the Regulatory Elements of the S101 and the S201 Continuing Education programs is now $55.

The Exchange currently utilizes FINRA's Continuing Education programs for its own continuing education requirements which include the S101 and S201 programs. Consistent with SR–FINRA–2015–015, the Exchange recently filed a separate proposed rule change relating to continuing education.[6] In that filing, the Exchange proposed to follow the changes set forth in SR–FINRA–2015–015 with respect to Web-based delivery of the Regulatory Element of the Continuing Education programs for the S101 and the S201. Consistent with SR–FINRA–2015–015 this proposed rule change would amend Rule 7003 to provide that the following fees will be collected and retained by FINRA for the registration of associated persons of Nasdaq members that are not also FINRA members: A $100 session fee ($55 if the Continuing Education is Web-based) for each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to Nasdaq Rule 1120 (S101 and S201). The proposal will eliminate the $60 session fee for each individual who is required to complete the Proprietary Trader Regulatory Element (S501).[7]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Web-based delivery will remove time parameters that exist with respect to taking continuing education at testing centers. Having additional time to take continuing education may result in better learning outcomes, which should enhance investor protection. In addition, the option to have Web-based delivery of the Regulatory Element of the Continuing Education program at a reduced cost removes impediments to a free and open market and national market system by making it easier and less costly for registrants to participate in the market. Accordingly, the Exchange believes that Web-based delivery of the Regulatory Element of the Continuing Education Program and reducing the costs of continuing education in general are goals that are consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[3] Currently, Rule 7003(a) provides that certain fees will be collected and retained by FINRA via the Web CRD registration system for the registration of associated persons of Nasdaq members that are not also FINRA members. Under Rule 7003(a)(7), FINRA collects and retains a $100 session fee for each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to Nasdaq Rule 1120 (S101 and S201) and a $60 session fee for each individual who is required to complete the Proprietary Trader Regulatory Element (S501).

[4] *See* Securities Exchange Act Release No. 75581 (July 31, 2015), 80 FR 47018 (August 6, 2015) (Order Approving a Proposed Rule Change to Provide a Web-based Delivery Method for Completing the Regulatory Element of the Continuing Education Requirements) (SR–FINRA–2015–015).

[5] The Regulatory Element of the S101 and S201 Continuing Education Programs will continue to be offered at testing centers until no later than six months after January 4, 2016. Test-center delivery of the Regulatory Element will be phased out by no later than six months after January 4, 2016. *See* Securities Exchange Act Release No. 75581 (July 31, 2015), 80 FR 47018 (August 6, 2015) (Order Approving a Proposed Rule Change To Provide a Web-Based Delivery Method for Completing the Regulatory Element of the Continuing Education) (SR–FINRA–2015–015).

[6] *See* SR–NASDAQ–2015–167 filed December 30, 2015.

[7] As noted above, the S501 Proprietary Trader Regulatory Element was discontinued by FINRA as of January 4, 2016. The Exchange anticipates filing a subsequent rule change to eliminate the reference to the $100 session fee when the test center option is eliminated for the S101 and S201 Regulatory Elements.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As FINRA has stated, the proposed rule change is specifically intended to reduce the burdens of continuing education on market participants while preserving the integrity of the Continuing Education program.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–006 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–2016–006.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–006 and should be submitted on or before February 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Brent J. Fields,

Secretary.

[FR Doc. 2016–01530 Filed 1–26–16; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76947; File No. SR–BX–2016–004]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Subsection (a)(7) of Rule 7003, Registration and Processing Fees

January 21, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that, on January 13, 2016, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend subsection (a)(7) of Rule 7003, Registration and Processing Fees, as described further below.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make changes to the continuing education fees section of Rule 7003 to provide that the continuing education session fee will be $55 if the session is conducted via Web delivery. The continuing education session fee will remain $100 if the session is conducted at a testing center. The Exchange is deleting the $60 session fee for the S501 Regulatory Element, which FINRA discontinued as of January 4, 2016.[3]

On August 8, 2015, the Commission approved SR–FINRA–2015–015 relating proposed changes to FINRA Rule 1250 to provide a Web-based delivery method for completing the Regulatory Element

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Currently, Rule 7003(a) provides that certain fees will be collected and retained by FINRA via the Web CRD registration system for the registration of associated persons of Exchange members that are not also FINRA members. Under Rule 7003(a)(7), FINRA collects and retains a $100 session fee for each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to Exchange Rule 1120 (S101 and S201) and a $60 session fee for each individual who is required to complete the Proprietary Trader Regulatory Element (S501).

of the continuing education requirements.[4] Pursuant to the rule change, effective October 1, 2015, the Regulatory Element of the Continuing Education Programs for the S201 for Registered Principals and Supervisors is now administered through Web-based delivery or such other technological manner and format as specified by FINRA. FINRA launched Web-based delivery of the S101 Regulatory Element program on January 4, 2016.[5]

Pursuant to the approval order for SR–FINRA–2015–015, the fee for test-center delivery of the Regulatory Element of the S201 Continuing Education programs will continue to be $100 per session through no later than six months after January 4, 2016 when the program will no longer be offered at testing centers. However, under the SR–FINRA–2015–015 approval order the fee for Web-based delivery of the Regulatory Elements of the S101 and the S201 Continuing Education programs is now $55.

The Exchange currently utilizes FINRA's Continuing Education programs for its own continuing education requirements which include the S101 and S201 programs. Consistent with SR–FINRA–2015–015, the Exchange recently filed a separate proposed rule change relating to continuing education.[6] In that filing, the Exchange proposed to follow the changes set forth in SR–FINRA–2015–015 with respect to Web-based delivery of the Regulatory Element of the Continuing Education programs for the S101 and the S201. Consistent with SR–FINRA–2015–015 this proposed rule change would amend Rule 7003 to provide that the following fees will be collected and retained by FINRA for the registration of associated persons of Exchange members that are not also FINRA members: A $100 session fee ($55 if the Continuing Education is Web-based) for each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to Exchange Rule 1120 (S101 and S201). The proposal will eliminate the $60 session fee for each individual who is required to complete the Proprietary Trader Regulatory Element (S501).[7]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Web-based delivery will remove time parameters that exist with respect to taking continuing education at testing centers. Having additional time to take continuing education may result in better learning outcomes, which should enhance investor protection. In addition, the option to have Web-based delivery of the Regulatory Element of the Continuing Education program at a reduced cost makes it easier and less costly for registrants to participate in the market. Accordingly, the Exchange believes that Web-based delivery of the Regulatory Element of the Continuing Education Program and reducing the costs of continuing education in general are goals that are consistent with 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 not necessary or appropriate in furtherance of the purposes of the Act. As FINRA has stated, the proposed rule change is specifically intended to reduce the burdens of continuing education on market participants while preserving the integrity of the Continuing Education program.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2016–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–BX–2016–004.* This file number should be included on the subject line if email is used. To help the

[4] *See* Securities Exchange Act Release No. 75581 (July 31, 2015), 80 FR 47018 (August 6, 2015) (Order Approving a Proposed Rule Change to Provide a Web-based Delivery Method for Completing the Regulatory Element of the Continuing Education Requirements) (SR–FINRA–2015–015).

[5] The Regulatory Element of the S101 and S201 Continuing Education Programs will continue to be offered at testing centers until no later than six months after January 4, 2016. Test-center delivery of the Regulatory Element will be phased out by no later than six months after January 4, 2016. See Securities Exchange Act Release No. 75581 (July 31, 2015), 80 FR 47018 (August 6, 2015) (Order Approving a Proposed Rule Change To Provide a Web-Based Delivery Method for Completing the Regulatory Element of the Continuing Education) (SR–FINRA–2015–015).

[6] *See* SR–BX–2016–02 [sic].

[7] As noted above, the S501 Proprietary Trader Regulatory Element was discontinued January 4, 2016. The Exchange anticipates filing a subsequent rule change to eliminate the reference to the $100 session fee when the test center option is eliminated for the S101 and S201 Regulatory Elements.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2016–004 and should be submitted on or before February 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Brent J. Fields,

Secretary.

[FR Doc. 2016–01531 Filed 1–26–16; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76954; File No. SR–BATS–2016–02]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Rule 14.11(i), Managed Fund Shares, to List and Trade Shares of the iShares iBonds Dec 2023 AMT-Free Muni Bond ETF, iShares iBonds Dec 2024 AMT-Free Muni Bond ETF, iShares iBonds Dec 2025 AMT-Free Muni Bond ETF, and iShares iBonds Dec 2026 AMT-Free Muni Bond ETF of the iShares U.S. ETF Trust

January 21, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 12, 2016, BATS Exchange, Inc. (''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to a rule change to list and trade shares of the iShares iBonds Dec 2023 AMT-Free Muni Bond ETF, iShares iBonds Dec 2024 AMT-Free Muni Bond ETF, iShares iBonds Dec 2025 AMT-Free Muni Bond ETF, and iShares iBonds Dec 2026 AMT-Free Muni Bond ETF (each a ''Fund'' or, collectively, the ''Funds'') of the iShares U.S. ETF Trust (the ''Trust'') under BATS Rule 14.11(i) (''Managed Fund Shares''). The shares of the Funds are referred to herein as the ''Shares.''

The text of the proposed rule change is available at the Exchange's Web site at *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

The Exchange proposes to list and trade the Shares under BATS Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange.[3] The Funds will be actively managed funds. The Shares will be offered by the Trust, which was established as a Delaware statutory trust on June 21, 2011. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Funds on Form N–1A (''Registration Statement'') with the Commission.[4]

Description of the Shares and the Funds

BlackRock Fund Advisors is the investment adviser (''BFA'' or ''Adviser'') to the Funds.[5] State Street Bank and Trust Company is the administrator, custodian, and transfer agent (''Administrator,'' ''Custodian,'' and ''Transfer Agent,'' respectively) for the Trust. BlackRock Investments, LLC serves as the distributor (''Distributor'') for the Trust.

BATS Rule 14.11(i)(7) 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.[6] In addition, Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved BATS Rule 14.11(i) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[4] *See* Registration Statement on Form N–1A for the Trust, dated November 2, 2015 (File Nos. 333–179904 and 811–22649). The descriptions of the Funds and the Shares contained herein are based, in part, on information in the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') (the ''Exemptive Order''). *See* Investment Company Act Release No. 29571 (January 24, 2011) (File No. 812–13601).

[5] BFA is an indirect wholly owned subsidiary of BlackRock, Inc.

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for

Continued

14.11(i)(7) further requires that personnel who make decisions on the investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio. Rule 14.11(i)(7) is similar to BATS Rule 14.11(b)(5)(A)(i), however, Rule 14.11(i)(7) 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. The Adviser is not a registered broker-dealer, but is affiliated with multiple broker-dealers and has implemented ''fire walls'' with respect to such broker-dealers regarding access to information concerning the composition and/or changes to a Fund's portfolio. In addition, Adviser personnel who make decisions regarding a Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio. In the event that (a) the Adviser becomes registered as a broker-dealer or newly affiliated with another broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

iShares iBonds Dec 2023 AMT-Free Muni Bond ETF

According to the Registration Statement, the Fund will seek to maximize tax-free current income and terminate on or around December 2023. To achieve its objective, the Fund will invest, under normal circumstances,[7] at least 80% of its net assets in Municipal Securities, as defined below, such that the interest on each security is exempt from U.S. federal income taxes and the federal alternative minimum tax (the ''AMT''). The Fund is not a money market fund and does not seek to maintain a stable net asset value of $1.00 per share. The Fund will be classified as a ''non-diversified'' investment company under the 1940 Act.[8]

The Fund intends to qualify each year as a regulated investment company (a ''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended. The Fund will invest its assets, and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M.

Principal Holdings—Municipal Securities

To achieve its objective, the Fund will invest, under normal circumstances, in U.S.-dollar denominated investment-grade fixed-rate Municipal Securities, as defined below. The Fund will invest in both callable and non-callable municipal bonds. Investment-grade securities are rated a minimum of BBB- or higher by Standard & Poor's Ratings Services and/or Fitch, or Baa3 or higher by Moody's, or if unrated, determined by the Adviser to be of equivalent quality.[9] Under normal circumstances, the Fund's effective duration will vary within one year (plus or minus) of the effective duration of the securities comprising the S&P AMT-Free Municipal Series Dec 2023 Index, which, as of December 15, 2015, was 6.51 years.[10]

Municipal securities (''Municipal Securities'') are fixed and variable rate securities issued in the U.S. by U.S. states and territories, municipalities and other political subdivisions, agencies, authorities, and instrumentalities of states and multi-state agencies and authorities and will include only the following instruments: General obligation bonds,[11] limited obligation bonds (or revenue bonds),[12] municipal notes,[13] municipal commercial paper,[14] tender option bonds,[15] variable rate demand obligations (''VRDOs''),[16] municipal lease obligations,[17] stripped securities,[18] structured securities,[19] when issued securities,[20] zero coupon securities,[21] and exchange traded and

administering the policies and procedures adopted under subparagraph (i) above.

[7] The term ''under normal circumstances'' includes, but is not limited to, the absence of adverse market, economic, political, or other conditions, including extreme volatility or trading halts in the financial markets; 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.

[8] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

[9] According to the Adviser, BFA may determine that unrated securities are of ''equivalent quality'' based on such credit quality factors that it deems appropriate, which may include among other things, performing an analysis similar, to the extent possible, to that performed by a nationally recognized statistical ratings organization when rating similar securities and issuers. In making such a determination, BFA may consider internal analyses and risk ratings, third party research and analysis, and other sources of information, as deemed appropriate by the Adviser.

[10] Effective duration is a measure of the Fund's price sensitivity to changes in yields or interest rates.

[11] General obligation bonds are obligations involving the credit of an issuer possessing taxing power and are payable from such issuer's general revenues and not from any particular source.

[12] Limited obligation bonds are payable only from the revenues derived from a particular facility or class of facilities or, in some cases, from the proceeds of a special excise or other specific revenue source, and also include industrial development bonds issued pursuant to former U.S. federal tax law. Industrial development bonds generally are also revenue bonds and thus are not payable from the issuer's general revenues. The credit and quality of industrial development bonds are usually related to the credit of the corporate user of the facilities. Payment of interest on and repayment of principal of such bonds is the responsibility of the corporate user (and/or any guarantor).

[13] Municipal notes are shorter-term municipal debt obligations that may provide interim financing in anticipation of tax collection, receipt of grants, bond sales, or revenue receipts.

[14] Municipal commercial paper is generally unsecured debt that is issued to meet short-term financing needs.

[15] Tender option bonds are synthetic floating-rate or variable-rate securities issued when long-term bonds are purchased in the primary or secondary market and then deposited into a trust. Custodial receipts are then issued to investors, such as the Fund, evidencing ownership interests in the trust.

[16] VRDOs are tax-exempt obligations that contain a floating or variable interest rate adjustment formula and a right of demand on the part of the holder thereof to receive payment of the unpaid principal balance plus accrued interest upon a short notice period not to exceed seven days.

[17] Municipal lease obligations include certificates of participation issued by government authorities or entities to finance the acquisition or construction of equipment, land, and/or facilities.

[18] Stripped securities are created when an issuer separates the interest and principal components of an instrument and sells them as separate securities. In general, one security is entitled to receive the interest payments on the underlying assets and the other to receive the principal payments.

[19] Structured securities are privately negotiated debt obligations where the principal and/or interest is determined by reference to the performance of an underlying investment, index, or reference obligation, and may be issued by governmental agencies. While structured securities are part of the principal holdings of the Fund, the Issuer represents that such securities, when combined with those instruments held as part of the other portfolio holdings described below, will not exceed 20% of the Fund's net assets.

[20] The Fund may purchase or sell securities that it is entitled to receive on a when issued or delayed delivery basis as well as through a forward commitment.

[21] Zero coupon securities are securities that are sold at a discount to par value and do not pay interest during the life of the security. The discount approximates the total amount of interest the security will accrue and compound over the period until maturity at a rate of interest reflecting the market rate of the security at the time of issuance. Upon maturity, the holder of a zero coupon security is entitled to receive the par value of the security.

non-exchange traded investment companies (including investment companies advised by BFA or its affiliates) that invest in such Municipal Securities.[22]

In the last year of operation, as the bonds held by the Fund mature, the proceeds will not be reinvested in bonds but instead will be held in cash and cash equivalents, including, without limitation, shares of affiliated money market funds, AMT-free tax-exempt municipal notes, VRDOs, tender option bonds and municipal commercial paper. In or around December 2023, the Fund will wind up and terminate, and its net assets will be distributed to then current shareholders.

In the absence of normal circumstances, the Fund may temporarily depart from its normal investment process, provided that such departure is, in the opinion of the Adviser, consistent with the Fund's investment objective and in the best interest of the Fund. For example, the Fund may hold a higher than normal proportion of its assets in cash in response to adverse market, economic or political conditions.

The Fund intends to qualify each year as a regulated investment company (a ''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended.[23] The Fund will invest its assets, and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M.

Other Portfolio Holdings

The Fund may also, to a limited extent (under normal circumstances, less than 20% of the Fund's net assets), engage in transactions in futures contracts, options, or swaps in order to facilitate trading or to reduce transaction costs.[24] The Fund's investments will be consistent with its investment objective and will not be used to achieve leveraged returns (*i.e.* two times or three times the Fund's benchmark, as described in the Registration Statement).

The Fund may also enter into repurchase and reverse repurchase agreements for Municipal Securities (collectively, ''Repurchase Agreements''). Repurchase Agreements involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date and interest payment and have the characteristics of borrowing as part of the Fund's principal holdings.[25]

The Fund may also invest in short-term instruments (''Short-Term Instruments''),[26] which includes exchange traded and non-exchange traded investment companies (including investment companies advised by BFA or its affiliates) that invest in money market instruments.

Investment Restrictions

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), as deemed illiquid by the Adviser[27] under the 1940 Act.[28] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund may also invest up to 20% of its net assets in Municipal Securities that pay interest that is subject to the AMT.

The Fund will not purchase the securities of issuers conducting their principal business activity in the same industry if, immediately after the purchase and as a result thereof, the value of the Fund's investments in that industry would equal or exceed 25% of the current value of the Fund's total assets, provided that this restriction does not limit the Fund's: (i) Investments in securities of other investment companies, (ii) investments in securities issued or guaranteed by the U.S. government, its agencies or

[22] The Fund currently anticipates investing in only registered open-end investment companies, including mutual funds and the open-end investment company funds described in BATS Rule 14.11. The Fund may invest in the securities of other investment companies to the extent permitted by law.

[23] 26 U.S.C. 851.

[24] Derivatives might be included in the Fund's investments to serve the investment objectives of the Fund. Such derivatives include only the following: Interest rate futures, interest rate options, interest rate swaps, and swaps on Municipal Securities indexes. The derivatives will be centrally cleared and they will be collateralized. Derivatives are not a principal investment strategy of the Fund.

[25] The Fund's exposure to reverse repurchase agreements will be covered by liquid assets having a value equal to or greater than such commitments. The use of reverse repurchase agreements is a form of leverage because the proceeds derived from reverse repurchase agreements may be invested in additional securities. As further stated below, the Fund's investments will be consistent with its investment objective and will not be used to achieve leveraged returns.

[26] The Fund may invest in Short-Term Instruments, including money market instruments, on an ongoing basis to provide liquidity or for other reasons. Money market instruments are generally short-term investments that include only the following: (i) Shares of money market funds (including those advised by BFA or otherwise affiliated with BFA); (ii) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities (including government-sponsored enterprises); (iii) negotiable certificates of deposit (''CDs''), bankers' acceptances, fixed-time deposits and other obligations of U.S. and non-U.S. banks (including non-U.S. branches) and similar institutions; (iv) commercial paper, including asset-backed commercial paper; (v) non-convertible corporate debt securities (*e.g.,* bonds and debentures) with remaining maturities at the date of purchase of not more than 397 days and that satisfy the rating requirements set forth in Rule 2a–7 under the 1940 Act; and (vi) short-term U.S. dollar-denominated obligations of non-U.S. banks (including U.S. branches) that, in the opinion of BFA, are of comparable quality to obligations of U.S. banks which may be purchased by the Fund. All money market securities acquired by the Fund will be rated investment grade. The Fund does not intend to invest in any unrated money market securities. However, it may do so, to a limited extent, such as where a rated money market security becomes unrated, if such money market security is determined by the Adviser to be of comparable quality. BFA may determine that unrated securities are of comparable quality based on such credit quality factors that it deems appropriate, which may include, among other things, performing an analysis similar, to the extent possible, to that performed by a nationally recognized statistical rating organization rating similar securities and issuers.

[27] In reaching liquidity decisions, the Adviser may consider factors including: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; the nature of the security and the nature of the marketplace trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer); any legal or contractual restrictions on the ability to transfer the security or asset; significant developments involving the issuer or counterparty specifically (*e.g.,* default, bankruptcy, etc.) or the securities markets generally; and settlement practices, registration procedures, limitations on currency conversion or repatriation, and transfer limitations (for foreign securities or other assets).

[28] 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).

instrumentalities, (iii) investments in securities of state, territory, possession or municipal governments and their authorities, agencies, instrumentalities or political subdivisions or (iv) investments in repurchase agreements collateralized by any such obligations.[29]

iShares iBonds Dec 2024 AMT-Free Muni Bond ETF

According to the Registration Statement, the Fund will seek to maximize tax-free current income and terminate on or around December 2024. To achieve its objective, the Fund will invest, under normal circumstances,[30] at least 80% of its net assets in Municipal Securities, as defined below, such that the interest on each security is exempt from U.S. federal income taxes and the federal alternative minimum tax (the ''AMT''). The Fund is not a money market fund and does not seek to maintain a stable net asset value of $1.00 per share. The Fund will be classified as a ''non-diversified'' investment company under the 1940 Act.[31]

The Fund intends to qualify each year as a regulated investment company (a ''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended. The Fund will invest its assets, and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M.

Principal Holdings—Municipal Securities

To achieve its objective, the Fund will invest, under normal circumstances, in U.S.-dollar denominated investment-grade fixed-rate Municipal Securities, as defined below. The Fund will invest in both callable and non-callable municipal bonds. Investment-grade securities are rated a minimum of BBB- or higher by Standard & Poor's Ratings Services and/or Fitch, or Baa3 or higher by Moody's, or if unrated, determined by the Adviser to be of equivalent quality.[32] Under normal circumstances, the Fund's effective duration will vary within one year (plus or minus) of the effective duration of the securities comprising the S&P AMT-Free Municipal Series Dec 2024 Index, which, as of December 15, 2015, was 7.24 years.[33]

Municipal securities (''Municipal Securities'') are fixed and variable rate securities issued in the U.S. by U.S. states and territories, municipalities and other political subdivisions, agencies, authorities, and instrumentalities of states and multi-state agencies and authorities and will include only the following instruments: General obligation bonds,[34] limited obligation bonds (or revenue bonds),[35], municipal notes,[36] municipal commercial paper,[37] tender option bonds,[38] variable rate demand obligations (''VRDOs''),[39] municipal lease obligations,[40] stripped securities,[41] structured securities,[42] when issued securities,[43] zero coupon securities,[44] and exchange traded and non-exchange traded investment companies (including investment companies advised by BFA or its affiliates) that invest in such Municipal Securities.[45]

In the last year of operation, as the bonds held by the Fund mature, the proceeds will not be reinvested in bonds but instead will be held in cash and cash equivalents, including, without limitation, shares of affiliated money market funds, AMT-free tax-exempt municipal notes, VRDOs, tender option bonds and municipal commercial paper. In or around December 2024, the Fund will wind up and terminate, and its net assets will be distributed to then current shareholders.

In the absence of normal circumstances, the Fund may temporarily depart from its normal investment process, provided that such departure is, in the opinion of the Adviser, consistent with the Fund's investment objective and in the best interest of the Fund. For example, the Fund may hold a higher than normal proportion of its assets in cash in response to adverse market, economic or political conditions.

[29] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests in 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).

[30] The term ''under normal circumstances'' includes, but is not limited to, the absence of adverse market, economic, political, or other conditions, including extreme volatility or trading halts in the financial markets; 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.

[31] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

[32] According to the Adviser, BFA may determine that unrated securities are of ''equivalent quality'' based on such credit quality factors that it deems appropriate, which may include among other things, performing an analysis similar, to the extent possible, to that performed by a nationally recognized statistical ratings organization when rating similar securities and issuers. In making such a determination, BFA may consider internal analyses and risk ratings, third party research and analysis, and other sources of information, as deemed appropriate by the Adviser.

[33] Effective duration is a measure of the Fund's price sensitivity to changes in yields or interest rates.

[34] General obligation bonds are obligations involving the credit of an issuer possessing taxing power and are payable from such issuer's general revenues and not from any particular source.

[35] Limited obligation bonds are payable only from the revenues derived from a particular facility or class of facilities or, in some cases, from the proceeds of a special excise or other specific revenue source, and also include industrial development bonds issued pursuant to former U.S. federal tax law. Industrial development bonds generally are also revenue bonds and thus are not payable from the issuer's general revenues. The credit and quality of industrial development bonds are usually related to the credit of the corporate user of the facilities. Payment of interest on and repayment of principal of such bonds is the responsibility of the corporate user (and/or any guarantor).

[36] Municipal notes are shorter-term municipal debt obligations that may provide interim financing in anticipation of tax collection, receipt of grants, bond sales, or revenue receipts.

[37] Municipal commercial paper is generally unsecured debt that is issued to meet short-term financing needs.

[38] Tender option bonds are synthetic floating-rate or variable-rate securities issued when long-term bonds are purchased in the primary or secondary market and then deposited into a trust. Custodial receipts are then issued to investors, such as the Fund, evidencing ownership interests in the trust.

[39] VRDOs are tax-exempt obligations that contain a floating or variable interest rate adjustment formula and a right of demand on the part of the holder thereof to receive payment of the unpaid principal balance plus accrued interest upon a short notice period not to exceed seven days.

[40] Municipal lease obligations include certificates of participation issued by government authorities or entities to finance the acquisition or construction of equipment, land, and/or facilities.

[41] Stripped securities are created when an issuer separates the interest and principal components of an instrument and sells them as separate securities. In general, one security is entitled to receive the interest payments on the underlying assets and the other to receive the principal payments.

[42] Structured securities are privately negotiated debt obligations where the principal and/or interest is determined by reference to the performance of an underlying investment, index, or reference obligation, and may be issued by governmental agencies. While structured securities are part of the principal holdings of the Fund, the Issuer represents that such securities, when combined with those instruments held as part of the other portfolio holdings described below, will not exceed 20% of the Fund's net assets.

[43] The Fund may purchase or sell securities that it is entitled to receive on a when issued or delayed delivery basis as well as through a forward commitment.

[44] Zero coupon securities are securities that are sold at a discount to par value and do not pay interest during the life of the security. The discount approximates the total amount of interest the security will accrue and compound over the period until maturity at a rate of interest reflecting the market rate of the security at the time of issuance. Upon maturity, the holder of a zero coupon security is entitled to receive the par value of the security.

[45] The Fund currently anticipates investing in only registered open-end investment companies, including mutual funds and the open-end investment company funds described in BATS Rule 14.11. The Fund may invest in the securities of other investment companies to the extent permitted by law.

The Fund intends to qualify each year as a regulated investment company (a ''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended.[46] The Fund will invest its assets, and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M.

Other Portfolio Holdings

The Fund may also, to a limited extent (under normal circumstances, less than 20% of the Fund's net assets), engage in transactions in futures contracts, options, or swaps in order to facilitate trading or to reduce transaction costs.[47] The Fund's investments will be consistent with its investment objective and will not be used to achieve leveraged returns (*i.e.* two times or three times the Fund's benchmark, as described in the Registration Statement).

The Fund may also enter into repurchase and reverse repurchase agreements for Municipal Securities (collectively, ''Repurchase Agreements''). Repurchase Agreements involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date and interest payment and have the characteristics of borrowing as part of the Fund's principal holdings.[48]

The Fund may also invest in short-term instruments (''Short-Term Instruments''),[49] which includes exchange traded and non-exchange traded investment companies (including investment companies advised by BFA or its affiliates) that invest in money market instruments.

Investment Restrictions

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), as deemed illiquid by the Adviser[50] under the 1940 Act.[51] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund may also invest up to 20% of its net assets in Municipal Securities that pay interest that is subject to the AMT.

The Fund will not purchase the securities of issuers conducting their principal business activity in the same industry if, immediately after the purchase and as a result thereof, the value of the Fund's investments in that industry would equal or exceed 25% of the current value of the Fund's total assets, provided that this restriction does not limit the Fund's: (i) Investments in securities of other investment companies, (ii) investments in securities issued or guaranteed by the U.S. government, its agencies or instrumentalities, (iii) investments in securities of state, territory, possession or municipal governments and their authorities, agencies, instrumentalities or political subdivisions or (iv) investments in repurchase agreements collateralized by any such obligations.[52]

iShares iBonds Dec 2025 AMT-Free Muni Bond ETF

According to the Registration Statement, the Fund will seek to maximize tax-free current income and terminate on or around December 2025. To achieve its objective, the Fund will invest, under normal circumstances,[53] at least 80% of its net assets in Municipal Securities, as defined below, such that the interest on each security is exempt from U.S. federal income taxes and the federal alternative minimum tax (the ''AMT''). The Fund is not a money market fund and does not

[46] 26 U.S.C. 851.

[47] Derivatives might be included in the Fund's investments to serve the investment objectives of the Fund. Such derivatives include only the following: Interest rate futures, interest rate options, interest rate swaps, and swaps on Municipal Securities indexes. The derivatives will be centrally cleared and they will be collateralized. Derivatives are not a principal investment strategy of the Fund.

[48] The Fund's exposure to reverse repurchase agreements will be covered by liquid assets having a value equal to or greater than such commitments. The use of reverse repurchase agreements is a form of leverage because the proceeds derived from reverse repurchase agreements may be invested in additional securities. As further stated below, the Fund's investments will be consistent with its investment objective and will not be used to achieve leveraged returns.

[49] The Fund may invest in Short-Term Instruments, including money market instruments, on an ongoing basis to provide liquidity or for other reasons. Money market instruments are generally short-term investments that include only the following: (i) Shares of money market funds (including those advised by BFA or otherwise affiliated with BFA); (ii) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities (including government-sponsored enterprises); (iii) negotiable certificates of deposit (''CDs''), bankers' acceptances, fixed-time deposits and other obligations of U.S. and non-U.S. banks (including non-U.S. branches) and similar institutions; (iv) commercial paper, including asset-backed commercial paper; (v) non-convertible corporate debt securities (*e.g.,* bonds and debentures) with remaining maturities at the date of purchase of not more than 397 days and that satisfy the rating requirements set forth in Rule 2a–7 under the 1940 Act; and (vi) short-term U.S. dollar-denominated obligations of non-U.S. banks (including U.S. branches) that, in the opinion of BFA, are of comparable quality to obligations of U.S. banks which may be purchased by the Fund. All money market securities acquired by the Fund will be rated investment grade. The Fund does not intend to invest in any unrated money market securities. However, it may do so, to a limited extent, such as where a rated money market security becomes unrated, if such money market security is determined by the Adviser to be of comparable quality. BFA may determine that unrated securities are of comparable quality based on such credit quality factors that it deems appropriate, which may include, among other things, performing an analysis similar, to the extent possible, to that performed by a nationally recognized statistical rating organization rating similar securities and issuers.

[50] In reaching liquidity decisions, the Adviser may consider factors including: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; the nature of the security and the nature of the marketplace trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer); any legal or contractual restrictions on the ability to transfer the security or asset; significant developments involving the issuer or counterparty specifically (*e.g.,* default, bankruptcy, etc.) or the securities markets generally; and settlement practices, registration procedures, limitations on currency conversion or repatriation, and transfer limitations (for foreign securities or other assets).

[51] 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).

[52] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests in 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).

[53] The term ''under normal circumstances'' includes, but is not limited to, the absence of adverse market, economic, political, or other conditions, including extreme volatility or trading halts in the financial markets; 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.

seek to maintain a stable net asset value of $1.00 per share. The Fund will be classified as a ''non-diversified'' investment company under the 1940 Act.[54]

The Fund intends to qualify each year as a regulated investment company (a ''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended. The Fund will invest its assets, and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M.

Principal Holdings—Municipal Securities

To achieve its objective, the Fund will invest, under normal circumstances, in U.S.-dollar denominated investment-grade fixed-rate Municipal Securities, as defined below. The Fund will invest in both callable and non-callable municipal bonds. Investment-grade securities are rated a minimum of BBB- or higher by Standard & Poor's Ratings Services and/or Fitch, or Baa3 or higher by Moody's, or if unrated, determined by the Adviser to be of equivalent quality.[55] Under normal circumstances, the Fund's effective duration will vary within one year (plus or minus) of the effective duration of the securities comprising the S&P AMT-Free Municipal Series Dec 2025 Index, which, as of December 15, 2015, was 8.26 years.[56]

Municipal securities (''Municipal Securities'') are fixed and variable rate securities issued in the U.S. by U.S. states and territories, municipalities and other political subdivisions, agencies, authorities, and instrumentalities of states and multi-state agencies and authorities and will include only the following instruments: General obligation bonds,[57] limited obligation bonds (or revenue bonds),[58] municipal notes,[59] municipal commercial paper,[60] tender option bonds,[61] variable rate demand obligations (''VRDOs''),[62] municipal lease obligations,[63] stripped securities,[64] structured securities,[65] when issued securities,[66] zero coupon securities,[67] and exchange traded and non-exchange traded investment companies (including investment companies advised by BFA or its affiliates) that invest in such Municipal Securities.[68]

In the last year of operation, as the bonds held by the Fund mature, the proceeds will not be reinvested in bonds but instead will be held in cash and cash equivalents, including, without limitation, shares of affiliated money market funds, AMT-free tax-exempt municipal notes, VRDOs, tender option bonds and municipal commercial paper. In or around December 2025, the Fund will wind up and terminate, and its net assets will be distributed to then current shareholders.

In the absence of normal circumstances, the Fund may temporarily depart from its normal investment process, provided that such departure is, in the opinion of the Adviser, consistent with the Fund's investment objective and in the best interest of the Fund. For example, the Fund may hold a higher than normal proportion of its assets in cash in response to adverse market, economic or political conditions.

The Fund intends to qualify each year as a regulated investment company (a ''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended.[69] The Fund will invest its assets, and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M.

Other Portfolio Holdings

The Fund may also, to a limited extent (under normal circumstances, less than 20% of the Fund's net assets), engage in transactions in futures contracts, options, or swaps in order to facilitate trading or to reduce transaction costs.[70] The Fund's investments will be consistent with its investment objective and will not be used to achieve leveraged returns (*i.e.* two times or three times the Fund's benchmark, as described in the Registration Statement).

[54] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

[55] According to the Adviser, BFA may determine that unrated securities are of ''equivalent quality'' based on such credit quality factors that it deems appropriate, which may include among other things, performing an analysis similar, to the extent possible, to that performed by a nationally recognized statistical ratings organization when rating similar securities and issuers. In making such a determination, BFA may consider internal analyses and risk ratings, third party research and analysis, and other sources of information, as deemed appropriate by the Adviser.

[56] Effective duration is a measure of the Fund's price sensitivity to changes in yields or interest rates.

[57] General obligation bonds are obligations involving the credit of an issuer possessing taxing power and are payable from such issuer's general revenues and not from any particular source.

[58] Limited obligation bonds are payable only from the revenues derived from a particular facility or class of facilities or, in some cases, from the proceeds of a special excise or other specific revenue source, and also include industrial development bonds issued pursuant to former U.S. federal tax law. Industrial development bonds generally are also revenue bonds and thus are not payable from the issuer's general revenues. The credit and quality of industrial development bonds are usually related to the credit of the corporate user of the facilities. Payment of interest on and repayment of principal of such bonds is the responsibility of the corporate user (and/or any guarantor).

[59] Municipal notes are shorter-term municipal debt obligations that may provide interim financing in anticipation of tax collection, receipt of grants, bond sales, or revenue receipts.

[60] Municipal commercial paper is generally unsecured debt that is issued to meet short-term financing needs.

[61] Tender option bonds are synthetic floating-rate or variable-rate securities issued when long-term bonds are purchased in the primary or secondary market and then deposited into a trust. Custodial receipts are then issued to investors, such as the Fund, evidencing ownership interests in the trust.

[62] VRDOs are tax-exempt obligations that contain a floating or variable interest rate adjustment formula and a right of demand on the part of the holder thereof to receive payment of the unpaid principal balance plus accrued interest upon a short notice period not to exceed seven days.

[63] Municipal lease obligations include certificates of participation issued by government authorities or entities to finance the acquisition or construction of equipment, land, and/or facilities.

[64] Stripped securities are created when an issuer separates the interest and principal components of an instrument and sells them as separate securities. In general, one security is entitled to receive the interest payments on the underlying assets and the other to receive the principal payments.

[65] Structured securities are privately negotiated debt obligations where the principal and/or interest is determined by reference to the performance of an underlying investment, index, or reference obligation, and may be issued by governmental agencies. While structured securities are part of the principal holdings of the Fund, the Issuer represents that such securities, when combined with those instruments held as part of the other portfolio holdings described below, will not exceed 20% of the Fund's net assets.

[66] The Fund may purchase or sell securities that it is entitled to receive on a when issued or delayed delivery basis as well as through a forward commitment.

[67] Zero coupon securities are securities that are sold at a discount to par value and do not pay interest during the life of the security. The discount approximates the total amount of interest the security will accrue and compound over the period until maturity at a rate of interest reflecting the market rate of the security at the time of issuance. Upon maturity, the holder of a zero coupon security is entitled to receive the par value of the security.

[68] The Fund currently anticipates investing in only registered open-end investment companies, including mutual funds and the open-end investment company funds described in BATS Rule 14.11. The Fund may invest in the securities of other investment companies to the extent permitted by law.

[69] 26 U.S.C. 851.

[70] Derivatives might be included in the Fund's investments to serve the investment objectives of the Fund. Such derivatives include only the following: Interest rate futures, interest rate options, interest rate swaps, and swaps on Municipal Securities indexes. The derivatives will be centrally cleared and they will be collateralized. Derivatives are not a principal investment strategy of the Fund.

The Fund may also enter into repurchase and reverse repurchase agreements for Municipal Securities (collectively, ''Repurchase Agreements''). Repurchase Agreements involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date and interest payment and have the characteristics of borrowing as part of the Fund's principal holdings.[71]

The Fund may also invest in short-term instruments (''Short-Term Instruments''),[72] which includes exchange traded and non-exchange traded investment companies (including investment companies advised by BFA or its affiliates) that invest in money market instruments.

Investment Restrictions

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), as deemed illiquid by the Adviser[73] under the 1940 Act.[74] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund may also invest up to 20% of its net assets in Municipal Securities that pay interest that is subject to the AMT.

The Fund will not purchase the securities of issuers conducting their principal business activity in the same industry if, immediately after the purchase and as a result thereof, the value of the Fund's investments in that industry would equal or exceed 25% of the current value of the Fund's total assets, provided that this restriction does not limit the Fund's: (i) Investments in securities of other investment companies, (ii) investments in securities issued or guaranteed by the U.S. government, its agencies or instrumentalities, (iii) investments in securities of state, territory, possession or municipal governments and their authorities, agencies, instrumentalities or political subdivisions or (iv) investments in repurchase agreements collateralized by any such obligations.[75]

iShares iBonds Dec 2026 AMT-Free Muni Bond ETF

According to the Registration Statement, the Fund will seek to maximize tax-free current income and terminate on or around December 2026. To achieve its objective, the Fund will invest, under normal circumstances,[76] at least 80% of its net assets in Municipal Securities, as defined below, such that the interest on each security is exempt from U.S. federal income taxes and the federal alternative minimum tax (the ''AMT''). The Fund is not a money market fund and does not seek to maintain a stable net asset value of $1.00 per share. The Fund will be classified as a ''non-diversified'' investment company under the 1940 Act.[77]

The Fund intends to qualify each year as a regulated investment company (a ''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended. The Fund will invest its assets, and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M.

Principal Holdings—Municipal Securities

To achieve its objective, the Fund will invest, under normal circumstances, in U.S.-dollar denominated investment-grade fixed-rate Municipal Securities, as defined below. The Fund will invest in both callable and non-callable municipal bonds. Investment-grade securities are rated a minimum of BBB- or higher by Standard & Poor's Ratings

[71] The Fund's exposure to reverse repurchase agreements will be covered by liquid assets having a value equal to or greater than such commitments. The use of reverse repurchase agreements is a form of leverage because the proceeds derived from reverse repurchase agreements may be invested in additional securities. As further stated below, the Fund's investments will be consistent with its investment objective and will not be used to achieve leveraged returns.

[72] The Fund may invest in Short-Term Instruments, including money market instruments, on an ongoing basis to provide liquidity or for other reasons. Money market instruments are generally short-term investments that include only the following: (i) Shares of money market funds (including those advised by BFA or otherwise affiliated with BFA); (ii) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities (including government-sponsored enterprises); (iii) negotiable certificates of deposit (''CDs''), bankers' acceptances, fixed-time deposits and other obligations of U.S. and non-U.S. banks (including non-U.S. branches) and similar institutions; (iv) commercial paper, including asset-backed commercial paper; (v) non-convertible corporate debt securities (*e.g.,* bonds and debentures) with remaining maturities at the date of purchase of not more than 397 days and that satisfy the rating requirements set forth in Rule 2a–7 under the 1940 Act; and (vi) short-term U.S. dollar-denominated obligations of non-U.S. banks (including U.S. branches) that, in the opinion of BFA, are of comparable quality to obligations of U.S. banks which may be purchased by the Fund. All money market securities acquired by the Fund will be rated investment grade. The Fund does not intend to invest in any unrated money market securities. However, it may do so, to a limited extent, such as where a rated money market security becomes unrated, if such money market security is determined by the Adviser to be of comparable quality. BFA may determine that unrated securities are of comparable quality based on such credit quality factors that it deems appropriate, which may include, among other things, performing an analysis similar, to the extent possible, to that performed by a nationally recognized statistical rating organization rating similar securities and issuers.

[73] In reaching liquidity decisions, the Adviser may consider factors including: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; the nature of the security and the nature of the marketplace trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer); any legal or contractual restrictions on the ability to transfer the security or asset; significant developments involving the issuer or counterparty specifically (*e.g.,* default, bankruptcy, etc.) or the securities markets generally; and settlement practices, registration procedures, limitations on currency conversion or repatriation, and transfer limitations (for foreign securities or other assets).

[74] 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).

[75] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests in 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).

[76] The term ''under normal circumstances'' includes, but is not limited to, the absence of adverse market, economic, political, or other conditions, including extreme volatility or trading halts in the financial markets; 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.

[77] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

Services and/or Fitch, or Baa3 or higher by Moody's, or if unrated, determined by the Adviser to be of equivalent quality.[78] Under normal circumstances, the Fund's effective duration will vary within one year (plus or minus) of the effective duration of the securities comprising the S&P AMT-Free Municipal Series Dec 2026 Index, which, as of December 15, 2015, was 9.22 years.[79]

Municipal securities (''Municipal Securities'') are fixed and variable rate securities issued in the U.S. by U.S. states and territories, municipalities and other political subdivisions, agencies, authorities, and instrumentalities of states and multi-state agencies and authorities and will include only the following instruments: General obligation bonds,[80] limited obligation bonds (or revenue bonds),[81] municipal notes,[82] municipal commercial paper,[83] tender option bonds,[84] variable rate demand obligations (''VRDOs''),[85] municipal lease obligations,[86] stripped securities,[87] structured securities,[88] when issued securities,[89] zero coupon securities,[90] and exchange traded and non-exchange traded investment companies (including investment companies advised by BFA or its affiliates) that invest in such Municipal Securities.[91]

In the last year of operation, as the bonds held by the Fund mature, the proceeds will not be reinvested in bonds but instead will be held in cash and cash equivalents, including, without limitation, shares of affiliated money market funds, AMT-free tax-exempt municipal notes, VRDOs, tender option bonds and municipal commercial paper. In or around December 2026, the Fund will wind up and terminate, and its net assets will be distributed to then current shareholders.

In the absence of normal circumstances, the Fund may temporarily depart from its normal investment process, provided that such departure is, in the opinion of the Adviser, consistent with the Fund's investment objective and in the best interest of the Fund. For example, the Fund may hold a higher than normal proportion of its assets in cash in response to adverse market, economic or political conditions.

The Fund intends to qualify each year as a regulated investment company (a ''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended.[92] The Fund will invest its assets, and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M.

Other Portfolio Holdings

The Fund may also, to a limited extent (under normal circumstances, less than 20% of the Fund's net assets), engage in transactions in futures contracts, options, or swaps in order to facilitate trading or to reduce transaction costs.[93] The Fund's investments will be consistent with its investment objective and will not be used to achieve leveraged returns (*i.e.* two times or three times the Fund's benchmark, as described in the Registration Statement).

The Fund may also enter into repurchase and reverse repurchase agreements for Municipal Securities (collectively, ''Repurchase Agreements''). Repurchase Agreements involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date and interest payment and have the characteristics of borrowing as part of the Fund's principal holdings.[94]

The Fund may also invest in short-term instruments (''Short-Term Instruments''),[95] which includes

[78] According to the Adviser, BFA may determine that unrated securities are of ''equivalent quality'' based on such credit quality factors that it deems appropriate, which may include among other things, performing an analysis similar, to the extent possible, to that performed by a nationally recognized statistical ratings organization when rating similar securities and issuers. In making such a determination, BFA may consider internal analyses and risk ratings, third party research and analysis, and other sources of information, as deemed appropriate by the Adviser.

[79] Effective duration is a measure of the Fund's price sensitivity to changes in yields or interest rates.

[80] General obligation bonds are obligations involving the credit of an issuer possessing taxing power and are payable from such issuer's general revenues and not from any particular source.

[81] Limited obligation bonds are payable only from the revenues derived from a particular facility or class of facilities or, in some cases, from the proceeds of a special excise or other specific revenue source, and also include industrial development bonds issued pursuant to former U.S. federal tax law. Industrial development bonds generally are also revenue bonds and thus are not payable from the issuer's general revenues. The credit and quality of industrial development bonds are usually related to the credit of the corporate user of the facilities. Payment of interest on and repayment of principal of such bonds is the responsibility of the corporate user (and/or any guarantor).

[82] Municipal notes are shorter-term municipal debt obligations that may provide interim financing in anticipation of tax collection, receipt of grants, bond sales, or revenue receipts.

[83] Municipal commercial paper is generally unsecured debt that is issued to meet short-term financing needs.

[84] Tender option bonds are synthetic floating-rate or variable-rate securities issued when long-term bonds are purchased in the primary or secondary market and then deposited into a trust. Custodial receipts are then issued to investors, such as the Fund, evidencing ownership interests in the trust.

[85] VRDOs are tax-exempt obligations that contain a floating or variable interest rate adjustment formula and a right of demand on the part of the holder thereof to receive payment of the unpaid principal balance plus accrued interest upon a short notice period not to exceed seven days.

[86] Municipal lease obligations include certificates of participation issued by government authorities or entities to finance the acquisition or construction of equipment, land, and/or facilities.

[87] Stripped securities are created when an issuer separates the interest and principal components of an instrument and sells them as separate securities. In general, one security is entitled to receive the interest payments on the underlying assets and the other to receive the principal payments.

[88] Structured securities are privately negotiated debt obligations where the principal and/or interest is determined by reference to the performance of an underlying investment, index, or reference obligation, and may be issued by governmental agencies. While structured securities are part of the principal holdings of the Fund, the Issuer represents that such securities, when combined with those instruments held as part of the other portfolio holdings described below, will not exceed 20% of the Fund's net assets.

[89] The Fund may purchase or sell securities that it is entitled to receive on a when issued or delayed delivery basis as well as through a forward commitment.

[90] Zero coupon securities are securities that are sold at a discount to par value and do not pay interest during the life of the security. The discount approximates the total amount of interest the security will accrue and compound over the period until maturity at a rate of interest reflecting the market rate of the security at the time of issuance. Upon maturity, the holder of a zero coupon security is entitled to receive the par value of the security.

[91] The Fund currently anticipates investing in only registered open-end investment companies, including mutual funds and the open-end investment company funds described in BATS Rule 14.11. The Fund may invest in the securities of other investment companies to the extent permitted by law.

[92] 26 U.S.C. 851.

[93] Derivatives might be included in the Fund's investments to serve the investment objectives of the Fund. Such derivatives include only the following: Interest rate futures, interest rate options, interest rate swaps, and swaps on Municipal Securities indexes. The derivatives will be centrally cleared and they will be collateralized. Derivatives are not a principal investment strategy of the Fund.

[94] The Fund's exposure to reverse repurchase agreements will be covered by liquid assets having a value equal to or greater than such commitments. The use of reverse repurchase agreements is a form of leverage because the proceeds derived from reverse repurchase agreements may be invested in additional securities. As further stated below, the Fund's investments will be consistent with its investment objective and will not be used to achieve leveraged returns.

[95] The Fund may invest in Short-Term Instruments, including money market instruments, on an ongoing basis to provide liquidity or for other reasons. Money market instruments are generally short-term investments that include only the following: (i) Shares of money market funds (including those advised by BFA or otherwise affiliated with BFA); (ii) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities (including government-sponsored enterprises); (iii) negotiable certificates of deposit (''CDs''), bankers' acceptances, fixed-time deposits and other obligations of U.S. and non-U.S. banks (including non-U.S. branches) and similar

exchange traded and non-exchange traded investment companies (including investment companies advised by BFA or its affiliates) that invest in money market instruments.

Investment Restrictions

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), as deemed illiquid by the Adviser [96] under the 1940 Act.[97] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund may also invest up to 20% of its net assets in Municipal Securities that pay interest that is subject to the AMT.

The Fund will not purchase the securities of issuers conducting their principal business activity in the same industry if, immediately after the purchase and as a result thereof, the value of the Fund's investments in that industry would equal or exceed 25% of the current value of the Fund's total assets, provided that this restriction does not limit the Fund's: (i) Investments in securities of other investment companies, (ii) investments in securities issued or guaranteed by the U.S. government, its agencies or instrumentalities, (iii) investments in securities of state, territory, possession or municipal governments and their authorities, agencies, instrumentalities or political subdivisions or (iv) investments in repurchase agreements collateralized by any such obligations.[98]

Net Asset Value

According to the Registration Statement, the net asset value (''NAV'') of the Funds will be calculated each business day 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''), on each day that the NYSE is open for trading, based on prices at the NAV Calculation Time. NAV per Share is calculated by dividing each Fund's net assets by the number of Shares outstanding.

According to the Registration Statement, unless otherwise described below, the Funds will value Municipal Securities using prices provided directly from one or more broker-dealers, market makers, or independent third-party pricing services which may use matrix pricing and valuation models, as well as recent market transactions for the same or similar assets, to derive values.

Exchange traded investment companies will be valued at market closing price or, if no closing price is available, at the last traded price on the primary exchange on which they are traded. Price information for such securities will be taken from the exchange where the security is primarily traded. Investment companies not listed on an exchange are valued at their net asset value.

Futures and options contracts will be valued at their last sale price or settle price as of the close of the applicable exchange.

Repurchase Agreements will generally be valued at par. In certain circumstances, Short-Term Instruments may be valued on the basis of amortized cost.

According to the Registration Statement, generally, trading in money market instruments, and certain Municipal Securities is substantially completed each day at various times prior to the close of business on the Exchange. Additionally, trading in certain derivatives is substantially completed each day at various times prior to the close of business on the Exchange. The values of such securities and derivatives used in computing the NAV of the Funds are determined at such times.

According to the Registration Statement, when market quotations are not readily available or are believed by BFA to be unreliable, the Funds' investments are valued at fair value. Fair value determinations are made by BFA in accordance with policies and procedures approved by the Trust's board of trustees and in accordance with the 1940 Act. BFA may conclude that a market quotation is not readily available or is unreliable if a security or other asset or liability is thinly traded, or where there is a significant event [99] subsequent to the most recent market quotation.

According to the Registration Statement, fair value represents a good faith approximation of the value of an asset or liability. The fair value of an asset or liability held by a Fund is the amount that the Fund might reasonably expect to receive from the current sale of that asset or the cost to extinguish that liability in an arm's-length transaction. Valuing a Fund's investments using fair value pricing will result in prices that may differ from current valuations and that may not be the prices at which those investments

institutions; (iv) commercial paper, including asset-backed commercial paper; (v) non-convertible corporate debt securities (*e.g.,* bonds and debentures) with remaining maturities at the date of purchase of not more than 397 days and that satisfy the rating requirements set forth in Rule 2a–7 under the 1940 Act; and (vi) short-term U.S. dollar-denominated obligations of non-U.S. banks (including U.S. branches) that, in the opinion of BFA, are of comparable quality to obligations of U.S. banks which may be purchased by the Fund. All money market securities acquired by the Fund will be rated investment grade. The Fund does not intend to invest in any unrated money market securities. However, it may do so, to a limited extent, such as where a rated money market security becomes unrated, if such money market security is determined by the Adviser to be of comparable quality. BFA may determine that unrated securities are of comparable quality based on such credit quality factors that it deems appropriate, which may include, among other things, performing an analysis similar, to the extent possible, to that performed by a nationally recognized statistical rating organization rating similar securities and issuers.

[96] In reaching liquidity decisions, the Adviser may consider factors including: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; the nature of the security and the nature of the marketplace trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer); any legal or contractual restrictions on the ability to transfer the security or asset; significant developments involving the issuer or counterparty specifically (*e.g.,* default, bankruptcy, etc.) or the securities markets generally; and settlement practices, registration procedures, limitations on currency conversion or repatriation, and transfer limitations (for foreign securities or other assets).

[97] 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).

[98] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests in 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).

[99] A ''significant event'' is an event that, in the judgment of BFA, is likely to cause a material change to the closing market price of the asset or liability held by the Fund.

could have been sold during the period in which the particular fair values were used.

The Shares

Each Fund will issue and redeem Shares on a continuous basis at the NAV per Share only in large blocks of a specified number of Shares or multiples thereof (''Creation Units'') in transactions with authorized participants who have entered into agreements with the Distributor. Each Fund currently anticipates that a Creation Unit will consist of 50,000 Shares, though this number may change from time to time, including prior to listing of the Funds. The exact number of Shares that will constitute a Creation Unit will be disclosed in the respective Registration Statement of each Fund. Once created, Shares of each Fund trade on the secondary market in amounts less than a Creation Unit.

The consideration for purchase of Creation Units of a Fund generally will consist of the in-kind deposit of a designated portfolio of securities (including any portion of such securities for which cash may be substituted) (*i.e.,* the ''Deposit Securities''), and the ''Cash Component'' computed as described below. Together, the Deposit Securities and the Cash Component constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of a Fund.

The portfolio of securities required for purchase of a Creation Unit may not be identical to the portfolio of securities a Fund will deliver upon redemption of Shares. The Deposit Securities and Fund Securities (as defined below), as the case may be, in connection with a purchase or redemption of a Creation Unit, generally will correspond pro rata to the securities held by the Fund.

The Cash Component will be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the ''Deposit Amount,'' which will be an amount equal to the market value of the Deposit Securities, and serve to compensate for any differences between the NAV per Creation Unit and the Deposit Amount. Each Fund generally offers Creation Units partially for cash. BFA will make available through the National Securities Clearing Corporation (''NSCC'') on each business day, prior to the opening of business on the Exchange, the list of names and the required number or par value of each Deposit Security and the amount of the Cash Component to be included in the current Fund Deposit (based on information as of the end of the previous business day) for the Fund.

The identity and number or par value of the Deposit Securities may change pursuant to changes in the composition of a Fund's portfolio as rebalancing adjustments and corporate action events occur from time to time. The composition of the Deposit Securities may also change in response to adjustments to the weighting or composition of the holdings of a Fund.

Each Fund reserves the right to permit or require the substitution of a ''cash in lieu'' amount to be added to the Cash Component to replace any Deposit Security that may not be available in sufficient quantity for delivery or that may not be eligible for transfer through the Depository Trust Company (''DTC'') or the clearing process through the NSCC.[100]

Except as noted below, all creation orders must be placed for one or more Creation Units and must be received by the Distributor in proper form no later than 4:00 p.m., Eastern Time, in each case on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form. Orders requesting substitution of a ''cash in lieu'' amount generally must be received by the Distributor no later than 2:00 p.m., Eastern Time on the Settlement Date. The ''Settlement Date'' is generally the third business day after the transmittal date. On days when the Exchange or the bond markets close earlier than normal, a Fund may require orders to create or to redeem Creation Units to be placed earlier in the day.

Fund Deposits must be delivered through the Federal Reserve System (for cash and government securities), through DTC (for corporate and municipal securities), or through a central depository account, such as with Euroclear or DTC, maintained by State Street or a sub-custodian (a ''Central Depository Account'') by an authorized participant. Any portion of a Fund Deposit that may not be delivered through the Federal Reserve System or DTC must be delivered through a Central Depository Account. The Fund Deposit transfer must be ordered by the authorized participant in a timely fashion so as to ensure the delivery of the requisite number of Deposit Securities to the account of the Fund by no later than 3:00 p.m., Eastern Time, on the Settlement Date.

A standard creation transaction fee will be imposed to offset the transfer and other transaction costs associated with the issuance of Creation Units.

Shares of a Fund may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor and only on a business day. BFA will make available through the NSCC, prior to the opening of business on the Exchange on each business day, the designated portfolio of securities (including any portion of such securities for which cash may be substituted) that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day (''Fund Securities''). Fund Securities received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Units.

Unless cash redemptions are available or specified for a Fund, the redemption proceeds for a Creation Unit generally will consist of a specified amount of cash, Fund Securities, plus additional cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after the receipt of a request in proper form, and the value of the specified amount of cash and Fund Securities, less a redemption transaction fee. Each Fund generally redeems Creation Units partially for cash.

A standard redemption transaction fee will be imposed to offset transfer and other transaction costs that may be incurred by the Fund.

Redemption requests for Creation Units of a Fund must be submitted to the Distributor by or through an authorized participant no later than 4:00 p.m. Eastern Time on any business day, in order to receive that day's NAV. The authorized participant must transmit the request for redemption in the form required by the Fund to the Distributor in accordance with procedures set forth in the authorized participant agreement.

Additional information regarding the Shares and each Fund, including investment strategies, risks, creation and redemption procedures, fees and expenses, portfolio holdings disclosure policies, distributions, taxes and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement or on the Web site for the Funds (*www.iShares.com*), as applicable.

Availability of Information

The Funds' Web site, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for each Fund that may be downloaded. The Web site will include additional quantitative

[100] The Adviser represents that, to the extent the Trust permits or requires a ''cash in lieu'' amount, such transactions will be effected in the same manner or in an equitable manner for all authorized participants.

information updated on a daily basis, including, for each Fund: (1) The prior business day's NAV and the market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[101] and a calculation of the premium or discount of the market closing price or 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. Daily trading volume information will be available in the financial section of newspapers, through subscription services such as Bloomberg, Thomson Reuters, and International Data Corporation, which can be accessed by authorized participants and other investors, as well as through other electronic services, including major public Web sites. On each business day, before commencement of trading in Shares during Regular Trading Hours 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'') held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[102] The Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting and market value of securities and other assets held by the Fund and the characteristics of such assets. The Web site and information will be publicly available at no charge.

In addition, for each Fund, an estimated value, defined in BATS Rule 14.11(i)(3)(C) as the ''Intraday Indicative Value,'' that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. Moreover, the Intraday Indicative Value will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours.[103]

The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of each Fund on a daily basis and provide a close estimate of that value throughout the trading day.

Intraday, executable price quotations on assets held by each Fund are available from major broker-dealer firms and for exchange-traded assets, including investment companies, such intraday information is available directly from the applicable listing exchange. All such intraday price information is available through subscription services, such as Bloomberg, Thomson Reuters and International Data Corporation, which can be accessed by authorized participants and other investors. Pricing information for Repurchase Agreements and securities not listed on an exchange or national securities market will be available from major broker-dealer firms and/or subscription services, such as Bloomberg, Thomson Reuters and International Data Corporation.

Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. 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 on the facilities of the CTA. Price information relating to all other securities held by the Funds will be available from major market data vendors. Quotations and last sale information for the underlying exchange traded investment companies will be available through CTA.

Initial and Continued Listing

The Shares will be subject to BATS Rule 14.11(i), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, each Fund must be in compliance with Rule 10A–3 under the Act.[104] A minimum of 100,000 Shares of each Fund 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 each Fund. The Exchange will halt trading in the Shares under the conditions specified in BATS Rule 11.18. 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 financial instruments composing the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which Shares of a Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BATS will allow trading in the Shares from 8:00 a.m. until 5:00 p.m. Eastern Time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BATS Rule 11.11(a), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01, with the exception of securities that are priced less than $1.00, for which the minimum price variation for order entry is $0.0001.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. The Exchange may obtain information regarding trading in the Shares and the underlying shares in exchange traded equity securities via the ISG, from other exchanges that are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing

[101] The Bid/Ask Price of the Fund will be determined using the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund or its service providers.

[102] Under accounting procedures to be followed by each Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, each 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.

[103] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Intraday Indicative Values published via the Consolidated Tape Association (''CTA'') or other data feeds.

[104] *See* 17 CFR 240.10A–3.

agreement.[105] In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

As it relates to exchange traded investment companies, the Funds will only invest in investment companies that trade on markets that are a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Exchange prohibits 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 will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BATS Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the risks involved in trading the Shares during the Pre-Opening[106] and After Hours Trading Sessions[107] 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.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds. Members purchasing Shares from the Funds for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that each Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Funds and the applicable NAV Calculation Time for the Shares. The Information Circular will disclose that information about the Shares of the Funds will be publicly available on the Funds' Web site. In addition, the Information Circular will reference that the Trust is subject to various fees and expenses described in each Fund's Registration Statement.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[108] in general and Section 6(b)(5) of the Act[109] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system 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 BATS Rule 14.11(i). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. BATS Rule 14.11(i)(7) 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. The Adviser is not a registered broker-dealer, but is affiliated with multiple broker-dealers and has implemented ''fire walls'' with respect to such broker-dealers regarding access to information concerning the composition and/or changes to a Fund's portfolio. In addition, Adviser personnel who make decisions regarding a Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio. The Exchange may obtain information regarding trading in the Shares and the underlying shares in exchange traded equity securities via the ISG, from other exchanges that are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to TRACE.

According to the Registration Statement, each Fund will invest, under normal circumstances,[110] at least 80% of its net assets in Municipal Securities such that the interest on each security is exempt from U.S. federal income taxes and the federal AMT. Additionally, each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), as deemed illiquid by the Adviser[111] under the 1940 Act.[112] 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

[105] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[106] The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. Eastern Time.

[107] The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. Eastern Time.

[108] 15 U.S.C. 78f.

[109] 15 U.S.C. 78f(b)(5).

[110] *See* supra note 7.

[111] *See* supra note 27.

[112] 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).

obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value will be disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours. On each business day, before commencement of trading in Shares during Regular Trading Hours, 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. Pricing information will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's NAV and the market closing price or mid-point of the Bid/Ask Price,[113] and a calculation of the premium or discount of the market closing price or Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily market closing price or Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Additionally, information regarding market price and trading 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 on the facilities of the CTA. The Web site for each Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of a Fund will be halted under the conditions specified in BATS Rule 11.18. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Finally, trading in the Shares will be subject to BATS Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which Shares may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

Intraday, executable price quotations on assets held by the Funds are available from major broker-dealer firms and for exchange-traded assets, including investment companies, such intraday information is available directly from the applicable listing exchange. All such intraday price information is available through subscription services, such as Bloomberg, Thomson Reuters and International Data Corporation, which can be accessed by authorized participants and other investors.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG, from other exchanges that are members of ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to TRACE. As noted above, investors will also 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.

For the above reasons, the Exchange believes that 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 purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional actively-managed exchange-traded product 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2016–02 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–BATS–2016–02. 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

[113] The Bid/Ask Price of a Fund will be determined using the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund or its service providers.

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 Number SR–BATS–2016–02 and should be submitted on or before February 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[114]

Brent J. Fields,

Secretary.

[FR Doc. 2016–01535 Filed 1–26–16; 8:45 am]

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[114] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76959; File No. SR–C2–2015–033]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Relating to Price Protection Mechanisms for Quotes and Orders

January 21, 2016.

I. Introduction

C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed on November 25, 2015, with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposal to enhance its current price protection mechanisms and adopt certain new price protection functionality for orders and quotes. On December 4, 2015, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on December 11, 2015.[3] On December 29, 2015, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission received no substantive comment letters on the proposal. This order approves the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment Nos. 1 and 2

The Exchange proposes to adopt new Exchange Rules 6.17(d) and (e) and to amend Exchange Rule 6.13, Interpretation and Policy .04, to enhance its current price protection mechanisms for orders and quotes in order to help prevent potentially erroneous executions.[5]

A. Put Strike Price and Call Underlying Value Checks

Proposed Exchange Rule 6.17(d) will provide a new price protection functionality pursuant to which the Exchange's automated trading system (''System'') will reject back to the Participant a quote or buy limit order for (i) a put if the price of the quote bid or order is equal to or greater than the strike price of the option or (ii) a call if the price of the quote bid or order is equal to or greater than the consolidated last sale price of the underlying security, with respect to equity and exchange-traded fund options, or the last disseminated underlying index value, with respect to index options.[6] The Exchange may determine not to apply this proposed price protection mechanism if a senior official at the Exchange's Help Desk determines the applicable check should not apply in the interest of maintaining a fair and orderly market.[7]

B. Quote Inverting NBBO Check

Proposed Exchange Rule 6.17(e) will apply new a price reasonability check to Market Maker quotes based on the national best bid or offer (''NBBO'') or the Exchange's best bid or offer if the NBBO is unavailable.[8] Specifically, if C2 is at the NBBO, the System will reject a quote back to a Market Maker if the quote bid or offer crosses the opposite side of the NBBO by more than a number of ticks specified by the Exchange.[9] If C2 is not at the NBBO, the System will reject a quote back to a Market-Maker if the quote bid or offer locks or crosses the opposite side of the NBBO.[10] The Exchange may determine not to apply this check to quotes entered during the pre-opening, a trading rotation, or a trading halt, and would announce to Participants any such determination thorough a Regulatory Circular.[11]

C. Debit/Credit Price Reasonability Checks

The Exchange proposes to amend its price check parameters applicable to complex orders that are contained in current Exchange Rule 6.13,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 76584 (December 8, 2015), 80 FR 77047 (December 11, 2015) (''Notice'').

[4] In Amendment No. 2, the Exchange amended the proposed rule language to (i) clarify that it will notify Trading Permit Holders by electronic message if the Exchange determines that the put strike price or call underlying value check should not apply in the interest of maintaining a fair and orderly market under proposed Exchange Rule 6.17(d)(ii) and (ii) limit the potential range of the percentage amount used to calculate the maximum value acceptable price range check in proposed Exchange Rule 6.13, Interpretation and Policy .04(h)(1)(iii). In Amendment No. 2, C2 also represented that it will document, retain, and periodically review any Exchange decision to not apply the put check or call check under proposed Exchange Rule 6.17(d)(ii), including the reason for the decision. *See* Amendment No. 2 to File No. SR–C2–2015–033, dated December 29, 2015 (''Amendment No. 2''). To promote transparency of its proposed amendment, when C2 filed Amendment No. 2 with the Commission, it also submitted Amendment No. 2 as a comment letter to the file, which the Commission posted on its Web site and placed in the public comment file for SR–C2–2015–033. The Exchange also posted a copy of its Amendment No. 2 on its Web site (*http://www.c2exchange.com/legal/rulefilings.aspx*) when it filed the amendment with the Commission.

[5] For a more detailed description of each proposed price protection mechanism, *see* Notice, *supra* note 3.

[6] If the System rejects a Market Maker's quote pursuant to either proposed price check, the Exchange will cancel any resting quote of the Market Maker in the same series. *See* proposed Exchange Rule 6.17(d); *see also* Notice, *supra* note 3, at 77048. These proposed checks also will apply to buy auction responses in the same manner as it does to orders and quotes, as well as pairs of orders submitted to the Exchange's Automated Improvement Mechanism (''AIM'') or Solicitation Auction Mechanism (''SAM''). *See id.*

[7] *See* proposed Exchange Rule 6.17(d)(ii); *see also* Notice, *supra* note 3, at 77048. The Exchange represented that it will document, retain, and periodically review any decision to not apply the put check or call check, including the reason for the decision. *See* Amendment No. 2, *supra* note 4.

[8] *See* proposed Exchange Rule 6.17(e); *see also* Notice, *supra* note 3, at 77049–50.

[9] The Exchange states that the number of ticks will be no less than three minimum increment ticks and announced to Participants by Regulatory Circular. *See* proposed Exchange Rule 6.17(e); *see also* Notice, *supra* note 3, at 77049. In addition, proposed Exchange Rule 6.17(e)(iii) addresses situations where C2 accepts a quote that locks or crosses the NBBO.

[10] *See* proposed Exchange Rule 6.17(e)(i); *see also* Notice, *supra* note 3, at 77050. As an additional risk control feature, if a Market Maker submits a quote in a series in which the Market Maker already has a resting quote and the Exchange rejects that quote pursuant to this proposed check, the Exchange will cancel the Market Maker's resting quote in the series. *See* Notice, *supra* note 3, at 77049.

[11] *See* proposed Exchange Rule 6.17(e)(ii); *see also* Notice, *supra* note 3, at 77049–50. Additionally, this proposed check will not apply if a senior official at the Exchange's Help Desk determines it should not apply in the interest of maintaining a fair and orderly market. *See id.*

Interpretation and Policy .04, to prevent the automatic execution of complex orders that appear to be erroneously priced based on general options volatility and pricing principles.[12] Under current Exchange Rule 6.13, Interpretation and Policy .04, the System will not automatically execute (i) a limit order for a debit strategy with a net credit price that should have been entered at a net debit price, (ii) a limit order for a credit strategy with a net debit price that should have been entered at a net credit price, and (iii) a market order for a credit strategy that would be executed at a net debit price when it should execute at a net credit price.[13] The amended rule expands this check to certain complex orders which the System can determine are credits or debits.[14]

D. Maximum Value Acceptable Price Range Check

Finally, the Exchange proposes to amend Exchange Rule 6.13, Interpretation and Policy .04(h), to add an additional price check for complex orders. The new price check would apply to vertical, true butterfly, and box spreads, and would block executions of such strategies at prices that exceed their quantifiable maximum possible values by more than a reasonable amount.[15] Under the proposed rule, the Exchange will determine the acceptable price range for these strategies and will reject back to the Participant any limit order and cancel any market order that does not satisfy this proposed check.[16]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b) of the Act.[17] In particular, the Commission finds that the proposed rule change is consistent with Sections 6(b)(5) of the Act,[18] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed new price protection mechanisms are reasonably designed to promote just and equitable principles of trade to the extent they are able to mitigate potential risks associated with market participants entering orders at what C2 believes are clearly unintended prices and executing trades at prices that are both extreme and potentially erroneous.[19] Specifically, the Commission believes that the proposed price protection for simple orders to buy put and call options based on the strike price or underlying value, respectively, is designed to promote fair and orderly markets and protect investors by rejecting quotes and orders that exceed the strike price for puts and the value of the underlying for calls, which may likely have occurred due to human or operational error. The Commission also believes that the proposed quote inverting NBBO check is reasonably designed to promote just and equitable principles of trade by preventing potential price dislocation that could result from erroneous Market Maker quotes sweeping through multiple price points.[20]

In addition, the proposed enhanced price checks that would apply to complex orders, including the debit and credit price reasonability checks and the maximum value acceptable price range checks, are designed to mitigate the potential risks associated with complex orders trading at prices that likely are inconsistent with their strategies and could potentially result in erroneous executions.[21] Furthermore, the Commission believes that the proposed maximum value acceptable price range adds a second layer of price protection to complex strategies that is reasonably designed to mitigate the potential risks associated with orders that have complex strategies with quantifiable maximum values trading at prices that are potentially erroneous.[22]

Accordingly, for the reasons discussed above, the Commission believes that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–C2–2015–033 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2015–033. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change;

[12] *See* proposed Exchange Rule 6.13, Interpretation and Policy .04; *see also* Notice, *supra* note 3, at 77050–53.

[13] *See* Notice, *supra* note 3, at 77050.

[14] *See id.* at 77050. The proposed rule contains new definitions of vertical spread, butterfly spread and box spread, and states how the System will define a complex order as a debit or credit. *See id* at 77050–51; *see also* proposed Exchange Rule 6.13, Interpretation and Policy .04. These checks will also apply to buy auction responses and pairs of orders submitted to AIM or SAM. *See* proposed Exchange Rule 6.13, Interpretation and Policy .04(c)(4)–(5); *see also* Notice, *supra* note 3, at 77053.

[15] *See* proposed Exchange Rule 6.13, Interpretation and Policy .04(h); *see also* Notice, *supra* note 3, at 77053.

[16] *See* Notice, *supra* note 3, at 77053. The proposed check will also apply to auction responses and pairs of orders submitted to AIM or SAM. *See id.*

[17] 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] *See* Notice, *supra* note 3, at 77054.

[20] *See* Notice, *supra* note 3, at 77055.

[21] *See id.* at 77055–56.

[22] *Id.*

the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2015–033 and should be submitted on or before February 17, 2016.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act, to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, prior to the 30th day after the date of publication of Amendment No. 2 in the **Federal Register**. As discussed above, Amendment No. 2 clarified that the Exchange will notify Trading Permit Holders by electronic message if the Exchange determines that the put strike price or call underlying value check should not apply in the interest of maintaining a fair and orderly market under proposed Exchange Rule 6.17(d)(ii).[23] C2 also represented in Amendment No. 2 that the Exchange will document, retain, and periodically review any Exchange decision to not apply the put check or call check under proposed Exchange Rule 6.17(d)(ii), including the reason for the decision.[24] Lastly, in Amendment No. 2, C2 clarified that the potential range of the percentage amount it will use to calculate the maximum value acceptable price range check in proposed Exchange Rule 6.17, Interpretation and Policy .04(h)(1)(iii), is between 1% and 5%.[25] The Commission believes that these changes provide greater clarity and remove any possible uncertainty regarding the potential exercise of Exchange discretion with regard to the proposed price protection mechanisms. In particular, the representation about documenting, retaining, and periodically reviewing decisions to suspend a price check will enable C2 to monitor the actions of its senior Help Desk personnel and assure that the suspension of any price check is appropriate and consistent with C2's responsibilities as a self-regulatory organization and the principles articulated in the Act that are applicable to exchanges. Further, clarifying the possible range of the maximum value acceptable price range provides valuable information to Trading Permit Holders to help them better understand and evaluate this price protection functionality. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[26] that the proposed rule change (SR–C2–2015–033), as modified by Amendment Nos. 1 and 2, be, and hereby is, approved on an acceleratedbasis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Brent J. Fields,

Secretary.

[FR Doc. 2016–01539 Filed 1–26–16; 8:45 am]

BILLING CODE 8011–01–P

[23] *See* Amendment No. 2, *supra* note 4.

[24] *Id.*

[25] *Id.*

[26] 15 U.S.C. 78f(b)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76957; File No. SR–ISE–2016–03]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

January 21, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 13, 2016, the International Securities Exchange, LLC (the ''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ISE proposes to amend the Schedule of Fees as described in more detail below. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rebate is to amend the Schedule of Fees to introduce a new set of rebates to the Qualified Contingent Cross (''QCC'') and/or other solicited crossing orders, including solicited orders executed in the Solicitation, Facilitation or Price Improvement Mechanisms, pricing initiative that offers rebates to members that execute a specified volume of QCC and other solicited crossing orders in a month. The proposed rebates apply to QCC and solicited orders between two Priority Customers[3] (' 'Customer to Customer' Orders'') executed by members that (1) execute a specified volume of QCC and solicited orders in a given month and (2) have a total unsolicited originating Facilitation contract side volume of 175,000 or more per month. The Exchange notes it is not proposing any change to how volume is calculated for the current volume tiers. Thus, members will continue to obtain the tier level based on all QCC and/or solicited crossing orders' originating side volume. Members will also continue to receive the Non-''Customer to Customer'' Order[4] rebate for their Non-''Customer to Customer'' Orders and the ''Customer to Customer'' Order rebate for their ''Customer to Customer'' Orders.

Currently, the Exchange offers members rebates in QCC and/or other solicited crossing orders (including ''Customer to Customer'' Orders), *i.e.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[4] ''Non-'Customer to Customer' Orders'' are QCC and/or other solicited crossing orders, including solicited orders executed in the Solicitation, Facilitation or Price Improvement Mechanisms, and excluding ''Customer to Customer'' Orders.

orders executed in the Solicitation, Facilitation, or Price Improvement Mechanisms where the agency order is executed against an order solicited from another party. These rebates are provided for each originating side of a crossing order, based on a member's volume in the crossing mechanisms during a given month. Currently, for the Non-''Customer to Customer'' Rebate, for members that execute 0 to 99,999 originating contract sides (''Tier 1'') the rebate is $0.00 per contract, for members that execute 100,000 to 199,999 originating contract sides (''Tier 2'') the rebate is $0.05 per contract, for members that execute 200,000 to 499,999 originating contract sides (''Tier 3'') the rebate is $0.07 per contract, for members that execute 500,000 to 699,999 originating contract sides (''Tier 4'') the rebate is $0.08 per contract, for members that execute 700,000 to 999,999 originating contract sides (''Tier 5'') the rebate is $0.09 per contract, and for members that execute 1,000,000 originating contract sides or more (''Tier 6'') the rebate is $0.11 per contract.[5] Also, for the ''Customer to Customer'' Rebate, for Tier 1 the rebate is $0.00, for Tiers 2 through 3 the rebate is $0.01, and for Tiers 4 through 6 the rebate is $0.03.

The Exchange now proposes to offer a new set of rebates called ''Customer to Customer'' Rebate PLUS. The proposed rebates apply to ''Customer to Customer'' Orders executed by members with (1) a specified volume of QCC and other solicited crossing orders in a given month and (2) 175,000 or more unsolicited originating Facilitation contract sides per month. The Facilitation Mechanism is a process by which an Electronic Access Member (''EAM'') can execute a transaction wherein the EAM seeks to facilitate a block-size order it represents as agent, and/or a transaction wherein the EAM solicited interest to execute against a block-size order it represents as agent.[6] Only orders entered into the Facilitation Mechanism that are facilitated by the entering EAM (*i.e.* unsolicited Facilitation orders) will count towards the volume threshold described above.[7] Once a member has met the volume thresholds described above, the member will receive a rebate for each originating contract side of their ''Customer to Customer'' Orders. In particular, the member will receive a ''Customer to Customer'' Rebate PLUS of $0.00 per contract for Tier 1, and $0.05 per contract for Tiers 2 through 6. The Exchange notes that members may receive either the ''Customer to Customer'' Rebate or the ''Customer to Customer'' Rebate PLUS—not both.

Finally, all originating contract side volume will continue to contribute to the member's Tier level, however a member's ''Customer to Customer'' rebate will depend on its unsolicited originating Facilitation volume. For example, if a member has 175,000 originating contract sides for Non-''Customer to Customer'' Orders and 75,000 originating contract sides for ''Customer to Customer'' Orders, the member's aggregated volume will be 250,000 placing them in Tier 3 (200,000 to 499,999). As a result, the member will receive a rebate of $0.07 per originating contract side for its Non-''Customer to Customer'' Orders and a rebate of either 1) $0.01 per originating contract side for its ''Customer to Customer'' Orders (*i.e.* ''Customer to Customer'' Rebate) or 2) if the member has 175,000 or more unsolicited originating Facilitation contract sides, $0.05 per originating side for its ''Customer to Customer'' Orders (*i.e.* ''Customer to Customer'' Rebate PLUS).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and Section 6(b)(4) of the Act,[9] in particular, in that 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 believes that it is reasonable and equitable to provide for the opportunity to receive these rebates because they will incentivize members to send varying types of crossing volumes to the Exchange. In particular, the proposed rebates will encourage members to send unsolicited Facilitation orders to meet the 175,000 volume threshold to obtain the greater PLUS Rebate and encourage more 'Customer to Customer' volume to achieve the higher rebates. Further, the Exchange believes it is reasonable and equitable to provide for the opportunity to receive the proposed rebates because they are attractive to market participants, and many exchanges, including CBOE for example, offer no rebate for customer to customer executions.[10] Finally, the Exchange believes that the proposed fees are not unfairly discriminatory because these rebates would be uniformly applied to all members' ''Customer to Customer'' Orders that meet the required volume thresholds.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[11] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rebates are attractive to market participants and are better than the rebates (if any) offered by other exchanges.[12] The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

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)(ii) of the Act,[13] and subparagraph (f)(2) of Rule 19b–4 thereunder,[14] because it establishes a due, fee, or other charge imposed by ISE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if

[5] The rebate is applied to the originating contract side of QCC and solicited crossing orders traded in a given month once a member reaches the specified volume threshold/Tier during that month.

[6] *See* Rule 716(d).

[7] In addition, the Exchange notes that it will only count originating contract sides in determining whether the EAM has met the 175,000 contract threshold.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] *See* CBOE Fee Schedule, QCC Rate Table, Notes at *https://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf.*

[11] 15 U.S.C. 78f(b)(8).

[12] CBOE for example, offers no rebate (credit) for customer to customer executions. *See* CBOE Fee Schedule, QCC Rate Table, Notes at *https://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf.*

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*); or
- Send an Email to *rule-comments@sec.gov.* Please include File No. SR–ISE–2016–03 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–ISE–2016–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2016–03 and should be submitted by February 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Brent J. Fields,

Secretary.

[FR Doc. 2016–01663 Filed 1–26–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76944; File No. SR–NASDAQ–2016–002]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To List and Trade Shares of the First Trust Municipal High Income ETF of First Trust Exchange-Traded Fund III

January 21, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 6, 2016, The NASDAQ Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in in Items I and II 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 First Trust Municipal High Income ETF (the ''Fund'') of First Trust Exchange-Traded Fund III (the ''Trust'') under Nasdaq Rule 5735 (''Managed Fund Shares'').[3] The shares of the Fund are collectively referred to herein as the ''Shares.''

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares[4] on the Exchange. The 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.[5] 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

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[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 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. 71913 (April 9, 2014), 79 FR 21333 (April 15, 2014) (SR–NASDAQ–2014–019) (order approving listing and trading of First Trust Managed Municipal 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); 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.

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (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.

[5] 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. 30029 (April 10, 2012) (File No. 812–13795) (the ''Exemptive Relief''). In addition, on December 6, 2012, the staff of the Commission's Division of Investment Management (''Division'') issued a no-action letter (''No-Action Letter'') relating to the use of derivatives by actively-managed ETFs. *See* No-Action Letter dated December 6, 2012 from Elizabeth G. Osterman, Associate Director, Office of Exemptive Applications, Division of Investment Management. The No-Action Letter stated that the Division would not recommend enforcement action to the Commission under applicable provisions of and rules under the 1940 Act if actively-managed ETFs operating in reliance on specified orders (which include the Exemptive Relief) invest in options contracts, futures contracts or swap agreements provided that they comply with certain representations stated in the No-Action Letter.

Commission.[6] The Fund will be a series of the Trust. The Fund intends to qualify each year as a regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended.

First Trust Advisors L.P. will be the investment adviser (''Adviser'') to the Fund. First Trust Portfolios L.P. (the ''Distributor'') will be the principal underwriter and distributor of the Fund's Shares. Brown Brothers Harriman & Co. (''BBH'') will act as the administrator, accounting agent, custodian and transfer agent to the Fund.

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.[7] 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. The Adviser is not a broker-dealer, but it is affiliated with the Distributor, a broker-dealer, and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In addition, personnel who make decisions on the Fund's portfolio composition will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio. In the event (a) the Adviser or any 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 the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. The Fund currently does not intend to use a sub-adviser.

First Trust Municipal High Income ETF

Principal Investments

The primary investment objective of the Fund will be to generate current income that is exempt from regular federal income taxes and its secondary objective will be long-term capital appreciation. Under normal market conditions,[8] the Fund will seek to achieve its investment objectives by investing at least 80% of its net assets (including investment borrowings) in municipal debt securities that pay interest that is exempt from regular federal income taxes (collectively, ''Municipal Securities'').[9] Municipal Securities are generally issued by or on behalf of states, territories or possessions of the U.S. and the District of Columbia and their political subdivisions, agencies, authorities and other instrumentalities. The types of Municipal Securities in which the Fund may invest include municipal lease obligations (and certificates of participation in such obligations), municipal general obligation bonds, municipal revenue bonds, municipal notes, municipal cash equivalents, private activity bonds (including without limitation industrial development bonds), and pre-refunded[10] and escrowed to maturity bonds. In addition, Municipal Securities include securities issued by entities whose underlying assets are municipal bonds (*i.e.,* tender option bond (TOB) trusts and custodial receipts trusts). The Fund may invest in Municipal Securities of any maturity.

Under normal market conditions, the Fund will invest at least 65% of its net assets in Municipal Securities that are, at the time of investment, rated below investment grade (*i.e.,* not rated Baa3/BBB- or above) by at least one nationally recognized statistical rating organization (''NRSRO'') rating such securities (or Municipal Securities that are unrated and determined by the Adviser to be of comparable quality)[11] (commonly

[6] *See* Post-Effective Amendment No. 27 to Registration Statement on Form N–1A for the Trust, dated August 31, 2015 (File Nos. 333–176976 and 811–22245). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] 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 fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or *force majeure* type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. On a temporary basis, including for defensive purposes, during the initial invest-up period and during periods of high cash inflows or outflows, the 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, the Fund may not be able to achieve its investment objectives. The Fund may adopt a defensive strategy when the Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

[9] Assuming compliance with the investment requirements and limitations described herein, the Fund may invest up to 100% of its net assets in Municipal Securities that pay interest that generates income subject to the federal alternative minimum tax.

[10] A pre-refunded municipal bond is a municipal bond that has been refunded to a call date on or before the final maturity of principal and remains outstanding in the municipal market. The payment of principal and interest of the pre-refunded municipal bonds held by the Fund will be funded from securities in a designated escrow account that holds U.S. Treasury securities or other obligations of the U.S. government (including its agencies and instrumentalities). As the payment of principal and interest is generated from securities held in a designated escrow account, the pledge of the municipality has been fulfilled and the original pledge of revenue by the municipality is no longer in place. The escrow account securities pledged to pay the principal and interest of the pre-refunded municipal bond do not guarantee the price movement of the bond before maturity. Investment in pre-refunded municipal bonds held by the Fund may subject the Fund to interest rate risk, market risk and credit risk. In addition, while a secondary market exists for pre-refunded municipal bonds, if the Fund sells pre-refunded municipal bonds prior to maturity, the price received may be more or less than the original cost, depending on market conditions at the time of sale.

[11] Comparable quality of unrated Municipal Securities will be determined by the Adviser based on fundamental credit analysis of the unrated security and comparable rated securities. On a best efforts basis, the Adviser will attempt to make a

Continued

referred to as ''high yield'' or ''junk'' bonds);[12] however, the Fund will consider pre-refunded or escrowed to maturity bonds, regardless of rating, to be investment grade securities. The Fund may invest up to 35% of its net assets in Municipal Securities that are, at the time of investment, rated investment grade (*i.e.,* rated Baa3/BBB- or above) by each NRSRO rating such securities (or Municipal Securities that are unrated and determined by the Adviser to be of comparable quality). If, subsequent to purchase by the Fund, a Municipal Security held by the Fund experiences an improvement in credit quality and becomes investment grade, the Fund may continue to hold the Municipal Security and it will not cause the Fund to violate the 35% investment limitation; however, the Municipal Security will be taken into account for purposes of determining whether purchases of additional Municipal Securities will cause the Fund to violate such limitation.

The Fund will be actively managed and will not be tied to an index. However, the Fund believes that, under normal market conditions, on a continuous basis determined at the time of purchase, its portfolio of Municipal Securities[13] will generally meet, as applicable, all except for one of the criteria for non-actively managed, index-based, fixed income ETFs contained in Nasdaq Rule 5705(b)(4)(A), as described below.

Nasdaq Rule 5705(b)(4)(A)(i) requires that the index or portfolio consist of ''Fixed Income Securities.'' Since ''Fixed Income Securities'' include, among other things, municipal securities, the Fund believes that its portfolio of Municipal Securities will satisfy this requirement under normal market conditions.

Nasdaq Rule 5705(b)(4)(A)(iii) applies to convertible securities and, therefore, since Municipal Securities do not include convertible securities, this requirement is not applicable.

Nasdaq Rule 5705(b)(4)(A)(iv) requires that no component fixed income security (excluding Treasury securities) will represent more than 30% of the weight of the index or portfolio, and that the five highest weighted component fixed income securities will not in the aggregate account for more than 65% of the weight of the index or portfolio. The Fund believes that its portfolio of Municipal Securities will satisfy this requirement under normal market conditions.

Nasdaq Rule 5705(b)(4)(A)(v) requires that an underlying index or portfolio (excluding one consisting entirely of exempted securities) include securities from a minimum of 13 non-affiliated issuers. Since, under Section 3(a)(12) of the Act, exempted securities include municipal securities, the Fund believes that its portfolio of Municipal Securities will satisfy this requirement under normal market conditions.

Nasdaq Rule 5705(b)(4)(A)(vi) requires that component securities that in the aggregate account for at least 90% of the weight of the index or portfolio be either exempted securities or from a specified type of issuer. Since, as noted above, exempted securities include municipal securities, the Fund believes that its portfolio of Municipal Securities will satisfy this requirement under normal market conditions.

The Fund does not believe that its portfolio of Municipal Securities will satisfy Rule 5705(b)(4)(A)(ii), which requires that components that in the aggregate account for at least 75% of the weight of the index or portfolio have a minimum original principal amount outstanding of $100 million or more. However, the Fund believes that, under normal market conditions, at least 40% (based on dollar amount invested) of the Municipal Securities in which the Fund invests will be issued by issuers with total outstanding debt issuances that, in the aggregate, have a minimum original principal amount outstanding of $75 million or more. The Commission has previously issued orders approving proposed rule changes relating to the listing and trading under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 (which governs the listing and trading of fixed-income index ETFs on NYSE Arca, Inc.), to various ETFs that track indexes comprised of municipal securities (including high-yield municipal index ETFs) that did not meet the analogous requirement included in Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3),[14] but demonstrated that the portfolio of municipal securities in which the ETFs would invest would be sufficiently liquid. Similarly, the Fund is of the view that its belief that its portfolio of Municipal Securities will satisfy all except for one of the applicable requirements of Nasdaq Rule 5705(b)(4)(A), coupled with its belief that a significant portion (at least 40% (based on dollar amount invested)) of the Municipal Securities in which the Fund invests will be issued by issuers with total outstanding debt issuances that, in the aggregate, have a minimum original principal amount outstanding of $75 million or more, should provide support regarding the anticipated liquidity of its Municipal Securities portfolio.

Other Investments

Under normal market conditions, the Fund will invest substantially all of its assets to meet its investment objectives as described above. In addition, the Fund may invest its assets or hold cash as generally described below.

The Fund may invest up to 10% of its net assets in taxable municipal securities. The Fund may also invest up to 10% of its net assets in short-term debt instruments (described below), money market funds and other cash equivalents, or it may hold cash. The percentage of the Fund invested in such holdings or held in cash will vary and will depend on several factors, including market conditions.

Short-term debt instruments, which do not include Municipal Securities, are issued by issuers having a long-term debt rating of at least A-/A3 (as applicable) by Standard & Poor's Ratings Services (''S&P Ratings''), Moody's Investors Service, Inc. (''Moody's'') or Fitch Ratings (''Fitch'') and have a maturity of one year or less.

rating determination based on publicly available data. In making a ''comparable quality'' determination, the Adviser may consider, for example, whether the issuer of the security has issued other rated securities, the nature and provisions of the relevant security, whether the obligations under the relevant security are guaranteed by another entity and the rating of such guarantor (if any), relevant cash flows, macroeconomic analysis, and/or sector or industry analysis.

[12] The Municipal Securities in which the Fund will invest to satisfy this 65% investment requirement may include Municipal Securities that are currently in default and not expected to pay the current coupon (''Distressed Municipal Securities''). The Fund may invest up to 10% of its net assets in Distressed Municipal Securities. If, subsequent to purchase by the Fund, a Municipal Security held by the Fund becomes a Distressed Municipal Security, the Fund may continue to hold the Distressed Municipal Security and it will not cause the Fund to violate the 10% limitation; however, the Distressed Municipal Security will be taken into account for purposes of determining whether purchases of additional Municipal Securities will cause the Fund to violate such limitation.

[13] For purposes of this statement and the discussion of the requirements of Nasdaq Rule 5705(b)(4)(A) below, with respect to Municipal Securities that are issued by entities whose underlying assets are municipal bonds, the underlying municipal bonds, rather than the securities issued by such entities, will be taken into account.

[14] *See, e.g.,* Securities Exchange Act Release Nos. 75376 (July 7, 2015), 80 FR 40113 (July 13, 2015) (SR–NYSEArca-2015–18) (order approving listing and trading of Vanguard Tax-Exempt Bond Index Fund); 71232 (January 3, 2014), 79 FR 1662 (January 9, 2014) (SR–NYSEArca–2013–118) (order approving listing and trading of Market Vectors Short High-Yield Municipal Index ETF); and 63881 (February 9, 2011), 76 FR 9065 (February 16, 2011) (SR–NYSEArca–2010–120) (order approving listing and trading of SPDR Nuveen S&P High Yield Municipal Bond ETF).

The Fund may invest in the following short-term debt instruments: (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,[15] 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; and (6) commercial paper, which is short-term unsecured promissory notes.[16]

With respect to up to 20% of its net assets, the Fund may (i) invest in the securities of other investment companies registered under the 1940 Act, including money market funds, other ETFs,[17] open-end funds (other than money market funds and other ETFs), and closed-end funds and (ii) acquire short positions in the securities of the foregoing investment companies.

With respect to up to 20% of its net assets, the Fund may (i) invest in exchange-listed options on U.S. Treasury securities, exchange-listed options on U.S. Treasury futures contracts, and exchange-listed U.S. Treasury futures contracts and (ii) acquire short positions in the foregoing derivatives. Transactions in the foregoing derivatives may allow the Fund to obtain net long or short exposures to selected interest rates. These derivatives may also be used to hedge risks, including interest rate risks and credit risks, associated with the Fund's portfolio investments. The Fund's investments in derivative instruments will be consistent with the Fund's investment objectives and the 1940 Act and will not be used to seek to achieve a multiple or inverse multiple of an index.

Investment Restrictions

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser.[18] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[19]

The Fund may not invest 25% or more of the value of its total assets in securities of issuers in any one industry. This restriction does not apply to (a) Municipal Securities issued by governments or political subdivisions of governments, (b) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities, or (c) securities of other investment companies.[20]

Creation and Redemption of Shares

The Fund will issue and redeem Shares on a continuous basis at net asset value (''NAV'')[21] 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. As described in the Registration Statement and consistent with the Exemptive Relief, the Fund will issue and redeem Creation Units in exchange for an in-kind portfolio of instruments and/or cash in lieu of such instruments (the ''Creation Basket'').[22] In addition, if 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 instruments 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

[15] The Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser to present minimal credit risks in accordance with criteria approved by the Board of Trustees of the Trust (''Trust Board''). The Adviser will review and monitor the creditworthiness of such institutions. The 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.

[16] The Fund may only invest in commercial paper rated A–3 or higher by S&P Ratings, Prime-3 or higher by Moody's or F3 or higher by Fitch.

[17] An ETF is an investment company registered under the 1940 Act that holds a portfolio of securities. Many ETFs are designed to track the performance of a securities index, including industry, sector, country and region indexes. ETFs included in the Fund will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act pursuant to exemptive orders obtained by other ETFs and their sponsors from the Commission. In addition, the Fund may invest in the securities of certain other investment companies in excess of the limits imposed under the 1940 Act pursuant to an exemptive order that the Trust has obtained from the Commission. *See* Investment Company Act Release No. 30377 (February 5, 2013) (File No. 812–13895). The ETFs in which the Fund may invest include Index Fund Shares (as described in Nasdaq Rule 5705), Portfolio Depository Receipts (as described in Nasdaq Rule 5705), and Managed Fund Shares (as described in Nasdaq Rule 5735). While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged (*e.g.,* 2X or -3X) ETFs.

[18] In reaching liquidity decisions, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades *(e.g.,* the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer).

[19] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[20] *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).

[21] The NAV of the 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 the Fund's net assets by the number of Fund Shares outstanding. For more information regarding the valuation of Fund investments in calculating the Fund's NAV, *see* the Registration Statement.

[22] Subject to, and in accordance with, the provisions of the Exemptive Relief, it is expected that the Fund will typically issue and redeem Creation Units on a cash basis; however, at times, it may issue and redeem Creation Units on an in-kind (or partially in-kind) basis.

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 the Fund through the transfer agent and only on a business day.

The Fund's 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 instruments 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

The 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 the Fund by taking the value of the 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.

The Fund's 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 (including Municipal Securities) will generally be valued using prices obtained from third-party pricing services (each, a ''Pricing Service'').[23] If, however, valuations for any of the Fund's investments cannot be readily obtained as provided in the preceding manner, or the Pricing Committee of the Adviser (the ''Pricing Committee'')[24] 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 asset. The fair valuations attempt to estimate the value at which an asset could be sold at the time of pricing, although actual sales could result in price differences, which could be material.

Certain securities, including in particular Municipal Securities, in which the 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 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, Municipal Securities; (b) except as provided below, short-term U.S. government securities, commercial paper, and bankers' acceptances, all as set forth under ''Other Investments'' (collectively, ''Short-Term Debt Instruments''); and (c) except as provided below, taxable municipal securities. 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.

Municipal Securities, Short-Term Debt Instruments and taxable municipal securities 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.

Equity securities (including ETFs and closed-end funds) listed on any exchange other than the Exchange 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. Such equity securities (including ETFs and closed-end funds) listed on the Exchange 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, such equity securities will typically be valued using fair value pricing. Such 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.

Money market funds and other registered open-end management investment companies (other than ETFs, which will be valued as described above) will typically be valued at their net asset values as reported by such registered open-end management investment companies to Pricing Services.

[23] 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.

[24] The Pricing Committee will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio.

Exchange-listed derivatives (including options on U.S. Treasury securities, options on U.S. Treasury futures contracts, and U.S. Treasury futures contracts) will typically be valued at the closing price in the market where such instruments are principally traded.

Availability of Information

The Fund's Web site (*www.ftportfolios.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include the Shares' ticker, CUSIP and exchange information along with additional quantitative information updated on a daily basis, including, for the 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''),[25] 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[26] on the Exchange, the 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.[27] The 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, the Fund will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding), the identity of the security or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

In addition, for the 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,[28] will be based upon the current 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 provided by a dealer who makes a market in those instruments. 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 the 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 the 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 the Fund's Statement of Additional Information (''SAI''), the Fund's annual and semi-annual reports (together, ''Shareholder Reports''), and its Form N–CSR and Form N–SAR, filed twice a year. The Fund's SAI and Shareholder Reports will be available free upon request from the 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.* 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 exchange-listed equity securities (including other ETFs and closed-end funds) will be available from the exchanges on which they are traded as well as in accordance with any applicable CTA plans. Quotation and last sale information for U.S. exchange-listed options will be available via the Options Price Reporting Authority.

One source of price information for Municipal Securities and taxable municipal securities will be the Electronic Municipal Market Access (''EMMA'') of the Municipal Securities Rulemaking Board (''MSRB'').[29] Additionally, the MSRB offers trade data subscription services that permit subscribers to obtain same-day pricing information about municipal securities transactions. Moreover, pricing information for Municipal Securities, as well as for taxable municipal securities, Short-Term Debt Instruments (including short-term U.S. government securities, commercial paper, and bankers' acceptances), and repurchase agreements will be available from major broker-dealer firms and/or major market data vendors and/or Pricing Services.

Pricing information for exchange-listed derivatives (including options on U.S. Treasury securities, options on U.S. Treasury futures contracts, and U.S. Treasury futures contracts), ETFs and closed-end funds will be available from the applicable listing exchange and from major market data vendors.

Money market funds and other open-end funds (excluding ETFs) are typically priced once each business day and their prices will be available through the applicable fund's Web site or from major market data vendors.

[25] The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[26] *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).

[27] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[28] 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 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.

[29] Information available on EMMA includes next-day information regarding municipal securities transactions and par amounts traded. In addition, a source of price information for certain taxable municipal securities is the Trade Reporting and Compliance Engine (''TRACE'') of the Financial Industry Regulatory Authority (''FINRA'').

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, Fund holdings disclosure policies, distributions and taxes will be included in the Registration Statement.

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, the Fund must be in compliance with Rule 10A–3 [30] 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 the 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 the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the 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 FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[31] 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 the exchange-listed securities and instruments held by the Fund (including closed-end funds, ETFs, exchange-listed options on U.S. Treasury securities, exchange-listed options on U.S. Treasury futures, and exchange-listed U.S. Treasury futures contracts) with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''),[32] and FINRA may obtain trading information regarding trading in the Shares and such exchange-listed securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the exchange-listed securities and instruments held by the Fund 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 Fund reported to FINRA's TRACE.[33]

At least 90% of the Fund's net assets that are invested in exchange-listed options on U.S. Treasury securities, exchange-listed options on U.S. Treasury futures contracts, and exchange-listed U.S. Treasury futures contracts (in the aggregate) 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. All of the Fund's net assets that are invested in exchange-listed equity securities (including closed-end funds and ETFs) will be invested in securities 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 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 will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the

[30] *See* 17 CFR 240.10A–3.

[31] 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.

[32] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[33] For Municipal Securities, trade information can generally be found on the MSRB's EMMA.

Fund and the applicable NAV Calculation Time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the 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 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 also FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.

The Adviser is not a broker-dealer, but it is affiliated with a broker-dealer and is required to implement a ''fire wall'' with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the 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 the exchange-listed securities and instruments held by the Fund (including closed-end funds, ETFs, exchange-listed options on U.S. Treasury securities, exchange-listed options on U.S. Treasury futures contracts, and exchange-listed U.S. Treasury futures contracts) with other markets and other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the Shares and such exchange-listed securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the exchange-listed securities and instruments held by the Fund 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 Fund reported to FINRA's TRACE. At least 90% of the Fund's net assets that are invested in exchange-listed options on U.S. Treasury securities, exchange-listed options on U.S. Treasury futures contracts, and exchange-listed U.S. Treasury futures contracts (in the aggregate) 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. All of the Fund's net assets that are invested in exchange-listed equity securities (including closed-end funds and ETFs) will be invested in securities that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

The primary investment objective of the Fund will be to generate current income that is exempt from regular federal income taxes and its secondary objective will be long-term capital appreciation. Under normal market conditions, the Fund will seek to achieve its investment objectives by investing at least 80% of its net assets (including investment borrowings) in Municipal Securities. Under normal market conditions, the Fund will invest at least 65% of its net assets in Municipal Securities that are, at the time of investment, rated below investment grade by at least one NRSRO rating such securities (or Municipal Securities that are unrated and determined by the Adviser to be of comparable quality) (commonly referred to as ''high yield'' or ''junk'' bonds). The Fund may invest up to 10% of its net assets in taxable municipal securities. In addition, the Fund may invest up to 10% of its net assets in Distressed Municipal Securities. With respect to up to 20% of its net assets, the Fund may (i) invest in exchange-listed options on U.S. Treasury securities, exchange-listed options on U.S. Treasury futures contracts, and exchange-listed U.S. Treasury futures contracts and (ii) acquire short positions in the foregoing derivatives. The Fund's investments in derivative instruments will be consistent with the Fund's investment objectives and the 1940 Act and will not be used to seek to achieve a multiple or inverse multiple of an index. Also, the Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The 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 (including Municipal Securities) will generally be valued using prices obtained from a Pricing Service. If, however, valuations for any of the Fund's investments cannot be readily obtained as provided in the preceding two sentences, 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 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 Fund 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, the 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. One source of price information for Municipal Securities and taxable municipal securities will be the MSRB's EMMA. Additionally, the MSRB offers trade data subscription services that permit subscribers to obtain same-day pricing information about municipal securities transactions. Moreover, pricing information for Municipal Securities, as well as for taxable municipal securities, Short-Term Debt Instruments (including short-term U.S. government securities, commercial paper, and bankers' acceptances), and repurchase agreements will be available from major broker-dealer firms and/or major market data vendors and/or Pricing Services.

Pricing information for exchange-listed derivatives (including options on U.S. Treasury securities, options on U.S. Treasury futures contracts, and U.S. Treasury futures contracts), ETFs and closed-end funds will be available from the applicable listing exchange and from major market data vendors.

Money market funds and other open-end funds (excluding ETFs) are typically priced once each business day and their prices will be available through the applicable fund's Web site or from major market data vendors.

The Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund 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 the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that 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 the exchange-listed securities and instruments held by the Fund (including closed-end funds, ETFs, exchange-listed options on U.S. Treasury securities, exchange-listed options on U.S. Treasury futures contracts, and exchange-listed U.S. Treasury futures contracts) with other markets and other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the Shares and such exchange-listed securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the exchange-listed securities and instruments held by the Fund 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. Furthermore, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

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 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 up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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. Please include File Number SR–NASDAQ–2016–002 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–NASDAQ–2016–002.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal

office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number *SR–NASDAQ–2016–002* and should be submitted on or before February 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Brent J. Fields,

Secretary.

[FR Doc. 2016–01542 Filed 1–26–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76952; File No. SR–BX–2016–003]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding SQF Port Fees

January 21, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on January 12, 2016, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify BX Options Market (''BX Options'') Chapter XV, Section 3, entitled ''BX Options Market—Access Services,'' which governs pricing for BX members using BX Options,[3] BX's facility for executing and routing standardized equity and index options. Specifically, the Exchange proposes to add new streaming quote interface (''SQF'') Port Fees.[4]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend BX Options Chapter XV, Section 3(b) to add new SQF Port Fees.

Currently, BX Options Chapter XV, Section 3 lists port fees as follows:

(b) Port Fees, per port, per month, per mnemonic as follows:

Order Entry Port Fee	$200.00
CTI Port Fee	200.00
BX Depth Port Fee [1]	200.00
BX TOP Port Fee [1]	200.00
Order Entry DROP Port Fee	200.00
SQF Port Fee [1]	0.00

[1] BX Depth and BX Top Port fees will be assessed to non-BX Participants and BX Participants.

Today, if an option participant transacting business on BX Options (''Participant'')[5] has one mnemonic[6] and 20 SQF Ports, in a month the Participant would not pay anything (20 × $0.00). The Exchange now proposes to assess an SQF Fee, which is currently set at $0.00. This change is described below.

The SQF Port is a port that allows a Participant acting as a BX Options Market Maker (''Market Maker'')[7] to enter his markets into the BX Options markets. The SQF Port also allows a Market Maker to access information such as execution reports and other relevant data through a single feed. Market Makers rely on data available through the SQF Port to provide them the necessary information to perform market making activities in a swift and meaningful way. This proposal establishes that SQF Ports, which are not currently fee liable, will be fee liable. Prospectively, fees for SQF Ports will to be assessed per port, per month.[8]

Change 1—SQF Port Fees

SQF Port Fees are currently set at $0.00 and as such are not fee liable for Participants that are Market Makers. The Exchange is now proposing in BX Options Chapter XV, Section 3(b) a fee of $500 per port, per month for SQF Ports. The Exchange had not initially made the SQF Ports fee liable in order to incentivize more Market Makers to make markets on the Exchange. The Exchange believes that this strategy has been successful in incentivizing Market Makers and that the Exchange no longer needs to offer SQF Ports without fee liability. Therefore, the Exchange is proposing a $500 SQF Port Fee that is significantly lower than that of other exchanges.[9] Moreover, the Exchange is proposing that the SQF Port Fee will be per port, per month similarly to how the same fee is offered on other exchanges.[10] The Exchange believes the continued availability of SQF Ports, even where fee liable as discussed, will continue to incentivize Market Makers to make markets on the Exchange. The Exchange believes that it is reasonable to impose an SQF Port Fee so that the Exchange may begin to partially recoup the costs of maintaining and enhancing SQF Ports.[11]

[34] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] References in this proposal to Chapter and Series refer to BX Options rules, unless otherwise indicated.

[4] SQF Ports are described in detail below.

[5] Options Participants may transact options business via the Exchange Trading System. *See* BX Options Chapter II, Section 1.

[6] A ''mnemonic'' is a unique identifier consisting of a four character alpha code.

[7] The term ''Market Maker'' or (''M'') means a Participant that has registered as a Market Maker on BX Options pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive Market Maker pricing in all securities, the Participant must be registered as a Market Maker in at least one security.

[8] All current port fee assessments (*e.g.*, CTI Port Fee, Order Entry Port Fee, and SQF Port Fee) are assessed per port, per month, per mnemonic. *See* BX Options Chapter XV, Section 3. For additional information regarding SQF generally, *see http://www.nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/sqfnom2.0.pdf.* This document applies to BX Options, NASDAQ Options Market (''NOM''), and NASDAQ OMX Phlx LLC (''Phlx''). NOM, Phlx, and BX Options are options exchanges of Nasdaq, Inc.

[9] The proposed $500 SQF Port Fee is, for example, significantly lower than the current $750 NOM SQF Port Fee. *See* NOM Chapter XV, Section 3(b).

[10] For example, the NOM SQF Port Fee is similarly offered per port, per month. *See* NOM Chapter XV, Section 3(b).

[11] The Exchange is proposing to delete the ''1'' indicating applicability of note 1 to the SQF Port Fee, as note 1 is clearly applicable only to BX Depth and BX Top Port fees.

As proposed, BX Options Chapter XV, Section 3 will read as follows:

Sec. 3 BX Options Market—Access Services

The following charges are assessed by BX for connectivity to the BX Options Market:

(a) TradeInfo BX

• BX Options Participants using TradeInfo BX will be charged a fee of $95 per user per month.

(b) Port Fees, per port, per month, per mnemonic as follows:

Order Entry Port Fee	$200.00
CTI Port Fee	200.00
BX Depth Port Fee [1]	200.00
BX TOP Port Fee [1]	200.00
Order Entry DROP Port Fee	200.00
Port Fees, per port, per month as follows:	
SQF Port Fee	500.00

[1] BX Depth and BX Top Port fees will be assessed to non-BX Participants and BX Participants.

With the proposed SQF Fee, if a Participant has 20 SQF Ports, the Participant would pay $10,000 (20 × $500).[12]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[13] in general, and with Section 6(b)(4) and 6(b)(5) of the Act,[14] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities which the Exchange operates or controls [sic], and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, for example, the Commission indicated that market forces should generally determine pricing because national market system regulation ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [15] Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [16] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[17] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [18]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [19] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange believes that its proposal should continue to provide opportunities for more efficient participation in orders and executions on the Exchange, and at the same time facilitate the ability of the Exchange to recoup some costs, maintain, and improve SQF Ports.

Change 1—SQF Port Fees

SQF Ports are not currently fee liable for Participants that are Market Makers. The Exchange is now proposing in BX Options Chapter XV, Section 3(b) a fee of $500 per port, per month for SQF Ports.[20] The Exchange had not initially made the SQF Ports fee liable in order to incentivize more BX Market Makers to make markets on the Exchange. The Exchange believes that this strategy has been successful in incentivizing Market Makers and that the Exchange no longer needs to offer SQF Ports without fee liability.

The Exchange believes that its proposal to make the SQF Port Fee $500 per port, per month is reasonable because it would allow the Exchange to keep pace with increasing technology costs. The proposed SQF Port Fee reflects the desire of the Exchange to recoup costs that the Exchange bears with respect to maintaining ports. The proposed SQF Port Fee is reasonable because it enables the Exchange to offset, in part, its costs associated with making such ports available, including costs based on software and hardware enhancements and resources dedicated to development, quality assurance, and support. This will continue to incentivize Market Makers while allowing the Exchange to recoup its costs. The proposed SQF Port Fee is reasonable because it is lower than, and therefore competitive with, fees for similar ports on other exchanges.[21] In addition, the proposed SQF Port Fee is in line with costs for other ports at other options exchanges.[22] SQF Ports allow a Market Maker to access information and rely on data available through such ports to provide necessary information to perform market making activities in a swift and meaningful way. Market Makers are valuable market participants that provide liquidity in the marketplace and incur costs unlike other market participants because Market Makers add value through continuous quoting [23] and the commitment of capital. Exchange Market Makers provide a critical liquidity function across thousands of individual option puts and option calls, a function no other market participants are obligated to perform.

The Exchange believes that establishing the proposed SQF Port Fee is equitable and not unfairly discriminatory. This is because the SQF Port Fee is applicable to all Participants that are Market Makers on the Exchange and will apply uniformly to all similarly

[12] The number of mnemonics is not relevant for the proposed SQF Port Fees.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4) and (5).

[15] Securities Exchange Act Release No. 51808 [sic] at 37499 (June 9, 2005) (''Regulation NMS Adopting Release'').

[16] *NetCoalition* v. *Securities and Exchange Commission,* No. 09–1042 (D.C. Cir. 2010).

[17] *See* id. at 534–535.

[18] *See id.* at 537.

[19] *Id.* at 539 (quoting Securities Exchange Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) at 73 FR at 74782–74783).

[20] In establishing that the SQF Fee is per port, per month the Exchange is proposing that the Exchange SQF Port Fee will be similar to that of NOM. *See* NOM Chapter XV, Section 3(b).

[21] The proposed $500 SQF Port Fee is, for example, significantly lower than the current $750 NOM SQF Port Fee. *See* NOM Chapter XV, Section 3(b).

[22] *See* NOM Pricing Schedule (port fees $650 or $750 per port); and Phlx Pricing Schedule, (port fees $650 or $1250 capped per port). *See also* ISE Gemini, LLC (''ISE Gemini'') Fee Schedule (port fees $750 to $15,000 depending on connectivity levels); and C2 Options Exchange, Incorporated (''C2'') (generally assesses port fees $500 to $1,000 depending on connectivity levels).

[23] Pursuant to BX Options Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a Market Maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. The Exchange recognizes that BX Option Market Makers that utilize SQF Ports require more technology infrastructure and more ports than BX Option Participants that are not engaged in market making, and has built this in to the fee structure.

situated Participants. All Market Makers that use a SQF Port(s) will be assessed the SQF Port Fee in the same way.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe that its proposal to make changes to BX Options Chapter XV, Section 3(b) to add new SQF Port Fees will impose any undue burden on competition, as discussed below.

The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees remain competitive with the fee structures at other trading platforms. In that sense, the Exchange's proposal is actually pro-competitive because it enables the Exchange to continue offering SQF Ports to the benefit of market participants.

The Exchange does not believe that the proposed rule change will impose any undue burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. Moreover, in terms of intra-market competition, the Exchange notes that the proposed assessment of an SQF Port Fee will be applied uniformly to all Participants that are Market Makers that use such ports but should have no undue burden on any particular group of users. The proposal is designed to ensure a fair and reasonable use of Exchange resources by allowing the Exchange to recoup for certain of its connectivity costs, while continuing to offer competitive rates to Participants.

Furthermore, in this instance the proposed SQF Port Fee does not impose a burden on competition because the Exchange's execution and routing services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Additionally, the changes proposed herein are pro-competitive to the extent that they continue to allow the Exchange to promote and maintain order executions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[24] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2016–003 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–BX–2016–003.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2016–003 and should be submitted on or before February 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Brent J. Fields,

Secretary.

[FR Doc. 2016–01533 Filed 1–26–16; 8:45 am]

BILLING CODE 8011–01–P

[24] 15 U.S.C. 78s(b)(3)(A)(ii).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76955; File No. SR–NYSEArca–2015–93]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment No. 1, Relating To Listing and Trading of Shares of the Cumberland Municipal Bond ETF Under NYSE Arca Equities Rule 8.600

January 21, 2016.

On November 24, 2015, NYSE Arca, Inc. filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Cumberland Municipal Bond ETF, a series of the ETF is Series Trust I. The proposed rule change was published for comment in the **Federal Register** on December 14, 2015.[3] On December 29, 2015, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] The Commission received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act [5] 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 Commission is extending this 45-day time period. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates April 27, 2016, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–NYSEArca–2015–93), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Brent J. Fields,

Secretary.

[FR Doc. 2016–01536 Filed 1–26–16; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 76590 (December 8, 2015), 80 FR 77384 (''Notice'').

[4] In Amendment No. 1, which replaces and supersedes the original filing in its entirety, the Exchange made clarifying changes, added a representation regarding municipal bonds, deleted a sentence regarding redemption, and clarified pricing information for certain assets. Amendment No. 1 is not subject to notice and comment because it is a technical amendment that does not materially alter the substance of the proposed rule change or raise any novel regulatory issues. It is available at: *http://www.sec.gov/comments/sr-nysearca-2015-93/nysearca201593-1.pdf.*

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76966; File No. SR–Phlx–2016–06]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend a Quote Spread Parameter Provision

January 22, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on January 14, 2016, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 1014(c)(i)(A)(1)(b) respecting U.S. dollar-settled foreign currency options (''FCO'') quote spread parameters, also known as bid/ask differentials, as described further below.

The text of the proposed rule change is below; proposed new language is italicized.

* * * * *

NASDAQ OMX PHLX Rules

* * * * *

Rule 1014. Obligations and Restrictions Applicable to Specialists and Registered Options Traders

(a)–(b) No change.

(c) In Classes of Option Contracts to Which Assigned—Affirmative Obligations. With respect to classes of option contracts to which his assignment extends, a Specialist and an ROT, whenever the ROT (except an RSQT) enters the trading crowd in other than a floor brokerage capacity or is called upon by an Options Exchange Official or a Floor Broker, to make a market, are expected to engage, to a reasonable degree under the existing circumstances, in dealing for his own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for a particular option contract, or a temporary distortion of the price relationships between option contracts of the same class. Without limiting the foregoing, a Specialist and an ROT is expected to perform the following activities in the course of maintaining a fair and orderly market:

(i) Options on Equities (including Exchange-Traded Fund Shares), Index Options, and U.S. dollar-settled Foreign Currency Options.

(A)(1) Quote Spread Parameters (Bid/Ask Differentials)—

(a) Options on equities and index options bidding and/or offering so as to create differences of no more than $.25 between the bid and the offer for each option contract for which the prevailing bid is less than $2; no more than $.40 where the prevailing bid is $2 or more but less than $5; no more than $.50 where the prevailing bid is $5 or more but less than $10; no more than $.80 where the prevailing bid is $10 or more but less than $20; and no more than $1 where the prevailing bid is $20 or more, provided that, in the case of equity options, the bid/ask differentials stated above shall not apply to in-the-money series where the market for the underlying security is wider than the differentials set forth above. For such series, the bid/ask differentials may be as wide as the quotation for the underlying security on the primary market, or its decimal equivalent rounded up to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options.

(b) Options on U.S. dollar-settled FCO. With respect to all U.S. dollar-settled FCO bidding and/or offering so as to create differences of no more than $.25 between the bid and the offer for each option contract for which the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

prevailing bid is less than $2.00; no more than $.40 where the prevailing bid is $2.00 or more but less than $5.00; no more than $.50 where the prevailing bid is $5.00 or more but less than $10.00; no more than $.80 where the prevailing bid is $10.00 or more but less than $20.00; and no more than $1.00 where the prevailing bid is $20.00 or more. *The Exchange may establish differences other than the above for one or more series or classes of options.*

(2) No change.

(d)–(g) No change.

* * **Commentary:* ————

.01–.19 No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to update and clarify the quote spread parameters applicable to FCOs. Quote spread parameters establish the maximum permissible width between the bid and the offer in a particular option series. Quote spreads apply to quotes, not orders, and are thus only applicable to the quoting participants who are required to submit two-sided quotes. This includes specialists and the various types of Registered Options Traders (''ROTs'') enumerated in Rule 1014(b).

Specifically, the Exchange proposes to amend Rule 1014(c)(i)(A)(1)(b) respecting FCOs to parallel the following language in Rule 1014(c)(i)(A)(1)(a) respecting equity and index options: the Exchange may establish differences other than the above for one or more series or classes of options. The Exchange inadvertently did not add this language respecting FCOs, even though the ability to establish different quote spread parameters is contemplated in Options Floor Procedure Advice (''Advice'') F–6,[3] Option Quote Parameters. Advice F–6 provides that relief from the established bid/ask differentials may be granted upon the receipt of an approval of an Options Exchange Official.[4] This relief is clearly available for FCOs under Advice F–6 based on the placement of the language. The Exchange believes that, although the relief language in Advice F–6 implies (but does not expressly require) that a request must be made to the Exchange, the result of any such relief would be to establish a different quote spread parameter.[5] If relief is granted, such relief applies to all market participants, regardless of whether a request was specifically made or whether it was made by one particular market participant. The Exchange certainly would not require that such relief be doled out participant-by-participant. The Exchange commonly announces such relief by issuing an Options Regulatory Alert.

Accordingly, the Exchange believes that adopting the proposed language to expressly permit different bid/ask differentials is clearer and parallels the language applicable to other options products, all of which trade on the same trading floor and through the same trading system. There is no reason why different quote spread parameters should be available to equity and index options and not FCOs, much like the relief provision in Advice F–6 applies to all options, including FCOs.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to promote just and equitable principles of trade and protect investors and the public interest by making it clear that respecting FCOs, just like all other options, different quote spread parameters can be established by the Exchange to address specific requests as well as general market events. This should promote just and equitable principles of trade and protect investors by having quote spread parameters reflect potential volatility and activity in the underlying currency, and thereby encourage robust market making in FCOs that reflects current market conditions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. With respect to intra-market competition, the proposed language will apply to all quoting market participants equally. With respect to inter-market competition, market participants who disagree with the quote spread parameters that the Exchange establishes may choose to trade FCOs on another exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[3] Options floor procedures advices generally correspond to Exchange rules and comprise the Exchange's minor rule violation plan establishing preset fines for certain violations pursuant to Rule 19d–1(c) under the Act. 17 CFR 240.19d–1(c).

[4] An Options Exchange Official is an Exchange staff member or contract employee designated as such by the Chief Regulatory Officer. *See* Rule 1(w).

[5] Some of the circumstances that may result in wider quote spread parameters include volatility in the underlying, recent news affecting the underlying and heavy volume in the underlying or the overlying option.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(a)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2016–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2016–06 and should be submitted on or before February 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Brent J. Fields,

Secretary.

[FR Doc. 2016–01665 Filed 1–26–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76969; File No. SR–NYSEArca–2016–13]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Exchange's Schedule of Fees and Charges To Define the Term ''Exchange Traded Products'' and To Provide for the Proration of Annual Fees Applicable to Exchange Traded Products That Have Liquidated

January 22, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 14, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Schedule of Fees and Charges to define the term ''Exchange Traded Products'' and to provide for the proration of Annual Fees applicable to Exchange Traded Products that have liquidated. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange originally filed this proposed rule change on December 23, 2015 under File No. SR–NYSEArca–2015–126, and the Exchange subsequently withdrew that filing on January 5, 2016. The Exchange refiled this proposed rule change on January 5, 2016 under File No. SR–NYSEArca–2016–07. The Exchange subsequently withdrew that filing on January 14, 2016 and filed this filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Schedule of Fees and Charges for NYSE Arca Equities listing fees (''Schedule'') to define the term ''Exchange Traded Products,'' to revise the Annual Fees paid by issuers of Exchange Traded Products, and to make technical, non-substantive changes to the Schedule.

The term ''Derivative Securities Products'' is currently defined in Footnote 3 of the Schedule to mean the securities described in NYSE Arca Equities Rules 5.2(j)(3) (Investment Company Units); 8.100 (Portfolio Depositary Receipts); 8.200 (Trust Issued Receipts); 8.201 (Commodity-Based Trust Shares); 8.202 (Currency Trust Shares); 8.203 (Commodity Index Trust Shares); 8.204 (Commodity Futures Trust Shares); 8.300 (Partnership Units); 8.500 (Trust Units); 8.600 (Managed Fund Shares), and 8.700 (Managed Trust Securities). The Exchange proposes to replace the term ''Derivative Securities Products'' with the term ''Exchange Traded Products'' as a term that is more commonly used by investors and the public with respect to the equity securities that list and trade on the Exchange and distinguishes them from derivatives, such as futures or swaps. To effect this change, the Exchange proposes to amend footnote 3 of the Schedule and to replace the term ''Derivative Securities Products'' with the term ''Exchange Traded Products'' throughout the Schedule.

The Schedule includes ''Annual Fees'' payable by issuers of Exchange Traded Products listed on the Exchange. Pursuant to Footnote 8 of the Schedule, issuers are subject to Annual Fees in the year of listing, pro-rated based on days listed that calendar year. The Annual Fees for Exchange Traded Products are billed in January for the forthcoming

year. Currently, when an Exchange Traded Product liquidates, and as a result, is delisted from the Exchange, the issuer is responsible for the full year's Annual Fee as billed in January. The issuer receives no refund for amounts paid or reduction of amounts payable even though the Exchange Traded Product has liquidated.

The Exchange proposes to amend Footnote 8 of the Schedule to provide that the Annual Fees applicable to Exchange Traded Products that have liquidated and as a result are delisted from the Exchange will be prorated for the portion of the calendar year that such issue was listed on the Exchange, based on days listed that calendar year. Thus, for example, if the issuer of an Exchange Traded Product has paid an Annual Fee of $20,000 as billed in January and such issue is liquidated and then delisted from the Exchange on June 30, the issuer would receive a refund of $10,000, which represents a pro rata credit of Annual Fees owed for the year.

Notwithstanding the proposed proration of the Annual Fees for Exchange Traded Products, the Exchange will continue to be able to fund its regulatory obligations.

The Exchange also proposes non-substantive amendments to the Schedule. First, the Exchange proposes to add the operative date to the Schedule, which, for this filing, would be January 14, 2016. Second, the Exchange proposes to delete the last two sentences of Commentary .4 to the Schedule, which refer to the transfer of securities from NYSE Alternext US to NYSE Arca, which occurred in 2008, and therefore is outdated text.

2. Statutory Basis

NYSE Arca believes that the proposal is consistent with Section 6(b)[4] of the Act, in general, and Section 6(b)(4)[5] of the Act in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its issuers and other persons using its facilities. In addition, the Exchange believes the proposal is consistent with the requirement under Section 6(b)(5)[6] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that adding the operative date will clarify the Schedule by specifying the date as of which the most recent changes to the Schedule apply. Replacing the term ''Derivative Securities Products'' with the term ''Exchange Traded Products'' will remove impediments to and perfect the mechanism of a free and open market by using a term commonly used by the public and investors to refer to the products that are listed on the Exchange. The Exchange further believes that using the term ''Exchange Traded Products'' will promote transparency in Exchange rules by distinguishing the equity securities that list and trade on the Exchange from derivatives, such as futures or swaps. In addition, the deletion of the last two sentences of Commentary .4 to the Schedule will eliminate outdated text.

The Exchange further believes that the proposed pro rata reduction of the Annual Fees as a result of liquidation and termination of an issue of Exchange Traded Products is equitable and does not unfairly discriminate between issuers because it would apply uniformly to all Exchange Traded Products and issuers of such products. The Exchange believes such reduction is reasonable in that it constitutes a potential reduction in Annual Fees for issues that are liquidated, and therefore are no longer collecting a management fee to pay for such expenses. Notwithstanding the proposed proration of the Annual Fees for Exchange Traded Products, the Exchange will continue to be able to fund its regulatory obligations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange believes the proposed rule change would promote competition because it will permit the Exchange to better compete with other exchanges with respect to fees charged in connection with listing Exchange Traded Products.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[7] of the Act and subparagraph (f)(2) of Rule 19b–4[8] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[9] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2016–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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

[4] 15 U.S.C. 78f(b).
[5] 15 U.S.C. 78f(b)(4).
[6] 15 U.S.C. 78f(b)(5).
[7] 15 U.S.C. 78s(b)(3)(A).
[8] 17 CFR 240.19b–4(f)(2).
[9] 15 U.S.C. 78s(b)(2)(B).

printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–13, and should be submitted on or before February 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Brent J. Fields,

Secretary.

[FR Doc. 2016–01668 Filed 1–26–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76953; File No. SR–BYX–2012–019]

Self-Regulatory Organization; BATS Y-Exchange, Inc.; Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program

January 21, 2016.

On November 27, 2012, the Securities and Exchange Commission (''Commission'') issued an order pursuant to its authority under Rule 612(c) of Regulation NMS (''Sub-Penny Rule)[1] that granted the BATS Y-Exchange, Inc. (''BYX'' or the ''Exchange'') a limited exemption from the Sub-Penny Rule in connection with the operation of the Exchange's Retail Price Improvement (''RPI'') Program (the ''Program''). The limited exemption was granted concurrently with the Commission's approval of the Exchange's proposal to adopt the Program for a one-year pilot term.[2] The exemption was granted coterminous with the effectiveness of the pilot Program and has been extended twice;[3] both the pilot Program and exemption are scheduled to expire on January 31, 2016.

The Exchange now seeks to extend the exemption until July 31, 2016.[4] The Exchange's request was made in conjunction with an immediately effective filing that extends the operation of the Program until July 31, 2015.[5] In its request to extend the exemption, the Exchange notes that the Program was implemented gradually over time. Accordingly, the Exchange has asked for additional time to allow itself and the Commission to analyze data concerning the Program, which the Exchange committed to provide to the Commission.[6] For this reason and the reasons stated in the Order originally granting the limited exemption, the Commission finds that extending the exemption, pursuant to its authority under Rule 612(c) of Regulation NMS, is appropriate in the public interest and consistent with the protection of investors.

Therefore, it is hereby ordered, that, pursuant to Rule 612(c) of Regulation NMS, the Exchange is granted a limited exemption from Rule 612(c) of Regulation NMS that allows it to accept and rank orders priced equal to or greater than $1.00 per share in increments of $0.001, in connection with the operation of its RPI Program.

The limited and temporary exemption extended by this Order is subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934. Responsibility for compliance with any applicable provisions of the federal securities laws must rest with the persons relying on the exemptions that are the subject of this Order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Brent J. Fields,

Secretary.

[FR Doc. 2016–01534 Filed 1–26–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76960; File No. SR–CBOE–2015–107]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Relating to Price Protection Mechanisms for Quotes and Orders

January 21, 2016.

I. Introduction

Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed on November 24, 2015, with the Securities and Exchange Commission (the ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposal to enhance its current price protection mechanisms and adopt certain new price protection functionality for orders and quotes. On December 4, 2015, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on December 11, 2015.[3] On December 29, 2015, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission received no

[10] 17 CFR 200.30–3(a)(12).

[1] 17 CFR 242.612(c).

[2] *See* Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (''RPI Approval Order'') (SR–BXY–2012–019).

[3] *See* Securities Exchange Act Release Nos. 71249 (January 7, 2014), 79 FR 2229 (January 13, 2012) (SR–BYX–2014–001) (extending the pilot period); 71250 (January 7, 2014), 79 FR 2234 (January 13, 2012) (Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program); 74111 (January 22, 2015), 80 FR 4598 (January 28, 2015) (SR–BYX–2015–05) (extending the pilot period); and 74115 (January 22, 2015), 80 FR 4324 (January 27, 2015) (Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program).

[4] *See* letter from Anders Franzon, Senior Vice President and Associate General Counsel, BYX, to Elizabeth M. Murphy, Secretary, Commission, dated January 12, 2016.

[5] *See* SR–BYX–2016–01.

[6] *See* RPI Approval Order, *supra* note 2, at 77 FR at 71657.

[7] 17 CFR 200.30–3(a)(83).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 76585 (December 8, 2015), 80 FR 77038 (December 11, 2015) (''Notice'').

[4] In Amendment No. 2, the Exchange amended the proposed rule language to (i) clarify that it will notify Trading Permit Holders by electronic message if the Exchange determines that the put strike price or call underlying value check should not apply in the interest of maintaining a fair and orderly market under proposed Exchange Rule 6.14(a)(ii) and (ii) limit the potential range of the percentage amount used to calculate the maximum value acceptable price range check in proposed Exchange Rule 6.53C, Interpretation and Policy .08(g)(1)(iii). In Amendment No. 2, CBOE also represented that it will document, retain, and periodically review any Exchange decision to not apply the put check or call check under proposed Exchange Rule 6.14(a)(ii), including the reason for the decision. *See* Amendment No. 2 to File No. SR–CBOE–2015–107, dated December 29, 2015

substantive comment letters on the proposal. This order approves the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment Nos. 1 and 2

The Exchange proposes to adopt new Exchange Rule 6.14 and amend Exchange Rule 6.53C, Interpretation and Policy .08, to enhance its current price protection mechanisms for orders and quotes in order to help prevent potentially erroneous executions.[5]

A. Put Strike Price and Call Underlying Value Checks

Proposed Exchange Rule 6.14(a) will provide a new price protection functionality pursuant to which the Exchange's Hybrid Trading System (''System'') will reject back to the Trading Permit Holder a quote or buy limit order for (i) a put if the price of the quote bid or order is equal to or greater than the strike price of the option or (ii) a call if the price of the quote bid or order is equal to or greater than the consolidated last sale price of the underlying security, with respect to equity and exchange-traded fund options, or the last disseminated underlying index value, with respect to index options.[6] The Exchange may determine not to apply this proposed price protection mechanism if a senior official at the Exchange's Help Desk determines the applicable check should not apply in the interest of maintaining a fair and orderly market.[7]

B. Quote Inverting NBBO Check

Proposed Exchange Rule 6.14(b) will apply new a price reasonability check to Market Maker quotes based on the national best bid or offer (''NBBO'') or the Exchange's best bid or offer if the NBBO is unavailable.[8] Specifically, if CBOE is at the NBBO, the System will reject a quote back to a Market Maker if the quote bid or offer crosses the opposite side of the NBBO by more than a number of ticks specified by the Exchange.[9] If CBOE is not at the NBBO, the System will reject a quote back to a Market-Maker if the quote bid or offer locks or crosses the opposite side of the NBBO.[10] The Exchange may determine not to apply this check to quotes entered during the pre-opening, a trading rotation, or a trading halt, and would announce to Trading Permit Holders any such determination thorough a Regulatory Circular.[11]

C. Debit/Credit Price Reasonability Checks

The Exchange proposes to amend its price check parameters applicable to complex orders that are contained in current Exchange Rule 6.53C, Interpretation and Policy .08(c), to prevent the automatic execution of complex orders that appear to be erroneously priced based on general options volatility and pricing principles.[12] Under current Exchange Rule 6.53C, Interpretation and Policy .08(c), the System will not automatically execute (i) a limit order for a debit strategy with a net credit price that should have been entered at a net debit price, (ii) a limit order for a credit strategy with a net debit price that should have been entered at a net credit price, and (iii) a market order for a credit strategy that would be executed at a net debit price when it should execute at a net credit price.[13] The amended rule expands this check to certain complex orders which the System can determine are credits or debits.[14]

D. Maximum Value Acceptable Price Range Check

Finally, the Exchange proposes to amend Exchange Rule 6.53C, Interpretation and Policy .08, to add an additional price check for complex orders. The new price check would apply to vertical, true butterfly, and box spreads, and would block executions of such strategies at prices that exceed their quantifiable maximum possible values by more than a reasonable amount.[15] Under the proposed rule, the Exchange will determine the acceptable price range for these strategies and will reject back to the Trading Permit Holder any limit order and cancel any market order that does not satisfy this proposed check.[16]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with section 6(b) of the Act.[17] In particular, the Commission finds that the proposed rule change is consistent with sections 6(b)(5) of the Act,[18] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and

(''Amendment No. 2''). To promote transparency of its proposed amendment, when CBOE filed Amendment No. 2 with the Commission, it also submitted Amendment No. 2 as a comment letter to the file, which the Commission posted on its Web site and placed in the public comment file for SR–CBOE–2015–107. The Exchange also posted a copy of its Amendment No. 2 on its Web site (*http://www.cboe.com/aboutcboe/legal/submittedsecfilings.aspx*) when it filed the amendment with the Commission.

[5] For a more detailed description of each proposed price protection mechanism, *see* Notice, *supra* note 3.

[6] If the System rejects a Market Maker's quote pursuant to either proposed price check, the Exchange will cancel any resting quote of the Market Maker in the same series. *See* proposed Exchange Rule 6.14(a); *see also* Notice, *supra* note 3, at 77038. These proposed checks also will apply to buy auction responses in the same manner as it does to orders and quotes, as well as pairs of orders submitted to the Exchange's Automated Improvement Mechanism (''AIM''), Solicitation Auction Mechanism (''SAM''), or as a qualified cross-contingent order (''QCC order''). *See id.*

[7] *See* proposed Exchange Rule 6.14(a)(ii); *see also* Notice, *supra* note 3, at 77039. The Exchange represented that it will document, retain, and periodically review any decision to not apply the put check or call check, including the reason for the decision. *See* Amendment No. 2, *supra* note 4.

[8] *See* proposed Exchange Rule 6.14(b); *see also* Notice, *supra* note 3, at 77039–41.

[9] The Exchange states that the number of ticks will be no less than three minimum increment ticks and announced to Trading Permit Holders by Regulatory Circular. *See* proposed Exchange Rule 6.14(b); *see also* Notice, *supra* note 3, at 77040. In addition, proposed Exchange Rule 6.14(b)(iii) addresses situations where CBOE accepts a quote that locks or crosses the NBBO.

[10] *See* proposed Exchange Rule 6.14(b)(i); *see also* Notice, *supra* note 3, at 77040. As an additional risk control feature, if a Market Maker submits a quote in a series in which the Market Maker already has a resting quote and the Exchange rejects that quote pursuant to this proposed check, the Exchange will cancel the Market Maker's resting quote in the series. *See* Notice, *supra* note 3, at 77040.

[11] *See* proposed Exchange Rule 6.14(b)(ii); *see also* Notice, *supra* note 3, at 77040. Additionally, this proposed check will not apply if a senior official at the Exchange's Help Desk determines it should not apply in the interest of maintaining a fair and orderly market. *See id.*

[12] *See* proposed Exchange Rule 6.53C, Interpretation and Policy .08(c); *see also* Notice, *supra* note 3, at 77041–43.

[13] *See* Notice, *supra* note 3, at 77041.

[14] *See id.* at 77041. The proposed rule contains new definitions of vertical spread, butterfly spread and box spread, and states how the System will define a complex order as a debit or credit. *See id* at 77041–43; *see also* proposed Exchange Rule 6.53C, Interpretation and Policy .08(c). These checks will also apply to buy auction responses and pairs of orders submitted to AIM, SAM, or as a QCC order. *See* proposed Exchange Rule 6.53C, Interpretation and Policy .08(c)(4)–(5); *see also* Notice, *supra* note 3, at 77043.

[15] *See* proposed Exchange Rule 6.53C, Interpretation and Policy .08(g); *see also* Notice, *supra* note 3, at 77044–45.

[16] *See* Notice, *supra* note 3, at 77044–45. The proposed check will also apply to auction responses and pairs of orders submitted to AIM, SAM, or as a QCC order. *See id.*

[17] 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed new price protection mechanisms are reasonably designed to promote just and equitable principles of trade to the extent they are able to mitigate potential risks associated with market participants entering orders at what CBOE believes are clearly unintended prices and executing trades at prices that are both extreme and potentially erroneous.[19] Specifically, the Commission believes that the proposed price protection for simple orders to buy put and call options based on the strike price or underlying value, respectively, is designed to promote fair and orderly markets and protect investors by rejecting quotes and orders that exceed the strike price for puts and the value of the underlying for calls, which may likely have occurred due to human or operational error. The Commission also believes that the proposed quote inverting NBBO check is reasonably designed to promote just and equitable principles of trade by preventing potential price dislocation that could result from erroneous Market Maker quotes sweeping through multiple price points.[20]

In addition, the proposed enhanced price checks that would apply to complex orders, including the debit and credit price reasonability checks and the maximum value acceptable price range checks, are designed to mitigate the potential risks associated with complex orders trading at prices that likely are inconsistent with their strategies and could potentially result in erroneous executions.[21] Furthermore, the Commission believes that the proposed maximum value acceptable price range adds a second layer of price protection to complex strategies that is reasonably designed to mitigate the potential risks associated with orders that have complex strategies with quantifiable maximum values trading at prices that are potentially erroneous.[22]

Accordingly, for the reasons discussed above, the Commission believes that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the Act.

[19] *See* Notice, *supra* note 3, at 77045.

[20] *See* Notice, *supra* note 3, at 77045.

[21] *See* Notice, *supra* note 3, at 77046.

[22] *See* Notice, *supra* note 3, at 77046.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2015–107 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2015–107. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2015–107 and should be submitted on or before February 17, 2016.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2

The Commission finds good cause, pursuant to section 19(b)(2) of the Act, to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, prior to the 30th day after the date of publication of Amendment No. 2 in the **Federal Register**. As discussed above, Amendment No. 2 clarified that the Exchange will notify Trading Permit Holders by electronic message if the Exchange determines that the put strike price or call underlying value check should not apply in the interest of maintaining a fair and orderly market under proposed Exchange Rule 6.14(a)(ii).[23] CBOE also represented in Amendment No. 2 that the Exchange will document, retain, and periodically review any Exchange decision to not apply the put check or call check under proposed Exchange Rule 6.14(a)(ii), including the reason for the decision.[24] Lastly, in Amendment No. 2, CBOE clarified that the potential range of the percentage amount it will use to calculate the maximum value acceptable price range check in proposed Exchange Rule 6.53C, Interpretation and Policy .08(g)(1)(iii), is between 1% and 5%.[25] The Commission believes that these changes provide greater clarity and remove any possible uncertainty regarding the potential exercise of Exchange discretion with regard to the proposed price protection mechanisms. In particular, the representation about documenting, retaining, and periodically reviewing decisions to suspend a price check will enable CBOE to monitor the actions of its senior Help Desk personnel and assure that the suspension of any price check is appropriate and consistent with CBOE's responsibilities as a self-regulatory organization and the principles articulated in the Act that are applicable to exchanges. Further, clarifying the possible range of the maximum value acceptable price range provides valuable information to Trading Permit Holders to help them better understand and evaluate this price protection functionality. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis, pursuant to section 19(b)(2) of the Act.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act[26] that the proposed rule change (SR–CBOE–2015–107), as modified by Amendment Nos. 1 and 2, be, and hereby is, approved on an accelerated basis.

[23] *See* Amendment No. 2, *supra* note 4.

[24] *Id.*

[25] *Id.*

[26] 15 U.S.C. 78f(b)(2).

[27] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Brent J. Fields,

Secretary.

[FR Doc. 2016–01540 Filed 1–26–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76967; File No. SR–NASDAQ–2016–004]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NOM Rules at Chapter XV, Section 2

January 22, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on January 11, 2016, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter XV, entitled ''Options Pricing,'' at Section 2, which governs pricing for Exchange members using the NASDAQ Options Market (''NOM''), the Exchange's facility for executing and routing standardized equity and index options.

The Exchange purposes [sic] to amend its NOM Market Maker[3] and Non-NOM Market Maker[4] Fees for Removing Liquidity in Penny Pilot Options to offer Participants an incentive to direct a greater amount of order flow to NOM from January 11, 2016 through January 29, 2016.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes certain amendments to the NOM transaction fees set forth at Chapter XV, Section 2 for executing and routing standardized equity and index options under the Penny Pilot Options program. The Exchange desires to incentivize NOM Participants to add an even greater amount of liquidity to NOM from January 11, 2016 through January 29, 2016. Specifically, the Exchange proposes to incentivize Participants by offering the opportunity to reduce the NOM Market Maker and Non-NOM Market Maker Penny Pilot Options Fees for Removing Liquidity from $0.50 to $0.48 per contract, for the time period from January 11, 2016 through January 29, 2016, provided the Participant adds 1.30% of Customer,[5] Professional,[6] Firm,[7] Broker-Dealer[8] or Non-NOM Market Maker liquidity *and* the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership.[9]

This incentive offer will not apply to volume transacted prior to January 11, 2016 or after January 29, 2016.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[10] in general, and with Section 6(b)(4) and 6(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Attracting order flow to the Exchange benefits all Participants who have the opportunity to interact with this order flow.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [12] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets and this proposal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''NOM Market Maker'' is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

[4] A ''Non-NOM Market Maker'' is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

[5] The term ''Customer'' or (''C'') applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Chapter I, Section 1(a)(48)).

[6] The term ''Professional'' or (''P'') means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

[7] The term ''Firm'' or (''F'') applies to any transaction that is identified by a Participant for clearing in the Firm range at The Options Clearing Corporation.

[8] The term ''Broker-Dealer'' or (''B'') applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

[9] The term ''Common Ownership'' shall mean Participants under 75% common ownership or control. Common Ownership shall apply to all pricing in Chapter XV, Section 2 for which a volume threshold or volume percentage is required to obtain the pricing.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] *Id.* [sic] at 539 (quoting Securities Exchange Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) at 73 FR at 74782–74783).

is consistent with those views in that it is a price cut driven by competition.

The Exchange's proposal to incentivize Participants by offering the opportunity to reduce the NOM Market Maker and Non-NOM Market Maker Penny Pilot Options Fees for Removing Liquidity from $0.50 to $0.48 per contract, for the time period from January 11, 2016 through January 29, 2016, provided the Participant adds 1.30% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity *and* the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership is reasonable because the Exchange believes NOM will attract a greater amount of order flow by offering this discounted rate. The Exchange believes that this additional fee reduction for Non-NOM Market Makers and NOM Market Makers should further incentivize Participants to add liquidity in Penny Pilot Options on NOM to obtain the discounted rate from January 11, 2016 through January 29, 2016.

The Exchange's proposal to incentivize Participants by offering the opportunity to reduce the NOM Market Maker and Non-NOM Market Maker Penny Pilot Options Fees for Removing Liquidity from $0.50 to $0.48 per contract, for the time period from January 11, 2016 through January 29, 2016, provided the Participant adds 1.30% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity *and* the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership is equitable and not unfairly discriminatory for the reasons which follow. NOM Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.[13] A NOM Market Maker has the obligation, for example, to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a [sic] course of dealings. The proposed differentiation as between NOM Market Makers and other market participants recognizes the differing contributions made to the trading environment on the Exchange by NOM Market Makers. For the above reasons, the Exchange believes that NOM Market Makers are entitled to discounted fees, provided they qualify for the discount. The Exchange believes it is equitable and not unfairly discriminatory to offer the fee discount to Non-NOM Market Makers because the Exchange is offering Participants flexibility in the manner in which they are submitting their orders. Non-NOM Market Makers have obligations on other exchanges to qualify as a market maker. Also, the Exchange believes that market makers not registered on NOM will be encouraged to send orders to NOM as an away market maker (Non-NOM Market Maker) with this incentive. Because the incentive is being offered to both market makers registered on NOM and those not registered on NOM, the Exchange believes that the proposal is equitable and not unfairly discriminatory because it encourages market makers to direct liquidity to NOM to the benefit of all Participants. This proposal recognizes the overall contributions made by market makers to a listed options market.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to only offer the fee reduction to NOM Market Makers and Non-NOM Market Makers because the Exchange is offering this $0.02 per contract fee discount to the Penny Pilot Options Fees for Removing Liquidity to incentivize NOM Participants to select NOM as a venue to send Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker order flow from January 11, 2016 through January 29, 2016.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to permit NOM Participants with 75 percent common ownership to aggregate their volume for purposes of obtaining the fee discount because certain NOM Participants chose to segregate their businesses into different legal entities for purposes of conducting business. The Exchange believes that these NOM Participants should be treated as one entity for purposes of qualifying for the discounted Fee for Removing Liquidity in Penny Pilot Options, from January 11, 2016 through January 29, 2016, as long as there is at least 75% common ownership or control among the NOM Participants. The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to offer a $0.02 per contract reduced Penny Pilot Option Fee for Removing Liquidity to Non-NOM Market Makers and NOM Market Makers for transactions in which the same NOM Participant or a NOM Participant under Common Ownership is the buyer and the seller from January 11. 2016 through January 29, 2016. NOM Participants that chose to segregate their businesses into different legal entities should still be afforded the opportunity to receive the discount as if they were the same NOM Participant on both sides of the transaction.

It is important to note that NOM Participants are unaware at the time the order is entered of the identity of the contra-party. Because contra-parties are anonymous, the Exchange believes that NOM Participants would aggressively pursue order flow in order to receive the benefit of the reduction. Offering the additional fee reduction is reasonable, equitable and not unfairly discriminatory because Participants would be entitled to receive the fee reduction when the Participant is both the buyer and seller. By way of example, if a NOM Participant that is assigned the firm code[14] ''ABC'' by the Exchange posted an order utilizing its Customer order router, and the order was removed by an ABC NOM Market Maker order, the NOM Participant would receive the $0.02 per contract fee reduction for that trade ($0.50 to $0.48 per contract). The fee reduction would only be applicable from January 11, 2016 through January 29, 2016. The Exchange proposes to utilize the Exchange assigned firm code to determine which NOM Participant executed an order and to apply the fee reduction to the Non-NOM Market Maker or NOM Market Maker Penny Pilot Option Fee for Removing Liquidity if the same NOM Participant was the buyer and the seller to a transaction.[15] This concept is not novel. Today NASDAQ OMX PHLX LLC (''Phlx'') assesses a Firm Floor Options Transaction Charge based on which side of the transaction the member represents as well whether the same member or its affiliates under Common Ownership was represented.[16]

[13] Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder. *See* Chapter VII, Section 5.

[14] Each NOM Participant is assigned a firm code by the Exchange.

[15] In this example, the same Participant that added and removed the order would be entitled to the fee reduction because the NOM Participant was the buyer and seller on the transaction.

[16] The Firm Floor Options Transaction Charges will be waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges). The Firm Floor Options Transaction Charges will be waived for the buy side of a transaction if the same member or its affiliates

Finally, the Exchange's proposal to count all order flow toward the 1.30% requisite volume, except for NOM Market Maker order flow is reasonable, equitable and not unfairly discriminatory because NOM Market Makers are entitled to rebates today similar to Customers and Professionals. Customer volume is important because it continues to attract liquidity to the Exchange, which benefits all market participants. Further, with respect to Professional liquidity, the Exchange initially established Professional pricing in order to ''. . . bring additional revenue to the Exchange.'' [17] The Exchange noted in the Professional Filing that it believes ''. . . that the increased revenue from the proposal would assist the Exchange to recoup fixed costs.'' [18] Further, the Exchange noted in that filing that it believes that establishing separate pricing for a Professional, which ranges between that of a Customer and market maker, accomplishes this objective.[19] The Exchange offers NOM Market Makers rebates in acknowledgment of the obligations [20] these Participants bear in the market. The Exchange believes that it is not necessary to count NOM Market Maker volume toward the volume to qualify for the fee reduction because that volume is counted toward the qualifiers for the NOM Market Maker rebates.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed amendments to NOM Market Maker and Non-NOM Market Maker Penny Pilot Options Fees for Removing Liquidity do not impose an undue burden on inter-market competition because the Exchange's execution services are completely voluntary and subject to extensive competition.

The Exchange's proposal to incentivize Participants by offering the opportunity to reduce the NOM Market Maker and Non-NOM Market Maker Penny Pilot Options Fees for Removing Liquidity from $0.50 to $0.48 per contract, for the time period from January 11, 2016 through January 29, 2016, provided the Participant adds 1.30% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity *and* the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership does not create an undue burden on intra-market competition because NOM Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.[21] Offering the fee discount to Non-NOM Market Makers provides Participants with flexibility in the manner in which they are submitting their orders. Non-NOM Market Makers have obligations on other exchanges to qualify as a market maker. Also, the Exchange believes that market makers not registered on NOM will be encouraged to send orders to NOM as an away market maker (Non-NOM Market Maker) with this incentive. Because the incentive is being offered to both market makers registered on NOM and those not registered on NOM, the Exchange believes that the proposal does not impose an undue burden on intra-market competition because it encourages market makers to direct liquidity to NOM to the benefit of all Participants.

The Exchange believes that permitting NOM Participants with 75 percent common ownership to aggregate their volume for purposes of obtaining the fee discount does not create an undue burden on intra-market competition because certain NOM Participants chose to segregate their businesses into different legal entities for purposes of conducting business. NOM Participants that chose to segregate their businesses into different legal entities should still be afforded the opportunity to receive the discount as if they were the same NOM Participant on both sides of the transaction.

Participants would be entitled to receive the fee reduction when the Participant is both the buyer and seller and therefore this qualifier does not create an undue burden on intra-market competition. NOM Participants are unaware at the time the order is entered of the identity of the contra-party, therefore, since contra-parties are anonymous, the Exchange believes that NOM Participants would aggressively pursue order flow in order to receive the benefit of the reduction, to the benefit of all Participants.

The Exchange's proposal to count all order flow toward the 1.30% requisite volume, except for NOM Market Maker order flow does not impose an undue burden on intra-market competition because the Exchange believes it is not necessary to count NOM Market Maker volume in qualifying for the fee discount as that volume is counted toward qualifying for NOM Market Maker rebates.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[22]

At any time within 60 days of the filing of the proposed rule change, the

under Common Ownership represents both sides of a Firm transaction when such members are trading in their own proprietary account. In addition, the Broker-Dealer Floor Options Transaction Charge (including Cabinet Options Transaction Charges) will be waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer (''BD-Customer Facilitation''), if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month. *See* Phlx's Pricing Schedule.

[17] *See* Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR–NASDAQ–2011–066) (''Professional Filing''). In this filing, the Exchange addressed the perceived favorable pricing of Professionals who were assessed fees and paid rebates like a Customer prior to the filing. The Exchange noted in that filing that a Professional, unlike a retail Customer, has access to sophisticated trading systems that contain functionality not available to retail Customers.

[18] *See* Professional Filing.

[19] *See* Professional Filing. The Exchange also in [sic] the Professional Filing that it believes the role of the retail Customer in the marketplace is distinct from that of the Professional and the Exchange's fee proposal at that time accounted for this distinction by pricing each market participant according to their roles and obligations.

[20] *See* note 13.

[21] *See* note 13.

[22] 15 U.S.C. 78s(b)(3)(A)(ii).

Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–004, and should be submitted on or before February 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Brent J. Fields,

Secretary.

[FR Doc. 2016–01666 Filed 1–26–16; 8:45 am]

BILLING CODE 8011–01–P

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76945; File No. SR–BATS–2015–108]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change To Adopt Rule 11.27 To Implement the Quoting and Trading Requirements of the Tick Size Pilot Program

January 21, 2016.

On November 30, 2015, BATS Exchange, Inc. (''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt Exchange Rule 11.27 to implement the quoting and trading requirements set forth in the Regulation NMS Plan to Implement a Tick Size Pilot Program.[3] The proposed rule change was published for comment in the **Federal Register** on December 9, 2015.[4] The Commission has received three comment letters on the proposal.[5]

Section 19(b)(2) of the Act [6] provides that, within 45 days of the publication of the 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 for this filing is January 23, 2016.

The Commission is extending this 45-day time period. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposal.

Accordingly, pursuant to Section 19(b)(2) of the Act,[7] the Commission designates March 8, 2016, as the date by which the Commission should either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change (File No. SR–BATS–2015–108).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Brent J. Fields,

Secretary.

[FR Doc. 2016–01529 Filed 1–26–16; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015).

[4] *See* Securities Exchange Act Release No. 76552 (December 3, 2015), 80 FR 76591.

[5] *See* Letters from Brendon J. Weiss, Co-Head Government Affairs, Intercontinental Exchange Inc. and John K. Kerin, CEO, Chicago Stock Exchange dated January 15, 2016, to Brent J. Fields, Secretary, Commission; Mary Lou Von Kaenel, Managing Director, Financial Information Forum, dated December 22, 2015; and Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated December 18, 2015, to Robert W. Errett, Deputy Secretary, Commission.

[6] 15 U.S.C. 78s(b)(2).

[7] *Id.*

[8] 17 CFR 200.30–3(a)(31).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995, 44 U.S.C Chapter 35 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before March 28, 2016.

ADDRESSES: Send all comments to Rachel Newman Karton, Program Analyst, Office of Entrepreneurial Development, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Rachel Newman Karton, Program

Analyst, 202–619–1618, *rachel.newman@sba.gov*; Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: In accordance with regulations and policy, the Small Business Development Centers (SBDC's) must provide SBA semi-annual financial and programmatic reports-outlining expenditures and accomplishments. The information collected will be used to monitor the progress of the program.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

Title: ''Federal Cash Transaction Report; Financial Status Report Program Income Report Narrative Program Report''.

Description of Respondents: SBDC Directors.

Form Number: 2113.

Annual Responses: 126.

Annual Burden: 7,308.

Curtis Rich,

Management Analyst.

[FR Doc. 2016–01601 Filed 1–26–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14589 and #14590]

Mississippi Disaster Number MS–00083

AGENCY: U.S. Small Business Administration

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Mississippi (FEMA–4248–DR), dated 01/04/2016.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 12/23/2015 through 12/28/2015.

DATES: *Effective Date:* 01/15/2016.

Physical Loan Application Deadline Date: 03/04/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 10/04/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of MISSISSIPPI, dated 01/04/2016, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties

Coahoma, Panola, Quitman.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59008)

James E. Rivera,

Associate Administrator, for Disaster Assistance.

[FR Doc. 2016–01599 Filed 1–26–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #4595 and #14596]

ALABAMA Disaster #AL–00059

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of ALABAMA dated 01/15/2016.

Incident: Severe Storms and Flooding.

Incident Period: 12/23/2015 through 12/31/2015.

DATES: Effective Date: 01/15/2016.

Physical Loan Application Deadline Date: 03/15/2016.

Economic Injury (Eidl) Loan Application Deadline Date: 10/17/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Coffee, Jefferson, Montgomery, Morgan.

Contiguous Counties: Alabama: Autauga, Bibb, Blount, Bullock, Covington, Crenshaw, Cullman, Dale, Elmore, Geneva, Lawrence, Limestone, Lowndes, Macon, Madison, Marshall, Pike, Saint Clair, Shelby, Tuscaloosa, Walker.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	3.625
Homeowners without credit available elsewhere	1.813
Businesses with credit available elsewhere	6.000
Businesses without credit available elsewhere	4.000
Non-profit organizations with credit available elsewhere	2.625
Non-profit organizations without credit available elsewhere	2.625
For Economic Injury:	
Businesses & small agricultural cooperatives without credit available elsewhere	4.000
Non-profit organizations without credit available elsewhere	2.625

The number assigned to this disaster for physical damage is 14595 c and for economic injury is 14596 0.

The state which received an eidl declaration # is Alabama.

(Catalog of Federal Domestic Assistance Numbers 59008)

Dated: January 15, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–01596 Filed 1–26–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14597 and #14598]

Washington Disaster #WA–00064

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Washington (FEMA–4249–DR), dated 01/15/2016.

Incident: Severe Storms, Straight-line Winds, Flooding, Landslides, and Mudslides.

Incident Period: 11/12/2015 through 11/21/2015.

Effective Date: 01/15/2016.

Physical Loan Application Deadline Date: 03/15/2016.

Economic Injury (EIDL) Loan Application Deadline DATE: 10/17/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 01/15/2016, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Chelan, Clallam, Garfield Island, Jefferson, Kittitas, Lewis, Lincoln, Mason, Pend, Oreille, Skamania, Snohomish, Spokane, Stevens, Wahkiakum, Whitman.

The Interest Rates are:

	Percentage
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14597B and for economic injury is 14598B.

(Catalog of Federal Domestic Assistance Numbers 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–01598 Filed 1–26–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 9425]

Privacy Act; System of Records: Digital Outreach and Communications, State–79

SUMMARY: Notice is hereby given that the Department of State proposes to amend an existing system of records, Digital Outreach and Communications, State–79, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a) and Office of Management and Budget Circular No. A–130, Appendix I.

DATES: This system of records will be effective on March 7, 2016, unless we receive comments that will result in a contrary determination.

ADDRESSES: Any persons interested in commenting on the amended system of records may do so by writing to the Director; Office of Information Programs and Services, A/GIS/IPS; Department of State, SA–2; 515 22nd Street NW.; Washington, DC 20522–8100.

FOR FURTHER INFORMATION CONTACT: John Hackett, Director; Office of Information Programs and Services, A/GIS/IPS; Department of State, SA–2; 515 22nd Street NW.; Washington, DC 20522–8100, or at *Privacy@state.gov.*

SUPPLEMENTARY INFORMATION: The Department of State proposes that the current system retain the name ''Digital Outreach and Communications'' (previously published at 78 FR 54946). The purpose of the system is to extend outreach, engagement, and collaboration efforts with the public, and to facilitate transparency and accountability with regard to Department activities; to conduct and administer contests, challenges, and other competitions; and to track aggregate activity and analytics to determine the effectiveness of email campaigns. The proposed system will include modifications to the following sections: System location, Categories of individuals, Categories of records, Authority for maintenance of the system, Purpose, Routine uses, Retrievability, Safeguards, and Notification procedure. The modifications will allow the contact information to be stored in a FEDRAMP Certified Cloud provider, and will allow the Department to collect aggregate activity and analytics of email campaigns.

The Department's report was filed with the Office of Management and Budget. The amended system description, ''Digital Outreach and Communications, State–79,'' will read as set forth below.

Joyce A. Barr,

Assistant Secretary for Administration, U.S. Department of State.

STATE–79

SYSTEM NAME:

Digital Outreach and Communications.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Department of State domestic locations, posts abroad, and within a government cloud, implemented by State Department as a cloud-based cloud software as a service (SaaS) provider.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who interact with the Department through a social media outlet, or other electronic means including by submitting feedback, subscription (RSS), email, requesting more information from the Department. Individuals participating in a contest, challenge, or other competition.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system may contain information passed through a social media site or cloud service provider to facilitate interaction with the Department such as, but not limited to the following: Name, username, email address, home or work address, contact information, phone numbers, date of birth, age, security questions, IP addresses, login credentials, topical interests, and educational, business, or volunteer affiliation. The system will also contain information on the topics about which users wish to receive communications, as well as input and feedback from the public, such as comments, emails, videos, and images, which may include tags, geotags, or geographical metadata. The system may also include information that does not meet the definition of a ''record'' under the Privacy Act, such as aggregate metrics on user click rates, open rates, non-read rates, unsubscribes, and link activity.

In addition to the information listed above, individuals who enter a contest, challenge, or other competition may be asked to provide certain specific information including financial data, passport and visa information, and other information necessary to authenticate qualifications for participation or for prize issuance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Presidential Memorandum to the Heads of Executive Departments and Agencies on Transparency and Open Government, January 21, 2009. OMB M–10–06, Open Government Directive, December 8, 2009. OMB M–10–23, Guidance for Agency Use of Third-Party Web sites and Applications, June 25, 2010. 5 U.S.C. 301, Management of Executive Agencies. 22 U.S.C. 2651a, Organization of the Department of State.

PURPOSE:

To extend outreach, engagement, and collaboration efforts with the public, and to facilitate transparency and accountability with regard to Department activities. To conduct and administer contests, challenges, and other competitions. To track aggregate activity and analytics to determine the effectiveness of email campaigns.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system may be shared with the news media and the public, with the approval of the Chief of Mission or Bureau Assistant Secretary who supervises the office responsible for the outreach effort, except to the extent that release of the information would constitute an unwarranted invasion of personal privacy;

To Government agencies and the White House for purposes of planning and coordinating public engagement activities;

To a contractor of the Department having need for the information in the performance of the contract, but not operating a system of records within the meaning of 5 U.S.C. 552a(m);

And to Federal, state, and city governments which are issued tax reports, the Internal Revenue Service and the Social Security Administration which are sent tax and withholding data.

The Department of State periodically publishes in the **Federal Register** its standard routine uses which apply to all of its Privacy Act systems of records. These notices appear in the form of a Prefatory Statement. These standard routine uses apply to Digital Outreach and Communications, State–79.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media.

RETRIEVABILITY:

Username; email; name.

SAFEGUARDS:

All users are given cyber security awareness training which covers the procedures for handling Sensitive But Unclassified (SBU) information, including personally identifiable information (PII). Annual refresher training is mandatory. In addition, all Foreign Service and Civil Service employees and those Locally Engaged Staff who handle PII are required to take the Foreign Service Institute distance learning course, PA 459, instructing employees on privacy and security requirements, including the rules of behavior for handling PII and the potential consequences if it is handled improperly.

Access to the Department of State, its annexes and posts abroad is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All paper records containing personal information are maintained in secured file cabinets in restricted areas, access to which is limited to authorized personnel only. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage. When it is determined that a user no longer needs access, the user account is disabled.

Before being granted access to Protocol Records, a user must first be granted access to the Department of State computer system. Remote access to the Department of State network from non-Department owned systems is authorized only to unclassified systems and only through a Department approved access program. Remote access to the network is configured with the Office of Management and Budget Memorandum M–07–16 security requirements which include but are not limited to two-factor authentication and time out function. All Department of State employees and contractors with authorized access have undergone a thorough background security investigation.

The safeguards in the following paragraphs apply only to records that are maintained in cloud systems. All cloud systems that provide IT services and process Department of State information must be: (1) Provisionally authorized to operate by the Federal Risk and Authorization Management Program (FedRAMP), and (2) specifically authorized by the Department of State Authorizing Official and Senior Agency Official for Privacy. Only information that conforms with Department-specific definitions for Federal Information Security Management Act (FISMA) low or moderate categorization are permissible for cloud usage. Specific security measures and safeguards will depend on the FISMA categorization of the information in a given cloud system. In accordance with Department policy, systems that process more sensitive information will require more stringent controls and review by Department cybersecurity experts prior to approval. Prior to operation, all Cloud systems must comply with applicable security measures that are outlined in FISMA, FedRAMP, OMB regulations, NIST Federal Information Processing Standards (FIPS) and Special Publication (SP), and Department of State policy and standards.

All data stored in cloud environments categorized above a low FISMA impact risk level must be encrypted at rest and in-transit using a federally approved encryption mechanism. The encryption keys shall be generated, maintained, and controlled in a Department data center by the Department key management authority. Deviations from these encryption requirements must be approved in writing by the Authorizing Official.

RETENTION AND DISPOSAL:

Records are retired and destroyed in accordance with published Department of State Records Disposition Schedules as approved by the National Archives and Records Administration (NARA). More specific information may be obtained by writing to the Director; Office of Information Programs and Services, A/GIS/IPS; SA–2, Department of State; 515 22nd Street NW.; Washington, DC 20522–8100.

SYSTEM MANAGER(S) AND ADDRESS:

The Under Secretary for Public Diplomacy and Public Affairs; Department of State; 2201 C Street NW.; Washington, DC 20520.

NOTIFICATION PROCEDURE:

Individuals who have cause to believe that the Department may have outreach records pertaining to him or her should write to the Director; Office of Information Programs and Services, A/GIS/IPS; SA–2, Department of State; 515 22nd Street NW.; Washington, DC 20522–8100. The individual must specify that he or she wishes the outreach records of the Department to be checked. At a minimum, the individual must include the following: Name; email address; current mailing address and zip code; signature; and other information helpful in identifying the record.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director; Office of Information Programs and Services (address above).

CONTESTING RECORD PROCEDURES:

Individuals who wish to contest records pertaining to themselves should write to the Director; Office of Information Programs and Services (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained directly from individuals who interact with the Department of State through social media sites or who communicate electronically with the Department in response to public outreach.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2016–01648 Filed 1–26–16; 8:45 am]

BILLING CODE 4710–45–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 526 (Sub-No. 7)]

Decision; Notice of Railroad-Shipper Transportation Advisory Council Vacancy

AGENCY: Surface Transportation Board (Board).

ACTION: Notice of vacancy on the Railroad-Shipper Transportation Advisory Council (RSTAC) and solicitation of nominations.

SUMMARY: The Board hereby gives notice of a vacancy for a small railroad representative on RSTAC. The Board is soliciting suggestions for candidates to fill this vacancy.

DATES: Nominations are due on February 22, 2016.

ADDRESSES: Suggestions may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E–FILING link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 526 (Sub-No. 7), 395 E Street SW., Washington, DC 20423–0001 (if sending via express company or private courier, please use zip code 20024). Please note that submissions will be available to the public at the Board's offices and posted on the Board's Web site under Docket No. EP 526 (Sub-No. 7).

FOR FURTHER INFORMATION CONTACT: Stephanie Lyons at 202–245–0536. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Board, created in 1996 to take over many of the functions previously performed by the Interstate Commerce Commission, exercises broad authority over transportation by rail carriers, including regulation of railroad rates and service (49 U.S.C. 10701–47, 11101–24), as well as the construction, acquisition, operation, and abandonment of rail lines (49 U.S.C. 10901–07) and railroad line sales, consolidations, mergers, and common control arrangements (49 U.S.C. 10902, 11323–27).

RSTAC was established upon the enactment of the ICC Termination Act of 1995 (ICCTA), on December 29, 1995, to advise the Board's Chairman, the Secretary of Transportation, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives with respect to rail transportation policy issues RSTAC considers significant. RSTAC focuses on issues of importance to small shippers and small railroads, including car supply, rates, competition, and procedures for addressing claims. ICCTA directs RSTAC to develop private-sector mechanisms to prevent, or identify and address, obstacles to the most effective and efficient transportation system practicable. RSTAC also prepares an annual report concerning its activities and recommendations on whatever regulatory or legislative relief it considers appropriate. RSTAC is not subject to the Federal Advisory Committee Act.

Nine members of RSTAC are voting members and are appointed from senior executive officers of organizations engaged in the railroad and rail shipping industries. At least four of the voting members must be representatives of small shippers as determined by the Chairman, and at least four of the voting members must be representatives of Class II or III railroads. The remaining six members to be appointed—three representing Class I railroads and three representing large shipper organizations—serve in a nonvoting, advisory capacity, but are entitled to participate in RSTAC deliberations.

RSTAC is required by statute to meet at least semi-annually. In recent years, RSTAC has met four times a year. Meetings are generally held at the Board's headquarters in Washington, DC, although some are held in other locations.

RSTAC members receive no compensation for their services and are required to provide for the expenses incidental to their service, including travel expenses, as the Board cannot provide for these expenses. RSTAC may solicit and use private funding for its activities, again subject to certain restrictions in ICCTA. RSTAC members currently have elected to submit annual dues to pay for RSTAC expenses.

RSTAC members must be citizens of the United States and represent as broadly as practicable the various segments of the railroad and rail shipper industries. They may not be full-time employees of the United States. According to revised guidance issued by the Office of Management and Budget, it is permissible for federally registered lobbyists to serve on advisory committees, such as RSTAC, as long as they do so in a representative capacity, rather than an individual capacity. *See Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards, and Commissions,* 79 FR 47482 (Aug. 13, 2014). Members of RSTAC are appointed to serve in a representative capacity.

RSTAC members are appointed for three-year terms. A member may serve after the expiration of his or her term until a successor has taken office. No member will be eligible to serve in excess of two consecutive terms.

Due to the expiration of one RSTAC member's second term, a vacancy exists for a small railroad representative. Upon appointment by the Chairman, the new representative will serve for three years, and may be eligible to serve a second three-year term following the end of their first term.

Suggestions for candidates to fill the vacancy should be submitted in letter form, identify the name of the candidate, provide a summary of why the candidate is qualified to serve on RSTAC, and contain a representation that the candidate is willing to serve as a member of RSTAC effective immediately upon appointment. RSTAC candidate suggestions should be filed with the Board by February 22, 2016. Members selected to serve on RSTAC are chosen at the discretion of the Board's Chairman. Please note that submissions will be available to the public at the Board's offices and posted on the Board's Web site under Docket No. EP 526 (Sub-No. 7).

Authority: 49 U.S.C. 726.

Decided: January 22, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Tia Delano,

Clearance Clerk.

[FR Doc. 2016–01642 Filed 1–26–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Mounir R. Khouri; Public Interest Exclusion Order

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: On January 20, 2016, the Department of Transportation (DOT) issued a decision and order under the Procedures for Transportation Workplace Drug and Alcohol Testing Programs that excludes a service agent, Mounir R. Khouri, from providing drug and alcohol testing services in any capacity to any DOT-regulated employer for a period of 5 years. Mr. Khouri provided Consortium/Third Party Administrator Services (C/TPA) and Medical Review Officer (MRO) services to DOT-regulated trucking companies. Mr. Khouri pled guilty to criminal charges that he made materially false statements that an MRO had reviewed drug test results, when a qualified MRO had not done so. This **Federal Register** publication serves as notice to the public that DOT-regulated employers or their service agents must stop using the services of Mounir R. Khouri for administering their DOT-regulated drug and/or alcohol testing programs.

DATES: The effective date of the Public Interest Exclusion is January 20, 2016 and it will remain in effect until January 20, 2021.

FOR FURTHER INFORMATION CONTACT: Patrice M. Kelly, Acting Director, U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue SE., Washington, DC 20590; (202) 366–3784 (voice), (202) 366–3897 (fax), or *patrice.kelly@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

In accordance with the provisions of the Department's regulation at 49 CFR part 40 (Part 40), Subpart R, Public Interest Exclusions (PIE), the Federal Motor Carrier Safety Administration (FMCSA) issued a Notice of Proposed Exclusion (NOPE) to Mr. Khouri on August 27, 2015, notifying him that he had engaged in serious noncompliance. In the NOPE, the FMCSA stated that the Department's Office of the Inspector General had conducted a criminal investigation that revealed that Mr. Khouri subverted the MRO's role in the testing process. Specifically, Mr. Khouri held out as performing C/TPA services and he: Received laboratory confirmed drug test results and falsely certified that those results were reviewed by a qualified MRO; acted as an MRO, without qualifications to do so, by verifying laboratory confirmed positive test results; and prepared false Federal Drug Testing Custody and Control Forms (CCFs) for untested specimens and misrepresented that the specimens had tested negative. In the United States District Court for the District of Vermont, Mr. Khouri pled guilty and was convicted for making false statements on a CCF. Those false statements indicated that an MRO had reviewed a drug test, when Mr. Khouri knew that had not occurred.

Public Interest Exclusion Decision and Order

On January 20, 2016, the Department issued a PIE against Mounir R. Khouri. This PIE prohibits all DOT-regulated employers and service agents from utilizing Mounir R. Khouri for drug and alcohol testing services in any capacity for a period of 5 years. A full copy of the Department's Decision and Order can be found at *http://www.dot.gov/odapc.*

In accordance with the terms of the Department's Decision and Order and per 49 CFR 40.403(a), Mounir R. Khouri is required to directly notify each of the affected DOT-regulated employer clients in writing about the issuance, scope, duration, and effect of the PIE. The Department is notifying employers and the public about this PIE by publishing it in a ''List of Excluded Drug and Alcohol Service Agents'' on its Web site at *http://www.dot.gov/odapc/* and will make the list available upon request. As required by 49 CFR 40.401(d), the Department is publishing this **Federal Register** notice to inform the public that Mounir R. Khouri is subject to a PIE for 5 years. After January 20, 2021, Mounir R. Khouri, will be removed from the list and the public will be notified of that removal, also in accordance with 49 CFR 40.401(d).

Any DOT-regulated employer who uses the services of Mounir R. Khouri between January 20, 2016 and January 20, 2021 may be subject to a civil penalty for violation of Part 40.

Dated this 20th day of January, 2016, at Washington, DC.

Patrice M. Kelly,

Acting Director, Office of Drug and Alcohol Policy Compliance.

[FR Doc. 2016–01630 Filed 1–26–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In accordance with section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Iraq
Kuwait
Lebanon
Libya
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen

Dated: January 19, 2016.

Danielle Rolfes,

International Tax Counsel, (Tax Policy).

[FR Doc. 2016–01622 Filed 1–26–16; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Multiemployer Pension Plan Application To Reduce Benefits

AGENCY: Department of the Treasury.

ACTION: Notice of availability; Request for comments.

SUMMARY: The Board of Trustees of the Iron Workers Local 17 Pension Plan, a multiemployer pension plan, has submitted an application to Treasury to reduce benefits under the plan in accordance with the Multiemployer Pension Reform Act of 2014 (MPRA). The purpose of this notice is to announce that the application submitted by the Board of Trustees of the Iron

Workers Local 17 Pension Plan has been published on the Web site of the Department of the Treasury (Treasury), and to request public comments on the application from interested parties, including contributing employers, employee organizations, and participants and beneficiaries of the Iron Workers Local 17 Pension Plan.

DATES: Comments must be received by March 14, 2016.

ADDRESSES: You may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions on that site. Electronic submissions through *www.regulations.gov* are encouraged.

Comments may also be mailed to the Department of the Treasury, MPRA Office, 1500 Pennsylvania Avenue NW., Room 1224, Washington, DC 20220. Attn: Deva Kyle. Comments sent via facsimile and email will not be accepted.

Additional Instructions. All comments received, including attachments and other supporting materials, will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or any other information in your comment or supporting materials that you do not want publicly disclosed. Treasury will make comments available for public inspection and copying on *www.regulations.gov* or upon request. Comments posted on the Internet can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: For information regarding the application from the Board of Trustees of the Iron Workers Local 17 Pension Plan, please contact Treasury at (202) 622–1534 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The Multiemployer Pension Reform Act of 2014 (MPRA) amended the Internal Revenue Code to permit a multiemployer plan that is projected to have insufficient funds to reduce pension benefits payable to participants and beneficiaries if certain conditions are satisfied. In order to reduce benefits, the plan sponsor is required to submit an application to the Secretary of the Treasury, which Treasury, in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Department of Labor, is required to approve or deny.

On December 23, 2015, the Board of Trustees of the Iron Workers Local 17 Pension Plan submitted an application for approval to reduce benefits under the plan. Treasury received that application on December 28, 2015. As required by MPRA, that application has been published on Treasury's Web site at *http://www.treasury.gov/services/Pages/Plan-Applications.aspx.* Treasury is publishing this notice in the **Federal Register**, in consultation with PBGC and the Department of Labor, to solicit public comments on all aspects of the Iron Workers Local 17 Pension Plan application.

Comments are requested from interested parties, including contributing employers, employee organizations, and participants and beneficiaries of the Iron Workers Local 17 Pension Plan. Consideration will be given to any comments that are timely received by Treasury.

Dated: Janaury 21, 2016.

David R. Pearl,

Executive Secretary, Department of the Treasury.

[FR Doc. 2016–01618 Filed 1–26–16; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Multiemployer Pension Plan Application To Reduce Benefits

AGENCY: Department of the Treasury.

ACTION: Notice of availability; Request for comments.

SUMMARY: The Board of Trustees of the Teamsters Local Union No. 469 Pension Plan (Teamsters Local 469 Pension Plan), a multiemployer pension plan, has submitted an application to Treasury to reduce benefits under the plan in accordance with the Multiemployer Pension Reform Act of 2014 (MPRA). The purpose of this notice is to announce that the application submitted by the Board of Trustees of the Teamsters Local 469 Pension Plan has been published on the Web site of the Department of the Treasury (Treasury), and to request public comments on the application from interested parties, including contributing employers, employee organizations, and participants and beneficiaries of the Teamsters Local 469 Pension Plan.

DATES: Comments must be received by March 14, 2016.

ADDRESSES: You may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions on that site. Electronic submissions through *www.regulations.gov* are encouraged.

Comments may also be mailed to the Department of the Treasury, MPRA Office, 1500 Pennsylvania Avenue NW., Room 1224, Washington, DC 20220. Attn: Deva Kyle. Comments sent via facsimile and email will not be accepted.

Additional Instructions. All comments received, including attachments and other supporting materials, will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or any other information in your comment or supporting materials that you do not want publicly disclosed. Treasury will make comments available for public inspection and copying on *www.regulations.gov* or upon request. Comments posted on the Internet can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: For information regarding the application from the Board of Trustees of the Teamsters Local 469 Pension Plan, please contact Treasury at (202) 622–1534 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The Multiemployer Pension Reform Act of 2014 (MPRA) amended the Internal Revenue Code to permit a multiemployer plan that is projected to have insufficient funds to reduce pension benefits payable to participants and beneficiaries if certain conditions are satisfied. In order to reduce benefits, the plan sponsor is required to submit an application to the Secretary of the Treasury, which Treasury, in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Department of Labor, is required to approve or deny.

On December 28, 2015, the Board of Trustees of the Teamsters Local 469 Pension Plan submitted an application for approval to reduce benefits under the plan. As required by MPRA, that application has been published on Treasury's Web site at *https://www.treasury.gov/services/Pages/Plan-Applications.aspx.* Treasury is publishing this notice in the **Federal Register**, in consultation with PBGC and the Department of Labor, to solicit public comments on all aspects of the Teamsters Local 469 Pension Plan application.

Comments are requested from interested parties, including contributing employers, employee organizations, and participants and beneficiaries of the Teamsters Local 469 Pension Plan. Consideration will be given to any comments that are timely received by Treasury.

Dated: January 21, 2016.

David R. Pearl,

Executive Secretary, Department of the Treasury.

[FR Doc. 2016–01616 Filed 1–26–16; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Financial Research Advisory Committee

AGENCY: Office of Financial Research, Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: The Financial Research Advisory Committee for the Treasury's Office of Financial Research (OFR) is convening for its seventh meeting on Thursday, February 25, 2016, in the Cash Room, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220, beginning at 9:15 a.m. Eastern Time. The meeting will be open to the public via live webcast at *http://www.financialresearch.gov* and limited seating will also be available.

DATES: The meeting will be held on Thursday, February 25, 2016, beginning at 9:15 a.m. Eastern Time.

ADDRESSES: The meeting will be held in the Cash Room, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220. The meeting will be open to the public via live webcast at *http://www.financialresearch.gov.* A limited number of seats will be available for those interested in attending the meeting in person, and those seats would be on a first-come, first-served basis. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must contact the OFR by email at *OFR_FRAC@ofr.treasury.gov* by 5 p.m. Eastern Time on Thursday, February 11, 2016, to inform the OFR of their desire to attend the meeting and to receive further instructions about building clearance.

FOR FURTHER INFORMATION CONTACT: Susan Stiehm, Designated Federal Officer, Office of Financial Research, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (212) 376–9808 (this is not a toll-free number), *OFR_FRAC@ofr.treasury.gov.* Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, 10(a)(2), through implementing regulations at 41 CFR 102–3.150, *et seq.*

Public Comment: Members of the public wishing to comment on the business of the Financial Research Advisory Committee are invited to submit written statements by any of the following methods:

- *Electronic Statements.* Email the Committee's Designated Federal Officer at *OFR_FRAC@ofr.treasury.gov.*
- *Paper Statements.* Send paper statements in triplicate to the Financial Research Advisory Committee, Attn: Susan Stiehm, Office of Financial Research, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

The OFR will post statements on the Committee's Web site, *http://www.financialresearch.gov,* including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. The OFR will also make such statements available for public inspection and copying in the Department of the Treasury's library, Annex Room 1020, 1500 Pennsylvania Avenue NW., Washington, DC 20220 on official business days between the hours of 8:30 a.m. and 5:30 p.m. Eastern Time. You may make an appointment to inspect statements by telephoning (202) 622–0990. All statements, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Tentative Agenda/Topics for Discussion: The Committee provides an opportunity for researchers, industry leaders, and other qualified individuals to offer their advice and recommendations to the OFR, which, among other things, is responsible for collecting and standardizing data on financial institutions and their activities and for supporting the work of Financial Stability Oversight Council.

This is the seventh meeting of the Financial Research Advisory Committee. Topics to be discussed among all members will include discussion of the OFR's Programmatic Approach, progress on prior Committee recommendations, Subcommittee reports to the Committee and the OFR's work related to Shadow Banking. For more information on the OFR and the Committee, please visit the OFR Web site at *http://www.financialresearch.gov.*

Dated: January 20, 2016.

Barbara Shycoff,

Chief of External Affairs.

[FR Doc. 2016–01619 Filed 1–26–16; 8:45 am]

BILLING CODE P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of submission to Congress of amendment to the sentencing guidelines effective August 1, 2016.

SUMMARY: Pursuant to its authority under 28 U.S.C. 994(p), the Commission has promulgated an amendment to the *Guidelines Manual.* This notice sets forth the amendment and the reason for the amendment.

DATES: The Commission has specified an effective date of August 1, 2016, for the amendment set forth in this notice.

FOR FURTHER INFORMATION CONTACT: Matt Osterrieder, Legislative Specialist, (202) 502–4500, *pubaffairs@ussc.gov.* The amendment set forth in this notice also may be accessed through the Commission's Web site at *www.ussc.gov.*

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and generally submits guideline amendments to Congress pursuant to 28 U.S.C. 994(p) not later than the first day of May each year. Absent action of Congress to the contrary, submitted amendments become effective by operation of law on the date specified by the Commission (generally November 1 of the year in which the amendments are submitted to Congress).

Notice of the proposed amendment was published in the **Federal Register** on August 17, 2015 (*see* 80 FR 49314). The Commission held a public hearing on the proposed amendment in Washington, DC, on November 5, 2015. On January 21, 2016, the Commission submitted this amendment to Congress and specified an effective date of August 1, 2016.

Authority: 28 U.S.C. 994(a), (o), and (p); USSC Rules of Practice and Procedure 4.1.

Patti B. Saris,

Chair.

1. *Amendment:* The Commentary to § 4B1.1 captioned ''Application Notes'' is amended by inserting at the beginning of Note 1 the following new heading: ''*Definitions.*—''; by inserting at the beginning of Note 2 the following new heading: '' '*Offense Statutory Maximum'.*—''; and by inserting at the end the following new Note 4:

''4. *Departure Provision for State Misdemeanors.*—In a case in which one or both of the defendant's 'two prior felony convictions' is based on an offense that was classified as a misdemeanor at the time of sentencing for the instant federal offense, application of the career offender guideline may result in a guideline range that substantially overrepresents the seriousness of the defendant's criminal history or substantially overstates the seriousness of the instant offense. In such a case, a downward departure may be warranted without regard to the limitation in § 4A1.3(b)(3)(A).''.

Section 4B1.2(a) is amended by striking paragraph (2) as follows:

''(2) is burglary of a dwelling, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.'',

and inserting the following:

''(2) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. 5845(a) or explosive material as defined in 18 U.S.C. 841(c).''.

The Commentary to § 4B1.2 captioned ''Application Notes'' is amended—in Note 1 by inserting ''*Definitions.*—'' as a heading before the beginning of the note; by striking the second and third undesignated paragraphs as follows:

'' 'Crime of violence' includes murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses, robbery, arson, extortion, extortionate extension of credit, and burglary of a dwelling. Other offenses are included as 'crimes of violence' if (A) that offense has as an element the use, attempted use, or threatened use of physical force against the person of another, or (B) the conduct set forth (*i.e.,* expressly charged) in the count of which the defendant was convicted involved use of explosives (including any explosive material or destructive device) or, by its nature, presented a serious potential risk of physical injury to another.

'Crime of violence' does not include the offense of unlawful possession of a firearm by a felon, unless the possession was of a firearm described in 26 U.S.C. 5845(a). Where the instant offense of conviction is the unlawful possession of a firearm by a felon, § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) provides an increase in offense level if the defendant had one or more prior felony convictions for a crime of violence or controlled substance offense; and, if the defendant is sentenced under the provisions of 18 U.S.C. 924(e), § 4B1.4 (Armed Career Criminal) will apply.'',

and inserting the following new paragraphs:

'' 'Forcible sex offense' includes where consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced. The offenses of sexual abuse of a minor and statutory rape are included only if the sexual abuse of a minor or statutory rape was (A) an offense described in 18 U.S.C. 2241(c) or (B) an offense under state law that would have been an offense under section 2241(c) if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

'Extortion' is obtaining something of value from another by the wrongful use of (A) force, (B) fear of physical injury, or (C) threat of physical injury.'';

and by striking the fifth undesignated paragraph as follows:

''Unlawfully possessing a firearm described in 26 U.S.C. 5845(a) (*e.g.,* a sawed-off shotgun or sawed-off rifle, silencer, bomb, or machine gun) is a 'crime of violence'.'';

in Note 2, at the beginning of the note, by inserting the following new heading: ''*Offense of Conviction as Focus of Inquiry.*—'';

in Note 3, at the beginning of the note, by inserting the following new heading: ''*Applicability of § 4A1.2.*—'';

and by inserting at the end the following new Note 4:

''4. *Upward Departure for Burglary Involving Violence.*—There may be cases in which a burglary involves violence, but does not qualify as a 'crime of violence' as defined in § 4B1.2(a) and, as a result, the defendant does not receive a higher offense level or higher Criminal History Category that would have applied if the burglary qualified as a 'crime of violence.' In such a case, an upward departure may be appropriate.''.

Reason for Amendment: This amendment is a result of the Commission's multi-year study of statutory and guideline definitions relating to the nature of a defendant's prior conviction (*e.g.,* ''crime of violence,'' ''aggravated felony,'' ''violent felony,'' ''drug trafficking offense,'' and ''felony drug offense'') and the impact of such definitions on the relevant statutory and guideline provisions (*e.g.,* career offender, illegal reentry, and armed career criminal). As part of this study, the Commission considered feedback from the field, including conducting a roundtable discussion on these topics and considering the varying case law interpreting these statutory and guideline definitions. In particular, the Commission has received extensive comment, and is aware of numerous court opinions, expressing a view that the definition of ''crime of violence'' is complex and unclear. The amendment is informed by this public comment and case law, as well as the Supreme Court's recent decision in *Johnson* v. *United States,* 135 S. Ct. 2551 (2015), regarding the statutory definition of ''violent felony'' in 18 U.S.C. 924(e) (commonly referred to as the ''Armed Career Criminal Act'' or ''ACCA''). While not addressing the guidelines, that decision has given rise to significant litigation regarding the guideline definition of ''crime of violence.'' Finally, the Commission analyzed a range of sentencing data, including a study of the sentences relative to the guidelines for the career offender guidelines. *See* U.S. Sent'g Comm'n, *Quick Facts: Career Offenders* (Nov. 2015) (highlighting the decreasing rate of within range guideline sentences (27.5% in fiscal year 2014), which has been coupled with increasing rates of government (45.6%) and non-government sponsored below range sentences (25.9%)).

The amendment makes several changes to the definition of ''crime of violence'' at § 4B1.2 (Definitions of Terms Used in Section 4B1.1), which, prior to this amendment, was defined as any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that

- has as an element the use, attempted use, or threatened use of physical force against the person of another (''force clause'' or ''elements clause''), *see* § 4B1.2(a)(1);
- is murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses, robbery, arson, extortion, extortionate extension of credit, burglary of a dwelling, or involves the use of explosives (''enumerated offenses''), *see* § 4B1.2(a)(2) and comment. (n.1); or
- otherwise involves conduct that presents a serious potential risk of physical injury to another (''residual clause''), *see* § 4B1.2(a)(2).

The ''crime of violence'' definition at § 4B1.2 is used to trigger increased sentences under several provisions in the Guidelines Manual, the most significant of which is § 4B1.1 (Career Offender). *See also* §§ 2K1.3, 2K2.1, 2S1.1, 4A1.1(e), 7B1.1. The career offender guideline implements a directive to the Commission set forth at 28 U.S.C. 994(h), which in turn identifies offenders for whom the guidelines must provide increased punishment. Tracking the criteria set

forth in section 994(h), the Commission implemented the directive by identifying a defendant as a career offender if (1) the defendant was at least eighteen years old at the time he or she committed the instant offense of conviction; (2) the instant offense is a felony that is a crime of violence or a controlled substance offense, and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense. Where these criteria are met, the directive at section 994(h), and therefore § 4B1.1, provides for significantly higher sentences under the guidelines, such that the guideline range is ''at or near the maximum [term of imprisonment] authorized.'' Commission data shows that application of § 4B1.1 resulted in an increased final offense level, an increased Criminal History Category, or both for 91.3 percent of defendants sentenced under the career offender guideline in fiscal year 2014. *See* U.S. Sent'g Comm'n, *Quick Facts: Career Offenders* (Nov. 2015) (46.3% of career offenders received an increase in both final offense level (from an average of 23 levels to 31 levels) and criminal history category (from an average of category IV to category VI); 32.6% had just a higher final offense level (from an average of 23 levels to 30 levels); and 12.4% had just a higher Criminal History Category (from an average of category IV to category VI)).

Residual Clause

First, the amendment deletes the ''residual clause'' at § 4B1.2(a)(2). Prior to the amendment, the term ''crime of violence'' in § 4B1.2 included any offense that ''otherwise involves conduct that presents a serious potential risk of physical injury to another.'' In *Johnson,* the Supreme Court considered an identical residual clause relating to the statutory definition of ''violent felony'' in the Armed Career Criminal Act. The Court held that using the ''residual clause'' to classify an offense as a ''violent felony'' violated due process because the clause was unconstitutionally vague. *See Johnson,* 135 S. Ct. at 2563. While the Supreme Court in *Johnson* did not consider or address the sentencing guidelines, significant litigation has ensued regarding whether the Supreme Court's holding in *Johnson* should also apply to the residual clause in § 4B1.2. *Compare United States* v. *Matchett,* 802 F.3d 1185 (11th Cir. 2015) (rejecting the argument that the residual clause in § 4B1.2 is unconstitutionally vague in light of *Johnson*) and *United States* v. *Wilson,* 622 F. App'x 393, 405 n.51 (5th Cir. 2015) (in considering the applicability of *Johnson,* noting ''[o]ur case law indicates that a defendant cannot bring a vagueness challenge against a Sentencing Guideline''), *with United States* v. *Taylor,* 803 F.3d 931 (8th Cir. 2015) (finding that previous circuit precedent holding that the guidelines cannot be unconstitutionally vague because they do not proscribe conduct is doubtful after *Johnson*); *United States* v. *Madrid,* 805 F.3d 1204, 1211 (10th Cir. 2015) (holding that that the residual clause of § 4B1.2(a)(2) is void for vagueness); *United States* v. *Harbin,* 610 F. App'x 562 (6th Cir. 2015) (finding that defendant is entitled to the same relief as offenders sentenced under the residual clause of the ACCA); and *United States* v. *Townsend,* __ F. App'x __, 2015 WL 9311394, at *4 (3d Cir. Dec. 23, 2015) (remanding for resentencing in light of the government's concession that, pursuant to *Johnson,* the defendant should not have been sentenced as a career offender).

The Commission determined that the residual clause at § 4B1.2 implicates many of the same concerns cited by the Supreme Court in *Johnson,* and, as a matter of policy, amends § 4B1.2(a)(2) to strike the clause. Removing the residual clause has the advantage of alleviating the considerable application difficulties associated with that clause, as expressed by judges, probation officers, and litigants. Furthermore, removing the clause will alleviate some of the ongoing litigation and uncertainty resulting from the *Johnson* decision.

List of Enumerated Offenses

With the deletion of the residual clause under subsection (a)(2), there are two remaining components of the ''crime of violence'' definition—the ''elements clause'' and the ''enumerated offenses clause.'' The ''elements clause'' set forth in subsection (a)(1) remains unchanged by the amendment. Thus, any offense under federal or state law, punishable by imprisonment for a term exceeding one year, qualifies as a ''crime of violence'' if it has as an element the use, or attempted use, or threatened use of physical force against the person of another. Importantly, such an offense may, but need not, be specifically enumerated in subsection (a)(2) to qualify as a crime of violence.

The ''enumerated offense clause'' identifies specific offenses that qualify as crimes of violence. In applying this clause, courts compare the elements of the predicate offense of conviction with the elements of the enumerated offense in its ''generic, contemporary definition.'' As has always been the case, such offenses qualify as crimes of violence regardless of whether the offense expressly has as an element the use, attempted use, or threatened use of physical force against the person of another. While most of the offenses on the enumerated list under § 4B1.2(a)(2) remain the same, the amendment does revise the list in a number of ways to focus on the most dangerous repeat offenders. The revised list is based on the Commission's consideration of public hearing testimony, a review of extensive public comment, and an examination of sentencing data relating to the risk of violence in these offenses and the recidivism rates of career offenders. Additionally, the Commission's revisions to the enumerated list also consider and reflect the fact that offenses not specifically enumerated will continue to qualify as a crime of violence if they satisfy the elements clause.

As amended, the enumerated offenses include murder, voluntary manslaughter, kidnapping, aggravated assault, forcible sex offenses, robbery, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. 5845(a) or explosive material as defined in 18 U.S.C. 841(c). For easier application, all enumerated offenses are now included in the guideline at § 4B1.2; prior to the amendment, the list was set forth in both § 4B1.2(a)(2) and the commentary at Application Note 1.

Manslaughter, which is currently enumerated in Application Note 1, is revised to include only voluntary manslaughter. While Commission analysis indicates that it is rare for involuntary manslaughter to be identified as a predicate for the career offender guideline, this change provides that only voluntary manslaughter should be considered. This is also consistent with the fact that involuntary manslaughter generally would not have qualified as a crime of violence under the ''residual clause.'' *See Begay* v. *United States,* 553 U.S. 137 (2008) (limiting crimes covered by the ACCA residual clause to those roughly similar in kind and degree of risk posed as the enumerated offenses, which typically involve ''purposeful, violent, and aggressive conduct'').

The amendment deletes ''burglary of a dwelling'' from the list of enumerated offenses. In implementing this change, the Commission considered that (1) burglary offenses rarely result in physical violence, (2) ''burglary of a dwelling'' is rarely the instant offense of conviction or the determinative predicate for purposes of triggering higher penalties under the career offender guideline, and (3) historically, career offenders have rarely been rearrested for a burglary offense after

release. The Commission considered several studies and analyses in reaching these conclusions.

First, several recent studies demonstrate that most burglaries do not involve physical violence. *See* Bureau of Justice Statistics, *National Crime Victimization Survey, Victimization During Household Burglary* (Sept. 2010) (finding that a household member experienced some form of violent victimization in 7% of all household burglaries from 2003 to 2007); Richard S. Culp et al., *Is Burglary a Crime of Violence? An Analysis of National Data 1998–2007,* at 29 (2015), *available at https://www.ncjrs.gov/pdffiles1/nij/grants/248651.pdf* (concluding that 7.6% of burglaries between 1998 and 2007 resulted in actual violence or threats of violence, while actual physical injury was reported in only 2.7% of all burglaries); *see also* United States Department of Justice, Federal Bureau of Investigation, *Uniform Crime Report, Crime in the United States* (2014) (classifying burglary as a ''property crime'' rather than a ''violent crime''). Second, based upon an analysis of offenders sentenced in fiscal year 2014, the Commission estimates that removing ''burglary of a dwelling'' as an enumerated offense in § 4B1.2(a)(2) will reduce the overall proportion of offenders who qualify as a career offender by less than three percentage points. The Commission further estimates that removing the enumerated offense would result in only about five percent of offenders sentenced under USSG § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) receiving a lower base offense level than would currently apply. Finally, a Commission analysis of recidivism rates for career offenders released during calendar years 2004 through 2006 indicates that about five percent of such offenders were rearrested for a burglary offense during the eight years after their release.

In reaching this conclusion, the Commission also considered that courts have struggled with identifying a uniform contemporary, generic definition of ''burglary of dwelling.'' In particular, circuits have disagreed regarding whether the requirement in *Taylor* v. *United States,* 495 U.S. 575, 598 (1990), that the burglary be of a ''building or other structure'' applies in addition to the guidelines' requirement that the burglary be of a ''dwelling.'' *Compare United States* v. *Henriquez,* 757 F.3d 144, 148–49 (4th Cir. 2014); *United States* v. *McFalls,* 592 F.3d 707 (6th Cir. 2010); *United States* v. *Wenner,* 351 F.3d 969 (9th Cir. 2003) *with United States* v. *Ramirez,* 708 F.3d 295, 301 (1st Cir. 2013); *United States* v. *Murillo-Lopez,* 444 F.3d 337, 340 (5th Cir. 2006); *United States* v. *Rivera-Oros,* 590 F.3d 1123 (10th Cir. 2009); *United States* v. *McClenton,* 53 F.3d 584 (3d Cir. 1995); *United States* v. *Graham,* 982 F.2d 315 (8th Cir. 1992).

Although ''burglary of a dwelling'' is deleted as an enumerated offense, the amendment adds an upward departure provision to § 4B1.2 to address the unusual case in which the instant offense or a prior felony conviction was any burglary offense involving violence that did not otherwise qualify as a ''crime of violence.'' This departure provision allows courts to consider all burglary offenses, as opposed to just burglaries of a dwelling, and reflects the Commission's determination that courts should consider an upward departure where a defendant would have received a higher offense level, higher Criminal History Category, or both (*e.g.,* where the defendant would have been a career offender) if such burglary had qualified as a ''crime of violence.''

Finally, the amendment adds offenses that involve the ''use or unlawful possession of a firearm described in 26 U.S.C. 5845(a) or an explosive material as defined in 18 U.S.C. 841(c)'' to the enumerated list at § 4B1.2(a)(2). This addition is consistent with long-standing commentary in § 4B1.2 categorically identifying possession of a firearm described in 26 U.S.C. 5845(a) as a ''crime of violence,'' and therefore maintains the status quo. The Commission continues to believe that possession of these types of weapons (*e.g.,* a sawed-off shotgun or sawed-off rifle, silencer, bomb, or machine gun) inherently presents a serious potential risk of physical injury to another person. Additionally, inclusion as an enumerated offense reflects Congress's determination that such weapons are inherently dangerous and, when possessed unlawfully, serve only violent purposes. *See also* USSG App. C, amend. 674 (eff. Nov. 1, 2004) (expanding the definition of ''crime of violence'' in Application Note 1 to § 4B1.2 to include unlawful possession of any firearm described in 26 U.S.C. 5845(a)).

Enumerated Offense Definitions

The amendment also adds definitions for the enumerated offenses of forcible sex offense and extortion. The amended guideline, however, continues to rely on existing case law for purposes of defining the remaining enumerated offenses. The Commission determined that adding several new definitions could result in new litigation, and that it was instead best not to disturb the case law that has developed over the years.

As amended, ''forcible sex offense'' includes offenses with an element that consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced. Consistent with the definition in § 2L1.2 (Unlawfully Entering or Remaining in the United States), this addition reflects the Commission's determination that certain forcible sex offenses which do not expressly include as an element the use, attempted use, or threatened use of physical force against the person of another should nevertheless constitute ''crimes of violence'' under § 4B1.2. *See also* USSG App. C, amend. 722 (eff. Nov. 1, 2008) (clarifying the scope of the term ''forcible sex offense'' as that term is used in the definition of ''crime of violence'' in § 2L1.2, Application Note 1(B)(iii)).

The new commentary also provides that the offenses of sexual abuse of a minor and statutory rape are included only if the sexual abuse of a minor or statutory rape was (A) an offense described in 18 U.S.C. 2241(c), or (B) an offense under state law that would have been an offense under section 2241(c) if the offense had occurred within the special maritime and territorial jurisdiction of the United States. This addition makes clear that the term ''forcible sex offense'' in § 4B1.2 includes sexual abuse of a minor and statutory rape where certain specified elements are present.

''Extortion'' is defined as ''obtaining something of value from another by the wrongful use of (i) force, (ii) fear of physical injury, or (iii) threat of physical injury.'' Under case law existing at the time of this amendment, courts generally defined extortion as ''obtaining something of value from another with his consent induced by the wrongful use of force, fear, or threats'' based on the Supreme Court's holding in *United States* v. *Nardello,* 393 U.S. 286, 290 (1969) (defining ''extortion'' for purposes of the Hobbs Act). Consistent with the Commission's goal of focusing the career offender and related enhancements on the most dangerous offenders, the amendment narrows the generic definition of extortion by limiting the offense to those having an element of force or an element of fear or threats ''of physical injury,'' as opposed to non-violent threats such as injury to reputation.

Departure Provision at § 4B1.1

Finally, the amendment adds a downward departure provision in § 4B1.1 for cases in which one or both of the defendant's ''two prior felony convictions'' is based on an offense that is classified as a misdemeanor at the time of sentencing for the instant federal offense.

An offense (whether a ''crime of violence'' or a ''controlled substance offense'') is deemed to be a ''felony'' for purposes of the career offender guideline if it is punishable by imprisonment for a term exceeding one year. This definition captures some state offenses that are punishable by more than a year of imprisonment, but are in fact classified by the state as misdemeanors. Such statutes are found, for example, in Colorado, Iowa, Maryland, Massachusetts, Michigan, Pennsylvania, South Carolina, and Vermont.

The Commission determined that the application of the career offender guideline where one or both of the defendant's ''two prior felony convictions'' is an offense that is classified as a misdemeanor may result in a guideline range that substantially overrepresents the seriousness of the defendant's criminal history or substantially overstates the seriousness of the instant offense. While recognizing the importance of maintaining a uniform and consistent definition of the term ''felony'' in the guidelines, the Commission determined that it is also appropriate for a court to consider the seriousness of the prior offenses (as reflected in the classification assigned by the convicting jurisdiction) in deciding whether the significant increases under the career offender guideline are appropriate. Such consideration is consistent with the structure used by Congress in the context of the Armed Career Criminal Act. *See* 18 U.S.C. 921(a)(20) (providing, for purposes of Chapter 44 of Title 18, that ''crime punishable by imprisonment for a term exceeding one year'' does not include a State offense classified as a misdemeanor and punishable by two years or less). It is also consistent with the court's obligation to account for the ''nature and circumstances of the offense and the history and characteristics of the defendant.'' *See* 18 U.S.C. 3553(a)(1).

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10 CFR Parts 429 and 431

Energy Conservation Program: Energy Conservation Standards for Commercial Prerinse Spray Valves; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[Docket Number EERE–2014–BT–STD–0027]

RIN 1904–AD31

Energy Conservation Program: Energy Conservation Standards for Commercial Prerinse Spray Valves

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 commercial prerinse spray valves (CPSVs). 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 adopting more-stringent energy conservation standards for commercial prerinse spray valves because DOE has determined that the amended energy conservation standards for these products would result in significant conservation of energy, and are technologically feasible and economically justified.

DATES: The effective date of this rule is March 28, 2016. Compliance with the amended standards established for commercial prerinse spray valves in this final rule is required on and after January 28, 2019.

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*. All documents in the docket are listed in the *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: *www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=100*. The *www.regulations.gov* Web page contains 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*.

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I. Synopsis of the Final Rule

Title III of the Energy Policy and Conservation Act of 1975 (EPCA),[1] sets forth a variety of provisions designed to improve energy efficiency. Part B of title III established the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' These products include commercial prerinse spray valves (CPSVs), the subject of this document.[2]

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 product 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)) Not later than 2 years after such a document is issued, DOE must publish a final rule amending the standard for the product. (42 U.S.C. 6295(m)(3)

In accordance with these and other statutory provisions discussed in this document, DOE is adopting amended energy conservation standards for commercial prerinse spray valves. The amended standards, which are expressed in terms of the flow rate (in gallons per minute, gpm) for each product class (defined by spray force in ounce-force, ozf), are shown in Table I.1. The amended standards will apply to all classes of commercial prerinse spray valves listed in Table I.1 that are manufactured in, or imported into, the United States on or after January 28, 2019.

TABLE I.1—AMENDED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL PRERINSE SPRAY VALVES

Product class	Maximum flow rate (gpm)
1. Product Class 1 (≤5.0 ozf)	1.00
2. Product Class 2 (>5.0 ozf and ≤8.0 ozf)	1.20
3. Product Class 3 (>8.0 ozf)	1.28

A. Benefits and Costs to Consumers

Table I.2 presents DOE's evaluation of the economic impacts of the amended standards on commercial prerinse spray valves, as measured by the average life-cycle cost (LCC) savings and the simple payback period (PBP).[3] The average LCC savings are non-negative for all product classes. The PBP for all product classes is also less than the projected average CPSV lifetime of approximately 5 years.

TABLE I.2—IMPACTS OF AMENDED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF COMMERCIAL PRERINSE SPRAY VALVES

Product class	Average LCC savings (2014$) *	Simple payback period (years) **
1. Product Class 1 (≤5.0 ozf)	0	0.0
2. Product Class 2 (>5.0 ozf and ≤8.0 ozf)	0	0.0
3. Product Class 3 (>8.0 ozf)	547	0.0

* Product classes 1 and 2 have zero LCC savings because the no-new-standards case efficiency distribution (see section IV.F.9) shows the entire CPSV market at or above the amended standard for these product classes.

** For product classes 1 and 2, because there is no change in the market resulting from the standard, DOE represented these PBPs as zero. Additionally, in all product classes, because more efficient units do not cost more up front, consumers begin saving money as soon as a more efficient product is installed (the payback is immediate).

DOE's analysis of the impacts of the amended standards on consumers is described in more detail in section IV.F 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 through 2048). Using a real discount rate of 6.9 percent,[4] DOE estimates that the INPV for manufacturers of commercial prerinse spray valves in the case without amended standards (referred to as the

[1] All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvements Act of 2015, Public Law 114–11 (Apr. 30, 2015).

[2] Because Congress included commercial prerinse spray valves in Part B of Title III of EPCA, the consumer product provisions of Part B (not the industrial equipment provisions of Part C) apply to commercial prerinse spray valves. However, because commercial prerinse spray valves are commonly considered to be commercial equipment, as a matter of administrative convenience and to minimize confusion among interested parties, DOE placed the requirements for commercial prerinse spray valves into subpart O of 10 CFR part 431. Part 431 contains DOE regulations for commercial and industrial equipment.

[3] The average LCC savings are measured relative to the no-new-standards case efficiency distribution, which depicts the CPSV market in the compliance year (see section IV.F). The simple PBP, which is designed to compare specific efficiency levels, is measured relative to the baseline CPSV model (see section IV.C.1).

[4] The discount rate is an industry average discount rate, which was estimated using publically available industry financial data for companies that sell CPSVs in the U.S. Data sources are listed in section IV.J.

no-new-standards case) is $8.6 million in 2014$. Under the amended standards adopted in this final rule, DOE expects that manufacturers may lose up to 13.1 percent of this INPV, which is equivalent to approximately $1.1 million. Additionally, based on its analysis of available information, DOE does not expect significant impacts on manufacturing capacity or loss of employment.

DOE's analysis of the impacts of the amended standards on manufacturers is described in more detail in section IV.J of this document.

C. National Benefits and Costs [5]

DOE's analyses indicate that the amended energy conservation standards for commercial prerinse spray valves would save a significant amount of energy and water. Relative to the no-new-standards case, the lifetime energy savings for commercial prerinse spray valves purchased in the 30-year period that begins in the compliance year (2019–2048) amounts to 0.10 quadrillion Btu (quads) [6] and 119.57 billion gallons of water. This represents a savings of 8 percent relative to the energy use of these products in the no-new-standards case. This also represents a savings of 8 percent relative to the water use of these products in the no-new-standards case.

The cumulative net present value (NPV) of total consumer costs and savings of the standards for commercial prerinse spray valves ranges from $0.72 billion (at a 7-percent discount rate) to $1.48 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product costs for commercial prerinse spray valves purchased in 2019–2048.

In addition, the standards for commercial prerinse spray valves are projected to yield significant environmental benefits. DOE estimates that the standards will result in cumulative emission reductions (from 2019–2048) of 5.87 million metric tons (Mt) [7] of carbon dioxide (CO_2), 1.79 thousand tons of sulfur dioxide (SO_2), 14.70 thousand tons of nitrogen oxides (NO_X), 47.37 thousand tons of methane (CH_4), 0.04 thousand tons of nitrous oxide (N_2O), and 0.01 tons of mercury (Hg).[8] The cumulative reduction in CO_2 emissions through 2030 amounts to 1.86 Mt, which is equivalent to the emissions resulting from the annual electricity use of about 255,000 homes.

The value of the CO_2 reductions is calculated using a range of values per metric ton of CO_2 (otherwise known as the Social Cost of Carbon, or SCC) developed by a recent Federal interagency working group.[9] The derivation of the SCC values is discussed in section IV.L of this document. Using discount rates appropriate for each set of SCC values, DOE estimates that the net present monetary value of the CO_2 emissions reduction (not including CO_2 equivalent emissions of other gases with global warming potential) is between $0.04 billion and $0.59 billion. DOE also estimates that the net present monetary value of the NO_X emissions reduction is between $24 and $53 million at a 7-percent discount rate, and between $52 and $117 million at a 3-percent discount rate.[10]

Table I.3 summarizes the national economic benefits and costs expected to result from the amended standards for commercial prerinse spray valves.

TABLE I.3—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF AMENDED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL PRERINSE SPRAY VALVES *

Category	Present value (million 2014$)	Discount rate (%)
Benefits		
Operating Cost Savings	718	7
	1,476	3
CO_2 Reduction Monetized Value ($12.2/metric ton case) **	44	5
CO_2 Reduction Monetized Value ($40.0/metric ton case) **	195	3
CO_2 Reduction Monetized Value ($62.3/metric ton case) **	308	2.5
CO_2 Reduction Monetized Value ($117/metric ton case) **	594	3
NO_X Reduction Monetized Value †	24	7
	52	3
Total Benefits ††	937	7
	1,724	3

[5] 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 savings (see section IV.H for discussion).

[6] A quad is equal to 10^{15} British thermal units (Btu). The quantity refers to full-fuel-cycle (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.

[7] A metric ton is equivalent to 1.1 short tons. Results for NO_X and Hg are presented in short tons.

[8] 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.

[9] *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: *http://www.whitehouse.gov/sites/default/files/omb/inforeg/scc-tsd-final-july-2015.pdf).*

[10] DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the Regulatory Impact Analysis titled, ''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. Note that the agency is presenting a national benefit-per-ton estimate for particulate matter emitted from the Electricity Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski et al., 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al., 2011), the values would be nearly two-and-a-half times larger. Because of the sensitivity of the benefit-per-ton estimate to the geographical considerations of sources and receptors of emissions, DOE intends to investigate refinements to the agency's current approach of one national estimate by assessing the regional approach taken by EPA's Regulatory Impact Analysis for the Clean Power Plan Final Rule. Note that DOE is currently investigating valuation of avoided SO_2 and Hg emissions.

TABLE I.3—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF AMENDED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL PRERINSE SPRAY VALVES *—Continued

Category	Present value (million 2014$)	Discount rate (%)
Costs		
Manufacturer Conversion Costs †	1 to 2	N/A
Total Net Benefits ††		
Including Emissions Reduction Monetized Value	937 1,724	7 3

* This table presents the costs and benefits associated with commercial prerinse spray valves shipped in 2019–2048. These results include benefits to consumers which accrue after 2048 from the products purchased in 2019–2048. 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_2 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%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series incorporate an escalation factor.

† The $/ton values used for NO_X are described in section IV.L. DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the Regulatory Impact Analysis titled, ''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. DOE is presenting a national benefit-per-ton estimate for particulate matter emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski et al., 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al., 2011), the values would be nearly two-and-a-half times larger. Because of the sensitivity of the benefit-per-ton estimate to the geographical considerations of sources and receptors of emissions, DOE intends to investigate refinements to the current approach of one national estimate by assessing the regional approach taken by EPA's Regulatory Impact Analysis for the Clean Power Plan Final Rule.

†† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to average SCC with 3-percent discount rate ($40.0/t case).

The benefits and costs of the amended standards, for commercial prerinse spray valves 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 annualized national economic value of the benefits from consumer operation of products that meet the amended standards (consisting primarily of operating cost savings from using less energy and water, minus increases in product purchase and installation costs, which is another way of representing consumer NPV); and (2) the annualized monetary value of the benefits of CO_2 and NO_X emission reductions.[11]

Although the value of operating cost savings and CO_2 emission reductions are both important, two issues are relevant. First, the national operating cost savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, whereas the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and CO_2 savings are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of commercial prerinse spray valves shipped in 2019–2048. Because CO_2 emissions have a very long residence time in the atmosphere,[12] the SCC values in future years reflect future CO_2-emissions impacts that continue beyond 2100.

Estimates of annualized benefits and costs of the amended standards are shown in Table I.4. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction (for which DOE used a 3-percent discount rate, along with the average SCC series that has a value of $40.0 per metric ton in 2015), there are no increased product costs associated with the standards adopted in this final rule. The benefits under the 7% discount rate case are $71 million per year in reduced product operating costs, $11 million per year in CO_2 reductions, and $2 million to $5 million per year in reduced NO_X emissions. In this case, the net benefit amounts to approximately $84 million per year. Using a 3-percent discount rate for all benefits and costs as well as the average SCC series that has a value of $40.0 per metric ton in 2015, there are still no increased product costs associated with the amended standards in this rule, while the benefits are $82 million per year in reduced operating costs, $11 million in CO_2 reductions, and $3 million to $7 million in reduced NO_X emissions. In this case (3% discount rate), the net benefit amounts to approximately $96 million per year.

[11] 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_2 reductions, for which DOE used case-specific discount rates, as shown in Table I.3. 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.

[12] The atmospheric lifetime of CO_2 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).

TABLE I.4—ANNUALIZED BENEFITS AND COSTS OF AMENDED STANDARDS FOR COMMERCIAL PRERINSE SPRAY VALVES *

	Discount rate	Million 2014$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Benefits				
Consumer Operating Cost Savings	7%	71	66	74
	3%	82	76	86
CO_2 Reduction at $12.2/t **	5%	3	3	3
CO_2 Reduction at $40.0/t **	3%	11	11	11
CO_2 Reduction at $62.3/t **	2.5%	16	16	16
CO_2 Reduction at $117/t **	3%	33	33	33
NO_X Reduction Monetized Value †	7%	2	2	5
	3%	3	3	7
Total Benefits ††	7% plus CO_2 range	77 to 106	71 to 101	82 to 112
	7%	84	79	90
	3% plus CO_2 range	89 to 118	82 to 112	96 to 126
	3%	96	89	104
Costs				
Manufacturer Conversion Costs †††	7%	0.08 to 0.13	0.08 to 0.13	0.08 to 0.13
	3%	0.05 to 0.08	0.05 to 0.08	0.05 to 0.08
Total Net Benefits				
Total ††††	7% plus CO_2 range	77 to 106	71 to 101	82 to 112
	7%	84	79	90
	3% plus CO_2 range	89 to 118	82 to 112	96 to 126
	3%	96	89	104

* This table presents the annualized costs and benefits associated with commercial prerinse spray valves shipped in 2019–2048. These results include benefits to consumers which accrue after 2048 from the products purchased in 2019–2048. The results account for the incremental variable and fixed costs incurred by manufacturers due to the amended 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 Annual Energy Outlook 2015 (*AEO2015)* reference case, low estimate, and high estimate, respectively.

** The CO_2 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 $/ton values used for NO_X are described in section IV.L. DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the Regulatory Impact Analysis titled, ''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 DOE's Primary Estimate and Low Net Benefits Estimate, the agency is presenting a national benefit-per-ton estimate for particulate matter emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski et al., 2009). For DOE's High Net Benefits Estimate, the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al., 2011), which are nearly two-and-a-half times larger than those from the ACS study. Because of the sensitivity of the benefit-per-ton estimate to the geographical considerations of sources and receptors of emission, DOE intends to investigate refinements to the agency's current approach of one national estimate by assessing the regional approach taken by EPA's Regulatory Impact Analysis for the Clean Power Plan Final Rule.

†† 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_2 range'' and ''3% plus CO_2 range,'' the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

††† The lower value of the range represents costs associated with the Sourced Components conversion cost scenario. The upper value represents costs for the Fabricated Components scenario.

†††† Total benefits for both the 3 percent and 7 percent cases are derived using the series corresponding to the average SCC with 3 percent discount rate. In the rows labeled ''7% plus CO2 range'' and ''3% plus CO2 range,'' the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO2 values. Manufacturer Conversion Costs are not included in the net benefits calculations.

DOE's analysis of the national impacts of the amended standards is described in sections IV.H, IV.K, and IV.L of this document.

D. Conclusion

Based on the analyses conducted for this final rule, DOE found the benefits to the nation of the standards (energy and water savings, consumer LCC savings, positive NPV of consumer benefit, and emission reductions) outweigh the burdens (loss of INPV). 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.

II. Introduction

The following sections briefly discusses the statutory authority underlying this final rule, as well as some of the relevant historical background related to the establishment of standards for commercial prerinse spray valves.

A. Authority

Title III, Part B of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. As part of this program, EPCA prescribed energy conservation standards for commercial prerinse spray valves, which are the subject of this rulemaking. (42 U.S.C. 6292(dd)) Under 42 U.S.C. 6295(m), DOE must

periodically review its already established energy conservation standards for a covered product no later than 6 years from the issuance of a final rule establishing or amending a standard for the product. After publishing a notice of proposed rulemaking (NOPR) including new proposed standards, DOE must publish a final rule amending the standard for the product no later than 2 years after the NOPR is issued. (42 U.S.C. 6295(m)(3)(A) This final rule fulfills this statutory requirement.

Pursuant to EPCA, DOE's energy conservation program for covered products 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 of Energy (Secretary) or the Federal Trade Commission (FTC), as appropriate, may prescribe labeling requirements for commercial prerinse spray valves. (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 each covered product. (42 U.S.C. 6293(b)(3)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedure for commercial prerinse spray valves appears at title 10 of the Code of Federal Regulations (CFR) part 431, subpart O. DOE released a pre-publication notice of the test procedure final rule for commercial prerinse spray valves (CPSV TP final rule) on December 18, 2015.[13]

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including commercial prerinse spray valves. Any new or amended standard for a covered product 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)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) Moreover, DOE may not prescribe a standard for certain products, including commercial prerinse spray valves, if no test procedure has been established for the product (42 U.S.C. 6295(o)(3)(A)) In deciding whether a proposed 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 products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products 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 products 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 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 product complying with an energy conservation standard level will be less than three times the value of the energy and water savings the consumer will receive during the first year that the standard applies, 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 product. (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 product 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 at the time of the Secretary's finding. (42 U.S.C. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. DOE must specify a different standard level for a type or class of products that has the same function or intended use if DOE determines that products within such group: (1) Consume a different kind of energy from that consumed by other covered products within such type (or class); or (2) have a capacity or other performance-related feature which other products 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 a group of products, DOE shall 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))

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) California, however, has a statutory exemption to preemption for commercial prerinse spray valve standards adopted by the California Energy Commission before January 1, 2005. (42 U.S.C. 6297(c)(7)) As a result, while federal commercial prerinse spray valve standards, including any amended standards that may result from this rulemaking, apply in California, California's commercial prerinse spray valve standards also apply as they are exempt from preemption. DOE may also 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)).

[13] The pre-publication **Federal Register** notice of the CPSV TP final rule issued by DOE is available on DOE's Web site at *http://energy.gov/sites/prod/files/2015/12/f27/CPSV%20TP%20Final%20Rule.pdf.* Following publication in the **Federal Register**, the CPSV TP final rule will be available at *www.regulations.gov* under Docket # EERE–2014.BT–TP–0055.

Finally, pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product 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 a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's recently updated test procedures for commercial prerinse spray valves do not address standby mode and off mode energy use, because they are not applicable for this product. Accordingly, in this rulemaking, DOE only addresses active mode energy consumption because commercial prerinse spray valves only consume energy and water in active mode.

B. Background

1. Current Standards

In a final rule published on October 18, 2005 (2005 CPSV final rule), DOE codified the current energy conservation standard for commercial prerinse spray valves that was prescribed by the Energy Policy Act of 2005 (EPAct 2005), Public Law 109–58 (August 8, 2005). 70 FR 60407, 60410. The 2005 CPSV final rule established that all commercial prerinse spray valves manufactured on or after January 1, 2006, must have a flow rate of not more than 1.6 gpm. *Id.*

2. History of Standards Rulemaking for Commercial Prerinse Spray Valves

DOE initiated the current rulemaking on September 11, 2014, by issuing an analytical Framework document (2014 CPSV Framework document) that explained the issues, analyses, and analytical approaches that DOE anticipated using to develop energy conservation standards for commercial prerinse spray valves. 79 FR 54213. DOE held a public meeting on September 30, 2014 to discuss the 2014 CPSV Framework document, and solicited comments from interested parties regarding DOE's analytical approach. DOE received comments that helped identify and resolve issues pertaining to the 2014 CPSV Framework document relevant to this rulemaking.

DOE published a NOPR for the CPSV energy conservation standards rulemaking on July 9, 2015 (CPSV NOPR). 80 FR 39486. DOE held a public meeting on July 28, 2015 to present the CPSV NOPR, which included the engineering analysis, downstream economic analyses, manufacturer impact analysis, and proposed standards. In the public meeting, DOE also sought comments from interested parties on these subjects, and facilitated interested parties' involvement in the rulemaking. At the public meeting, and during the comment period, DOE received comments that helped DOE identify issues and refine the analyses presented in the CPSV NOPR for this final rule.

Based on the issues raised in response to the CPSV NOPR, DOE published a notice of data availability (NODA) for the CPSV energy conservation standards rulemaking on November 20, 2015 (CPSV NODA).[14] 80 FR 72608. In the CPSV NODA, DOE described revisions to its analyses of commercial prerinse spray valves in the following areas: (1) Engineering, (2) manufacturer impacts, (3) LCC and PBP, and (4) national impacts. DOE also presented updated trial standard level (TSL) combinations. DOE sought comments on all aspects of the updated analyses. During the CPSV NODA comment period, DOE received comments in response to issues raised in the CPSV NODA.

This final rule responds to issues raised by commenters in response to the 2014 CPSV Framework document, CPSV NOPR, and CPSV NODA.

C. General Rulemaking Comments

In response to the CPSV NOPR, Alliance for Water Efficiency (AWE) recommended that this rulemaking be postponed until the stakeholders develop and agree upon a cleaning performance test that mimics ''real world'' performance. (AWE, No. 28 at p. 6) [15] As discussed previously, under 42 U.S.C. 6295(m), the agency must periodically review its already established energy conservation standards for a covered product. DOE codified the current energy conservation standard for commercial prerinse spray valves in the 2005 CPSV final rule. Therefore, DOE is required to conduct a review of CPSV energy conservation standards, and cannot postpone this rulemaking further. A discussion of the CPSV test procedure is provided in section III.B of this document.

In response to the CPSV NODA, DOE received a comment from the Plumbing Manufacturers Institute (PMI) requesting the comment period for the CPSV NODA be extended. PMI cited the short duration of the comment period, as well as the Thanksgiving holiday to support their request for an extension. (PMI, No. 41 at p. 1) DOE chose to maintain the comment period at 14 days, which DOE believes is sufficient time to review the updated analyses and provide comment. Additionally, while input data was updated in response to comments received, the analytical framework remained unchanged.

PMI further commented that the process by which DOE obtained data to develop energy conservation standards lacked transparency. PMI stated that DOE should have formed a working group. (PMI, No. 43 at p. 1) DOE disagrees with PMI's comment that DOE's regular notice-and-comment rulemaking process lacks transparency with regards to data collection. DOE solicited comments and data from interested parties in response to the 2014 CPSV Framework document, the CPSV NOPR, and the CPSV NODA. Based on data obtained during these public comment periods, DOE revised its analyses and proposed standards.

III. General Discussion

A. Product Classes and Scope of Coverage

EPCA defines the term ''commercial prerinse spray valve'' as a ''handheld device designed and marketed for use with commercial dishwashing and ware washing equipment that sprays water on dishes, flatware, and other food service items for the purpose of removing food residue before cleaning the items.'' (42 U.S.C. 6291(33)(A) In the CPSV TP final rule, DOE modified the CPSV definition to clarify the scope of coverage, and adopted the following definition: ''Commercial prerinse spray valve'' is defined as a handheld device that has a release to close valve and is suitable for removing food residue from food service items before cleaning them in commercial dishwashing and ware washing equipment. The analyses conducted for this final rule were based on the scope of coverage provided by this amended definition.

When evaluating and establishing energy conservation standards, DOE divides covered products into product classes by the type of energy used, or by

[14] DOE initially published the CPSV NODA on November 12, 2015. 80 FR 69888. Due to errors in the CPSV NODA, DOE withdrew the document and published a corrected NODA on November 20, 2015. 80 FR 72608.

[15] A notation in this form provides a reference for information that is in the docket of DOE's rulemaking to amend energy conservation standards for commercial prerinse spray valves. (Docket No. EERE–2014–BT–STD–0027, which is maintained at *www.regulations.gov*). This particular notation refers to a comment: (1) Submitted by AWE; (2) appearing in document number 28 of the docket; and (3) appearing on page 6 of that document.

capacity or other performance-related features that justify a different standard. In making a determination whether a performance-related feature justifies a different standard, DOE considers such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (42 U.S.C. 6295(q))

Currently, all covered commercial prerinse spray valves are included in a single product class that is subject to a 1.6-gpm standard for maximum flow rate. 10 CFR 431.266. In the CPSV NOPR, DOE proposed three separate product classes based on spray force. DOE believes that spray force is a performance-related feature of commercial prerinse spray valves, and that each of the defined spray force ranges is associated with unique consumer utility for specific CPSV applications. (42 U.S.C. 6295(q)) DOE also requested comments from interested parties. See section IV.A.2 for more discussion on the product classes addressed in this final rule.

B. Test Procedure

In addition to establishing the current maximum flow rate for commercial prerinse spray valves, EPCA also prescribed that the test procedure for measuring flow rate for commercial prerinse spray valves be based on American Society for Testing and Materials (ASTM) Standard F2324, ''Standard Test Method for Pre-Rinse Spray Valves.'' (42 U.S.C. 6293(b)(14)) In a final rule published December 8, 2006, DOE incorporated by reference ASTM Standard F2324–03 as the DOE test procedure for commercial prerinse spray valves. 71 FR 71340, 71374. In a final rule published on October 23, 2013, DOE incorporated by reference ASTM Standard F2324–03 (2009) for testing commercial prerinse spray valves, which reaffirmed the 2003 version. 78 FR 62970, 62980.

In 2013, ASTM amended Standard F2324–03 (2009) to replace the cleanability test with a spray force test, based on research conducted by the U.S. Environmental Protection Agency's (EPA) WaterSense® program.[16] The most current version of the ASTM industry standard is the version published in 2013, ASTM Standard F2324–13.

DOE published the NOPR for the CPSV test procedure on June 23, 2015 (CPSV TP NOPR). 80 FR 35874. In the CPSV TP NOPR, DOE proposed to incorporate by reference relevant portions of the amended ASTM Standard F2324–13, requiring spray force and flow rate to be measured in accordance with the industry standard. Additionally, DOE proposed a clarification to the definition of ''commercial prerinse spray valve'' as well as adding a new definition for ''spray force.'' For commercial prerinse spray valves with multiple spray settings, DOE proposed that both flow rate and spray force be measured for each available spray setting. DOE also proposed modifications to the rounding requirements for flow rate and added rounding requirements for spray force. Finally, DOE proposed modification of the sampling plan to remove the provisions related to determining representative values where customers would favor higher values. DOE presented the CPSV TP NOPR in the public meeting on July 28, 2015.

DOE issued a pre-publication notice for the final rule for the CPSV TP on December 18, 2015. The final rule incorporates by reference relevant portions of the latest version of the industry testing standard from the ASTM Standard F2324–13, including the procedure for measuring spray force, revises the definitions of ''commercial prerinse spray valve'' and ''basic model,'' clarifies the test procedure for products with multiple spray settings, establishes rounding requirements for flow rate and spray force measurements, and removes irrelevant portions of the statistical methods for certification, compliance, and enforcement of commercial prerinse spray valves. The amended standards adopted in this final rule were based on testing conducted in accordance with the amended test procedure adopted in the CPSV TP final rule.

C. Certification, Compliance, Enforcement and Labeling

This final rule establishes three separate product classes for commercial prerinse spray valves based on spray force. DOE recognizes that some commercial prerinse spray valves contain multiple spray settings and may fall into more than one product class. If the spray settings on a CPSV unit fall into multiple product classes, manufacturers must certify separate basic models for each product class and may only group individual spray settings into basic models within each product class. The tested spray force for each spray setting determines which product class definition applies to each spray setting. Therefore, a commercial prerinse spray valve that contains multiple spray settings, or is sold with multiple spray faces, may be classified as more than one product class. In this case, the commercial prerinse spray valve is required to meet the appropriate energy conservation standard for each product class.

With regards to labeling, in the CPSV NOPR public meeting, the Natural Resource Defense Council (NRDC) questioned whether the institution of product classes for commercial prerinse spray valves will affect product labeling, and more specifically, whether the product class in which a commercial prerinse spray valve is categorized needs to be represented on product literature. (NRDC, Public Meeting Transcript, No. 23 at p. 110) NRDC also requested guidance on how commercial prerinse spray valves will be labeled if the proposal of multiple product classes were adopted. (NRDC, Public Meeting Transcript, No. 23 at p. 110)

This final rule does not include labeling requirements for commercial prerinse spray valves. Accordingly, this final rule does not require manufacturers to include product class information on product labels. However, DOE notes that any representations of flow rate are required to be determined in accordance with the DOE test procedure and applicable sampling plans.

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 products 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 products 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 product utility or availability; and (3) adverse impacts on health or safety. 10 CFR part 430, subpart C, appendix A, section

[16] EPA WaterSense program, *WaterSense Specification for Commercial Prerinse Spray Valves Supporting Statement.* Version 1.0 (Sept. 19, 2013). Available at: *www.epa.gov/watersense/partners/prsv_final.html.*

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 (EL). Section IV.B of this document discusses the results of the screening analysis for commercial prerinse spray valves, particularly the technology options DOE considered, those it screened out, and those that are the basis for the standards considered in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the final rule technical support document (TSD).

2. Maximum Technologically Feasible Levels

When DOE adopts an amended standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (max-tech) improvements in efficiency for commercial prerinse spray valves using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this rulemaking are described in section IV.C.3 of this document and in chapter 5 of the final rule TSD.

E. Energy Savings

1. Determination of Savings

For each TSL, DOE projected energy savings from the application of the TSL to commercial prerinse spray valves purchased in the 30-year period that begins in the year of compliance with any amended standards (2019–2048).[17] The savings are measured over the entire lifetime of products 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 a product would likely evolve in the absence of amended energy conservation standards.

DOE used its national impact analysis (NIA) spreadsheet models to estimate energy savings from amended standards for commercial prerinse spray valves. The NIA spreadsheet model (described in section IV.H of this document) calculates savings in site energy, which is the energy directly consumed by products at the locations where they are used. DOE calculates national energy savings (NES) in terms of primary energy savings, which is the savings in energy that is used to generate and transmit the site energy, 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.[18] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products. For more information on FFC energy savings, see section IV.H.1 of this document. For natural gas, the primary energy savings are considered to be equal to the site energy savings.

2. Significance of Savings

To adopt more stringent standards for commercial prerinse spray valves, 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 EPCA, 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 amended standards, are nontrivial, and, therefore, DOE considers them ''significant'' within the meaning of section 325 of EPCA.

F. Economic Justification

1. Specific Criteria

As previously noted, 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)(I)–(VII)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of an amended standard on manufacturers, DOE conducts a manufacturer impact analysis (MIA), as discussed in section IV.J. 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) 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 consumers, measures of economic impact include the changes in LCC and PBP associated with amended standards. These measures are discussed further in the following section. For consumers 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 consumers 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 product 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 product 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 product (including its installation) and the operating cost (including water, energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC analysis requires a variety of inputs, such as product prices; product energy and water consumption; energy and water and wastewater prices; maintenance and repair costs; product lifetime; and discount rates appropriate for consumers. To account for

[17] DOE also presents a sensitivity analysis that considers impacts for products shipped in a 9-year period.

[18] 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).

uncertainty and variability in specific inputs, such as product 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 consumers to recover the increased purchase cost (including installation) of a more-efficient product 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 assumes that consumers will purchase the covered products 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's LCC and PBP analysis is discussed in further detail in section IV.F.

c. Energy and Water 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 and water savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section III.E, DOE uses the NIA spreadsheet models to project national energy and water savings.

d. Lessening of Utility or Performance of Products

In determining whether a proposed standard is economically justified, DOE evaluates any lessening of the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards adopted in this final rule would not reduce the utility or performance of the products 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 of the United States (Attorney General), that is likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) DOE transmitted a copy of its proposed rule to the Attorney General with a request that the Department of Justice (DOJ) provide its 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)). On September 4, 2015, DOJ provided its determination to DOE that the amended standards for commercial prerinse spray valves are unlikely to have a significant adverse impact on competition. DOE has included this determination from DOJ at the end of this final 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 amended 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.

The amended standards are also likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases (GHGs) associated with energy production and use. DOE conducts an emissions analysis to estimate how standards may affect these emissions, as discussed in section IV.K. DOE also estimates the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.L.

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)) No other factors were considered in this analysis.

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy and water savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effect the amended energy conservation standards would have on the PBP for consumers. 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 consumers, 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 an amended 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.11 of this document.

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this rulemaking with regard to commercial prerinse spray valves. Separate subsections address each component of DOE's analyses.

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 the amended energy conservation standards. The NIA uses a second spreadsheet set that provides shipments forecasts and calculates NES and NPV of total consumer costs and savings expected to result from amended energy conservation standards. DOE uses a third spreadsheet tool, the Government Regulatory Impact Model (GRIM), to assess manufacturer impacts of amended 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=100*.

Additionally, DOE used a version of the Energy Information Administration's (EIA) National Energy Modeling System (NEMS) for the emission and utility impact analyses. The NEMS model simulates the energy sector of the U.S. economy. EIA uses NEMS to prepare the *AEO,* a widely-known baseline energy forecast for the United States.[19]

The version of NEMS used for appliance standards analysis, which makes minor modifications to the *AEO* version, is called NEMS–BT.[20] NEMS–

[19] For more information on NEMS, refer to *The National Energy Modeling System: An Overview 2009,* DOE/EIA–0581 (Oct. 2009) (Available at: *https://www.eia.gov/forecasts/aeo/info_nems_archive.cfm*).

[20] EIA approves the use of the name ''NEMS'' to describe only an *AEO* version of the model without

Continued

BT accounts for the interactions among the various energy supply and demand sectors and the economy as a whole.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for commercial prerinse spray valves, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly-available information. The subjects addressed in the market and technology assessment for this rulemaking include: (1) Market assessment, (2) product classes, (3) technology assessment, and (4) impact on compliance, certification and enforcement. The key findings of DOE's market assessment are summarized in the following sections. See chapter 3 of the final rule TSD for further discussion of the market and technology assessment.

1. Market Assessment

As part of the market assessment, DOE examined manufacturers, trade associations, and the quantities and types of products sold and offered in the market. DOE reviewed relevant literature to develop an understanding of the CPSV industry in the United States, including market research data, government databases, retail listings, and industry publications (*e.g.,* manufacturer catalogs). Using this information, DOE assessed the overall state of the industry, CPSV manufacturer model-based market shares, shipments, general technical information on commercial prerinse spray valves, and industry trends.

In comments to the CPSV NOPR, T&S Brass suggested that information and data acquired through the WaterSense program be considered, as the program set a reasonable efficiency goal and established the groundwork for a viable CPSV efficiency program. (T&S Brass, No. 33 at p. 3) AWE stated that the WaterSense research seems to be ignored by DOE. (AWE, No. 28 at p. 7)

For this rulemaking, DOE performed market research using various reports and databases, including the WaterSense database that lists the spray force of WaterSense labeled products. DOE used the spray force results from the WaterSense labeled products as input to the engineering analysis (see chapter 5 of the final rule TSD). Also, DOE used the WaterSense field study report: (1) To characterize the CPSV market; (2) to perform a sensitivity analysis of water pressure for testing commercial prerinse spray valves as part of the CPSV test procedure rulemaking;[21] and (3) as inputs to the energy and water use analysis (see chapter 7 of the final rule TSD).

To characterize the market, DOE analyzed the model-based market shares of major manufacturers based on the number of basic models[22] observed through the DOE Compliance Certification Management System (CCMS) database, WaterSense database, and Web searches.[23] DOE concluded that the CPSV market includes 46 basic models from 13 manufacturers. Chapter 3 of the final rule TSD provides more details on the CPSV market.

Additionally, DOE also characterized the efficiency (flow rate) distribution of commercial prerinse spray valves currently on the market. DOE performed this analysis in the CPSV NOPR, and presented it during the CPSV NOPR public meeting. DOE's analysis indicated a wide range of CPSV flow rates on the market with rated flow rates between 0.59 and 1.60 gpm. DOE received a comment during the CPSV NOPR public meeting regarding the efficiency distribution. T&S Brass stated that consumer satisfaction was not represented in DOE's analysis, and that consumer satisfaction is very high at the upper range of the market flow rate distribution. (T&S Brass, Public Meeting Transcript, No. 23 at p. 31) T&S Brass further commented that the showerhead-type commercial prerinse spray valves represent the majority of the market and highest level of customer satisfaction because these units prevent splash-back. (T&S Brass, Public Meeting Transcript, No. 23 at pp. 42–43)

While consumer satisfaction is not directly referenced in the efficiency distribution graph presented by DOE in the CPSV NOPR, DOE has acknowledged consumer satisfaction and consumer utility as important aspects to consider when establishing product classes for commercial prerinse spray valves. This is described further in the product class section of this document (section IV.A.2). Additionally, in response to comments from interested parties, DOE updated both its engineering analysis and downstream analysis to account for the shower-type commercial prerinse spray valves and its majority market shipments. The updated engineering analysis is presented in section IV.C of this document, and the updated shipments analysis is presented in section IV.G of this document.

2. Product Classes

When evaluating and establishing energy conservation standards, DOE considers dividing covered products into classes by (a) the type of energy used, (b) the capacity of the product, or (c) other performance-related features that justify different standard levels. (42 U.S.C. 6295(q)) Currently, DOE regulates all covered commercial prerinse spray valves as a single product class that is subject to a 1.6-gpm standard for flow rate. 10 CFR 431.266. DOE, however, has determined that spray force is a performance-related feature that justifies different standard levels. Consequently, this final rule establishes three product classes based on spray force ranges: (1) Product class 1 (less than or equal to 5.0 ounce-force, or ozf), (2) product class 2 (greater than 5.0 ozf but less than or equal to 8.0 ozf), and (3) product class 3 (greater than 8.0 ozf). These are the same product classes that were proposed in the CPSV NOPR, but with a different naming convention.

a. Spray Force

In the CPSV NOPR and public meeting, DOE presented data indicating a strong correlation between spray force and flow rate, as described further in section IV.C.2 of this final rule and in chapter 5 of the TSD. Specifically, units with higher spray force have inherently higher flow rates, and units with lower spray force have inherently lower flow rates. This direct relationship provided justification for creating multiple product classes defined by ranges of spray force.

In the CPSV NOPR, DOE cited a WaterSense field study that found that low water pressure, or spray force, can be a source of user dissatisfaction for some applications.[24] DOE also received

any modification to code or data. Because the present analysis entails some minor code modifications and runs the model under various policy scenarios that deviate from *AEO* assumptions, the name ''NEMS–BT'' refers to the model as used here. (BT stands for DOE's Building Technologies Office.)

[21] The water pressure sensitivity analysis is available at *www.regulations.gov* under docket number EERE–2014–BT–TP–0055.

[22] Basic model means all units of a given type of covered product (or class thereof) manufactured by one manufacturer, having the same primary energy source, and having essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy use, energy efficiency, water use, or water efficiency. 10 CFR 431.262.

[23] U.S. Department of Energy. Compliance Certification Database (available at *http://www.regulations.doe.gov/certification-data/*); U.S. EPA, Water Sense (available at *www.epa.gov/watersense/product_search.html*).

[24] EPA WaterSense, *Prerinse Spray Valves Field Study Report,* at 24–25 (Mar. 31, 2011) (Available at: *www.epa.gov/watersense/docs/final_epa_prsv_study_report_033111v2_508.pdf*).

multiple comments in response to the 2014 CPSV Framework document stating that spray force is a performance related feature that could be used to define product classes. The Advocates commented that product classes must be considered to distinguish commercial prerinse spray valves, and that DOE could consider using spray force as one way to delineate separate product classes. (Advocates, No. 11 at p. 2) The CA IOUs urged DOE to consider user satisfaction when considering the efficiency metric, as some field surveys have shown that users that are dissatisfied with efficient commercial prerinse spray valves will substitute them with those that likely increase overall water consumption. Therefore, CA IOUs suggested either incorporating spray force into the efficiency metric, or alternatively, using spray force to establish product classes as a way to account for differentiating products. (CA IOUs, No. 14 at p. 1) T&S Brass commented that the applications of commercial prerinse spray valves could vary from rinsing to cleaning baked-on food, and that the different applications might require different spray forces. T&S Brass stated that it offers a variety of prerinse spray valves that have different design features based on end users' applications. (T&S Brass, Public Meeting Transcript, No. 6 at p. 40) In response to the CPSV NOPR, Chicago Faucets commented that spray force is useful for predicting customer satisfaction. (Chicago Faucets, No. 26 at p. 2)

Furthermore, DOE market research indicates three distinct categories of end-user applications for commercial prerinse spray valves, which require different levels of spray force: (1) Cleaning delicate glassware and removing loose food particles from dishware (which requires the least amount of spray force); (2) cleaning wet foods; and (3) cleaning baked-on foods (which requires the greatest amount of spray force).

DOE also received general comments regarding the use of spray force to define separate product classes for commercial prerinse spray valves. T&S Brass recommended that the DOE establish the CPSV efficiency goal based only upon maximum flow rate, as this is directly related to water conservation. (T&S Brass, No. 33 at p. 3) Chicago Faucets commented that the addition of the spray force test into mandated Federal law is unnecessary and counterproductive. Chicago Faucets believes that the focus should be on water conservation. Chicago Faucets stated that the spray force test method has no bearing on water conservation and that it was intended as a tool for marketing and selling spray valves, and nothing more. (Chicago Faucets, No. 26 at p. 2) The North American Association of Food Equipment Manufacturers (NAFEM) stated that it appears to them that DOE is requiring manufacturers to design commercial prerinse spray valves to meet the classification system and spray force requirements which have been pre-determined by DOE. (NAFEM, PMI, No. 31 at p. 1)

AWE commented in response to the CPSV NOPR that there is no evidence that spray force is the only factor for consumer satisfaction and performance in cleaning dishware. (AWE, No. 28 at p. 3) AWE further commented that spray force should be excluded from the proposed rule as it is irrelevant to efficiency, and that the only measure of valve water efficiency is a volumetric measure, stated in gallons per minute. (AWE, No. 28 at p. 3) AWE also stated that high spray force can be a hindrance to performance for some operations due to excessive splash and aerosolizing water. (AWE, No. 28 at p. 4)

In comments received during the CPSV NOPR public meeting and through written submissions, the majority of the interested parties opposed DOE's product class structure based on spray force, and recommended that DOE maintain a single product class. (Chicago Faucets, No. 26 at pp. 1–2; PMI, No. 27 at p. 1; Fisher, No. 30 at p. 1; Appliance Standards Awareness Project (ASAP), Northwest Energy Efficiency Alliance (NEEA), NRDC, No. 32 at p. 1; Pacific Gas and Electric (PG&E), Southern California Edison (SCE), Southern California Gas Company (SCGC), San Diego Gas and Electric (SDG&E), No. 34 at pp. 1–2; AWE, No. 28 at p. 7; T&S Brass, No. 33 at p. 2) PMI, PG&E, SCE, SCGC, and SDG&E (collectively, the ''CA IOUs'') and, ASAP and NRDC reiterated their comments in favor of a single product class in response to the CPSV NODA. (PMI, No. 43 at p. 1; CA IOUs, No. 44 at pp. 1–2; ASAP and NRDC, No. 45 at p. 1)

On the other hand, several interested parties supported the consideration of spray force for the standard. Fisher stated that the standard should focus on flow rate and spray force, but allow the consumer to determine which of these performance factors will satisfy their requirements. (Fisher, No. 30 at p. 1) ASAP, NEEA, and NRDC (collectively, the ''Advocates'') and the CA IOUs commented that they support the proposal to add a requirement to measure and report spray force. The Advocates and CA IOUs believe that the addition of spray force will help stakeholders to better understand CPSV product performance and help inform the incorporation of this metric into a future rulemaking. Additionally, the Advocates stated that the collection of spray force product data will also inform the EPA WaterSense program and other efforts to improve water and energy efficiency in commercial kitchens. (Advocates, No. 32 at p. 2; CA IOUs, No. 34 at p. 3).

DOE acknowledges that some interested parties generally oppose the use of spray force to define separate product classes for commercial prerinse spray valves. However, DOE received no comments contradicting its conclusion that spray force is a performance-related feature related to consumer utility. DOE also acknowledges that there are other features that could also affect consumer utility of commercial prerinse spray valves, including spray shape and amount of splash back; however, these metrics are not as easily quantifiable as spray force, nor can they be easily tested or defined. Based on the WaterSense studies, the totality of comments received in response to the 2014 CPSV Framework document and CPSV NOPR, and additional market research, DOE concludes that spray force is a performance-related feature that justifies different standard levels. DOE is not establishing a minimum spray force requirement in this final rule; rather, spray force is used only to define the boundaries between the three product classes.

b. Number of Classes

To determine the number of product classes, DOE tested and analyzed a wide range of CPSV units on the market, spanning multiple manufacturers, flow rates, and spray shapes. DOE believes that the units analyzed for this rulemaking are representative of the entire CPSV market. DOE's test data and additional market research indicated three clusters of spray force data points, which DOE used as the basis for proposing three separate product classes. Additional details regarding this test data is provided in chapter 5 of the final rule TSD.

Product class 1 included units with spray force less than or equal to 5.0 ounce-force (ozf), product class 2 included units with spray force greater than 5.0 ozf but less than or equal to 8.0 ozf, and product class 3 included units with spray force greater than 8.0 ozf.

DOE received comments regarding the method behind how the product classes were established. Specifically, AWE stated that using a scatter graph of spray force from different models, then dividing into thirds, is not a scientific

method to classify products. (AWE, No. 28 at p. 3) AWE recommended that the classification system not be implemented and believes that it is arbitrary, unjustified, and its effect on water use is unknown. (AWE, No. 28 at p. 6)

DOE selected 5.0 ozf as the spray force cut-off between product class 1 and product class 2 based on DOE's test data and market research, which clearly showed a cluster of CPSV units above and below that threshold. One cluster of CPSV units had spray force ranges between 4.1 and 4.8 ozf, and the other cluster was between 5.5 and 7.7 ozf. Additionally, in comments to the 2014 CPSV Framework document, T&S Brass suggested a flow rate cut-off of 0.80 gpm between the ''ultra-low-flow'' and ''low-flow'' commercial prerinse spray valves. (T&S Brass, No. 12 at p. 3) A flow rate of 0.80 gpm equates to 5.3 ozf using the flow rate-spray force linear relationship determined by DOE. Based on these considerations, DOE established the threshold between the two classes at 5.0 ozf.

DOE selected 8.0 ozf as the spray force cut-off between product class 2 and product class 3 based on test results of commercial prerinse spray valves with shower-type spray shapes. Shower-type spray shapes provide the distinct utility of minimizing ''splash back'' which can be associated with nozzle-type designs at higher flow rates. In addition to the three clusters of data points in the flow rate-spray force plot, DOE testing showed that the upper range of the market, in terms of flow rate, predominantly includes shower-type units. DOE found that the lowest tested spray force of any shower-type unit was 8.1 ozf. Additionally, in comments to the 2014 CPSV Framework document, T&S Brass suggested a flow rate cut-off of 1.28 gpm between the ''low-flow'' and ''standard'' commercial prerinse spray valves. (T&S Brass, No. 12 at p. 3) A flow rate of 1.28 gpm equates to 8.5 ozf using the flow rate-spray force linear relationship determined by DOE. Based on these considerations, DOE selected 8.0 ozf to differentiate product class 3 units from other commercial prerinse spray valves available on the market.

As described in the CPSV NOPR, DOE believed that each of these defined spray force ranges is associated with unique consumer utility for specific CPSV applications. Specifically, product class 1 provides distinct utility for cleaning delicate glassware and removing loose food particles from dishware, product class 2 provides distinct utility for cleaning wet foods, and product class 3 provides distinct utility for cleaning baked-on foods. DOE believes that these categorizations appropriately reflect the various end uses of commercial prereinse spray valves and has defined the three product classes accordingly.

c. Other Comments

In response to the NOPR, interested parties commented that the proposed product classes would limit manufacturers' product designs and innovation, and create confusion to consumers. (T&S Brass, Public Meeting Transcript, No. 23 at pp. 51–52; Chicago Faucets, Public Meeting Transcript, No. 23 at pp. 49–51; NAFEM, PMI, No. 31 at p. 1; PMI, No. 27 at p. 1; Chicago Faucets, No. 26 at p. 2; T&S Brass, No. 33 at p. 2; AWE, No. 28 at p. 6; CA IOUs, No. 44 at p. 2) Specifically, AWE stated that the classifications could alter the market in a manner that deters the use of more efficient and better performing products. (AWE, No. 28 at p. 4)

By maintaining flow rate as the regulated efficiency metric and creating three product classes, DOE believes the product class structure would not prescribe or limit any particular design options for CPSV manufacturers. DOE's technology assessment and screening analysis identified multiple possible design options that manufacturers could implement to achieve reductions in flow rate, which apply to both shower-type and nozzle-type commercial prerinse spray valves. In addition, manufacturers would not be precluded from implementing other innovative design options that may be developed in the future.

Additionally, DOE does not expect the product class structure to create confusion for the consumer, because DOE market research indicates that CPSV marketing materials predominantly highlight the spray pattern shape (*e.g.,* solid stream, shower, fan) and flow rate of CPSV models. The product class structure does not prescribe any changes to the type of information manufacturers can provide in CPSV marketing materials.

CA IOUs stated that different product classes are not marketed to consumers that would necessitate three different product standards based on spray force. According to the CA IOUs, commercial prerinse spray valves are marketed based on physical dimensions, and in some cases flow rate. (CA IOUs, No. 34 at pp. 1–2; CA IOUs, No. 44 at p. 2)

DOE also has not specified any labeling requirements in this final rule. DOE only requires that manufacturers provide the information contained in the certification reports when certifying that all applicable CPSV models are compliant with the standard. DOE is not requiring that the product classes be used to market commercial prerinse spray valves; the product classes are used to determine the applicable standard, and are used for certification, compliance, and enforcement purposes. See section III.C for more details on compliance, certification and enforcement. Therefore, DOE does not expect that the product class structure would alter the market and deter the use of higher-efficiency and better performing products, as the representation of the commercial prerinse spray valves will continue to be in terms of flow rate.

AWE commented that there is no evidence presented as to how a consumer should choose between the different classifications, and that consumer choice tends to gravitate towards ''heavy-duty'' under the false premise that bigger is better. (AWE, No. 28 at pp. 3–4) The Advocates stated that if DOE creates the three product classes, then it would drive the market to the ''heavy-duty'' class. The Advocates expressed concern that without the benefit of the current distribution of CPSV market shares based on flow rate, creating three product classes could increase the average flow rate of products sold in the market. (Advocates, No. 32 at p. 2; ASAP and NRDC, No. 45 at p. 1)

DOE realizes that consumers may switch between product classes, and the flow rate of commercial prerinse spray valves used by some consumers may increase instead of decrease due to energy conservation standards. DOE analyzed the effects of product class switching in the downstream analyses and evaluated the results of product class switching when setting a standard in section V.C.1. A detailed description of DOE's method to model product class switching is contained in chapter 9 of the final rule TSD.

DOE received comments on the naming convention used for the proposed product classes in the CPSV NOPR. T&S Brass recommended changing the product class names because the ''heavy-duty'' term is already widely used in the industry to represent products that last long. (T&S Brass, Public Meeting Transcript, No. 23 at pp. 110–111) During the public meeting, DOE requested that stakeholders provide an alternate naming convention for the product classes. Chicago Faucets stated that the proposed product class names, especially ''light duty,'' may prevent customers from choosing the lower flow products. Users prefer durable, heavy duty products, particularly in

commercial applications where commercial prerinse spray valves are most commonly used. Therefore, Chicago Faucets suggested using ''Level 1'', ''Level 2'', and ''Level 3'' instead. (Chicago Faucets, No. 26 at p. 3) Fisher stated that the terms ''heavy duty'', ''standard duty'', and ''light duty'' should not be used as the terminology for the different product classes. (Fisher, No. 30 at p. 1)

Based on feedback from interested parties, DOE has renamed the product classes in this final rule as product class 1, product class 2, and product class 3 instead of ''light-duty,'' ''standard-duty,'' and ''heavy-duty,'' respectively. DOE also notes that the product class names defined by DOE do not restrict how manufacturers may refer to their products in marketing literature, provided that such products meet the appropriate standard based on DOE's defined product classes.

Finally, DOE also received comments regarding potential other product classes that could be considered in future rulemakings. The Advocates commented that there is some market differentiation between commercial prerinse spray valves intended for cleaning dishware before sanitizing in a commercial dishwasher, and commercial prerinse spray valves intended for pot and pan cleaning. The Advocates recommended that DOE may wish to consider product classes based on such existing market differentiation during the next update to the standards. (Advocates, No. 32 at p. 2) CA IOUs stated that the market appears to be moving towards different usage type, such as dining and pot cleaning spray valves. CA IOUs recommended when DOE begins the process of a new energy conservation standard in a future rulemaking, that DOE should consider separate standards for dining and pot and pan cleaning. (CA IOUs, No. 34 at p. 2; CA IOUs, No. 44 at p. 2)

3. Technology Assessment

In the CPSV NOPR technology assessment, DOE identified six technology options that would improve the efficiency of commercial prerinse spray valves, as measured by the CPSV DOE test procedure. These include the following: (1) Addition of flow control insert, (2) smaller spray hole area, (3) aerators, (4) additional valves, (5) changing spray hole shape, and (6) venturi meter to orifice plate nozzle geometries.

DOE received one comment in support of the venturi meter to orifice plate nozzle geometry technology option. CA IOUs supported DOE's consideration of implementing an orifice plate nozzle design to produce a lower flow rather than a venturi meter nozzle with similar inlet and outlet dimensions. (CA IOUs, No. 34 at pp. 2–3) AWE, on the other hand, opposed design-restrictive requirements in a specification unless health and/or safety are at risk. Instead, AWE stated that it is appropriate to mandate an outcome (*e.g.,* gallons per minute) directly related to water and energy efficiency, rather than pre-determine design parameters. Once the desired outcome is defined, manufacturers will innovate and develop products that yield the mandated outcomes. (AWE, No. 28, p. 7)

As part of its rulemaking analysis process, DOE analyzes technology options that can be implemented to improve the efficiency of a covered product. The technology options identified for commercial prerinse spray valves provide feasible means for decreasing flow rate (or increasing efficiency) to meet the amended standard. However, DOE does not mandate any technology options that can be used to meet the amended standard. Manufacturers can use all technologies available to them to meet the amended energy conservation standard. In addition, manufacturers would also not be precluded from implementing other innovative design options that may be developed in the future.

For this final rule, DOE analyzed the same six technology options that were described in the CPSV NOPR. Chapter 3 of the final rule TSD provides additional details on all the technology options identified by DOE as part of the technology assessment.

B. Screening Analysis

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.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial products 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 product 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 consumers or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products 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)

If DOE determines that a technology, or a combination of technologies, fails to meet one or more of the previously mentioned four criteria, it will be excluded from further consideration in the engineering analysis. The reasons for eliminating any technology are discussed in the following sections.

The subsequent sections include comments from interested parties pertinent to the screening criteria, DOE's evaluation of each technology option against the screening analysis criteria, and whether DOE determined that a technology option should be excluded (screened out) based on the screening criteria.

In the CPSV NOPR, DOE screened out the following technology options: The addition of a flow control insert, aerators, and additional valves. DOE did not receive any comments regarding the design options that were screened out. The remaining technology options listed in section IV.A.3 met all four screening criteria and were analyzed in the CPSV NOPR. DOE did not receive any additional comments regarding these technology options. Therefore, DOE did not screen out the following technology options for the final rule analysis: (1) Smaller spray hole area, (2) changing spray hole shape, and (3) venturi meter to orifice plate nozzle geometries.

DOE determined that these technology options are technologically feasible because they are being used or have previously been used in commercially available products 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 consumer utility, product availability, health, or safety). For additional details, see chapter 4 of the final rule TSD.

C. Engineering Analysis

In the engineering analysis, DOE establishes the relationship between the manufacturer production cost (MPC) and improved CPSV efficiency. This relationship serves as the basis for cost-benefit calculations for individual consumers, manufacturers, and the nation. DOE typically structures the engineering analysis using one of three approaches: (1) Design option, (2) efficiency level, or (3) reverse engineering (or cost assessment). The design-option approach involves adding the estimated cost and associated efficiency of various efficiency-improving design changes to the baseline to model different levels of efficiency. The efficiency-level approach uses estimates of costs and efficiencies of products available on the market at distinct efficiency levels to develop the cost-efficiency relationship. The reverse-engineering approach involves testing products for efficiency and determining cost from a detailed bill of materials (BOM) derived from reverse engineering representative products.

For this analysis, DOE structured its engineering analysis for commercial prerinse spray valves using a combination of the design option approach and the reverse-engineering approach. The analysis is performed in terms of incremental increases in efficiency (decreases in flow rate) due to the implementation of selected design options, while the estimated MPCs for each successive design option are based on product teardowns and a bottom-up manufacturing cost assessment. Using this hybrid approach, DOE developed the relationship between MPC and CPSV efficiency.

Chapter 5 of the final rule TSD discusses the baseline efficiencies for each product class (in terms of flow rate), the design options DOE considered, the methodology used to develop manufacturing production costs, and the cost-efficiency relationships. The LCC and PBP analysis uses the cost-efficiency relationships developed in the engineering analysis.

1. Engineering Approach

For each of the three adopted product classes, DOE selected a baseline efficiency (in terms of flow rate) as a reference point from which to measure changes resulting from each design option. DOE then developed separate cost-efficiency relationships for each product class analyzed. The following is a summary of the method DOE used to determine the cost-efficiency relationship for commercial prerinse spray valves:

(1) Perform flow rate and spray force tests on a representative sample of commercial prerinse spray valves in every product class.

(2) Develop a detailed BOM for the tested commercial prerinse spray valves through product teardowns, and construct a commercial prerinse spray valve cost model.

(3) Use the test data and cost model to calculate the incremental increase in efficiency (*i.e.,* decrease in flow rate) and cost increase of adding specific design options to a baseline model.

In response to the CPSV NOPR, NAFEM stated that DOE has not tested commercial prerinse spray valves in real life foodservice settings. NAFEM believes that consumer satisfaction is essential for the companies selling these products. (NAFEM, No. 31 at p. 1)

DOE has not performed testing in foodservice settings because DOE test procedures, not field performance, must be used to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) Instead, DOE conducted multiple commercial prerinse spray valve tests according to the amended DOE test procedure.

2. Linear Relationship Spray Force and Flow Rate

In the CPSV NOPR public meeting, DOE presented the relationship between spray force and flow rate. This relationship was determined using DOE test data for spray force and flow rate for a wide range of commercial prerinse valves. The tested units included the entire spectrum of available spray patterns and flow rates that DOE was aware of at the time of the analysis. In addition, DOE collected supplementary data from DOE's CCMS, the U.S. EPA WaterSense program, and FSTC reports. DOE analyzed the collected data and found a strong linear relationship between flow rate and spray force.

DOE received several comments related to the spray force and flow rate relationship. NRDC requested that DOE consider identifying the configuration of the commercial prerinse spray valves in the spray force-flow rate relationship without revealing the individual model. (NRDC, Public Meeting Transcript, No. 23 at p. 45) DOE updated the flow rate-spray force plot in this final rule to identify commercial prerinse spray valves that have shower-type spray patterns. The updated relationship can be found in chapter 5 of the final rule TSD.

T&S Brass stated that the relationship between spray force and flow rate does not address consumer satisfaction. Instead, the relationship assumes that consumers are satisfied with all products. (T&S Brass, Public Meeting Transcript, No. 23 at p. 47)

DOE acknowledges that different CPSV products may provide different levels of consumer satisfaction. DOE believes, however, that the amended standards promulgated in this final rule for the three defined product classes will maintain the same variety of product features on the market as under the current standard. DOE's analysis indicates that the amended standards will not result in a loss of consumer utility compared to the current standards.

T&S Brass stated that while the flow rate values for the basic models are included in the relationship between spray force and flow rate, the impact of market share is not included. Therefore, if market share was included, there will be more data points on the higher end of flow rate. However, T&S Brass also commented that even with the additional data points, the linear relationship will not change. (T&S Brass, Public Meeting Transcript, No. 23 at pp. 48–49) Since publishing the CSPV NOPR, DOE tested additional units from product class 3, and added the test results for the units that were compliant with DOE's current CPSV standard (1.6 gpm) to the relationship shown in chapter 5 of the final rule TSD. The relationship continues to show flow rate varies linearly with spray force, irrespective of market share. However, based on the comment from T&S Brass, DOE has updated the assumption in the shipments analysis to account for more shipments in product class 3. This is presented in section IV.G of this document.

3. Baseline and Max-Tech Models

To analyze design options for energy efficiency improvements, DOE defined a baseline model for each product class. Typically, the baseline model is a model that meets current energy conservation standards. DOE defined the baseline efficiency for all product classes as the current Federal standard of 1.6 gpm.

DOE defined the market baseline for product classes 1 and 2 as the greater of (1) the highest flow rate in the class that meets the Federal standard, or (2) the flow rate at the upper spray force bound of the product class as predicted by the spray force-flow rate linear relationship described in chapter 5 of the TSD. The most consumptive unit that was tested in product class 1 had a flow rate of 0.97 gpm, which exceeds the 0.75 gpm predicted by the linear relationship between spray force and flow rate for

the product class 1 upper spray force bound of 5.0 ozf. DOE rounded the market baseline flow rate of product class 1 to 1.00 gpm. The market baseline for product class 2, predicted by the spray force-flow rate linear relationship, is 1.20 gpm at the upper spray force bound of 8.0 ozf. DOE did not find any commercial prerinse spray valves in product class 2 that exceed this flow rate. For product class 3, the market baseline equals the Federal flow rate standard of 1.60 gpm.

The analysis also identified the lowest flow rate that is commercially available within each product class (*i.e.,* the max-tech model). DOE determined the max-tech level as the least consumptive tested commercial prerinse spray valve in each product class. The max-tech levels for product classes 1, 2, and 3 are 0.62, 0.73, and 1.13 gpm, respectively. Finally, DOE also defined intermediate efficiency levels between the baseline and max-tech levels for each product class. Further information about DOE's efficiency level definitions is provided in chapter 5 of the final rule TSD. Table IV.1 through Table IV.3 provide the updated efficiency levels for all three product classes.

TABLE IV.1—EFFICIENCY LEVELS FOR CPSV PRODUCT CLASS 1

[Spray force ≤ 5.0 ozf]

Efficiency level	Description	Flow rate (gpm)
Baseline	Current Federal standard	1.60
Level 1	Market minimum	1.00
Level 2	15% improvement over market minimum	0.85
Level 3	25% improvement over market minimum	0.75
Level 4	Maximum technologically-feasible (max-tech)	0.62

TABLE IV.2—EFFICIENCY LEVELS FOR CPSV PRODUCT CLASS 2

[5.0 ozf < spray force ≤ 8.0 ozf]

Efficiency level	Description	Flow rate (gpm)
Baseline	Current Federal standard	1.60
Level 1	Market minimum	1.20
Level 2	15% improvement over market minimum	1.02
Level 3	25% improvement over market minimum	0.90
Level 4	Maximum technologically-feasible (max-tech)	0.73

TABLE IV.3—EFFICIENCY LEVELS FOR CPSV PRODUCT CLASS 3

[Spray force > 8.0 ozf]

Efficiency level	Description	Flow rate (gpm)
Baseline	Current Federal standard	1.60
Level 1	10% improvement over baseline	1.44
Level 2	WaterSense level; 20% improvement over baseline	1.28
Level 3	Maximum technologically-feasible (max-tech)	1.13

In response to the updates to the engineering analysis in the CPSV NODA, CA IOUs stated that DOE should provide a reason for changing the efficiency level 2 for product class 3 from 1.24 gpm to 1.28 gpm. (CA IOUs, No. 44 at p. 2)

DOE notes that the flow rate for efficiency level 2 for product class 3 remains unchanged at 1.28 gpm since the CPSV NOPR. Instead, DOE has only updated the max-tech level of product class 3 since the CPSV NOPR. In the CPSV NOPR, the max-tech level for product class 3 was set at 1.24 gpm based on test results. After the CPSV NOPR, DOE performed additional testing and based on these test results, DOE identified a new max-tech level for product class 3. Therefore, DOE revised the max-tech level in product class 3 from 1.24 gpm to 1.13 gpm.

4. Proposed CPSV NOPR Standard Levels

In the CPSV NOPR, DOE proposed the standard levels to be 0.65, 0.97, and 1.24 gpm for light, standard, and heavy-duty product classes, respectively. 80 FR 39487. DOE received comments on the loss of product availability regarding the proposed standards as well as several other comments about the standard levels, which are addressed in the following sections.

a. Availability of Products

AWE commented that the CPSV NOPR proposal has design-restrictive requirements and will likely lead to less diverse products on the market. (AWE, No. 28 at pp. 6–7) AWE recommended that the rule include the use of WaterSense test criteria to determine compliance to any Federal minimum standard. (AWE, No. 28 at p. 4) AWE also stated that the proposed spray force criteria are in direct conflict with WaterSense criteria, and that only 3 of the 22 prerinse spray valves currently meeting WaterSense specifications also meet the minimum requirements proposed in this rulemaking. AWE commented that the remaining 19 products, together with the new WaterSense products about to be released, would no longer be compliant with the DOE standard. (AWE, No. 28 at p. 5)

Chicago Faucets expressed a similar concern that the levels proposed in the CPSV NOPR are too stringent, stating

that 86 percent of the products certified to voluntary Federal EPA WaterSense requirements will be obsolete and the investments in the WaterSense program will not be recovered. Chicago Faucets stated that this might lead to limited resources in the future for this product. Additionally, Chicago Faucets stated that 60 percent of the models in the spray force and flow rate graph presented in the CPSV NOPR would not pass the new requirement. Chicago Faucets believes that the more stringent requirements could easily disrupt the free market, eliminating the majority of the products offered today and restricting competition by reducing the number of manufacturers of CPSV products. (Chicago Faucets, No. 26 at pp. 2–3) NAFEM also commented that the proposed standard will require the manufacturers to abandon current products and the investment they made. (NAFEM, No. 28 at p. 1)

T&S Brass commented that the proposed standard would eliminate multi-orifice showerhead-type spray valves. Single-orifice type spray valves could have applications where there is a lot of splash back. Therefore, customers will be forced into products that they will not be satisfied with. (T&S Brass, Public Meeting Transcript, No. 23 at p. 40)

CA IOUs disagreed with T&S Brass and stated that commercial prerinse spray valves with single orifice, multi orifice, or venturi meter nozzle designs would be able to meet the 1.24 gpm standard, based on their own testing results. Additionally, CA IOUs did not observe any splash back issues with a single orifice nozzle design, nor did they observe any concerns about splash back based upon customer interviews. (CA IOUs, No. 34 at pp. 2–3)

EPCA establishes that DOE may not prescribe an amended 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 product 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)) In this final rule, DOE revised the efficiency level definitions and the analysis of the trial standard levels (TSL) based on feedback from interested parties. The amended standards adopted in this final rule are less stringent than those proposed in the CPSV NOPR for all three product classes. DOE notes that the amended standards adopted in this final rule are set at the market minimum for product class 1 and product class 2 at 1.00 gpm and 1.20 gpm respectively. The amended standards for these product classes have no impact on the current CPSV market, because all CPSV models in those product classes already meet the market minimum level. In product class 3, the amended standard is set at the WaterSense level of 1.28 gpm, and approximately 55 percent of CPSV units in product class 3 already meet this level. The 1.28 gpm level maintains the availability of multi-orifice shower-type units on the market, as described further in the following section. More discussion on the amended standard and the discussion on the TSL selections are provided in section IV.C.4.b, and section V.C.1 respectively.

b. Standard Levels

DOE also received comments about the standard levels that were proposed in the CPSV NOPR. Chicago Faucets expressed concern with the flow rate levels proposed in the CPSV NOPR and noted that the proposed flow rates are only hundredths of one gallon per minute lower than the common flow rates used in the plumbing industry of 1.00 gpm and 1.25 gpm. (Chicago Faucets, No. 26 at p. 3) Chicago Faucets also commented that if DOE were to move forward with the CPSV NOPR approach, DOE should use standard levels of 0.65 gpm, 1.00 gpm, and 1.25 gpm for light duty, standard duty, and heavy duty, respectively. (Chicago Faucets, No. 26 at p. 3)

The Advocates and CA IOUs recommended that DOE amend the standard to be a maximum flow rate of 1.24 gpm for all commercial prerinse spray valves. The Advocates and the CA IOUs recommended this flow rate, because they believe that 1.24 gpm is a technologically feasible efficiency level, and would realize significant water and energy savings and still maintain a positive LCC. (Advocates, No. 11 at p. 2) Additionally, CA IOUs stated that based on their testing, the 1.24 gpm level was feasible for equipment from different manufacturers, while also maintaining product performance. (CA IOUs, No. 34 at p. 2) In response to the CPSV NODA, the CA IOUs, ASAP and NRDC reiterated that DOE should adopt a single 1.24 gpm level for all product classes. (CA IOUs, No. 44 at p. 2; ASAP and NRDC, No. 45 at p. 2).

PMI recommended that DOE replace the proposed three product classes with a single product class that contains the 1.28 gpm WaterSense level. (PMI, No. 43 at p. 1) AWE stated that setting a Federal maximum at 1.28 gpm would prevent WaterSense from establishing a commercial prerinse spray valve program with a significantly lower water use threshold. (AWE, No. 28 at p. 7) T&S Brass stated if DOE ultimately decides to adopt the current EPA WaterSense specification at 1.28 gpm for commercial prerinse spray valves, that a reasonable transition period from the voluntary to mandatory status would be an effective date of January 2020. (T&S Brass, No. 12 at p. 3) Similarly, AWE urged DOE to postpone this rulemaking process for at least 2 years to prevent an industry-wide backlash against water efficiency. (AWE, No. 28 at pp. 7–8) AWE further recommended that DOE postpone this rulemaking by at least 2 years until additional data can be obtained through the WaterSense reporting process. (AWE, No. 28 at pp. 7–8)

As presented in section I, DOE is adopting standard levels of 1.00 gpm, 1.20 gpm and 1.28 gpm for product classes 1, 2 and 3, respectively. The adopted standards are set at the market minimum level for product classes 1 and 2, and at the WaterSense level for product class 3. DOE believes that these flow rates are the minimum flow rates for each product class that would not induce consumers to switch product classes. DOE also notes that the 1.28 gpm standard for product class 3 alleviates many of the concerns expressed by interested parties because (1) the engineering analysis shows that the 1.28 gpm level is technologically feasible; (2) interested parties, including the trade organization PMI, certain efficiency advocates and a manufacturer, commented that 1.28 gpm would be an appropriate standard level that would not negatively impact consumer utility for the highest-flow product class, and (3) the 1.28 gpm level represents the WaterSense Program criteria, which was developed in a collaborative process between EPA and interested parties, including manufacturers. In addition, the amended standard standards for product classes 1 and 2 have no impact on the current CPSV market, because all CPSV models in those product classes already meet the market minimum level.

More discussion on this standard level is in sections V.A and V.C.1 of this document.

Regarding the compliance date of the amended standards, EPCA states that a manufacturer shall not be required to apply new standards to a product with respect to which other new standards have been required during the prior 6 year period. (EPCA U.S.C. 6295(m)(4)(B)) As described earlier in this document, the current standard became effective January 1, 2006. Manufacturers will have 3 years to

comply with the amended standards after publication of this final rule. DOE believes that 3 years is sufficient time for manufacturers to transition products to the amended standard level. DOE also notes that the effective date of the amended standards in this final rule will be more than 6 years after the voluntary WaterSense specification date of September 19, 2013.

The standard levels set in this final rule also alleviate the concern about product class switching that was raised by CA IOUs. CA IOUs suggested using one product class, because one of the benefits is that it would not result in product class switching. (CA IOUs, No. 34 at p. 2) DOE does not expect product class switching to occur under the amended standards promulgated by this final rule, as the standard levels for product classes 1 and 2 do not move consumers from the current market minimums. A detailed description of DOE's method to model product class switching is contained in chapter 9 of the final rule TSD.

5. Manufacturing Cost Analysis

DOE estimated the manufacturing costs using a reverse-engineering approach, which involves a bottom-up manufacturing cost assessment based on a detailed BOM derived from teardowns of the product being analyzed. The detailed BOM includes labor costs, depreciation costs, utilities, maintenance, tax, and insurance costs, in addition to the individual component costs. These manufacturing costs are developed to be an industry average and do not take into account how efficiently a particular manufacturing facility operates.

To develop the relationship between cost and performance for commercial prerinse spray valves, DOE used a reverse-engineering analysis, or teardown analysis. DOE purchased off-the-shelf commercial prerinse spray valves available on the market and dismantled them component by component to determine what technologies and designs manufacturers use to decrease CPSV flow rate. DOE then used independent costing methods, along with component-supplier data, to estimate the costs of the components.

DOE derived detailed manufacturing cost estimate data based on its reverse engineering analysis, which included the cost of the product components, labor, purchased parts and materials, and investment.

A portion of DOE's test sample included four product series from four different manufacturers. Through testing, DOE found that the flow rates of the units varied within each series. However, based on the reverse-engineering analysis, the manufacturing costs for the units within each series were the same. Therefore, DOE concluded that there is no manufacturing cost difference for incremental efficiency improvements between models within the same series from the same manufacturer.

DOE also tested and performed a teardown analysis on commercial prerinse spray valves from additional manufacturers. These commercial prerinse spray valves represented a range of market baseline to max-tech units in each class. The testing and teardown results indicated that the manufacturing costs between different units from different manufacturers can vary based on the type of material, amount of material, and/or process used. However, DOE determined that these factors do not affect the efficiency of a commercial prerinse spray valve. Therefore, DOE did not include these cost differences in the engineering analysis. Chapter 5 of the final rule TSD provides further details on the teardown analysis, component costs, and costs that were developed as part of the cost-efficiency curves.

D. Markups Analysis

The purpose of the markups analysis is to translate the MPC derived from the engineering analysis into the final consumer purchase price by applying the appropriate markups. The first step in this process is converting the MPC into the manufacturer selling price (MSP) by applying the manufacturer markup. The manufacturer markup accounts for cost of sales, general and administrative expenses, research and development costs, other corporate expenses, and profit. As described further in chapter 6 of the final rule TSD, the manufacturer markup of 1.30 was calculated as the market share weighted average value for the industry. DOE developed this manufacturer markup by examining several major CPSV manufacturers' gross margin information from annual reports and Securities and Exchange Commission 10–K reports. Because the 10–K reports do not provide gross margin information at the subsidiary level, the estimated markups represent the average markups that the parent company applies over its entire range of product offerings, and does not necessarily represent the manufacturer markup of the subsidiary. Both the MPC and the MSP values are used in the MIA.

Next, DOE uses manufacturer-to-consumer markups to convert the MSP into a consumer purchase price, which is then used in the LCC and PBP analysis, as well as the NIA. Consumer purchase prices are necessary for the baseline efficiency level and all other efficiency levels under consideration.

DOE recognizes that the consumer purchase price depends on the distribution channel (*i.e.,* how the product is distributed from the manufacturer to the consumer) the consumer uses to purchase the product. DOE identified the following distribution channels for commercial prerinse spray valves:

A. Manufacturer → Final Consumer (Direct Sales)
B. Manufacturer → Authorized Distributor → Final Consumer
C. Manufacturer → Retailer → Final Consumer
D. Manufacturer → Service Company → Final Consumer

Baseline markups are multipliers that convert the MSP of products at the baseline efficiency level to consumer purchase price. Incremental markups are multipliers that convert the incremental increase in MSP for products at each higher efficiency level (compared to the MSP at the baseline efficiency level) to corresponding incremental increases in the consumer purchase price. Consistent with the CPSV NOPR, in the analysis in this final rule, DOE used only baseline markups to convert the MSP of products to the consumer purchase price. This is due to the fact that the engineering analysis indicated that there is no price increase with improvements in efficiency for commercial prerinse spray valves. Thus, incremental markups were not required. Chapter 6 of the final rule TSD provides further details on the distribution channels and calculated markups. No comments regarding the markups analysis or distribution chains were received from interested parties.

E. Energy and Water Use Analysis

The purpose of the energy and water use analysis is to determine the annual energy and water consumption of commercial prerinse spray valves to assess the associated energy and water savings potential of different product efficiencies. The energy and water use analysis estimates the range of energy and water use of commercial prerinse spray valves in the field (*i.e.,* as they are actually used by consumers). To this end, DOE performed an energy and water use analysis that calculated energy and water use of commercial prerinse spray valves for each product class and efficiency level identified in the engineering analysis. The energy and water use analysis provides the basis for other analyses DOE performed,

particularly assessments of the energy and water savings and the savings in consumer operating costs that could result from adoption of the amended standards.

In the CPSV NOPR analysis, DOE calculated the energy and water use by determining the representative daily operating time of the product by major building types that contain commercial kitchens found in the Commercial Building Energy Consumption Survey (CBECS).[25] The daily CPSV operating time was annualized based on operating schedules for each building type. Annual water use for each product class was determined by multiplying the annual operating time by the flow rate at an operating pressure of 60 psi, in accordance with the amended DOE test procedure, for each efficiency level.

Annual site energy use was calculated by multiplying the annual water use in gallons by the energy required to heat each gallon of water to an end-use temperature of 108 °F.[26] Cold water supply temperatures used in this calculation were derived for the nine U.S. census regions based on ambient air temperatures and the hot water supply temperature was assumed to be 140 °F based on American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 12–2000 regarding the appropriate hot water temperatures necessary to prevent legionellosis and other bacterial diseases.[27] The proportion of buildings which used natural gas or electricity for water heating found in the CBECS database were multiplied by the energy consumption of each kind of water heater, taking into account the efficiency level of the product, to obtain the total energy consumption of each product class and efficiency level of commercial prerinse spray valves.

In response to the CPSV NOPR, DOE received several comments related to the energy and water use analysis. Specifically, NRDC questioned how DOE derived the hot water ratio used in the energy and water use and why the hot water ratio was not consistent throughout the U.S. NRDC further inquired if the end use temperature of 108 °F was consistent throughout the analysis. (NRDC, Public Meeting Transcript, No. 23 at pp. 61–63)

The hot water ratio used in the CPSV NOPR and the final rule energy and water use analysis(see chapter 7 of the final rule TSD) calculates the proportion of hot water from the water heater that mixes with the incoming cold water from the local mains water at the commercial prerinse spray valve to deliver water at 108 °F. The cold water is derived regionally for each census division and building type where commercial prerinse spray valves are installed. The hot water ratio is not consistent throughout the United States because the mains water temperature is not consistent throughout the United States. As noted previously, end use temperature was calculated using data from the average end use temperature from CPSV field studies.

DOE also received comments in response to the CPSV NOPR related to the water pressure used in the energy and water use analysis. AWE commented that the representative range of water pressures in commercial kitchens should be determined in order to determine a reasonable range of both flow rate and spray force to be maintained by the valves. (AWE, No. 28 at p. 5) ASAP was concerned that not testing at different water pressures could affect the definition of the product classes, and make it difficult to ensure customer satisfaction. (ASAP, No. 23 at p. 27) AWE commented that spray force is largely dependent upon water pressure, and that the supplied water pressure can vary by at least 70 psi between different service areas. AWE stated that this can cause models to be classified differently in varying locales, and is not addressed in the proposal. (AWE, No. 28 at p. 3) AWE further stated that mandatory requirements demand a higher level of scrutiny, and recommended that DOE postpone the rulemaking until further research data is available on how water pressure affects performance in real life settings. (AWE, No. 28 at p. 5)

DOE is not establishing spray force requirements in this final rule; instead, spray force is used only to define the boundaries between product classes. DOE understands that the measured flow rate of commercial prerinse spray valves will vary as a function of water pressure. In evaluating the representative water pressure used in the CPSV test procedure, DOE performed a sensitivity analysis to determine typical water pressure values and their impact on measured flow rate, titled ''Analysis of Water Pressure for Testing Commercial Prerinse Spray Valves Final Report.'' [28] DOE concluded, as part of this analysis, that the representative water pressure for evaluating the energy and water use of commercial prerinse spray valves was 60 psi.

Chapter 7 of the final rule TSD provides details and the results of DOE's energy use analysis for commercial prerinse spray valves.

F. Life-Cycle Cost and Payback Period Analysis

DOE conducted the LCC and PBP analysis to evaluate the economic impacts on individual consumers of the amended energy conservation standards for commercial prerinse spray valves. The LCC is the total consumer expense over the life of the product, consisting of purchase and installation costs plus operating costs (expenses for energy and water use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product. The PBP is the estimated amount of time (in years) it takes consumers to recover the potential increased purchase cost (including installation) of more efficient products through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the first year the amended standards are in effect (2019).[29]

For any given efficiency level, DOE measures the change in LCC relative to an estimate of the no-new-standards case product efficiency distribution. The no-new-standards case estimate reflects the market in the absence of amended energy conservation standards, including the market for products that exceed the current energy conservation standard. In contrast, the PBP for a given efficiency level is measured relative to the baseline product.

Inputs to the calculation of total installed cost include the cost of the product—which includes MSPs, distribution channel markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy and water consumption, energy prices and price projections, combined water prices (which include water and wastewater prices) and price projections, repair and maintenance costs, product lifetimes, and discount rates. DOE created

[25] Survey data available at *www.eia.gov/consumption/commercial/data/2003/index.cfm.*

[26] End-use temperature was determined based on a review of several field studies. See chapter 7 of the CPSV NOPR TSD for a list of the field studies reviewed.

[27] *ASHRAE Standard 12–2000: Minimizing the Risk of Legionellosis Associated with Building Water Systems,* (February 2000).

[28] The water pressure sensitivity analysis is available at regulations.gov under docket number EERE–2014–BT–TP–0055.

[29] As compliance with the amended standards will be required at the very end of 2018, DOE used 2019 as the first year in the analysis period.

distributions of values for product lifetime, discount rates, energy and combined water prices, and sales taxes, with probabilities attached to each value to account for their uncertainty and variability.

The computer model DOE used to calculate the LCC and PBP, which incorporates Crystal Ball™ (a commercially available software program), relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and CPSV user samples. The model calculated the LCC and PBP for products at each efficiency level for 10,000 CPSV users per simulation run.

DOE calculated the LCC and PBP for all consumers as if each were to purchase a new commercial prerinse spray valve in 2019, the first year of the analysis period.

Table IV.4 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 and its appendices of the final rule TSD.

TABLE IV.4—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/method
Product Cost	Derived by multiplying MSPs by distribution channel markups and sales tax, as appropriate.
Installation Costs	Baseline installation cost determined with data from U.S. Department of Labor. Assumed no change with efficiency level.
Annual Energy and Water Use	Determined from the energy required to heat a gallon of water used at the prerinse spray valve multiplied by the average annual operating time and flow rate of each product class. Variability: By census region.
Energy, Water and Wastewater Prices	Energy: Based on EIA's Form 826 data for 2014. Variability: By State. Water: Based on 2012 AWWA Survey. Variability: By State.
Energy and Water Price Trends	Energy: Forecasted using *AEO2015* price forecasts. Water: Forecasted using Bureau of Labor Statistics (BLS) historic water price index information.
Maintenance and Repair Costs	Assumed no change with efficiency level.
Product Lifetime	DOE assumed an average lifetime of 5 years. Variability: Characterized using modified Weibull probability distributions.
Discount Rates	Estimated using the average cost of capital to commercial prerinse spray valve consumers. Cost of capital was found using information from the Federal reserve and from Damodaran online data.
First Year of Analysis Period	2019.

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the final rule TSD.

1. Product Cost

To calculate consumer product costs, DOE multiplied the MSPs developed from the engineering analysis by the distribution channel markups described in section IV.D (along with sales taxes). DOE used baseline markups, but did not apply incremental markups, because the engineering analysis indicated that there is no price increase with improvements in efficiency for commercial prerinse spray valves. Product costs are assumed to remain constant over the analysis period.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the product. DOE used data from the U.S. Department of Labor to estimate the baseline installation cost for commercial prerinse spray valves.[30] DOE found no evidence and received no comments in the NOPR stage of this rulemaking that indicate installation costs will be impacted with increased efficiency levels.

3. Annual Energy and Water Consumption

Chapter 7 of the final rule TSD details DOE's analysis of CPSV annual energy and water use at various efficiency levels. For each sampled building type, DOE determined the energy and water consumption for a commercial prerinse spray valve at different efficiency levels using the approach described in section IV.E of this document.

4. Energy Prices

DOE derived energy prices from the EIA regional average energy price data for the commercial sectors. DOE used projections of these energy prices for commercial consumers to estimate future energy prices in the LCC and PBP analysis. *AEO2015* was used as the default source of projections for future energy prices.

DOE developed estimates of commercial electricity and natural gas prices for each state and the District of Columbia (DC). DOE derived average regional energy prices from data that are published annually based on EIA Form 826.[31] DOE then used *AEO2015* price projections to estimate commercial electricity and natural gas prices in future years. *AEO2015* price projections have an end year of 2040. To estimate price trends after 2040, DOE used the average annual rate of change in prices from 2030 to 2040. DOE assumed that 100 percent of installations were in commercial locations.

5. Water and Wastewater Prices

DOE obtained data on water and wastewater prices from the 2012 American Water Works Association (AWWA) surveys for this document.[32] For each state and the District of Columbia, DOE combined all individual utility observations within the state to develop one value for water and wastewater service. Because water and wastewater charges are frequently tied to the same metered commodity values, DOE combined the prices for water and wastewater into one total dollar per thousand gallons figure. This figure is

[30] U.S. Department of Labor—Wage and Hour Division. *Minimum Wage. http://www.dol.gov/whd/minimumwage.htm.* Washington, DC.

[31] U.S. Department of Energy—Energy Information Administration. *Form EIA–826 Database Monthly Electric Utility Sales and Revenue Data (EIA–826 Sales and Revenue Spreadsheets).* 2015. *http://www.eia.gov/electricity/data/eia826/.* Washington, DC.

[32] American Water Works Association. *AWWA 2012 Water and Wastewater Rate Survey. http://www.awwa.org/resources-tools/water-and-wastewater-utility-management/water-wastewater-rates.aspx.*

referred to as the combined water price. DOE used the consumer price index (CPI) data for water related consumption (1970–2013) in developing a real growth rate for combined water price forecasts.[33]

Chapter 8 of the final rule TSD provides more detail about DOE's approach to developing water and wastewater prices.

6. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing product components that have failed in the product; maintenance costs are associated with maintaining the operation of the product. Typically, small incremental increases in product efficiency produce no, or only minor, changes in repair and maintenance costs compared to baseline efficiency products.

Throughout this rulemaking process, DOE has requested information as to whether maintenance and repair costs are a function of efficiency level and product class. DOE did not receive comments during the CPSV NOPR public meeting or comment period regarding these costs. Thus, consistent with the analysis conducted at the NOPR stage of this rulemaking, DOE assumed that consumers would replace the commercial prerinse spray valve upon failure rather than repairing the product. Additionally, DOE modeled no changes in maintenance or repair costs between different efficiency levels.

7. Product Lifetime

Because product lifetime varies depending on utilization and other factors, DOE developed a distribution of product lifetimes. The use of a lifetime distribution helps account for the variability of product lifetimes.

DOE considered—but did not implement—the use of factors such as usage, water temperature, and pressure as means of determining the distribution of lifetimes of commercial prerinse spray valves in the analysis for this document. DOE developed a Weibull distribution with an average lifetime of 5 years and a maximum lifetime of 10 years. In the CPSV NOPR analysis, DOE modified the Weibull distribution to reflect 10 percent of commercial prerinse spray valves failing within the first year after installation, and maintained that characteristic for the final rule analysis. See chapter 8 of the final rule TSD for further details on the method and sources DOE used to develop CPSV lifetimes.

8. Discount Rates

In the calculation of LCC, DOE developed discount rates by estimating the average cost of capital to commercial prerinse spray valve consumers. DOE applies discount rates to commercial consumers to estimate the present value of future cash flows derived from a 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. See chapter 8 in the final rule TSD for further details on the development of consumer discount rates.

9. Efficiency Distribution in the No-New-Standards Case

To accurately estimate the share of consumers that will be affected by the amended energy conservation standard at a particular efficiency level, DOE's LCC and PBP analysis considered the projected distribution of product efficiencies that consumers purchase under the no-new-standards case. DOE refers to this distribution of product efficiencies as a no-new-standards case efficiency distribution.

To estimate the no-new-standards case efficiency distribution of commercial prerinse spray valves in 2019 (the first year of the analysis period), DOE relied on data from the Food Service Technology Center and DOE's CCMS Database for commercial prerinse spray valves.[34] Additionally, DOE conducted general internet searches and examined manufacturer literature to understand the characteristics of the spray valves currently offered on the market. DOE assumed that the no-new-standards case percentages in 2019 would stay the same through the analysis period. The no-new-standards case efficiency distribution is described in chapter 8 of the final rule TSD.

The estimated shares for the no-new-standards case efficiency distribution for commercial prerinse spray valves are shown in Table IV.5.

TABLE IV.5—COMMERCIAL PRERINSE SPRAY VALVE NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION BY PRODUCT CLASS IN 2019

Efficiency level	Product class 1 (% of shipments)	Product class 2 (% of shipments)	Product class 3 (% of shipments)
0	0	0	40
1	10	40	35
2	0	50	20
3	80	0	5
4	10	10	N/A

10. Payback Period Analysis

The payback period is the amount of time it takes the consumer to recover the additional installed cost of more-efficient products, compared to baseline products, through energy and water cost savings. Payback periods are expressed in years. Payback periods that exceed the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first year annual operating expenditures relative to the baseline. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not needed. As explained in the engineering analysis (section IV.C) there are no additional installed costs for more efficient commercial prerinse spray valves, making the PBPs in this analysis zero.

11. Rebuttable-Presumption Payback Period

EPCA, as amended, establishes a rebuttable presumption that a standard

[33] U.S. Department of Labor—Bureau of Labor Statistics, *1970–2014 Tables 3A, 24.* 2014. *http://www.bls.gov/cpi/cpid1401.pdf.*

[34] The Food Service Technology Center test data for prerinse spray valves is available at *www.fishnick.com/equipment/sprayvalves/.* The DOE compliance certification data for commercial prerinse spray valves is available at *www.regulations.doe.gov/certification-data/.*

is economically justified if DOE finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the first year's energy (and, as applicable, water) savings resulting from the standard, as calculated under the test procedure in place for that standard. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year's energy and water savings by calculating the quantity of those savings in accordance with the applicable DOE test procedure, and multiplying that amount by the average energy and combined water price forecast for the year in which compliance with the amended standard will be required. The results are summarized in section V.B.1.c of this document.

G. Shipments Analysis

DOE uses projections of product shipments to calculate the national impacts of amended energy conservation standards on energy and water use, NPV, and future manufacturer cash flows. DOE develops shipment projections based on historic economic figures and an analysis of key market drivers for commercial prerinse spray valves. In DOE's shipments model, CPSV shipments are driven by both new construction and stock replacements. The shipments model takes an accounting approach, tracking market shares of each product class and the vintage of units in the existing stock. Stock accounting uses product shipments as inputs to estimate the age distribution of in-service product stocks for all years. The age distribution of in-service products is a key input to calculations of the NES, national water savings, and NPV, because operating costs for any year depend on the age distribution of the stock.

In the shipments analysis for this final rule, DOE gathered information pertaining to commercial prerinse spray valves for many building types besides restaurants from the Puget Sound Energy Program, EPA WaterSense Field Study, and other industry reports.[35] [36]

In the CPSV NOPR analysis, DOE disaggregated total industry shipments into the three product classes. At the CPSV NOPR public meeting, T&S Brass commented that more shipments should be allocated to product class 3, which was the ''heavy duty'' product class in the CPSV NOPR. (T&S Brass, Public Meeting Transcript, No. 23 at p. 80) After considering the comment from T&S Brass, and with further study into the CPSV market, DOE updated the allocation of total shipments by product class for the final rule, as shown in Table IV.6.

TABLE IV.6—NOPR VS. FINAL RULE SHIPMENTS ALLOCATIONS BY PRODUCT CLASS

	Product class 1 (%)	Product class 2 (%)	Product class 3 (%)
NOPR	20	50	30
Final Rule	10	30	60

DOE based the retirement function (the time at which the product fails and is replaced) on the probability distribution for product lifetime that was developed in the LCC and PBP analysis. The shipments model assumes that no units are retired below a minimum product lifetime (one year of service) and that all units are retired before exceeding a maximum product lifetime (10 years of service).

DOE determined that a roll-up scenario is most appropriate to establish the distribution of efficiencies in the first year of compliance with the amended standards. Under the ''roll-up'' scenario, DOE assumes: (1) Product efficiencies in the no-new-standards case that do not meet the standard level ''roll-up'' to meet the required standard levels for each standards case; and (2) product efficiencies above the standard level are not affected. The details of DOE's approach to forecast efficiency trends are described in chapter 8 of the final rule TSD.

The nature of the market for commercial prerinse spray valves makes it possible that consumers may, under examined TSLs and product classes, opt to switch product classes to a commercial prerinse spray valve that consumes more water and energy than their current product. In particular, if current choices of product flow rate correspond to consumers' optimal choice under the current regulatory environment, it is probable that some consumers would switch from product class 1 to product class 2, and from product class 2 to product class 3, in response to amended standards, given the lack of restrictions on doing so. DOE implemented a mechanism in the shipments model to estimate such consumer choices. The economics resulting from product class switching may result in lower optimal efficiency levels and reduced estimates of water and energy savings, as compared to the case without class switching. A detailed description of DOE's method to model product class switching is contained in chapter 9 of the final rule TSD.

1. Sensitivity Cases

In addition to a standard shipments scenario, DOE also developed two alternative shipments scenarios to help examine potential impacts in specific situations.

The first alternative shipments scenario, introduced in the CPSV NODA, alters standards-case shipments for product class 3. 80 FR 72608. In this shipments scenario, some consumers exit the CPSV market rather than comply with amended standards. Since the utility of single-orifice CPSV models may not be equivalent in some applications that previously used shower-type CPSV models, this alternative shipments scenario enables analysis of the case where, rather than accepting the decreased usability of a compliant CPSV model, consumers of shower-type units instead exit the CPSV market and purchase faucets that have a maximum flow rate of 2.2 gpm under the current Federal standard. Thus, shipments of compliant CPSV models are much lower under this scenario. With this scenario, DOE is able to account for the energy and water use of CPSV models that remain within the scope of this rule and also for the change in energy and water use for consumers that chose to exit the CPSV

[35] U.S. Environmental Protection Agency WaterSense. Pre-Rinse Spray Valve Field Study Report. March 2011. Washington DC. Available at: *http://www.epa.gov/watersense/partners/prsv_background.html#study*.

[36] SBW Consulting, Inc. and Koeller and Company. Pre-Rinse Spray Valve Programs: How Are They Really Doing? December 2005. Seattle, WA. Available at: *http://www.allianceforwaterefficiency.org/Commercial_Food_Service_Introduction.aspx*.

market, and instead purchase faucets, as a result of the standard.

The second alternative shipments scenario modifies the no-new-standards case for product classes 1 and 2. In the case of the first two product classes, EL 1 represents the market minimum level, while EL 0 represents a baseline at the Federal standard level of 1.6 gpm, as described in section IV.C.3. Although DOE did not observe any models at the baseline, DOE recognizes that it is possible that some shipments could occur at this level. In order to better understand the implications of moving the standard from EL 0 to EL 1, for this sensitivity case, 1 percent of no-new-standards case shipments in each of the first two product classes are assumed to fall into EL 0. These shipments were originally located at EL 1 in the default shipments scenario. Although additional product-class switching would possibly occur as a result of standards impacting these consumers, somewhat reducing any incremental savings, it was not considered in this sensitivity case.

Specific analyses undertaken with these alternative shipments scenarios are discussed in section V.A. Results of those analyses are provided in sections V.B.2 and V.B.3.

H. National Impact Analysis

The NIA assesses the NES, national water savings, and NPV of total consumer costs and savings that are expected to result from amended standards at specific efficiency levels. DOE calculates the NES, national water savings, and NPV based on projections of annual CPSV shipments, along with the annual energy and water consumption and total installed cost data from the energy and water use analysis, as well as the LCC and PBP analysis. DOE forecasted the energy and water savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of commercial prerinse spray valves sold from 2019 through 2048.

DOE evaluates the impacts of amended standards by comparing a no-new-standards case with standards-case projections. The no-new-standards case characterizes energy and water use and consumer costs for each product class in the absence of new or amended energy conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market for each product class if DOE adopted new or amended standards at specific 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 products with efficiencies greater than the standard.

DOE uses a spreadsheet model to calculate the energy and water savings, and the national consumer costs and savings for each TSL. Chapter 10 of the final rule TSD describes the models and how to use them; interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical or weighted-average mean values (as opposed to probability distributions) as inputs.

DOE used projections of energy and combined water prices as described in section IV.F.4 and IV.F.5, as well as chapter 8 of the final rule TSD. As part of the NIA, DOE analyzed scenarios that used inputs from the *AEO2015* Low Economic Growth and High Economic Growth cases. Those cases have higher and lower energy price trends compared to the reference case. NIA results based on these cases are available via the NIA analysis spreadsheet.

Table IV.7 summarizes the inputs and methods DOE used for the NIA analysis for the final rule. Discussion of these inputs and methods follows the table. 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.
First Year of Analysis Period	2019.
No-Standards Case Forecasted Efficiencies	Efficiency distributions are forecasted based on historical efficiency data.
Standards Case Forecasted Efficiencies	Used a "roll-up" scenario.
Annual Energy and Water Consumption per Unit	Annual weighted-average values are a function of energy and water use at each TSL.
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each TSL. Incorporates forecast of future product prices based on historical data.
Annual Energy and Combined Water Cost per Unit	Annual weighted-average values as a function of the annual energy and water consumption per unit, and energy, and combined water treatment prices.
Energy Prices	*AEO2015* forecasts (to 2040) and extrapolation through 2058.
Energy Site-to-Source Conversion Factors	Varies yearly and is generated by NEMS–BT.
Discount Rate	3 and 7 percent real.
Present Year	Future expenses discounted to 2015, when the final rule will be published.

1. National Energy and Water Savings

The NES analysis involves a comparison of national energy and water consumption of the considered products in each TSL with consumption in the no-new-standards case with no amended energy and water conservation standards. DOE calculated the national energy and water consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy and water consumption (also by vintage). DOE calculated annual NES and national water savings based on the difference in national energy and water consumption for the no-new-standards case and for each higher efficiency standard. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy (*i.e.,* the energy consumed by power plants to generate site electricity) using annual conversion factors derived from *AEO2015.* Cumulative energy and water savings are the sum of the NES and national water savings for each year over the timeframe of the analysis. DOE has historically presented NES in terms of primary energy savings. In the case of electricity use and savings, this quantity includes the energy consumed by power plants to generate delivered (site) electricity.

In 2011, in response to the recommendations of a committee on "Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy

Efficiency Standards'' appointed by the National Academy of Sciences, DOE announced its intention to use FFC measures of energy use and GHG and other emissions in the NIAs and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (August 18, 2011). After evaluating the approaches discussed in the August 18, 2011 document, DOE published a statement of amended policy in which DOE explained its determination that EIA's NEMS is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (August 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector [37] that EIA uses to prepare its *Annual Energy Outlook.* The approach used for deriving FFC measures of energy use and emissions is described in appendix 10B of the final rule TSD.

In response to the CPSV NOPR, ASAP asked if DOE considered the energy required to treat and transport the water used by commercial prerinse spray valves in its energy analysis. (ASAP, Public Meeting Transcript, No. 23 at pp. 63–64)

DOE recognizes the important relationship between water and energy use. In June 2014, a DOE working group published a report on this relationship, which acknowledged the need for a more interconnected approach to energy and water use analysis.[38] The report also identified the need for data and an integrated water-energy analytical platform, which remains under development.

2. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are (1) total annual installed cost, (2) total annual savings in operating costs, and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings 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 installed costs. DOE calculates operating cost savings over the lifetime of each product shipped during the forecast period. The operating cost savings are energy and combined water cost savings.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this final rule, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (OMB) to Federal agencies on the development of regulatory analysis.[39] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. 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 ''social rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value.

I. Consumer Subgroup Analysis

In analyzing the potential impact of new or amended standards on consumers, DOE evaluates the impact on identifiable subgroups of consumers that may be disproportionately affected by a new or amended national standard. DOE evaluated impacts on particular subgroups of consumers by analyzing the LCC impacts and PBP for those particular consumers from alternative standard levels. For this final rule, DOE analyzed the impacts of the considered standard levels on single entities and limited service establishment end users.

In general, the higher the cost of capital and the lower the cost of energy and water, the more likely it is that an entity would be disproportionately affected by the requirement to purchase higher efficiency product. An example of a single entity would be a small, independent, or family-owned business that operates in a single location. Compared to large corporations and franchises, these single entities might be subjected to higher costs of capital.

The other subgroup DOE analyzed in the subgroup analysis is a limited service establishment. These consumers likely have significantly lower operating times than the average consumer. Lower operating times typically lead to lower operating cost savings over the lifetime of the product, making this subgroup of consumers disproportionately affected by amended efficiency standards.

Chapter 11 of the final rule TSD describes the consumer subgroup analysis in greater detail.

J. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the financial impacts of amended energy conservation standards on manufacturers of commercial prerinse spray valves and to estimate the potential impacts of such standards on employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects and includes analyses of forecasted industry cash flows, the INPV, investments in research and development (R&D) and manufacturing capital, and domestic manufacturing employment. Additionally, the MIA seeks to determine how amended energy conservation standards might affect manufacturing employment, capacity, and competition, as well as how standards contribute to overall regulatory burden. Finally, the MIA serves to identify any disproportionate impacts on manufacturer subgroups, including small business manufacturers.

The quantitative elements of the MIA rely on the GRIM, an industry cash flow model with inputs specific to this rulemaking. The key GRIM inputs include data on the industry cost structure, unit production costs, product shipments, manufacturer markups, and investments in R&D and manufacturing capital required to produce compliant products. The key GRIM outputs are the INPV, which is the sum of industry annual cash flows over the analysis period, discounted using the industry-weighted average cost of capital, and the impact to domestic manufacturing employment. The model uses standard accounting principles to estimate the impacts of more-stringent energy conservation standards on a given industry by comparing changes in INPV and domestic manufacturing employment between a no-new-standards case and the various TSLs. To capture the uncertainty relating to manufacturer pricing strategy following amended standards, the GRIM estimates a range of possible impacts under different markup scenarios.

The qualitative part of the MIA addresses manufacturer characteristics and market trends. Specifically, the MIA considers such factors as manufacturing capacity, competition within the industry, the cumulative impact of other DOE and non-DOE regulations, and impacts on manufacturer subgroups. The complete MIA is outlined in chapter 12 of the final rule TSD.

[37] For more information on NEMS, refer to the Energy Information Administration. *The National Energy Modeling System: An Overview 2009.* October 2009. DOE/EIA–0581. *https://www.eia.gov/forecasts/aeo/nems/overview/pdf/0581(2009).pdf.*

[38] U.S. Department of Energy, *The Water-Energy Nexus: Challenges and Opportunities* (June 2014) (Available at:*www.energy.gov/sites/prod/files/2014/06/f16/Water%20Energy%20Nexus%20Report%20June%202014.pdf*).

[39] U.S. Office of Management and Budget. Circular A–4: Regulatory Analysis,'' (Sept. 17, 2003), section E (Available at: *www.whitehouse.gov/omb/memoranda/m03-21.html*).

DOE conducted the MIA for this rulemaking in three phases. In Phase 1 of the MIA, DOE prepared a profile of the CPSV manufacturing industry based on the market and technology assessment, information on the present and past market structure and characteristics of the industry, product attributes, product shipments, manufacturer markups, and the cost structure for various manufacturers.

The profile also included an analysis of manufacturers in the industry using Security and Exchange Commission 10–K filings, Standard & Poor's stock reports, and corporate annual reports released by publicly held companies.[40] DOE used this and other publicly available information to derive preliminary financial inputs for the GRIM, including an industry discount rate, manufacturer markup, cost of goods sold and depreciation, selling, general, and administrative (SG&A) expenses, and R&D expenses.

In Phase 2 of the MIA, DOE prepared the GRIM, an industry cash flow analysis, to quantify the impacts of potential amended energy conservation standards on the industry as a whole. 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 changes in sales volumes. DOE used the GRIM to model these effects in a cash flow analysis of the CPSV manufacturing industry. In performing this analysis, DOE used the financial parameters developed in Phase 1, the cost-efficiency curves from the engineering analysis, and the shipment assumptions from the NIA.

In Phase 3, DOE evaluated subgroups of manufacturers that may be disproportionately impacted by standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash flow analysis. For example, small businesses, manufacturers of niche products, or companies exhibiting a cost structure that differs significantly from the industry average could be more negatively affected. While DOE did not identify any other subgroup of manufacturers of commercial prerinse spray valves that would warrant a separate analysis, DOE specifically investigated impacts on small business manufacturers. See sections V.B.2.d and VI.B of this document for more information.

In Phase 3, the MIA also addresses the direct impact on employment tied to the manufacturing of commercial prerinse spray valves, as well as impacts on manufacturing capacity. Additionally, the MIA explores the cumulative regulatory burdens facing CPSV manufacturers. See section V.B.2.b of this document and chapter 12 of the final rule TSD for more information on the impacts of amended energy conservation standards for commercial prerinse spray valves on direct employment, manufacturing capacity, and cumulative regulatory burdens.

2. Government Regulatory Impact Model

DOE uses the GRIM to quantify the changes in cash flow that result in a higher or lower industry value due to energy conservation standards. The GRIM is a standard, discounted cash-flow model that incorporates manufacturer costs, markups, shipments, and industry financial information as inputs, and models changes in manufacturing costs, shipments, investments, and margins that may result from amended energy conservation standards. The GRIM uses these inputs to arrive at a series of annual cash flows, beginning with the base year of the analysis, 2015, and continuing through 2048. DOE uses the industry-average weighted average cost of capital (WACC) of 6.9 percent, as this represents the minimum rate of return necessary to cover the debt and equity obligations manufacturers use to finance operations.

DOE used the GRIM to compare INPV in the no-new-standards case with INPV at each TSL (the standards case). The difference in INPV between the no-new-standards and standards cases represents the financial impact of the amended standard on manufacturers. Additional details about the GRIM can be found in chapter 12 of the final rule TSD.

a. GRIM Key Inputs

Manufacturer Production Costs

Manufacturer production costs are the costs to the manufacturer to produce a commercial prerinse spray valve. These costs include materials, labor, overhead, and depreciation. Changes in the MPCs of commercial prerinse spray valves can affect revenues, gross margins, and cash flow of the industry, making product cost data key inputs for DOE's analysis. DOE estimated the MPCs for the three CPSV product classes at the baseline and higher efficiency levels, as described in section IV.C.5 of this document. The cost model also disaggregated the MPCs into the cost of materials, labor, overhead, and depreciation. DOE used the MPCs and cost breakdowns, as described in chapter 5 of the final rule TSD, for each efficiency level analyzed in the GRIM.

No-New-Standards Case Shipments Forecast

The GRIM estimates manufacturer revenues in each year of the forecast based in part on total unit shipments and the distribution of these values by efficiency level and product class. Generally, changes in the efficiency mix and total shipments at each standard level affect manufacturer finances. The GRIM uses the NIA shipments forecasts from 2015 through 2048, the end of the analysis period.

To calculate shipments, DOE developed a shipments model for each product class based on an analysis of key market drivers for commercial prerinse spray valves. For greater detail on the shipments analysis, see section IV.G of this document and chapter 9 of the final rule TSD.

Product and Capital Conversion Costs

Amended energy conservation standards may cause manufacturers to incur conversion costs to make necessary changes to their production facilities and bring product designs into compliance. For the MIA, DOE classified these costs into two major groups: (1) Product conversion costs and (2) capital conversion costs. Product conversion costs are investments in R&D, testing, marketing, and other non-capitalized costs focused on making product designs comply with the amended energy conservation standard. Capital conversion costs are investments in property, plant, and equipment to adapt or change existing production facilities so that new product designs can be fabricated and assembled.

DOE contacted manufacturers of commercial prerinse spray valves for the purpose of conducting interviews. However, no manufacturer agreed to participate in an interview. In the absence of information from manufacturers, DOE created estimates of industry capital and product conversion costs using the engineering cost model and information gained during product teardowns. DOE requested comments on the estimates of industry capital and product conversion costs provided in the CPSV NOPR. Since, no interested parties provided comments, DOE used the same methodology to estimate industry product and capital conversion costs in this final rule. DOE's estimates of the product and capital conversion

[40] SEC Form 10–K filings are available at *www.sec.gov/edgar.shtml*. Stock reports are available at *www.standardandpoors.com*.

costs for the CPSV manufacturing industry can be found in section V.B.2.a of this document and in chapter 12 of the final rule TSD.

b. GRIM Scenarios

Standards Case Shipments Forecasts

The MIA results presented in section V.B.2 of this document use shipments from the NIA. For standards case shipments, DOE assumed that CPSV consumers would choose to buy the commercial prerinse spray valve that has the flow rate that is closest to the flow rate of the product they currently use and that complies with the new standard (and, accordingly, manufacturers would choose to produce products with the closest flow rate to those they currently produce). Due to the structure of the product classes and efficiency levels for this rule, in certain instances, product class switching is predicted to occur, wherein consumers choose to buy the product with the flow rate that is closest to their current product's flow rate even if it has a higher spray force (putting those products into a different product class). Where product class switching does not occur, no-new-standards case shipments of products that did not meet the new standard would roll up to meet the standard starting in the compliance year. See section IV.F.9 of this document for a description of the standards case efficiency distributions. See section IV.G of this document for further detail relating to the shipments analysis.

The NIA also used historical data to derive a price scaling index to forecast product costs. The MPCs and MSPs in the GRIM use the default price forecast for all scenarios, which assumes constant pricing. See section IV.H of this document for a discussion of DOE's price forecasting methodology.

Markup Scenarios

MSP is equal to MPC times a manufacturer markup. The MSP includes direct manufacturing production costs (*i.e.,* labor, material, depreciation, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.,* SG&A, R&D, and interest), along with profit.

DOE used the baseline manufacturer markup of 1.30, developed during Phase 1 and subsequently revised, for all products when modeling the no-new-standards case in the GRIM. For the standards case in the GRIM, DOE modeled the preservation of gross margin as a percentage of revenues markup scenario markup scenario. For this scenario, DOE placed no premium on higher efficiency products. This is based on the assumption that efficiency is not the primary factor influencing purchasing decisions for CPSV consumers.

The preservation of gross margin as a percentage of revenues markup scenario assumes that the baseline markup of 1.30 is maintained for all products in the standards case. This scenario corresponds with the assumption that manufacturers are able to pass additional production costs due to amended standards through to their consumers.

Capital Conversion Cost Scenarios

DOE developed two capital conversion costs scenarios to estimate an upper and lower bound of industry profitability as a result of amended energy conservation standards for commercial prerinse spray valves. The assumption underlying both scenarios is that capital conversion costs associated with increasing the efficiency of commercial prerinse spray valves are exclusively related to the fabrication of plastic nozzles, as manufacturers would have to redesign nozzle molds to produce a nozzle with fewer or smaller spray holes. DOE does not believe there will be capital conversion costs associated with the in-house fabrication of metal nozzles. A more detailed discussion of capital conversion cost assumptions is provided in chapter 12 of the final rule TSD.

One capital conversion cost scenario, representing the upper bound of industry profitability, assumes that the majority of CPSV manufacturers source components (including the nozzle) from component suppliers and simply assemble the commercial prerinse spray valves (*i.e.,* Sourced Components Scenario). The second scenario, representing the lower bound of industry profitability, assumes that all of the CPSV manufacturers currently selling products with plastic spray nozzles fabricate these nozzles in-house (*i.e.,* Fabricated Components Scenario). More detail regarding these capital conversion cost scenarios is provided in chapter 12 of the final rule TSD.

3. Discussion of Comments

During the CPSV NOPR public meeting and in public comments submitted in response to the CPSV NOPR, manufacturers, trade organizations, and advocacy groups provided several comments on the potential impact of amended energy conservation standards on manufacturers. These comments are outlined in the following text. DOE notes that these comments helped to update the analysis reflected in this final rule.

In response to the CPSV NOPR, several stakeholders expressed concerns relating to the overlapping effects of the EPA's WaterSense program and the potential amended DOE energy conservation standards on CPSV manufacturers. AWE stated that any update to DOE test criteria will place an unreasonable burden on the manufacturers who participated in WaterSense. (AWE, No. 28 at p. 3) Any amendment to current DOE standards will require manufacturers to abandon current products and again invest the capital and time to meet criteria that is entirely different than the WaterSense criteria. (AWE, No. 28 at p. 7) Similarly, T&S Brass commented that cumulative regulatory burden is a key issue for manufacturers, and that compliance with EPA's WaterSense required a significant financial investment in product redesigns. Two manufacturers chose to invest in developing, certifying, and promoting high efficiency products through WaterSense last year, and are now faced with a more stringent regulatory requirement and the associated costs of development and certification. (T&S Brass, No. 33 at pp. 2–3)

Fisher also stated that compliance with WaterSense standards required Fisher to devote substantial resources to product development, testing, certification, updating literature, packaging, catalogs, Web sites, labeling, markings, marketing, and consumer education. Fisher believes DOE's proposed standards will require duplicative efforts and expenses and will jeopardize the WaterSense program. (Fisher, No. 30 at p. 1)

PMI and NAFEM echoed these concerns. PMI stated that the proposed standards puts a strain its members, T&S Brass and Fisher Manufacturing, who have recently invested capital in redesigning and reengineering their products to comply with the EPA WaterSense specification. (PMI, No. 27 at p. 1) Additionally, NAFEM believes that the collaborative process used to develop WaterSense would be wasted as a result of DOE's amended standards. (NAFEM, No. 31 at p. 1)

DOE acknowledges the existence of the voluntary WaterSense program and that three manufacturers, T&S Brass, Fisher Manufacturing, and Chicago Faucets, are currently participating in the WaterSense program. At the time of the CPSV NOPR, DOE had proposed standard levels of 0.65 gpm, 0.97 gpm, and 1.24 gpm for light-, standard-, and heavy-duty product classes, respectively (since the CPSV NOPR, DOE updated

the product class names from light-, standard-, and heavy-duty to product class 1, 2, and 3). DOE has updated its proposal for this final rule to standard levels of 1.00 gpm and 1.20 gpm for product class 1 and product class 2, and at the WaterSense level (1.28 gpm) for product class 3. All products certified to WaterSense currently meet the standard levels described in this final rule. Therefore, DOE expects the cumulative regulatory burdens due to the amended energy conservation standards, relative to the WaterSense program, to be limited. DOE investigates cumulative regulatory burden impacts associated with this rulemaking in more detail in section V.B.2.e of this document, and in chapter 12 of the final rule TSD.

Next, Chicago Faucets stated that current commercial prerinse spray valves are rated for 1.00 or 1.25 gpm, and that the new proposed levels (*i.e.,* as proposed in the CPSV NOPR; 0.65 gpm, 0.97 gpm and 1.24 gpm for light-, standard-, and heavy-duty product classes, respectively) will require spray valves to be retested and recertified at great expense to manufacturers. (Chicago Faucets, No. 26 at p. 3)

In the MIA, DOE classifies retesting and recertification costs as product conversion costs. For the CPSV NOPR, DOE used the engineering analysis as a basis for estimating total conversion costs that are expected to be incurred by the industry at each efficiency level. DOE requested comment and additional information relating to industry product and capital conversion cost estimates. DOE did not receive any comment and therefore continues to use the same methodology for estimating conversion costs in this final rule. More information on conversion costs can be found in section V.B.2 of this document and chapter 12 of the final rule TSD.

Finally, relating to DOE's CPSV NOPR finding that the average small manufacturer would likely have to reinvest between 81 and 120 percent of operating profit per year over the conversion period to comply with proposed amended energy conservation standards, T&S Brass commented that since eight of 11 CPSV manufacturers are small businesses, and concentrated in commercial prerinse spray valves and related products, amended standards would be a major financial strain on the majority of the industry. (T&S Brass, No. 33 at p. 2)

DOE acknowledges that small businesses manufacturers may be disproportionately impacted by energy conservation standards relative to larger, more diversified manufacturers. In this document, DOE provides an updated analysis of disproportionate impacts, based on the revised engineering analysis and standard levels. The impacts of amended energy conservation standards on small business manufacturers are detailed in section VI.B of this document and in chapter 12 of the final rule TSD.

K. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of amended energy conservation standards on power sector and site (where applicable) combustion emissions of CO_2, NO_X, SO_2, and Hg. The second component estimates the impacts of amended standards on emissions of two additional GHGs, CH_4 and N_2O, 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 factors calculated using a methodology based on results published for the *AEO2015* reference case and a set of side cases that implement a variety of efficiency-related policies. The methodology is described in chapter 15 of the final rule TSD.

Combustion emissions of CH_4 and N_2O are estimated using emissions intensity factors published by the EPA, GHG Emissions Factors Hub.[41] 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_4 and CO_2.

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 NIA.

For CH_4 and N_2O, DOE calculated emissions reduction in tons and also in terms of units of carbon dioxide equivalent (CO_2eq). Gases are converted to CO_2eq 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,[42] DOE used GWP values of 28 for CH_4 and 265 for N_2O.

The *AEO2015* projections incorporate 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_2 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_2 for affected EGUs in the 48 contiguous States and the District of Columbia. (42 U.S.C. 7651 *et seq.*) SO_2 emissions from 28 eastern States and the District of Columbia 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.[43] 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,[44] 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.[45] On October 23, 2014, the D.C. Circuit lifted the stay of CSAPR.[46] Pursuant to this

[41] Available at: *http://www.epa.gov/climateleadership/inventory/ghg-emissions.html.*

[42] 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.

[43] 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).

[44] 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).

[45] *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.

[46] *See Georgia* v. *EPA,* Order *(D.C. Cir. filed October 23, 2014) (No. 11–1302).*

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_2 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_2 emissions by any regulated EGU. In past rulemakings, DOE recognized that there was uncertainty about the effects of efficiency standards on SO_2 emissions covered by the existing cap-and-trade system, but it concluded that negligible reductions in power sector SO_2 emissions would occur as a result of standards.

Beginning in 2016, however, SO_2 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_2 (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_2 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_2 emissions. Under the MATS, emissions will be far below the cap established by CAIR, so it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand will be needed or used to permit offsetting increases in SO_2 emissions by any regulated EGU.[47] Therefore, DOE believes that energy conservation standards will generally reduce SO_2 emissions in 2016 and beyond.

CAIR established a cap on NO_X emissions in 28 eastern States and the District of Columbia.[48] Energy conservation standards are expected to have little effect on NO_X emissions in those States covered by CAIR because excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions from other facilities. However, standards are expected to reduce NO_X emissions in the States not affected by the caps, so DOE estimated NO_X 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, therefore, 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.

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_2 and NO_X 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 consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the forecast period for each TSL. This section summarizes the basis for the monetary values used for each of these emissions and presents the values considered in this final rule.

For this final rule, DOE relied on a set of values for the 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

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_2. A domestic SCC value is meant to reflect the value of damages in the United States resulting from a unit change in CO_2 emissions, while a global SCC value is meant to reflect the value of damages worldwide.

Under section 1(b) 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_2 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.

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 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, the OMB announced a new opportunity for public comment on the TSD underlying the revised SCC estimates. See 78 FR 70586 (Nov. 26, 2013). In July 2015, OMB published a detailed summary and formal response to the many comments that were

[47] 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 tentatively determined that the remand of the MATS rule does not change the assumptions regarding the impact of energy efficiency standards on SO_2 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.

[48] CSAPR also applies to NO_X and it would supersede the regulation of NO_X 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_X emissions is slight.

received.[49] In the response, the interagency working group continued to recommend the use of the SCC estimates as they represent the best scientific information on the impacts of climate change in a form appropriate for incorporating the damages from incremental CO_2 emissions changes into regulatory analyses.[50] 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.

a. Monetizing Carbon Dioxide Emissions

When attempting to assess the incremental economic impacts of CO_2 emissions, the analyst faces a number of challenges. A report from the National Research Council [51] 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_2 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 will 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_2 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_2 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_2. 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.

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. Specifically, 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 in modeling 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,[52] although preference is given to consideration of the global benefits of reducing CO_2 emissions. Table IV.8 presents the values in the 2010 interagency group report,[53] which is reproduced in appendix 14A of the final rule TSD.

[49] Available at *https://www.whitehouse.gov/blog/2015/07/02/estimating-benefits-carbon-dioxide-emissions-reductions.*

[50] Interagency Working Group on Social Cost of Carbon, U.S. Government, *Response to Comments: Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,* at 5 (July 2015).

[51] National Research Council, *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use,* National Academies Press: Washington, DC (2009).

[52] 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.

[53] *Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866.* Interagency Working Group on Social Cost of Carbon, U.S. Government (February 2010) (Available at: *www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf*).

TABLE IV.8—ANNUAL SCC VALUES FROM 2010 INTERAGENCY REPORT, 2010–2050

[2007$ per metric ton CO_2]

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).[54]

Table IV.9 shows the updated sets of SCC estimates from the 2013 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.9—ANNUAL SCC VALUES FROM 2013 INTERAGENCY REPORT (REVISED JULY 2015), 2010–2050

[2007$ per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	10	31	50	86
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 2009 National Research Council report 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.

In summary, in considering the potential global benefits resulting from reduced CO_2 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_2 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.

2. Social Cost of Other Air Pollutants

As noted previously, DOE has estimated how the considered energy

[54] *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: *http://www.whitehouse.gov/sites/default/files/omb/inforeg/scc-tsd-final-july-2015.pdf*).

conservation standards would reduce site NO_X emissions nationwide and decrease power sector NO_X emissions in those 22 States not affected by the CAIR.

DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the Regulatory Impact Analysis titled, ''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. The report includes high and low values for NO_X (as $PM_{2.5}$) for 2020, 2025, and 2030 discounted at 3 percent and 7 percent,[55] 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. DOE will continue for evaluate the monetization of avoided NO_X emissions and will make any appropriate updates in energy conservation standards rulemakings.

DOE is evaluating appropriate monetization of avoided SO_2 and Hg emissions in energy conservation standards rulemakings. DOE has not included monetization of those emissions in the current analysis.

3. Comments

In response to the CPSV NOPR, DOE received two comments regarding the use of SCC. In a comment submitted by the U.S. Chamber of Commerce along with the American Chemistry Council, the American Coke and Coal Chemicals Institute, the American Forest & Paper Association, the American Fuel & Petrochemical Manufacturers, the American Petroleum Institute, the Brick Industry Association, the Council of Industrial Boiler Owners, the National Association of Manufacturers, the National Mining Association, the National Oilseed Processors Association, and the Portland Cement Association (collectively, ''the Associations''), the commenters objected to DOE's continued use of SCC in the cost-benefit analysis and stated their belief that SCC should be withdrawn as a basis for the rule. The Associations further stated that the SCC calculation should not be used in any rulemaking or policymaking until it undergoes a more rigorous notice, review, and comment process. (The Associations, No. 29, at p. 4) DOE also received a comment from a group consisting of the Environmental Defense Fund, Institute for Policy Integrity at New York University School of Law, Natural Resources Defense Council, and Union of Concerned Scientists (collectively, ''Joint Commenters'') that supported DOE's current use of the Interagency Working Group's SCC estimate. The Joint Commenters further indicated that DOE should also include a qualitative assessment of all significant climate effects that are not currently quantified in the monetized estimate. (Joint Commenters, No. 21, at p. 19)

DOE appreciates the comments and acknowledges the many uncertainties involved with monetizing the social benefits of reducing CO_2 emissions. However, DOE reiterates that the use of the SCC estimates, as recommended by the working group, represent the best scientific information on the impacts of climate change in a form appropriate for incorporating into regulatory analyses.

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 produced 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 that incorporate efficiency-related policies to estimate the marginal impacts of reduced energy demand on the utility sector. 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.

Chapter 15 of the final rule TSD describes the utility impact analysis in further detail.

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 any changes in the number of employees of manufacturers of the products subject to standards, their suppliers, and related service firms. The MIA addresses the direct employment 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 consumer spending on new products 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).[56] 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.[57] 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 consumer utility bills.

[55] For the monetized NO_X benefits associated with $PM_{2.5}$, the related benefits (derived from benefit-per-ton values) are 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 so using the higher value would also be 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 here.)

[56] 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*.

[57] 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).

Because reduced consumer 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 amended standards for commercial prerinse spray valves.

DOE estimated indirect national employment impacts for the standard levels considered in this final rule using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 4.0 (ImSET).[58] 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, where these uncertainties are reduced. For more details on the employment impact analysis, see chapter 16 of the final rule TSD.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for commercial prerinse spray valves. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for commercial prerinse spray valves, 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 document.

A. Trial Standard Levels

DOE analyzed the benefits and burdens of four TSLs for commercial prerinse spray valves. These TSLs were developed by combining specific efficiency levels for each of the product classes analyzed by DOE. DOE also analyzed two additional TSLs that utilized the alternative shipments scenarios discussed in section IV.G.1. DOE presents the results for each of the TSLs in this document, while the engineering analysis results for all efficiency levels that DOE analyzed are in the final rule TSD.

Table V.1 presents the TSLs and the corresponding efficiency levels for commercial prerinse spray valves. These TSLs were chosen based on the following criteria:

- TSL 1 represents the first EL above the market minimum for each product class. That is, for product classes 1 and 2, TSL 1 represents EL 2 which is a 15 percent increase in efficiency above the market minimum. For product class 3, TSL 1 represents EL 1 which is a 10 percent increase in efficiency above the market minimum.
- TSL 2 represents the second EL above market minimum for each product class. That is, for product classes 1 and 2, TSL 2 represents EL 3 which is a 25 percent increase in efficiency above the market minimum. For product class 3, TSL 3 represents the WaterSense level, or 20 percent increase in efficiency above the market minimum.
- TSL 3 represents the minimum flow rates for each product class that: (1) Would not induce consumers to switch product classes as a result of a standard at those flow rates (as discussed in the CPSV NOPR); and (2) retains shower-type designs.
- TSL 3a is a sensitivity-case variant of TSL 3, utilizing the second alternative shipments scenario described in section IV.G.1. This shipments scenario permits examination of the potential for additional savings if one percent of the shipments are assumed to fall into EL 0, rather than at EL 1, in the no-new-standards case for product classes 1 and 2. NIA results were generated for this case.
- TSL 4 represents max-tech for all product classes under the default shipments scenario, which assumes the total volume of shipments does not change as a function of the standard level selected. Consumers in product classes 1 and 2 would purchase a compliant CPSV model with flow rates most similar to the flow rate they would purchase in the absence of a standard. This TSL assumes that purchasers of shower-type commercial prerinse spray valves would transition to single-orifice CPSV models.
- TSL 4a represents a sensitivity-case max-tech for all product classes under an alternative shipments scenario, as described in section IV.G.1. Since the utility of single-orifice CPSV models may not be equivalent to shower-type CPSV models for some applications, this alternative shipments scenario assumes consumers of shower-type units exit the CPSV market and purchase faucets, which have a maximum flow rate of 2.2 gpm under the current Federal standard. Thus, shipments of compliant CPSV models are much lower under this TSL and water consumption is higher due to increased faucet shipments. Both MIA and NIA results were developed for this case.

TABLE V.1—TRIAL STANDARD LEVELS FOR COMMERCIAL PRERINSE SPRAY VALVES

TSL	Product class 1	Product class 2	Product class 3	Shipments scenario
	EL	EL	EL	
1	2	2	1	Default.
2	3	3	2	Default.
3	1	1	2	Default.
3a	1	1	2	Alternate.
4	4	4	3	Default.
4a	4	4	3	Alternate.

[58] Livingston OV, SR Bender, MJ Scott, and RW Schultz. 2015. ImSET 4.0: Impact of Sector Energy Technologies Model Description and User's Guide. PNNL–24563, Pacific Northwest National Laboratory, Richland, WA. (2015).

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on commercial prerinse spray valve consumers by looking at the effects the amended standards at each TSL would have on the LCC and PBP analysis. DOE also examined the impacts of amended standards on consumer subgroups. These analyses are discussed in the following sections.

a. Life-Cycle Cost and Payback Period

To evaluate the net economic impact of the amended energy conservation standards on consumers of commercial prerinse spray valves, DOE conducted an LCC and PBP analysis for each TSL. In general, higher-efficiency products affect consumers in two ways: (1) Purchase price increases; and (2) annual operating cost decreases. Because DOE did not find that the purchase price of commercial prerinse spray valves increased with increasing efficiency, the only effect of higher-efficiency products to consumers is decreased operating costs. Inputs used for calculating the LCC and PBP include: (1) Total installed costs (*i.e.,* product price plus installation costs); and (2) operating costs (*i.e.,* annual energy use, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses product lifetime and a discount rate. Chapter 8 of the final rule TSD provides detailed information on the LCC and PBP analyses.

Table V.2 through Table V.7 show the LCC and PBP results for the TSLs considered for each product class. In the first of each pair of tables, the simple PBP is measured relative to the baseline product. In the second of each pair of tables, the LCC savings are measured relative to the average LCC in the no-new-standards case in the compliance year (see section IV.F.10 of this document). No impacts occur when the no-new-standards case efficiency for a specific consumer equals or exceeds the efficiency at a given TSL. In this situation, a standard would have no effect because the product installed would be at or above that standard level without amended standards. For commercial prerinse spray valves, DOE determined that there was no increase in purchase price with increasing EL within each product class. Therefore, LCC and PBP results instead reflect differences in operating costs due to decreased energy and water use for each EL.

TABLE V.2—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR PRODUCT CLASS 1 (≤5.0 ozf) COMMERCIAL PRERINSE SPRAY VALVES

TSL	EL	Average costs (2014$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
—	0	76	780	3,556	3,643	.....	4.9
3	1	76	487	2,229	2,305	0.0	4.9
1	2	76	414	1,895	1,971	0.0	4.9
2	3	76	366	1,672	1,748	0.0	4.9
4	4	76	302	1,382	1,458	0.0	4.9

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.3—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR PRODUCT CLASS 1 (≤5.0 ozf) COMMERCIAL PRERINSE SPRAY VALVES

TSL	EL	Life-cycle cost savings	
		Percent of consumers that experience (net cost)	Average savings * (2014$)
—	0	.....	.....
3	1	0	** 0
1	2	0	334
2	3	0	557
4	4	0	352

* **Note:** The calculation includes consumers with zero LCC savings (no impact).

** At TSL 3, the average LCC impact is a savings of $0 for CPSV models in product classes 1 and 2 because the market minimums are the standard for those classes. Because no consumers in the no-new-standards case purchase products with a higher flow rate than the respective market minimums, no consumers are affected by a standard set at EL 1 (market minimum) in product classes 1 and 2.

TABLE V.4—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR PRODUCT CLASS 2 (>5.0 ozf AND ≤8.0 ozf) COMMERCIAL PRERINSE SPRAY VALVES

TSL	EL	Average costs (2014$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
—	0	76	780	3,556	3,643	.....	4.9
3	1	76	585	2,675	2,751	0.0	4.9
1	2	76	497	2,274	2,350	0.0	4.9
2	3	76	439	2,006	2,082	0.0	4.9
4	4	76	356	1,627	1,704	0.0	4.9

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.5—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR PRODUCT CLASS 2 (>5.0 ozf AND ≤8.0 ozf) COMMERCIAL PRERINSE SPRAY VALVES

TSL	EL	Life-cycle cost savings	
		Percent of consumers that experience (net cost)	Average savings * (2014$)
—	0	.....	.....
3	1	0	** 0
1	2	0	401
2	3	0	446
4	4	0	825

* **Note:** The calculation includes consumers with zero LCC savings (no impact).

** At TSL 3, the average LCC impact is a savings of $0 for CPSV models in product classes 1 and 2 because the market minimums are the standard for those classes. Because no consumers in the no-new-standards case purchase products with a higher flow rate than the respective market minimums, no consumers are affected by a standard set at EL 1 (market minimum) in product classes 1 and 2.

TABLE V.6—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR PRODUCT CLASS 3 (>8.0 ozf) COMMERCIAL PRERINSE SPRAY VALVES

TSL	EL	Average costs (2014$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
—	0	76	780	3,566	3,643	.....	4.9
1	1	76	702	3,210	3,286	0.0	4.9
2, 3	2	76	624	2,853	2,929	0.0	4.9
4	3	76	551	2,519	2,595	0.0	4.9

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.7—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR PRODUCT CLASS 3 (>8.0 ozf) COMMERCIAL PRERINSE SPRAY VALVES

TSL	EL	Life-cycle cost savings	
		Percent of consumers that experience (net cost)	Average savings * (2014$)
—	0	.....	.....
1	1	0	357
2, 3	2	0	547
4	3	0	766

Note: The calculation includes consumers with zero LCC savings (no impact).

b. Consumer Subgroup Analysis

In the consumer subgroup analysis, DOE estimated the impact of the considered TSLs on small businesses and limited service establishments. Table V.8 through Table V.10 compare the average LCC savings at each efficiency level for the two consumer subgroups, along with the average LCC savings for the entire sample for each product class for commercial prerinse spray valves. The average LCC savings for single entities and limited service establishments at the considered ELs are not substantially different from the average for all consumers. Chapter 11 of the final rule TSD presents the complete LCC and PBP results for the subgroups.

TABLE V.8—PRODUCT CLASS 1 (≤5.0 ozf) COMMERCIAL PRERINSE SPRAY VALVES: COMPARISON OF AVERAGE LCC SAVINGS FOR CONSUMER SUBGROUPS AND ALL CONSUMERS

TSL	Average life-cycle cost savings (2014$)			Simple payback period (years)		
	Single entities	Limited service establishments	All consumers	Single entities	Limited service establishments	All consumers
1	317	267	334	0.0	0.0	0.0
2	529	446	557	0.0	0.0	0.0
3	*0	*0	*0	0.0	0.0	0.0
4	334	281	352	0.0	0.0	0.0

*At TSL 3, the average LCC impact is a savings of $0 for CPSV models in product classes 1 and 2 because the market minimums are the standard for those classes. Because no consumers in the no-new-standards case purchase products with a higher flow rate than the respective market minimums, no consumers are affected by a standard set at EL 1 (market minimum) in product classes 1 and 2.

TABLE V.9—PRODUCT CLASS 2 (>5.0 ozf AND ≤8.0 ozf) COMMERCIAL PRERINSE SPRAY VALVES: COMPARISON OF AVERAGE LCC SAVINGS FOR CONSUMER SUBGROUPS AND ALL CONSUMERS

TSL	Average life-cycle cost savings (2014$)			Simple payback period (years)		
	Single entities	Limited service establishments	All consumers	Single entities	Limited service establishments	All consumers
1	381	321	401	0.0	0.0	0.0
2	423	357	446	0.0	0.0	0.0
3	*0	*0	*0	0.0	0.0	0.0
4	782	660	825	0.0	0.0	0.0

*At TSL 3, the average LCC impact is a savings of $0 for CPSV models in product classes 1 and 2 because the market minimums are the standard for those classes. Because no consumers in the no-new-standards case purchase products with a higher flow rate than the respective market minimums, no consumers are affected by a standard set at EL 1 (market minimum) in product classes 1 and 2.

TABLE V.10—PRODUCT CLASS 3 (>8.0 ozf) COMMERCIAL PRERINSE SPRAY VALVES: COMPARISON OF AVERAGE LCC SAVINGS FOR CONSUMER SUBGROUPS AND ALL CONSUMERS

TSL	Average life-cycle cost savings (2014$)			Simple payback period (years)		
	Single entities	Limited service establishments	All consumers	Single entities	Limited service establishments	All consumers
1	338	285	357	0.0	0.0	0.0
2	519	437	547	0.0	0.0	0.0
3	519	437	547	0.0	0.0	0.0
4	727	613	766	0.0	0.0	0.0

c. Rebuttable Presumption Payback

As discussed in section IV.F.11, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first year energy and water savings resulting from the standard. In calculating a rebuttable presumption PBP for each of the considered TSLs, DOE used discrete values, and, as required by EPCA, based the energy and water use calculation on the DOE test procedure for commercial prerinse spray valves. Table V.11 presents the rebuttable-presumption PBPs for the considered TSLs. In addition to examining the rebuttable-presumption criterion, DOE also considered whether the standard levels are economically justified through a more detailed analysis of the economic impacts of those levels that considers the full range of impacts to the consumer, manufacturer, nation, and environment. (42 U.S.C. 6295(o)(2)(B)(i) The results of that 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. As indicated in the engineering analysis, there is no increased purchase cost for products that meets the standard, so the rebuttable PBP for each considered TSL is zero.

TABLE V.11—COMMERCIAL PRERINSE SPRAY VALVES: REBUTTABLE PBPS

Product class	Rebuttable payback period for trial standard level (years)			
	1	2	3	4
Product Class 1 (≤5.0 ozf)	0.0	0.0	0.0	0.0
Product Class 2 (>5.0 ozf and ≤8.0 ozf)	0.0	0.0	0.0	0.0
Product Class 3 (>8.0 ozf)	0.0	0.0	0.0	0.0

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of amended energy conservation standards on manufacturers of commercial prerinse spray valves. Section V.B.2.a 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

DOE modeled two scenarios using different conversion cost assumptions to evaluate the range of cash flow impacts on the CPSV manufacturing industry from amended energy conservation standards. Each scenario results in a unique set of cash flows and corresponding industry value at each TSL. These assumptions correspond to the bounds of a range of capital conversion costs that DOE anticipates could occur in response to amended standards. The following tables illustrate the financial impacts (represented by changes in INPV) of amended energy conservation standards on manufacturers of commercial prerinse spray valves, as well as the conversion costs that DOE estimates manufacturers would incur for each product class at each TSL.

DOE also conducted a sensitivity MIA (reflected in TSL 4a) based on an alternative shipments scenario described in section IV.G.1. DOE assumed that a percentage of consumers currently using product class 3 commercial prerinse spray valves will switch to using faucets at higher flow rates. DOE did not include faucet shipments in its shipments analysis. Therefore, overall shipments decrease in the alternative shipments scenario. The alternative shipments scenario is described in more detail in section IV.G.1. The results for the sensitivity MIA are presented in Table V.12 and Table V.13 as well as in chapter 12 of the final rule TSD.

The INPV results refer to the difference in industry value between the no-new-standards case and the standards case, which DOE calculated by summing the discounted industry cash flows from the base year (2015) through the end of the analysis period (2048). The discussion also notes the difference in cash flow between the no-new-standards case and the standards case in the year before the compliance date of amended energy conservation standards.

TABLE V.12—MANUFACTURER IMPACT ANALYSIS FOR COMMERCIAL PRERINSE SPRAY VALVES—WITH THE SOURCED COMPONENTS CAPITAL CONVERSION COSTS SCENARIO

	Units	No-new-standards case	Trial Standard Level				
			1	2	3	4	4a
INPV	2014$ MM	8.6	7.7	7.5	8.0	7.1	5.5
Change in INPV ($)	2014$ MM		(0.8)	(1.1)	(0.6)	(1.5)	(3.1)
Change in INPV (%)	%		(9.9)	(12.8)	(6.5)	(17.4)	(36.3)
Product Conversion Costs.	2014$ MM		1.5	1.8	0.8	2.4	1.9
Capital Conversion Costs	2014$ MM		0.1	0.2	0.2	0.2	0.0
Total Investment Required.	2014$ MM		1.6	2.0	1.0	2.6	1.9

* Parentheses indicate negative values.

TABLE V.13—MANUFACTURER IMPACT ANALYSIS FOR COMMERCIAL PRERINSE SPRAY VALVES—WITH THE FABRICATED COMPONENTS CAPITAL CONVERSION COSTS SCENARIO

	Units	No-new-standards case	Trial Standard Level				
			1	2	3	4	4a
INPV	2014$ MM	8.6	7.1	6.7	7.4	6.2	4.8
Change in INPV ($)	2014$ MM		(1.5)	(1.8)	(1.1)	(2.4)	(3.8)
Change in INPV (%)	%		(17.5)	(21.4)	(13.1)	(28.0)	(44.4)
Product Conversion Costs.	2014$ MM		1.5	1.8	0.8	2.4	1.9
Capital Conversion Costs	2014$ MM		0.8	1.0	0.8	1.2	0.8
Total Investment Required.	2014$ MM		2.3	2.8	1.6	3.6	2.7

* Parentheses indicate negative values.

At TSL 1, DOE estimates impacts on INPV to range from −$1.5 million to −$0.8 million, or a change in INPV of −17.5 percent to −9.9 percent for the Fabricated Components and Sourced Components Capital Conversion Costs scenarios, respectively. At this level, industry free cash flow is estimated to decrease by as much as 165.6 percent to −$0.3 million, compared to the no-new-standards case value of $0.5 million in the year leading up to the amended energy conservation standards. As DOE forecasts that approximately 63 percent of commercial prerinse spray valves shipments in the no-new-standards case will meet TSL 1 in the first year that standards are in effect (2019), 37 percent of the market shipments are affected at this standard level. The impact on INPV at TSL 1 stems exclusively from the conversion costs associated with the conversion of baseline units to those meeting the standards set at TSL 1. Product and capital conversion costs are estimated to be approximately $1.2 million for the Sourced Components Capital Conversion Costs scenario and $2.0 million for the Fabricated Components Capital Conversion Costs scenario.

At TSL 2, DOE estimates impacts on INPV to range from −$1.8 million to −$1.1 million, or a change in INPV of −21.4 percent to −12.8 percent for the Fabricated Components and Sourced Components Capital Conversion Costs scenarios, respectively. At this level, industry free cash flow is estimated to decrease by as much as 202.7 percent to −$0.5 million, compared to the no-new-standards case value of $0.5 million in the year leading up to the amended energy conservation standards. As it is estimated that only approximately 27 percent of commercial prerinse spray valves shipments will meet the efficiency levels specified at TSL 2 in the first year that standards are in effect (2019), 73 percent of the market shipments are affected at this standard level. As with TSL 1, the impact on INPV at TSL 2 stems exclusively from the conversion costs associated with the conversion of lower efficiency units to those meeting the standards set at TSL 2. Since the majority of commercial prerinse spray valves will have to be updated to reach the standard level, product and capital conversion costs are estimated to be approximately $2.0 million for the Sourced Components Capital Conversion Costs scenario and $2.8 million for the Fabricated Components Capital Conversion Costs scenario.

At TSL 3, DOE estimates impacts on INPV to range from −$1.1 million to −$0.6 million, or a change in INPV of −13.1 percent to −6.5 percent for the Fabricated Components and Sourced Components Capital Conversion Cost scenarios, respectively. At this level, industry free cash flow is estimated to decrease by as much as 124.4 percent to −$0.1 million, compared to the no-new-standards case value of $0.5 million in the year leading up to the amended energy conservation standards. It is estimated that 55 percent of commercial prerinse spray valves shipments will meet the efficiency levels specified at TSL 3 in the first year that standards are in effect (2019); 45 percent of market shipments are affected at this standard level. Again, the impact on INPV at TSL 3 stems exclusively from the conversion costs associated with the conversion of lower efficiency units to those meeting the standards set at TSL 3. Since the majority of commercial prerinse spray valves already meet the standard level, product and capital conversion costs are estimated to be approximately $1.0 million for the Sourced Components Capital Conversion Costs scenario and $1.6 million for the Fabricated Components Capital Conversion Costs model.

At TSL 4, DOE estimates impacts on INPV to range from −$2.4 million to −$1.5 million, or a change in INPV of −28.0 percent to −17.4 percent for the Fabricated Components and Sourced Components Capital Conversion Cost scenarios, respectively. At this level, industry free cash flow is estimated to decrease by as much as 275.3 percent to −$0.8 million, compared to the no-new-standards case value of $0.5 million in the year leading up to the amended energy conservation standards. It is estimated that just 7 percent of commercial prerinse spray valves shipments will meet the efficiency levels specified at TSL 4 in the first year that standards are in effect (2019). Again, the impact on INPV at TSL 4 stems exclusively from the conversion costs associated with the conversion of lower efficiency units to those meeting the standards set at TSL 4. Since the majority of commercial prerinse spray valves will have to be updated to reach the standard level, product and capital conversion costs are estimated to be approximately $2.6 million for the Sourced Components Capital Conversion Costs scenario and $3.6 million for the Fabricated Components Capital Conversion Costs scenario.

Finally, at TSL 4a, DOE estimates impacts on INPV to range from −$3.8 million to −$3.1 million, or a change in INPV of −44.4 percent to −36.3 percent for the Fabricated Components and Sourced Components Capital Conversion Cost scenarios, respectively. At this level, industry free cash flow is estimated to decrease by as much as 189.4 percent to −$0.4 million, compared to the no-new-standards case value of $0.5 million in the year leading up to the amended energy conservation standards. It is estimated that just 7 percent of commercial prerinse spray valves will meet the efficiency levels specified at TSL 4a in the first year that standards are in effect (2019). The impact on INPV at TSL 4a stems from the conversion costs associated with the conversion of lower efficiency units to those meeting the standards set at TSL 4a, and from a reduction in shipments in product class 3 by 46 percent. Since the majority of commercial prerinse spray valves will have to be updated to reach the standard level, product and capital conversion costs are estimated to be approximately $1.9 million for the Sourced Components Capital Conversion Costs scenario and $2.7 million for the Fabricated Components Capital Conversion Costs scenario.

b. Impacts on Employment

DOE used the GRIM to estimate the domestic labor expenditures and number of domestic production workers in the no-new-standards case and at each TSL from 2014 through 2048. DOE used the labor content of each product and the MPCs from the engineering analysis to estimate the total annual labor expenditures associated with commercial prerinse spray valves sold in the United States. Using statistical data from the U.S. Census Bureau's 2013 ''Annual Survey of Manufactures'' (2013 ASM) as well as market research, DOE estimates that 100 percent of commercial prerinse spray valves sold in the United States are assembled domestically, and hence that portion of total labor expenditures is attributable to domestic labor.[59] Labor expenditures for the manufacturing of products are a function of the labor intensity of the product, the sales volume, and an assumption that wages in real terms remain constant.

Using the GRIM, DOE forecasts the domestic labor expenditure for commercial prerinse spray valve production labor in 2019 will be approximately $1.9 million. Using the $20.51 hourly wage rate including fringe benefits and 2,019 production hours per year per employee found in the 2013 ASM, DOE estimates there will be approximately 46 domestic production workers involved in assembling and, to

[59] U.S. Census Bureau. *U.S. Census Bureau Annual Survey of Manufacturers 2013.* 2013. Available at *http://www.census.gov/manufacturing/asm/historical_data/index.html.*

a lesser extent, fabricating components for commercial prerinse spray valves in 2019, the year in which the amended standards go into effect. In addition, DOE estimates that 21 non-production employees in the United States will support commercial prerinse spray valve production. The employment spreadsheet of the commercial prerinse spray valve GRIM shows the annual domestic employment impacts in further detail.[60]

The production worker estimates in this section cover workers only up to the line-supervisor level who are directly involved in fabricating and assembling commercial prerinse spray valves within an original equipment manufacturer (OEM) facility. Workers performing services that are closely associated with production operations, such as material handling with a forklift, are also included as production labor. Additionally, the employment impacts shown are independent of the employment impacts from the broader U.S. economy, which are documented in chapter 12 of the final rule TSD.

Table V.14 depicts the potential levels of production employment that could result following amended energy conservation standards as calculated by the GRIM. The employment levels shown reflect the scenario in which manufacturers continue to produce the same scope of covered products in domestic facilities and domestic production is not shifted to lower-labor-cost countries. The following discussion includes a qualitative evaluation of the likelihood of negative domestic production employment impacts at the various TSLs.

TABLE V.14—TOTAL NUMBER OF DOMESTIC COMMERCIAL PRERINSE SPRAY VALVE PRODUCTION WORKERS IN 2019

	No-new-standards case	Trial standard level				
		1	2	3	4	4a
Total Number of Domestic Production Workers in 2019 (without changes in production locations)	46	46	46	46	46	27

The design options specified for achieving greater efficiency levels (*i.e.,* reducing the spray hole area, changing spray hole shape, or changing the nozzle geometry from a venturi meter to an orifice plate) do not increase the labor content (measured in dollars) of commercial prerinse spray valves at any EL, nor do they increase total MPC. Except for TSL 4a, the total industry shipments are forecasted to be constant across TSLs. Therefore, DOE predicts no change in domestic manufacturing employment levels, provided manufacturers do not relocate production facilities outside of the United States, at TSLs 1 to 4. At TSL 4a, the total number of production workers for commercial prerinse spray valves in the United States is expected to decrease to 27 due to a reduction in industry shipments.

c. Impacts on Manufacturing Capacity

Approximately 55 percent of CPSV shipments already comply with the amended energy conservation standards adopted in this rulemaking. The majority of manufacturers already offer products that meet the amended energy conservation standards for commercial prerinse spray valves. Therefore, DOE does not foresee any impact on manufacturing capacity during the period leading up to the compliance date.

d. Impacts on Subgroups of Manufacturers

Using average cost assumptions to develop an industry cash-flow estimate may not be adequate for assessing differential impacts among manufacturer subgroups. Small manufacturers, niche product manufacturers, and manufacturers exhibiting a cost structure substantially different from the industry average could be affected disproportionately. DOE examined the potential for disproportionate impacts on small business manufacturers in section VI.B of this document. DOE did not identify any other manufacturer subgroups for this rulemaking.

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. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. 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 products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its energy conservation standards rulemakings.

For the cumulative regulatory burden, DOE considers other DOE regulations that could affect commercial prerinse spray valve manufacturers that will take effect approximately 3 years before or after the compliance date for the amended energy conservation standards. The compliance years and expected industry conversion costs of energy conservation standards that may also impact commercial prerinse spray valve manufacturers are indicated in Table V.15.

TABLE V.15—COMPLIANCE DATES AND EXPECTED CONVERSION EXPENSES OF FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING COMMERCIAL PRERINSE SPRAY VALVE MANUFACTURERS

Regulation	Compliance date	Estimated conversion costs
Commercial Refrigerators, Freezers and Refrigerator-Freezers, 79 FR 17725 (March 28, 2014)	3/27/2017	$43.1 million.

[60] The employment spreadsheet is available in the GRIM at *www.regulations.gov* under docket number EERE–2014–BT–STD–0027.

Industry and State-Level Standards

In addition to DOE's energy conservation regulations for commercial prerinse spray valves and other products also sold by commercial prerinse spray valve manufacturers, several other existing and pending regulations apply to commercial prerinse spray valves, including third-party and international industry standards and certification programs (*e.g.,* ASME A112.18.1/CSA B125.1, ASTM Standard F2324) and state water efficiency regulations (*e.g.,* California, Texas, and Massachusetts).

Additionally, in response to the CPSV NOPR, DOE received several comments related to the substantial cumulative burden associated with compliance with the EPA WaterSense specification. DOE summarized these comments in section IV.J.3 of this document. See chapter 12 of the final rule TSD for the results of DOE's analysis of the cumulative regulatory burden.

3. National Impact Analysis

a. Significance of Energy Savings

To estimate the energy and water savings attributable to amended standards for commercial prerinse spray valves, DOE compared the energy consumption of those products under the no-new-standards case to their anticipated energy consumption under each TSL. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the first year of compliance with the amended standards (2019–2048). Table V.16 presents DOE's projections of the NES for each TSL considered for commercial prerinse spray valves. The savings were calculated using the approach described in section IV.H.1 of this document.

TABLE V.16—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS FOR PRODUCTS SHIPPED IN 2019–2048

TSL	Product class	National energy savings (quads)		National water savings (billion gal)
		Primary	FFC	
1	1 (≤5.0 ozf)	0.008	0.009	10.831
	2 (>5.0 ozf and ≤8.0 ozf)	0.113	0.123	144.916
	3 (>8.0 ozf)	(0.082)	(0.089)	(105.275)
Total TSL 1		0.039	0.043	50.471
2	1 (≤5.0 ozf)	0.008	0.009	10.831
	2 (>5.0 ozf and ≤8.0 ozf)	0.244	0.264	311.926
	3 (>8.0 ozf)	(0.165)	(0.179)	(210.875)
Total TSL 2		0.087	0.095	111.882
3	1 (≤5.0 ozf)	0.000	0.000	0.000
	2 (>5.0 ozf and ≤8.0 ozf)	0.000	0.000	0.000
	3 (>8.0 ozf)	0.093	0.101	119.572
Total TSL 3		0.093	0.101	119.572
3a	1 (≤5.0 ozf)	0.001	0.001	0.650
	2 (>5.0 ozf and ≤8.0 ozf)	0.001	0.001	1.300
	3 (>8.0 ozf)	0.093	0.101	119.572
Total TSL 3a		0.095	0.103	121.521
4	1 (≤5.0 ozf)	0.059	0.064	75.815
	2 (>5.0 ozf and ≤8.0 ozf)	0.196	0.212	250.516
	3 (>8.0 ozf)	(0.092)	(0.100)	(118.272)
Total TSL 4		0.163	0.176	208.059
4a	1 (≤5.0 ozf)	0.059	0.064	75.815
	2 (>5.0 ozf and ≤8.0 ozf)	0.196	0.212	250.516
	3 (>8.0 ozf)	(0.463)	(0.503)	(593.418)
Total TSL 4a		(0.209)	(0.226)	(267.087)

OMB Circular A–4 [61] 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 product 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.[62] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to CPSV equipment. Thus, such results are presented for informational purposes only and are not indicative of any

[61] U.S. Office of Management and Budget, ''Circular A–4: Regulatory Analysis'' (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4/*).

[62] Section 325(m) of 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. 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.

change in DOE's analytical methodology. Table V.17 reports cumulative national energy and water savings associated with this shorter analysis period of 2019–2027. The impacts are counted over the lifetime of products purchased during this period.

TABLE V.17—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS FOR PRODUCTS SHIPPED IN 2019–2027

TSL	Product class	National energy savings (quads)		National water savings (billion gal)
		Primary	FFC	
1	1 (≤5.0 ozf)	0.002	0.003	2.917
	2 (≤5.0 ozf and ≤8.0 ozf)	0.031	0.034	39.030
	3 (≤8.0 ozf)	(0.023)	(0.025)	(28.353)
Total TSL 1		0.011	0.012	13.593
2	1 (≤5.0 ozf)	0.002	0.003	2.917
	2 (≤5.0 ozf and ≤8.0 ozf)	0.068	0.073	84.010
	3 (≤8.0 ozf)	(0.046)	(0.050)	(56.794)
Total TSL 2		0.024	0.026	30.133
3	1 (≤5.0 ozf)	0.000	0.000	0.000
	2 (≤5.0 ozf and ≤8.0 ozf)	0.000	0.000	0.000
	3 (≤8.0 ozf)	0.026	0.028	32.204
Total TSL 3		0.026	0.028	32.204
3a	1 (≤5.0 ozf)	0.000	0.000	0.175
	2 (≤5.0 ozf and ≤8.0 ozf)	0.000	0.000	0.350
	3 (≤8.0 ozf)	0.026	0.028	32.204
Total TSL 3a		0.026	0.029	32.729
4	1 (≤5.0 ozf)	0.016	0.018	20.419
	2 (≤5.0 ozf and ≤8.0 ozf)	0.054	0.059	67.471
	3 (≤8.0 ozf)	(0.026)	(0.028)	(31.854)
Total TSL 4		0.045	0.049	56.036
4a	1 (≤5.0 ozf)	0.016	0.018	20.419
	2 (≤5.0 ozf and ≤8.0 ozf)	0.054	0.059	67.471
	3 (≤8.0 ozf)	(0.129)	(0.140)	(159.824)
Total TSL 4a		(0.058)	(0.063)	(71.934)

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV to the nation of the total costs and savings for consumers that would result from particular standard levels for commercial prerinse spray valves. In accordance with OMB's guidelines on regulatory analysis,[63] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate.

Table V.18 shows the consumer NPV results for each TSL DOE considered for commercial prerinse spray valves. The impacts are counted over the lifetime of products purchased in 2019–2048.

TABLE V.18—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR PRODUCT SHIPPED IN 2019–2048

TSL	Product class	Net present value (billion $2014)	
		7-Percent discount rate	3-Percent discount rate
1	1 (≤5.0 ozf)	0.067	0.137
	2 (>5.0 ozf and ≤8.0 ozf)	0.892	1.828
	3 (>8.0 ozf)	(0.656)	(1.342)
Total TSL 1		0.303	0.623
2	1 (≤5.0 ozf)	0.067	0.137
	2 (>5.0 ozf and ≤8.0 ozf)	1.924	3.943
	3 (>8.0 ozf)	(1.319)	(2.699)
Total TSL 2		0.672	1.381

[63] U.S. Office of Management and Budget, ''Circular A–4: Regulatory Analysis, section E,'' (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4/*).

TABLE V.18—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR PRODUCT SHIPPED IN 2019–2048—Continued

TSL	Product class	Net present value (billion $2014)	
		7-Percent discount rate	3-Percent discount rate
3	1 (≤5.0 ozf)	0.000	0.000
	2 (>5.0 ozf and ≤8.0 ozf)	0.000	0.000
	3 (>8.0 ozf)	0.718	1.476
Total TSL 3		0.718	1.476
3a	1 (≤5.0 ozf)	0.004	0.008
	2 (>5.0 ozf and ≤8.0 ozf)	0.008	0.016
	3 (>8.0 ozf)	0.718	1.476
Total TSL 3a		0.730	1.500
4	1 (≤5.0 ozf)	0.473	0.968
	2 (>5.0 ozf and ≤8.0 ozf)	1.539	3.156
	3 (>8.0 ozf)	(0.763)	(1.557)
Total TSL 4		1.249	2.568
4a *	1 (≤5.0 ozf)	0.473	0.968
	2 (>5.0 ozf and ≤8.0 ozf)	1.539	3.156
	3 (>8.0 ozf)	(3.616)	(7.421)
Total TSL 4a		(1.603)	(3.296)

* In TSL 4a, DOE assumed that the installed costs for faucets and commercial prerinse spray valves are equal.

DOE also determined financial impacts for a sensitivity case utilizing a 9-year analysis period. Table V.19 reports NPV results associated with this shorter analysis period. The impacts are counted over the lifetime of products purchased in 2019–2027. 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.19—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NET PRESENT VALUE OF CUSTOMER BENEFITS FOR EQUIPMENT SHIPPED IN 2019–2027

TSL	Product class	Net present value (billion $2014)	
		7-Percent discount rate	3-Percent discount rate
1	1 (≤5.0 ozf)	0.030	0.044
	2 (>5.0 ozf and ≤8.0 ozf)	0.397	0.580
	3 (>8.0 ozf)	(0.293)	(0.427)
Total TSL 1		0.135	0.197
2	1 (≤5.0 ozf)	0.030	0.044
	2 (>5.0 ozf and ≤8.0 ozf)	0.858	1.252
	3 (>8.0 ozf)	(0.589)	(0.859)
Total TSL 2		0.299	0.437
3	1 (≤5.0 ozf)	0.000	0.000
	2 (>5.0 ozf and ≤8.0 ozf)	0.000	0.000
	3 (>8.0 ozf)	0.319	0.467
Total TSL 3		0.319	0.467
3a	1 (≤5.0 ozf)	0.002	0.003
	2 (>5.0 ozf and ≤8.0 ozf)	0.003	0.005
	3 (>8.0 ozf)	0.319	0.467
Total TSL 3a		0.324	0.474
4	1 (≤5.0 ozf)	0.211	0.308
	2 (>5.0 ozf and ≤8.0 ozf)	0.686	1.002
	3 (>8.0 ozf)	(0.342)	(0.497)
Total TSL 4		0.555	0.812
4a *	1 (≤5.0 ozf)	0.211	0.308
	2 (>5.0 ozf and ≤8.0 ozf)	0.686	1.002

TABLE V.19—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NET PRESENT VALUE OF CUSTOMER BENEFITS FOR EQUIPMENT SHIPPED IN 2019–2027—Continued

TSL	Product class	Net present value (billion $2014)	
		7-Percent discount rate	3-Percent discount rate
	3 (>8.0 ozf)	(1.610)	(2.352)
Total TSL 4a		(.713)	(1.043)

*In TSL 4a, DOE assumed that the installed costs for faucets and commercial prerinse spray valves are equal.

c. Indirect Impacts on Employment

DOE expects amended energy conservation standards for commercial prerinse spray valves to reduce energy bills for consumers of those products, with the resulting net savings being redirected to other forms of economic activity. These expected 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 expenditures (the income effect). As described in section IV.N of this document, 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. 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 timeframes (2020–2025), where these uncertainties are reduced.

The results suggest that the amended standards are likely to have a negligible impact on the net demand for labor in the economy. All TSLs increase net demand for labor by fewer than 500 jobs. The net change in jobs is so small that it would be imperceptible in national labor statistics, and it might be offset by other, unanticipated effects on employment. Chapter 16 of the final rule TSD presents detailed results regarding indirect employment impacts. As shown in Table V.20, DOE estimates that net indirect employment impacts from a CPSV amended standard are small relative to the national economy.

TABLE V.20—NET SHORT-TERM CHANGE IN EMPLOYMENT (JOBS)

Trial Standard Level	2020	2025
1	36	103
2	80	229
3	86	244
4	149	425

4. Impact on Utility or Performance of Products

Based on testing conducted in support of this rulemaking, discussed in section IV.C.4.b of this document, DOE has concluded that the amended standards in this final rule would not reduce the utility or performance of the commercial prerinse spray valves under consideration in this rulemaking. Manufacturers of these products currently offer units that meet or exceed the amended standards.

5. Impact of Any Lessening of Competition

As discussed in section III.F.1.e, the Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard and transmits such determination in writing to the Secretary within 60 days of the publication of a proposed rule, along with an analysis of the nature and extent of the impact. To assist the Attorney General in making such determination, DOE provided the DOJ with copies of the CPSV NOPR and TSD for review. In its assessment letter responding to DOE, DOJ concluded that the amended energy conservation standards for commercial prerinse spray valves are unlikely to have a significant adverse impact on competition. DOE is publishing the Attorney General's assessment at the end of this document.

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 from amended standards for commercial prerinse spray valves is expected to yield environmental benefits in the form of reduced emissions of air pollutants and GHGs. Table V.21 provides DOE's estimate of cumulative emissions reductions expected to result from the TSLs considered in this rulemaking. The table includes both power sector emissions and upstream emissions. The emissions were calculated using the multipliers discussed in section IV.K. DOE reports annual emissions reductions for each TSL in chapter 13 of the final rule TSD.

TABLE V.21—CUMULATIVE EMISSIONS REDUCTION ESTIMATED FOR COMMERCIAL PRERINSE SPRAY VALVES TRIAL STANDARD LEVELS FOR PRODUCTS SHIPPED IN 2019–2048

	TSL			
	1	2	3	4
Power Sector and Site Emissions				
CO_2 (million metric tons)	2.26	5.00	5.35	9.31
NO_X (thousand tons)	2.82	6.24	6.67	11.61
Hg (tons)	0.00	0.01	0.01	0.01
N_2O (thousand tons)	0.02	0.04	0.04	0.07
CH_4 (thousand tons)	0.13	0.28	0.30	0.52
SO_2 (thousand tons)	0.74	1.64	1.75	3.05
Upstream Emissions				
CO_2 (million metric tons)	0.22	0.48	0.52	0.90
NO_X (thousand tons)	3.39	7.51	8.03	13.97
Hg (tons)	0.00	0.00	0.00	0.00
N_2O (thousand tons)	0.00	0.00	0.00	0.00
CH_4 (thousand tons)	19.87	44.04	47.07	81.90
SO_2 (thousand tons)	0.01	0.03	0.03	0.05
Total Emissions				
CO_2 (million metric tons)	2.48	5.49	5.87	10.21
NO_X (thousand tons)	6.20	13.75	14.70	25.57
Hg (tons)	0.00	0.01	0.01	0.01
N_2O (thousand tons)	0.02	0.04	0.04	0.07
N_2O (thousand tons CO_2eq)	4.75	10.53	11.25	19.57
CH_4 (thousand tons)	19.99	44.32	47.37	82.42
CH_4 (thousand tons CO_2eq) *	559.83	1,241.00	1,326.29	2,307.80
SO_2 (thousand tons)	0.75	1.67	1.79	3.11

* CO_2eq is the quantity of CO_2 that would have the same GWP.

As part of the analysis for this rule, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 and NO_X that DOE estimated for each of the considered TSLs for commercial prerinse spray valves. As discussed in section IV.L of this document, for CO_2, DOE used the most recent values for the SCC developed by an interagency process. The four sets of SCC values for CO_2 emissions reductions in 2015 resulting from that process (expressed in 2014$) are represented by $12.2/metric ton (the average value from a distribution that uses a 5-percent discount rate), $40.0/metric ton (the average value from a distribution that uses a 3-percent discount rate), $62.3/metric ton (the average value from a distribution that uses a 2.5-percent discount rate), and $117/metric ton (the 95th-percentile value from a distribution that uses a 3-percent discount rate). The values for later years are higher due to increasing damages (public health, economic, and environmental) as the projected magnitude of climate change increases.

Table V.22 presents the global value of CO_2 emissions reductions at each TSL. For each of the four cases, DOE calculated a present value of the stream of annual values using the same discount rate as was used in the studies upon which the dollar-per-ton values are based. DOE calculated domestic values as a range from 7 percent to 23 percent of the global values; these results are presented in chapter 14 of the final rule TSD.

TABLE V.22—ESTIMATES OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR COMMERCIAL PRERINSE SPRAY VALVES TSLS SHIPPED IN 2019–2048

TSL	SCC case * (million 2014$)			
	5% discount rate, average *	3% discount rate, average *	2.5% discount rate, average *	3% discount rate, 95th percentile *
Primary Energy Emissions				
1	17	75	119	229
2	38	167	263	507
3	40	178	281	541
4	70	310	489	942
Upstream Emissions				
1	2	7	11	22
2	4	16	25	49

TABLE V.22—ESTIMATES OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR COMMERCIAL PRERINSE SPRAY VALVES TSLS SHIPPED IN 2019–2048—Continued

TSL	SCC case * (million 2014$)			
	5% discount rate, average *	3% discount rate, average *	2.5% discount rate, average *	3% discount rate, 95th percentile *
3	4	17	27	52
4	7	30	47	91
Total Emissions				
1	19	82	130	251
2	41	183	288	555
3	44	195	308	594
4	77	340	536	1,033

* For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.2, $40.0, $62.3, and $117 per metric ton (2014$). The values are for CO_2 only (*i.e.,* not CO_{2eq} of other greenhouse gases).

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 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 on reduced CO_2 emissions in this rulemaking 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_2 and other GHG emissions. This ongoing review will consider 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 has included in this final rule the most recent values and analyses resulting from the interagency review process.

DOE also estimated the cumulative monetary value of the economic benefits associated with NO_X emissions reductions anticipated to result from the considered TSLs for commercial prerinse spray valves. The dollar-per-ton value that DOE used is discussed in section IV.L of this document. Table V.23 presents the cumulative present values for NO_X emissions for each TSL calculated using 7-percent and 3-percent discount rates.

TABLE V.23—ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION UNDER COMMERCIAL PRERINSE SPRAY VALVES TRIAL STANDARD LEVELS

TSL	Million 2014$	
	3% discount rate	7% discount rate
Power Sector Emissions		
1	10	5
2	22	10
3	24	11
4	42	19
Upstream Emissions		
1	12	5
2	27	12
3	29	13
4	50	22
Total Emissions		
1	22	10
2	49	22
3	52	24
4	91	42

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 consumer savings calculated

for each TSL considered in this rulemaking. Table V.24 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced CO_2 and NO_X emissions in each of four valuation scenarios to the NPV of consumer savings calculated for each TSL considered in this rulemaking, at both a 7-percent and 3-percent discount rate. The CO_2 values used in the columns of each table correspond to the four sets of SCC values discussed in section V.B.6.

TABLE V.24—NET PRESENT VALUE OF CONSUMER SAVINGS COMBINED WITH PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

TSL	Billion 2014$			
	SCC Value of $12.2/metric ton CO_2* and Medium Value for NO_X**	SCC Value of $40.0/metric ton CO_2* and Medium Value for NO_X**	SCC Value of $62.3/metric ton CO_2* and Medium Value for NO_X**	SCC Value of $117/metric ton CO_2* and Medium Value for NO_X**
Consumer NPV at 3% Discount Rate added with:				
1	0.664	0.728	0.775	0.896
2	1.471	1.613	1.718	1.985
3	1.572	1.724	1.836	2.122
4	2.736	2.999	3.195	3.692
Consumer NPV at 7% Discount Rate added with:				
1	0.332	0.396	0.443	0.564
2	0.735	0.877	0.982	1.249
3	0.786	0.937	1.050	1.335
4	1.367	1.630	1.826	2.323

* For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.2, $40.0, $62.3, and $117 per metric ton (2014$).
** The medium value for NO_X is $2,723 per short ton (2014$)

In considering the results discussed previously, 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_2 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 products shipped in 2019 through 2048. Because CO_2 emissions have a very long residence time in the atmosphere,[64] the SCC values in future years reflect future climate-related impacts that continue beyond 2100.

C. Conclusion

Any new or amended energy conservation standards that DOE adopts for any type (or class) of covered product 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))

For this final rule, DOE considered the impacts of amended standards for commercial prerinse spray valves at each TSL, beginning with the max-tech 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.

Tables in the following section present a summary of the results of DOE's quantitative analysis for each TSL. 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 consumers who may be disproportionately affected by a national standard and impacts on employment.

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. There is evidence that consumers 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; (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 (for example, between renters and owners, or builders and purchasers). Having less than perfect foresight and a high degree of uncertainty about the future, consumers may trade off these types of investments at a higher than expected rate between current consumption and uncertain future energy cost savings.

In DOE's current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways. First, if consumers forego the purchase of a product in the standards case, this decreases sales for product manufacturers, and the impact on manufacturers attributed to lost revenue is included in the MIA. Second, DOE

[64] The atmospheric lifetime of CO_2 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).

accounts for energy savings attributable only to products actually used by consumers in the standards case; if a regulatory option decreases the number of products purchased by consumers, this decreases the potential energy savings from an energy conservation standard. DOE provides estimates of shipments and changes in the volume of product purchases in chapter 9 of the final rule TSD. However, DOE's current analysis does not explicitly control for heterogeneity in consumer preferences, preferences across subcategories of products or specific features, or consumer price sensitivity variation according to household income.[65]

While DOE is not prepared at present to provide a fuller quantifiable framework for estimating the benefits and costs of changes in consumer purchase decisions due to an energy conservation standard, DOE is committed to developing a framework that can support empirical quantitative tools for improved assessment of the consumer welfare impacts of appliance standards. DOE has posted a paper that discusses the issue of consumer welfare impacts of appliance energy conservation standards, and potential enhancements to the methodology by which these impacts are defined and estimated in the regulatory process.[66]

1. Benefits and Burdens of TSLs Considered for Commercial Prerinse Spray Valve Standards

Table V.25 and Table V.26 summarize the quantitative impacts estimated for each TSL for commercial prerinse spray valves. The national impacts are measured over the lifetime of commercial prerinse spray valves purchased in the 30-year period that begins in the first year of compliance with amended standards (2019–2048). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results. The efficiency levels contained in each TSL are described in section V.A of this document. Note that the tables in this section report the results only for the standard TSLs that utilize the default shipments scenario. Results for the two sensitivity-case TSLs are reported in sections V.B.2 and V.B.3.

TABLE V.25—SUMMARY OF ANALYTICAL RESULTS FOR COMMERCIAL PRERINSE SPRAY VALVE TRIAL STANDARD LEVELS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4
Cumulative FFC Energy Savings (quads)				
	0.04	0.10	0.10	0.18.
Cumulative Water Savings (billion gal)				
	50.47	111.88	119.57	208.06.
NPV of Consumer Benefits (2014$ billion)				
3% discount rate	0.62	1.38	1.48	2.57.
7% discount rate	0.30	0.67	0.72	1.25.
Cumulative FFC Emissions Reduction				
CO_2 million metric tons	2.48	5.49	5.87	10.21.
NO_X thousand tons	6.20	13.75	14.70	25.57.
Hg tons	0.00	0.01	0.01	0.01.
N_2O thousand tons	0.02	0.04	0.04	0.07.
N_2O thousand tons CO_2eq*	4.75	10.53	11.25	19.57.
CH_4 thousand tons	19.99	44.32	47.37	82.42.
CH_4 thousand tons CO_2eq*	559.83	1,241.00	1,326.29	2,307.80.
SO_2 thousand tons	0.75	1.67	1.79	3.11.
Value of Emissions Reduction				
CO_2 2014$ million**	19 to 251	41 to 555	44 to 594	77 to 1033.
NO_X—3% discount rate 2014$ million	22 to 50	49 to 110	52 to 117	91 to 204.
NO_X—7% discount rate 2014$ million	10 to 22	22 to 50	24 to 53	42 to 92.

* CO_2eq is the quantity of CO_2 that would have the same GWP.
** Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.

TABLE V.26—SUMMARY OF ANALYTICAL RESULTS FOR COMMERCIAL PRERINSE SPRAY VALVE TRIAL STANDARD LEVELS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1*	TSL 2*	TSL 3*	TSL 4*
Manufacturer Impacts				
Industry NPV Relative to a No-New-Standards Case Value of 8.6 (2014$ million, 6.9% discount rate).	7.1–7.7	6.7–7.5	7.4–8.0	6.2–7.1.
Industry NPV (% change)	(17.5)–(9.9)	(21.4)–(12.8)	(13.1)–(6.5)	(28.0)–(17.4).

[65] P.C. Reiss and M.W. White, Household Electricity Demand, Revisited, *Review of Economic Studies* 72, 853–883 (2005).

[66] Alan Sanstad, Notes on the Economics of Household Energy Consumption and Technology Choice. Lawrence Berkeley National Laboratory (2010) (Available online at: *https://www1.eere.energy.gov/buildings/appliance_standards/pdfs/consumer_ee_theory.pdf*).

TABLE V.26—SUMMARY OF ANALYTICAL RESULTS FOR COMMERCIAL PRERINSE SPRAY VALVE TRIAL STANDARD LEVELS: MANUFACTURER AND CONSUMER IMPACTS—Continued

Category	TSL 1 *	TSL 2 *	TSL 3 *	TSL 4 *
Direct Employment Impacts				
Potential Increase in Domestic Production Workers in 2019	0	0	0	0.
Consumer Average LCC Savings (2014$)				
Product Class 1 (≤5.0 ozf)	334	557	N/A	352.
Product Class 2 (>5.0 and ≤8.0 ozf)	401	446	N/A	825.
Product Class 3 (>8.0 ozf)	357	547	547	766.
Consumer Simple PBP (years)				
Product Class 1 (≤5.0 ozf)	0.0	0.0	0.0	0.0.
Product Class 2 (>5.0 and ≤8.0 ozf)	0.0	0.0	0.0	0.0.
Product Class 3 (>8.0 ozf)	0.0	0.0	0.0	0.0.
Distribution of Consumer LCC Impacts—Net Cost (%)				
Product Class 1 (≤5.0 ozf)	0	0	0	0.
Product Class 2 (>5.0 and ≤8.0 ozf)	0	0	0	0.
Product Class 3 (>8.0 ozf)	0	0	0	0.

* Parentheses indicate negative (−) values. The entry "N/A" means not applicable because there is no change in the standard at certain TSLs.

DOE first considered TSL 4, which represents the max-tech efficiency levels. TSL 4 would save 0.18 quads of energy and 208.06 billion gallons of water. Under TSL 4, the NPV of consumer benefit would be $1.25 billion using a discount rate of 7 percent, and $2.57 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 10.21 Mt of CO_2, 25.57 thousand tons of NO_X, 3.11 thousand tons of SO_2, 0.01 tons of Hg, 0.07 thousand tons of N_2O, and 82.42 thousand tons of CH_4. The estimated monetary value of the CO_2 emissions reductions at TSL 4 ranges from $77 million to $1,033 million.

At TSL 4, the average LCC impact is a savings of $357 for CPSV models in product class 1, $825 for CPSV models in product class 2, and $766 for CPSV models in product class 3. The simple PBP is 0.0 years for all CPSV models because there are no incremental equipment costs for more efficient products. The fraction of consumers experiencing an LCC net cost is 0 percent for all CPSV models.

At TSL 4, the projected change in INPV ranges from a decrease of $2.4 million to a decrease of $1.5 million. If the lower bound of the range of impacts is reached, TSL 4 could result in a net loss of up to 28.0 percent in INPV for manufacturers.

Although TSL 4 for commercial prerinse spray valves provides positive LCC savings and a positive total NPV of consumer benefits, the estimated industry losses are large. Moreover, the studied sensitivity case of TSL 4a indicated that the outcomes of setting a standard at TSL 4 could be far less favorable, including sufficient loss of utility to drive consumers from the CPSV market to another product.

TSL 4a would *increase* energy use by 0.23 quads of energy, and *increase* water use by 267.08 billion gallons of water. Under TSL 4a, the NPV of consumer benefit would be −$1.60 billion using a discount rate of 7 percent, and −$3.30 billion using a discount rate of 3 percent.

At TSL 4a, the projected change in INPV ranges from a decrease of $3.8 million to a decrease of $3.1 million. If the lower bound of the range of impacts is reached, TSL 4 could result in a net loss of up to 44.4 percent in INPV for manufacturers.

Therefore, the Secretary concludes that at TSL 4 the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the reduction in manufacturer industry value. Consequently, the Secretary has concluded that TSL 4 is not economically justified.

DOE then considered TSL 3, which saves an estimated total of 0.10 quads of energy and 119.57 billion gallons of water. TSL 3 has an estimated NPV of consumer benefit of $0.72 billion using a 7-percent discount rate, and $1.48 billion using a 3-percent discount rate.

TSL 3 represents the minimum flow rate for each product class that would not induce consumers to switch product classes as a result of a standard at those flow rates, and retains shower-type designs. Therefore, unlike TSL 4, TSL 3 maintains consumer utility and the availability of all types of products currently in the marketplace.

The cumulative emissions reductions at TSL 3 are 5.87 Mt of CO_2, 14.70 thousand tons of NO_X, 1.79 thousand tons of SO_2, 0.01 tons of Hg, and 47.37 thousand tons of CH_4. The estimated monetary value of the CO_2 emissions reductions at TSL 3 ranges from $44 million to $594 million.

At TSL 3, the average LCC impact is a savings of $0 for CPSV models in product classes 1 and 2 because the market minimums are the standard for those classes. Because no consumers in the no-new-standards case purchase products with a higher flow rate than the respective market minimums, no consumers are affected by a standard set at EL 1 (market minimum) in product classes 1 and 2. Consumers of CPSV models in product class 3 save an average of $547 over a product's lifetime. The simple payback period is 0.0 years for all CPSV models. The fraction of consumers experiencing an LCC net cost is 0 percent for all CPSV models.

At TSL 3, the projected change in INPV ranges from a decrease of $1.1 million to a decrease of $0.6 million. If the lower bound of the range of impacts is reached, TSL 3 could result in a net loss of up to 13.1 percent in INPV for manufacturers. Moreover, the studied sensitivity case of TSL 3a indicated that

the outcomes of setting a standard at TSL 3 could provide an opportunity for incremental savings for product classes 1 and 2, if some products exist at the current minimum standard level. These additional savings enable TSL 3a to save an estimated total of 0.10 quads of energy and 121.52 billion gallons of water. TSL 3a has an estimated NPV of consumer benefit of $0.73 billion using a 7-percent discount rate, and $1.50 billion using a 3-percent discount rate.

DOE concludes that at TSL 3 for commercial prerinse spray valves, the benefits of energy savings, water savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would outweigh the negative impacts on manufacturers, including the conversion costs that could result in a reduction in INPV for manufacturers.

After considering the analysis and the benefits and burdens of TSL 3, DOE concludes that this TSL will offer the maximum improvement in efficiency that is technologically feasible and economically justified, and will result in the significant conservation of energy and water. Therefore, DOE adopts TSL 3 for commercial prerinse spray valves. The amended energy conservation standards for commercial prerinse spray valves, which are described in terms of flow rate, are shown in Table V.27.

TABLE V.27—AMENDED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL PRERINSE SPRAY VALVES

Product class	Flow rate (gpm)
Product Class1 (≤5.0 ozf)	1.00
Product Class2 (>5.0 ozf and ≤8.0 ozf)	1.20
Product Class 3 (>8.0 ozf)	1.28

2. Summary of Annualized Benefits and Costs of the Amended Standards

The benefits and costs of the amended 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 products that meet the amended standards (consisting primarily of operating cost savings from using less energy and water, minus increases in product purchase costs) and (2) the annualized monetary value of the benefits of CO_2 and NO_X emission reductions.[67]

Table V.28 shows the annualized values for commercial prerinse spray valves under TSL 3, expressed in 2014$. Using a 7-percent discount rate for benefits and costs other than CO_2 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), there are no increased product costs associated with the standards described in this rule, while the benefits are $69.90 million per year in reduced product operating costs, $10.94 million per year in CO_2 reductions, and $1.00 million per year in reduced NO_X emissions. In this case, the net benefit amounts to $81.85 million per year.

Using a 3-percent discount rate for all benefits and costs as well as the average SCC series that has a value of $40.0 per metric ton in 2015, there are no increased product costs associated with the standards described in this rule, while the benefits are $81.32 million per year in reduced operating costs, $10.94 million in CO_2 reductions, and $1.11 million in reduced NO_X emissions. In this case, the net benefit amounts to $93.37 million per year.

TABLE V.28—ANNUALIZED BENEFITS AND COSTS OF AMENDED STANDARDS (TSL 3) FOR COMMERCIAL PRERINSE SPRAY VALVES SOLD IN 2019–2048

	Discount rate	Million 2014$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Benefits				
Consumer Operating Cost Savings	7%	71	66	74.
	3%	82	76	86.
CO_2 Reduction at $12.0/t **	5%	3	3	3.
CO_2 Reduction at $40.5/t **	3%	11	11	11.
CO_2 Reduction at $62.4/t **	2.5%	16	16	16.
CO_2 Reduction at $119/t **	3%	33	33	33.
NO_X Reduction Monetized Value †	7%	2	2	5.
	3%	3	3	7.
Total Benefits ††	7% plus CO_2 range	77 to 106	71 to 101	82 to 112.
	7%	84	79	90.
	3% plus CO_2 range	89 to 118	82 to 112	96 to 126.
	3%	96	89	104.
Costs				
Manufacturer Conversion Costs †††	7%	0.08 to 0.13	0.08 to 0.13	0.08 to 0.13.
	3%	0.05 to 0.08	0.05 to 0.08	0.05 to 0.08.
Total Net Benefits				
Total †††	7% plus CO_2 range	77 to 106	71 to 101	82 to 112.
	7%	84	79	90.
	3% plus CO_2 range	89 to 118	82 to 112	96 to 126.

[67] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2014, 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 value of CO_2 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.

TABLE V.28—ANNUALIZED BENEFITS AND COSTS OF AMENDED STANDARDS (TSL 3) FOR COMMERCIAL PRERINSE SPRAY VALVES SOLD IN 2019–2048—Continued

	Discount rate	Million 2014$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
	3%	96	89	104.

* This table presents the annualized costs and benefits associated with commercial prerinse spray valves shipped in 2019–2048. These results include benefits to consumers which accrue after 2048 from the products purchased in 2019–2048. The results account for the incremental variable and fixed costs incurred by manufacturers due to the amended 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 estimate, and high estimate, respectively.

** The CO_2 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 $/ton values used for NO_X are described in section IV.L. 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_2 range'' and ''3% plus CO_2 range,'' the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

††† The lower value of the range represents costs associated with the Sourced Components conversion cost scenario. The upper value represents costs for the Fabricated Components scenario.

†††† Total benefits for both the 3 percent and 7 percent cases are derived using the series corresponding to the average SCC with 3 percent discount rate. In the rows labeled ''7% plus CO_2 range'' and ''3% plus CO_2 range,'' the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values. Manufacturer Conversion Costs are not included in the net benefits calculations.

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 amended standards for commercial prerinse spray valves are intended to address are as follows:

(1) Insufficient information and the high costs of gathering and analyzing relevant information leads some consumers to miss opportunities to make cost-effective investments in energy efficiency.

(2) In some cases the benefits of more efficient products are not realized due to misaligned incentives between purchasers and users. An example of such a case is when the product 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 commercial prerinse spray valves that are not captured by the users of such products. 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. Accordingly, DOE is not submitting this final rule for review by OIRA.

In addition, the Administrator of OIRA has determined that this regulatory action is not an ''economically'' significant regulatory action under section (3)(f)(1) of Executive Order 12866. Accordingly, pursuant to section 6(a)(3)(C) of the Order, DOE has provided to OIRA an assessment, including the underlying analysis, of benefits and costs anticipated from the regulatory action, together with, to the extent feasible, a quantification of those costs; and an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation why the planned regulatory action is preferable to the identified potential alternatives. These assessments can be found in the technical support document for this rulemaking. DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. 76 FR 3281 (Jan. 21, 2011). Executive Order 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 an final regulatory flexibility analysis (FRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. 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 products that are the subject of this rulemaking.

For manufacturers of commercial prerinse spray valves, the Small Business Administration (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 *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*. Manufacturing of commercial prerinse spray valves is classified under NAICS 332919, ''Other Metal Valve and Pipe Fitting Manufacturing.'' The SBA sets a threshold of 500 employees or less for an entity to be considered as a small business for this category.

1. Statement of the Need for, and Objectives of, the Rule

A statement of the need for, and objectives of, the rule is stated elsewhere in the preamble and not repeated here.

2. Statement of the Significant Issues Raised by Public Comments

DOE received no comments specifically on the initial regulatory flexibility analysis prepared for this rulemaking. Comments on the economic impacts of the rule are discussed elsewhere in the preamble and did not necessitate changes to the analysis required by the Regulatory Flexibility Act.

3. Response to Comments Submitted by the Small Business Administration

The Small Business Administration did not file any comments on the proposed rule.

4. Description on Estimated Number of Small Entities Regulated

To estimate the number of small businesses that could be impacted by the amended energy conservation standards, DOE conducted a market survey using public information to identify potential small manufacturers. DOE reviewed the DOE's CCMS database, EPA's WaterSense program database, individual company Web sites, and various marketing research tools (*e.g.,* Hoover's reports) to create a list of companies that import, assemble, or otherwise manufacture commercial prerinse spray valves covered by this rulemaking. DOE screened out companies that do not offer products covered by this rulemaking, do not meet the definition of a ''small business,'' or are foreign-owned and operated.

DOE identified 13 commercial spray valve manufacturers selling commercial prerinse spray valves in the United States, 9 of which are small businesses.

5. Description and Estimate of Compliance Requirements

The nine small domestic commercial prerinse spray valve manufacturers account for approximately 83 percent of commercial spray valve basic models currently on the market. The remaining 17 percent of commercial spray valve spray basic models currently on the market are offered by four large manufacturers.

Using basic model counts, DOE estimated the distribution of industry conversion costs between small manufacturers and large manufacturers. Using its count of manufacturers, DOE calculated capital conversion costs (under both capital conversion costs scenarios, Table VI.1) and product conversion costs (Table VI.2) for an average small manufacturer versus an average large manufacturer. To provide context, DOE presents the conversion costs relative to annual revenue and annual operating profit under the standard level for the two capital conversion cost scenarios considered in the MIA, as shown in Table VI.3 and Table VI.4. 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. Due to the lack of direct market share data for individual manufacturers, DOE used basic model counts as a percent of total basic models currently available on the market as a proxy for market share.

TABLE VI.1—COMPARISON OF TYPICAL SMALL AND LARGE MANUFACTURER'S CAPITAL CONVERSION COSTS *

Trial standard level	Sourced components capital conversion costs scenario		Fabricated components capital conversion costs scenario	
	Capital conversion costs for typical small manufacturer	Capital conversion costs for typical large manufacturer	Capital conversion costs for typical small manufacturer	Capital conversion costs for typical large manufacturer
	2014$ millions	2014$ millions	2014$ millions	2014$ millions
TSL 1	0.05	0.02	0.07	0.03
TSL 2	0.06	0.03	0.09	0.03
TSL 3	0.03	0.02	0.05	0.02

TABLE VI.1—COMPARISON OF TYPICAL SMALL AND LARGE MANUFACTURER'S CAPITAL CONVERSION COSTS *—Continued

Trial standard level	Sourced components capital conversion costs scenario		Fabricated components capital conversion costs scenario	
	Capital conversion costs for typical small manufacturer	Capital conversion costs for typical large manufacturer	Capital conversion costs for typical small manufacturer	Capital conversion costs for typical large manufacturer
	2014$ millions	2014$ millions	2014$ millions	2014$ millions
TSL 4	0.08	0.03	0.12	0.04
TSL 4a	0.06	0.02	0.09	0.03

* Capital conversion costs are the capital investments made during the 3-year period between the publication of the final rule and the first year of compliance with the amended 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	0.14	0.07
TSL 2	0.17	0.08
TSL 3	0.07	0.05
TSL 4	0.22	0.10
TSL 4a	0.18	0.07

* 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 first year of compliance with the amended standard.

TABLE VI.3—COMPARISON OF CONVERSION COSTS FOR AN AVERAGE SMALL AND AN AVERAGE LARGE MANUFACTURER AT TSL 3—SOURCED COMPONENTS CAPITAL CONVERSION COSTS SCENARIO

	Capital conversion cost (2014$ millions)	Product conversion cost (2014$ millions)	Conversion costs/conversion period revenue* (%)	Conversion costs/conversion period operating profit * (%)
Small Manufacturer	0.03	0.07	4	39
Large Manufacturer	0.02	0.05	5	47

* The conversion period, the time between the final rule publication year and the first year of compliance for this rulemaking, is 3 years.

TABLE VI.4—COMPARISON OF CONVERSION COSTS FOR AN AVERAGE SMALL AND AN AVERAGE LARGE MANUFACTURER AT TSL 3—FABRICATED COMPONENTS CAPITAL CONVERSION COSTS SCENARIO

	Capital conversion cost (2014$ millions)	Product conversion cost (2014$ millions)	Conversion costs/conversion period revenue * (%)	Conversion costs/conversion period operating profit * (%)
Small Manufacturer	0.05	0.07	7	70
Large Manufacturer	0.02	0.05	6	58

* The conversion period, the time between the final rule publication year and the first year of compliance for this rulemaking, is 3 years.

At the established standard level, depending on the capital conversion cost scenario, DOE estimates total conversion costs for an average small manufacturer to range from $30,000 to $50,000 for the Sourced Components Capital Conversion Costs scenario and the Fabricated Components Capital Conversion Costs scenario, respectively. This suggests that an average small manufacturer would need to reinvest roughly 39 percent to 70 percent of its operating profit per year over the conversion period to comply with standards. Depending on the capital conversion cost scenario, the total conversion costs for an average large manufacturer range from $16,000 to $19,000 for the Sourced Components Capital Conversion Costs scenario and the Fabricated Components Capital Conversion Costs scenario, respectively. This suggests that an average large manufacturer would need to reinvest

roughly 47 percent to 58 percent of its commercial prerinse spray valve-related operating profit per year over the 3-year conversion period.

6. Description of Steps To Minimize Impacts to Small Businesses

The discussion in the previous section analyzes impacts on small businesses that would result from DOE's final rule, represented by TSL 3. In reviewing alternatives to the final rule, DOE examined energy conservation standards set at both higher and lower efficiency levels.

With respect to TSL 4, DOE estimated that while there would be significant consumer benefits from the projected energy savings of 0.18 quads of energy and 208.06 billion gallons of water (ranging from $1.25 billion using a 7-percent discount rate to $2.57 billion using a 3-percent discount rate), along with emissions reductions and positive LCC savings, the standards could result in an INPV reduction of $2.4 million to $1.5 million. DOE determined that this INPV reduction would outweigh the potential benefits. (See also the description of DOE's sensitivity case of TSL4a in section V.C.)

With respect to TSL 1 and TSL 2, EPCA requires DOE to establish standards at the level that would achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Based on its analysis, DOE concluded that TSL 3 achieves the maximum improvement in energy efficiency that is technologically feasible and economically justified. Therefore, DOE did not establish standards at the levels considered at TSL 1 and TSL 2 because DOE determined that higher levels were technologically feasible and economically justified. DOE's analysis also shows that TSL 1 and TSL 2 would not reduce the impacts on small business manufacturers because there are more products that require redesign at TSL 1 and TSL 2 than at TSL 3. Therefore, TSL 3 results in lower impacts on small businesses than TSL 1 and TSL 2.

In summary, DOE concluded that establishing standards at TSL 3 balances the benefits of the energy savings and the NPV benefits to consumers at TSL 3 with the potential burdens placed on manufacturers, including small business manufacturers. Accordingly, DOE is declining to adopt 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.

Additional compliance flexibilities may be available through other means. For example, individual manufacturers may petition for a waiver of the applicable test procedure. 10 CFR 431.401. Further, 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, 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.

C. Review Under the Paperwork Reduction Act

Manufacturers of commercial prerinse spray valves must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for commercial prerinse spray valves, 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 commercial prerinse spray valves. 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 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, appendix B, B5.1(b); § 1021.410(b) and appendix B, B(1)–(5). The 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://cxnepa.energy.gov/*.

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 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 products that are 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). 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 (Pub. L. 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 small governments. 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*.

DOE has concluded that this final rule will not require expenditures of $100 million or more in any one year in the private sector.

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 final rule TSD chapter 17, the ''Regulatory Impact Analysis,'' 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(o) and (dd), this final rule would establish amended energy conservation standards for commercial prerinse spray valves 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 chapter 17 of the final rule TSD, ''Regulatory Impact Analysis.''

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 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 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 amended energy conservation standards for commercial prerinse spray valves, 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: *www1.eere.energy.gov/buildings/appliance_standards/peer_review.html.*

M. 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 not 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

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Reporting and recordkeeping requirements.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, Reporting and recordkeeping requirements.

Issued in Washington, DC, on December 29, 2015.

David J. Friedman,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE amends parts 429 and 431 of chapter II of title 10, 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 429.51(b) is revised to read as follows:

§ 429.51 Commercial pre-rinse spray valves.

* * * * *

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to commercial prerinse spray valves; and

(2) Pursuant to § 429.12(b)(13), a certification report must include the following public product-specific information: The flow rate, in gallons per minute (gpm), rounded to the nearest 0.01 gpm, and the corresponding spray force, in ounce-force (ozf), rounded to the nearest 0.1 ozf.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 3. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 4. Section 431.266 is revised to read as follows:

§ 431.266 Energy conservation standards and their effective dates.

(a) Commercial prerinse spray valves manufactured on or after January 1, 2006 and before January 28, 2019, shall have a flow rate of not more than 1.6 gallons per minute. For the purposes of this standard, a *commercial prerinse spray valve* is a handheld device designed and marketed for use with commercial dishwashing and ware washing equipment that sprays water on dishes, flatware, and other food service items for the purpose of removing food residue before cleaning the items.

(b) Commercial prerinse spray valves manufactured on or after January 28, 2019 shall have a flow rate that does not exceed the following:

Product class (spray force in ounce-force, ozf)	Flow rate (gallons per minute, gpm)
Product Class 1 (≤5.0 ozf) ...	1.00
Product Class 2 (>5.0 ozf and ≤8.0 ozf)	1.20
Product Class 3 (>8.0 ozf) ...	1.28

(1) For the purposes of this standard, the definition of *commercial prerinse spray valve* in § 431.262 applies.

(2) [Reserved]

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
RFK Main Justice Building
950 Pennsylvania Ave. NW
Washington, DC 20530–0001
(202) 514–2401/(202) 616–2645 (Fax)

September 4, 2015

Anne Harkavy, Esq.
Deputy General Counsel for Litigation
1000 Independence Ave. SW.
U.S. Department of Energy Washington, DC 20585

Re: Energy Conservation Standards for Commercial Prerinse Spray Valves Doc. No. EERE–2014–BT–STD–0027

Dear Deputy General Counsel Harkavy:

I am responding to your July 9, 2015, letter seeking the views of the Attorney General about the potential impact on competition of proposed energy standards for commercial prerinse spray valves.

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 required 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 our 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 FR 39,486–39,539, July 9, 2015) and the related Technical Support Documents. We have also listened to, and reviewed materials from, the public meeting held on July 28, 2015. Further, we have talked to various industry representatives to determine their position regarding the proposed standards potential effect on competition. Based on this review, our conclusion is that the proposed energy conservation standards for commercial prerinse spray valves are unlikely to have a significant adverse impact on competition.

Sincerely,

William J. Baer

[FR Doc. 2016–00068 Filed 1–26–16; 8:45 am]

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Part III

National Credit Union Administration

Request for Comment Regarding Overhead Transfer Rate Methodology; Notices

NATIONAL CREDIT UNION ADMINISTRATION

Request for Comment Regarding Overhead Transfer Rate Methodology

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA Operating Budget has two primary funding mechanisms: (1) An Overhead Transfer, which is funded by federal credit unions (FCUs) and federally insured state-chartered credit unions (FISCUs); and (2) annual Operating Fees, which are charged only to FCUs. In a voluntary effort to invite input from stakeholders representing federal and state-chartered credit unions, the NCUA Board (Board) is simultaneously requesting comments on the methodologies for both funding mechanisms in separate notices in the **Federal Register.**

This request for comments focuses on the methodology NCUA uses to determine the Overhead Transfer Rate (OTR). To facilitate comments, the Board is also assembling and describing its existing OTR methodologies and processes, which are also available on NCUA's Web site. The Board applies the OTR to NCUA's Operating Budget to determine the portion of the budget that will be funded from the National Credit Union Share Insurance Fund (NCUSIF). The Board invites comments on all aspects of the OTR methodology and any alternatives commenters may offer. Areas the Board specifically seeks comments on include:

- Whether the OTR should continue to be determined using a formula-driven approach, or instead be set largely at the discretion of the Board;
- The definition NCUA uses for insurance-related activities;
- Adjustments or changes to the current calculation; and
- Alternate methodologies to arrive at an accurate and fair allocation of costs.

To be most instructive to the Board, commenters are encouraged to provide the specific basis for their comments and recommendations, as well as documentation to support their proposed adjustments or alternatives.

DATES: Comments must be received on or before April 26, 2016 to be assured of consideration.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *NCUA Web Site: https://www.ncua.gov/about/pages/board-comments.aspx.* Follow the instructions for submitting comments.
- *Email:* Address to *boardcomments@ncua.gov.* Include ''[Your name]—Comments on OTR Methodology'' in the email subject line.
- *Fax:* (703) 518–6319. Include your name and the following subject line: ''Comments on OTR Methodology.''
- *Mail:* Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- Hand Delivery/Courier: Same as mail address.

Public Inspection: You can view all public comments on NCUA's Web site at *https://www.ncua.gov/about/pages/board-comments.aspx* as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments at NCUA's headquarters at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6360 or send an e-mail to *EIMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Russell Moore, Loss/Risk Analysis Officer, Office of Examination and Insurance, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6383.

Authority: 12 U.S.C. 1783(a); 1766(j)(3).

SUPPLEMENTARY INFORMATION: NCUA charters, regulates and insures deposits in federal credit unions (FCUs) and insures deposits in state-chartered credit unions that have their shares insured through the NCUSIF. To cover expenses related to its statutory mission, the Board adopts an Operating Budget in the fall of each year. The Federal Credit Union Act (FCU Act) authorizes two primary sources to fund the Operating Budget: (1) Requisitions from the NCUSIF ''for such administrative and other expenses incurred in carrying out the purposes of [Title II of the FCU Act] as [the Board] may determine to be proper''; [1] and (2) ''fees and assessments (including income earned on insurance deposits) levied on insured credit unions under [the FCU Act].'' [2] Among the fees levied under the FCU Act are annual Operating Fees, which are required for FCUs under 12 U.S.C. 1755 ''and may be expended by the Board to defray the expenses incurred in carrying out the provisions of [the FCU Act,] including the examination and supervision of [FCUs].'' Taken together, these dual funding authorities effectively require the Board to determine which expenses are appropriately paid from each source, though these two provisions give the Board broad discretion in this.

To determine an appropriate division of expenses between these two funding sources, the Board uses the OTR methodology described in this publication. This version of the OTR methodology was first adopted by the Board in 2003 and refined in 2013. The OTR represents the allocation formula the Board uses to determine which expenses are properly characterized as insurance related and charged to the NCUSIF under Title II, rather than collected through annual Operating Fees.[3] Only two statutory provisions limit the Board's discretion with respect to NCUSIF requisitions for NCUA's Operating Budget and, hence, the OTR. First, expenses funded from the NCUSIF must carry out the purposes of Title II of the FCU Act, which relate to share insurance.[4] Second, NCUA must fund at least some part of its Operating Budget through fees charged pursuant to 12 U.S.C. 1766(j)(3).[5] NCUA has not imposed any additional policy or regulatory limitations on its discretion for determining the OTR.

Third, while not a legal requirement, the current Board policy is to use a cost-accounting methodology that by design is both neutral and equitable with respect to credit union charter types.

The methodology satisfies the two legal requirements identified above. First, the funds transferred from the NCUSIF must relate to NCUA's insurance functions. The Board notes the breadth of that category, and each expense funded from the OTR in accordance with the formula explained herein, reasonably relates to insurance for purposes of 12 U.S.C. 1783(a). NCUA's definition of ''insurance related examination procedures'' that fall under Title II includes ''examination or supervision contact procedures [that]

[1] 12 U.S.C. 1783(a).

[2] 12 U.S.C. 1766(j)(3). Other sources of income for the Operating Budget include interest income, funds from publication sales, parking fee income, and rental income.

[3] Annual Operating Fees must ''be determined according to a schedule, or schedules, or other method determined by the NCUA Board to be appropriate, which gives due consideration to the expenses of the [NCUA] in carrying out its responsibilities under the [FCU Act] and to the ability of [FCUs] to pay the fee.'' 1755(b). The NCUA Board's methodology for determining the aggregate amount of Operating Fees is discussed in a separate **Federal Register** publication.

[4] 12 U.S.C. 1783(a).

[5] *Accord* 12 U.S.C. 1755(a) (''In accordance with rules prescribed by the Board, each [FCU] shall pay to the [NCUA] an annual operating fee which may be composed of one or more charges identified as to the function or functions for which assessed.'').

address safety and soundness issues.'' Safety and soundness terminology is sprinkled throughout Title II of the FCU Act with respect to NCUA's insurance-related responsibilities.[6] As such, this definition is contained within the broad swath of 12 U.S.C. 1783(a), which simply requires that an expense be ''incurred in carrying out the purposes of [Title II]'' on share insurance to be eligible for OTR coverage. Similarly, ''insurance regulatory related examination procedures'' are defined in the OTR methodology as those that assess compliance with regulations that ''address safety and soundness issues.'' This secondary definition expressly excludes procedures that assess compliance with regulations ''designed to protect consumers directly.'' Therefore, this supplemental definition narrows, rather than expands, the procedures that the OTR methodology includes under Title II, since some consumer protection regulations may also be directed at safety and soundness. Further, neither the activities the OTR methodology identifies as examples of examination or supervision procedures that address safety and soundness, nor any of the NCUA-specific regulations classified as ''insurance regulatory'' related in the regulation mapping in Appendix A, fall outside of this definition.

Second, at least some part of the Operating Budget comes from fees charged to insured credit unions under 12 U.S.C. 1755. The imposition of the annual Operating Fees on FCUs and their use to pay expenses in the Operating Budget is sufficient evidence of the proper exercise of the Board's discretion under these two limitations. Within these broad statutory bounds, the Board is seeking additional public input on its OTR methodology through Federal Register processes.

Since its inception, NCUA has taken the position that the OTR is not a legislative rule under the Administrative Procedure Act (APA) and is, therefore, exempt from notice and comment rulemaking processes.[7] As such, NCUA has never used notice and comment rulemaking to establish either an individual determination of the OTR or the general methodology used to calculate the OTR. However, the OTR has been explained, discussed, and reviewed in various public records, including in annual Board Action Memorandums related to budget matters, independent evaluations, and other documents available in public records and on NCUA's Web site.[8] Beyond its APA obligations, the Board has chosen to solicit public comments on the OTR processes and methodologies through this **Federal Register** publication.

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I. Overview

NCUA is the independent federal agency created by the U.S. Congress to regulate, charter and supervise FCUs. With the backing of the full faith and credit of the United States, NCUA also operates and manages the NCUSIF. Congress enacted Title II of the FCU Act on October 19, 1970.[9] Title II established the NCUSIF, requiring all federal credit unions to immediately apply for insurance and permitting the Board to insure accounts in state-chartered credit unions. After enactment of Title II, the Board established an allocation formula, the Overhead Transfer Rate, to determine the amount of the Operating Budget that it would requisition from the NCUSIF for insurance-related expenses. Over time, the Board has refined the OTR process to ensure the equitable allocation of costs between NCUA's dual roles of insurer (insurance related activities) and regulator that charters federal credit unions (non-insurance related activities).

NCUA's current methodology, in place since 2003 and refined in 2013, determines the OTR using the results of an examiner time survey (ETS). The ETS captures the time NCUA spends examining and supervising FCUs, carrying out its dual mission as insurer of federally insured credit unions (FICUs), and the chartering authority for federal credit unions. The OTR methodology also factors in the following:

- The value to the NCUSIF of the insurance-related work performed by state supervisory authorities (SSAs).
- The cost of NCUA resources and programs with different allocation factors from the examination and supervision program.
- The distribution of insured shares between FCUs and federally insured state-chartered credit unions (FISCUs).
- Operational costs charged directly to the NCUSIF.

The goal of the methodology is to create a comprehensive and equitable calculation and allocation of costs to set the OTR annually within a framework that can be administered at minimal cost.

II. Context for the OTR

There is a distinct overlap between the historical role of a regulator, concerned with enforcing laws and implementing public policy, and that of an insurer. Though not motivated by the associated financial liability that comes with the role of insurer, regulators address threats to the viability of their financial institutions to protect consumers and their jurisdiction's economy. This focus on viability benefits the insurer. The primary roles of an insurer are to protect depositors and the taxpayer, and contribute to the stability of the financial system.

Before the advent of federal deposit insurance, federal financial institution regulators were concerned with protecting the stability of the financial system by ''regulating'' it. Thus, financial institution examinations focused on ensuring (1) statutes and regulations were followed to protect consumers, and (2) institutions were viable to protect consumer deposits,

[6] *See, e.g.,* 12 U.S.C. 1781(c)(2) (referencing ''unsafe and unsound'' financial condition and policies in connection with applications for insurance); 1782(a)(6)(b) (referencing the phrase ''unsafe and unsound'' in connection with a failure to obtain an outside, independent audit); 1786 (addressing ''unsafe or unsound practices'' or ''safety and soundness'' in connection with termination of insurance, orders to cease and desist, prohibition and removal orders, civil money penalties, and delay in publication of final orders); 1787(b)(2)(D) (authorizing the Board to take actions as conservator to put an insured credit union ''in a sound and solvent condition''); 1790d(h)(1) (referencing ''safety and soundness'' in relation to prompt corrective action and reclassification of a credit union's net worth category).

[7] NCUA's legal analysis with respect to the OTR and APA process is available at the following Web page: *https://www.ncua.gov/Legal/Documents/Opinion/OL2015-0818.pdf.* Note that even where not subject to notice and comment procedures, the APA provides that ''[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review.'' 5 U.S.C. 704. The scope of such a review is set forth in 5 U.S.C. 706.

[8] Materials related to the OTR can be found at the following NCUA Web page: *https://www.ncua.gov/About/Pages/budget-strategic-planning/supplementary-materials.aspx.*

[9] Section 1783(a) of the FCU Act created the NCUSIF and authorized the NCUA Board to use the fund to pay for ''such administrative and other expenses incurred in carrying out the purposes of [Title II] as it may determine to be proper''.

preserve access to financial services, and safeguard the stability of the economy.[10]

NCUA has a unique dual role in that it serves as both the regulator of FCUs and the insurer of FCUs and FISCUs. Given this dual role, it is appropriate to allocate examination and supervision costs between the NCUSIF and Operating Fees charged to FCUs. The policy rationale for this allocation is supported by various provisions of the FCU Act.

In Title II of the FCU Act, Congress established the NCUSIF and housed it within NCUA for administration by the NCUA Board.[11] Congress envisioned efficiencies from this arrangement, as well as NCUA's partnership with state regulators. Evidence of this intent to streamline can be found in 12 U.S.C. 1782(a)(5), which requires reports FCUs must file under Title I of the FCU Act to be prepared so ''that they can be used for share insurance purposes.'' Similarly, this provision requires NCUA to use the reports filed by FISCUs with their state regulators ''for share insurance purposes . . . [t]o the maximum extent feasible. . . .'' [12]

Congress also recognized that, in addition to losses related to credit union failures, the NCUSIF would incur expenses related to its administration, including examination staff and other employees. Title II empowers the NCUA Board to determine the proper allocation of ''administrative and other expenses incurred'' under Title II that may be funded by direct requisitions from the NCUSIF.[13] Title II further subjects the resources expended for ''insurance purposes'' to the Board's discretion by empowering the Board to ''appoint examiners who shall have power, on its behalf, to examine any insured credit union, any credit union making application for insurance of its member accounts, or any closed insured credit union *whenever in the judgment of the Board an examination is necessary to determine the condition of any such credit union. . . .*'' [14] Title I confirms this design by requiring that salaries and expenses of the Board and NCUA employees ''be paid from fees and assessments (including income earned on insurance deposits) levied on *insured credit unions* under [the FCU Act].'' [15] In addition to assessments charged to all insured credit unions simply by nature of their NCUSIF insurance, Title I requires an annual Operating Fee charged to FCUs in recognition of the additional duties required of NCUA under Title I with respect to FCUs.[16]

NCUA also has the authority to promulgate rules and regulations to carry out the provisions of Title II.[17] Accordingly, the NCUA Board has approved rules and regulations that specifically address safety and soundness and protect the NCUSIF.[18]

Under the discretion vested in it under the FCU Act, the NCUA Board's primary motivation for the agency's regulations and examination program has been managing risk to the NCUSIF posed by all insured credit unions, whether state chartered or federal. The Board notes that NCUA's role as insurer is best fulfilled by a proactive approach to preventing losses, in addition to paying the post-failure obligations that NCUSIF insurance coverage requires. Since the implementation of federal share insurance in 1970, the NCUA Board has instituted a much more proactive examination and supervision program geared toward safety and soundness, which focuses on insurance related issues. In 2002, the NCUA Board strengthened its commitment to fulfilling NCUA's role as insurer by implementing the Risk-Focused Examination Program. This program bases examination scope and timing to a large extent on the risks an institution poses to the NCUSIF. The OTR's portion of NCUA's Operating Budget, including its changes over time, reflects the Board's fulfillment of its insurance responsibilities under the FCU Act under evolving economic and legislative circumstances.

III. History

The NCUSIF was established in 1970 through an amendment to the FCU Act. Section 203(a) of the FCU Act, 12 U.S.C. 1783(a), created the NCUSIF and authorized the Board to use it to pay for ''such administrative and other expenses incurred in carrying out the purposes of [the FCU Act] as it may determine to be proper.''

In 1972, a Government Accountability Office (GAO) audit [19] recommended NCUA adopt a method of allocating costs between NCUA and the newly formed NCUSIF. Between 1973 and 1980, various cost allocation methods were employed, including direct charges to the NCUSIF for insurance expenses, including costs to close institutions, liquidation and merger costs, and, examiner time spent supervising—as opposed to examining—institutions. Starting in 1981, the OTR ranged between 30 and 34 percent, and stayed in that range through 1984.

From 1985 through 1994, NCUA's Office of Examination and Insurance (E&I) coordinated an annual ETS to determine an appropriate factor for apportioning the agency's total operating expenses. Examiners completed 1,000 to 1,200 survey forms each year. The survey results supported a transfer rate between 50.1 percent and 60.4 percent for insurance related activities; however, the NCUA Board maintained the OTR at 50 percent.

In 1994, and again in 1997, the NCUA Board approved conducting examiner time surveys once every three years. Three-year surveys covered fiscal years 1995 through 1997 and fiscal years 1998 through 2000. During that period, the OTR remained at 50 percent through 2000.

The NCUA Board then voted to resume annual examiner time surveys in 2000 and expanded the survey to include more examiners, as well as central and regional office staff. The fiscal year 2000 survey results supported a transfer rate of 66.72 percent. After 15 years of holding the transfer rate at 50 percent, the NCUA

[10] The Office of the Comptroller of the Currency (OCC) charters, regulates, and supervises all national banks and federal savings associations as well as federal branches and agencies of foreign banks. On its Web site, the OCC lists its mission as ensuring that national banks and federal savings associations operate in a safe and sound manner, provide fair access to financial services, treat customers fairly, and comply with applicable laws and regulations. Similarly, the Board of Governors of the Federal Reserve System has supervisory and regulatory authority over a wide range of financial institutions, including state-chartered banks that are members of the Federal Reserve System, bank holding companies, thrift holding companies and foreign banking organizations that have a branch, agency, a commercial lending company subsidiary or a bank subsidiary in the United States. On its Web site, The Federal Reserve states its mission is to provide the nation with a safer, more flexible, and more stable monetary and financial system. One of its four stated general duties is supervising and regulating banking institutions to ensure the safety and soundness of the nation's banking and financial system and to protect the credit rights of consumers. On its Web site, the Federal Deposit Insurance Corporation states its mission is to maintain stability and public confidence in the nation's financial system by insuring deposits, examining and supervising financial institutions for safety and soundness and consumer protection, making large and complex financial institutions resolvable, and managing receiverships.

[11] 12 U.S.C. 1783.

[12] 12 U.S.C. 1782(a)(5).

[13] 12 U.S.C. 1783(a).

[14] 12 U.S.C. 1784(a) (emphasis added).); *see also* 1789(a)(7).

[15] § 1766(j)(3) (emphasis added).

[16] § 1755.

[17] § 1789(a)

[18] NCUA staff have mapped all examination related rules and regulations to one of two categories: insurance regulatory related, or non-insurance and consumer regulatory related. This regulatory mapping provides the key basis for determining how examination time is measured for purposes of the budgetary Overhead Transfer Rate.

[19] *http://www.gao.gov/assets/210/203181.pdf.*

Board increased the transfer rate to 66.72 percent for fiscal year 2001.

The Board also decided to hire an independent party to assess the OTR process. Deloitte & Touche's review of the OTR process was issued on September 5, 2001 and included several recommendations to improve the OTR process.[20] These recommendations were implemented in 2002.

In 2002, as a result of the Deloitte & Touche review, NCUA automated the examiner time survey [21] and enhanced examiner training and guidance. The agency also initiated a task force to conduct a comprehensive review of the OTR, in part to better define insurance-related activities. In October 2003, GAO issued report GAO–04–91 [22] recommending continuous improvement of the process for and documentation of the OTR, updating the rate annually, and completing the examiner time surveys with full representation. Noting the task force review, NCUA agreed to set the rate annually, improve the methodology and documentation, and ensure examiner time survey sampling was statistically valid.

The agency task force completed its review of the OTR in 2003 and recommended a revised, comprehensive methodology for calculating the OTR annually.[23] The NCUA Board received comments from credit union trade groups [24] on the proposed revised methodology and ultimately approved adoption of the revised methodology and an OTR of 59.8 percent for fiscal year 2004 at the November 20, 2003, open Board meeting.[25]

Using the revised methodology approved in 2003, the OTR approved annually by the NCUA Board ranged between 52.0 percent and 57.2 percent for fiscal years 2005 through 2010. The NCUA Board approved funding for an independent review of the OTR at the November 2009 open Board meeting. PricewaterhouseCoopers issued its first of two reports to NCUA in January 2011.[26] Based on the 2011 PricewaterhouseCoopers report, the definitions used in the examiner time survey were clarified over the next two ETS cycles.

The 2010–2011 ETS cycle defined insurance-related and non-insurance related activities as follows: [27]

Insurance Related Examination Procedures—Insurance Related examination or supervision contact procedures address safety and soundness issues. On the time survey forms, respondents should classify the time used to evaluate safety and soundness as ''insurance related.'' ''Insurance Related'' time is

- Evaluating financial trends and Call Report data
- Determining the credit union's solvency position
- Evaluating risks, and potential costs, the credit union presents to the NCUSIF (when appropriate)
- Assessing management's efforts to protect earnings and net worth by identifying, evaluating, controlling, and monitoring internal and external risks
- Assessing management's abilities to develop strong policies and a reliable internal control structure

Non-Insurance Related Examination Procedures—Non-Insurance Related examination or supervision contact procedures address compliance with the laws and regulations that NCUA enforces. On the survey forms, respondents should classify the time used to evaluate issues not related to safety and soundness

- Compliance with consumer protection laws, NCUA Rules and Regulations, the FCU Act, and Bylaws
- Review of previously cited regulatory violations, areas of concern, and corrective actions taken
- Call report accuracy and timeliness

After the issuance of the PricewaterhouseCoopers report in January 2011, NCUA improved the ETS Instruction definitions for insurance and non-insurance related activities for the 2011–2012 ETS cycle. Specifically, new categories were established to help examiners distinguish between regulations established to protect the NCUSIF, labeled ''insurance regulatory'', from regulations established to provide consumer protection or otherwise govern how federal credit unions operate, labeled ''consumer regulatory.'' This resulted in a more accurate assessment of insurance related activities (including insurance-regulatory) and consumer regulatory or non-insurance related activities. NCUA solicited comments from representatives of key stakeholders on the proposed changes to the definitions of the agency's activities as they related to the OTR methodology.[28] The 2011–2012 ETS Instructions contained the following definitions:

Insurance Related Examination Procedures—No change from 2010–2011 ETS Instruction definition stated above.

Insurance Regulatory Related Examination Procedures—Insurance Regulatory related examination or supervision contact procedures address regulations that are not designed to protect consumers directly. This includes assessing compliance with all regulations outside of consumer oriented regulations—see listing of consumer regulations in the following section—Consumer Regulatory examination procedures. Insurance Regulatory related regulations include those regulations that address safety and soundness issues. Examples include (this is not all inclusive):

- 701.21—Loans to Members and Lines of Credit to Members
  - Includes total loan limit to one individual, limitation on maturity, rate of interest, and security.
- 702—Prompt Corrective Action
  - Establishes net worth categories and mandatory and discretionary supervisory actions
- 703—Investments and Deposit Activities
  - Establishes permissible investments and requires credit analysis prior to purchase and requires ongoing monitoring of securities
- 712—Credit Union Service Organizations
  - Establishes investment and loan limits as well as outlines permissible activities
- 713—Fidelity Bond and Insurance Coverage
  - Requires minimum bond coverage
- 715—Supervisory Committee Audits and Verifications
- 722—Appraisals
  - Establishes minimum appraisal standards based on loan size
- 723—Member Business Loans
  - Establishes prohibited activities, requires specific policies and sets overall loan limits as well as limits to one member or group of associated members

Consumer Regulatory Related Examination Procedures—Consumer Regulatory Related examination or supervision contact procedures address compliance with consumer regulations. The regulations include:

- Reg. B—Equal Credit Opportunity Act
- BSA—Bank Secrecy Act
- Reg. C—Home Mortgage Disclosure Act
- Reg. CC—Expedited Funds Availability
- COPPA—Children's Online Privacy Protection Act
- Reg. D—Reserve Requirements
- Reg. E—Electronic Funds Transfer Act

[20] The full independent report from Deloitte is available on NCUA's Web site: *https://www.ncua.gov/About/Documents/Budget/Misc%20Documents/2001DeloitteReportonOTRProcess.pdf.*

[21] The examiner time survey process is discussed in detail later in this document.

[22] *http://www.gao.gov/new.items/d0491.pdf.*

[23] The pre-decisional staff proposal is available on NCUA's Web site: *https://www.ncua.gov/About/Documents/Budget/Misc%20Documents/Additional%20Documents/2003%20Task%20Force%20Proposal.pdf.*

[24] A summary of the comments received is available on NCUA's Web site: *https://www.ncua.gov/About/Documents/Budget/Misc%20Documents/Additional%20Documents/2003%20Summary%20of%20Pre-Adoption%20OTR%20Stakeholder%20Meeting%20Comments.pdf.*

[25] *https://www.ncua.gov/About/Documents/Budget/Misc%20Documents/2003OTRBAM.pdf.*

[26] *https://www.ncua.gov/About/Documents/Budget/Misc%20Documents/2011PwCOTR Review.pdf.*

[27] As described in the ETS section, the ETS cycle runs from June 1, Year 1 to May 31, Year 2. The PricewaterhouseCoopers report was issued mid-cycle, January 2011.

[28] This included the Credit Union National Association, the National Association of Federal Credit Unions, the National Association of State Credit Union Supervisors, and the National Federation of Community Development Credit Unions.

- FACTA—Fair and Accurate Credit Transactions Act
- FCPR—Fair Credit Practice Rule
- FCRA—Fair Credit Reporting Act
- FDCPA—Fair Debt Collections Practices Act
- FDPA—Flood Disaster Protection Act
- FHA—Fair Housing Act
- GLBA—Gramm-Leach Bliley Act
- HOEPA—Home Ownership and Equity Protection Act
- HOPA—Home Owner's Protection Act
- Reg. M—Consumer Leasing
- OFAC—Office of Foreign Asset Control
- PCFI—Privacy of Consumer Financial Information
- RFPA—Right to Financial Privacy Act
- SCRA—Service Members Civil Relief Act
- Reg.—X Real Estate Settlement Procedures Act
- Credit Card Act
- Unlawful Internet Gaming Enforcement Act
- SAFE Act—Secure and Fair Enforcement for Mortgage Licensing Act
- Reg.—Z Truth in Lending
- Rules and Regulations Part 706—Credit Practices
- Rules and Regulations Part 707—Truth in Savings
- Rules and Regulations Part 717—Fair Credit Reporting

In 2012, the Office of Examination and Insurance (E&I) further clarified the application of the insurance-related and non-insurance related definitions in the ETS. Specifically, all relevant NCUA regulations were explicitly mapped to the survey classifications to provide more uniformity and consistency of reporting. This breakdown and mapping of regulations was consistent with the existing overall definitions of insurance-related and non-insurance related activities. The primary definitions did not change; the regulations were merely explicitly mapped based on the overarching definitions. This clarification resulted in more consistency by respondents on the ETS. Appendix A contains the mapping provided to ETS participants. In 2013, NCUA also obtained an independent review of the mapping of the regulations from PricewaterhouseCoopers.[29] The mapping of NCUA's regulations outlined in the PricewaterhouseCoopers October 2, 2013 report, is available on NCUA's Web site.

Based on the validated mapping of NCUA regulations to guide examiners in completing the annual time survey, the average survey results for insurance related activities increased from 67 percent to 88 percent of examiner time. This resulted in an OTR for 2014 of 69.2 percent, which was approved at the November 2013 open NCUA Board meeting. The OTR rose to 71.8 percent for 2015 and to 73.1 percent for 2016. Figure 1 shows the trends in the OTR since 2004.[30]

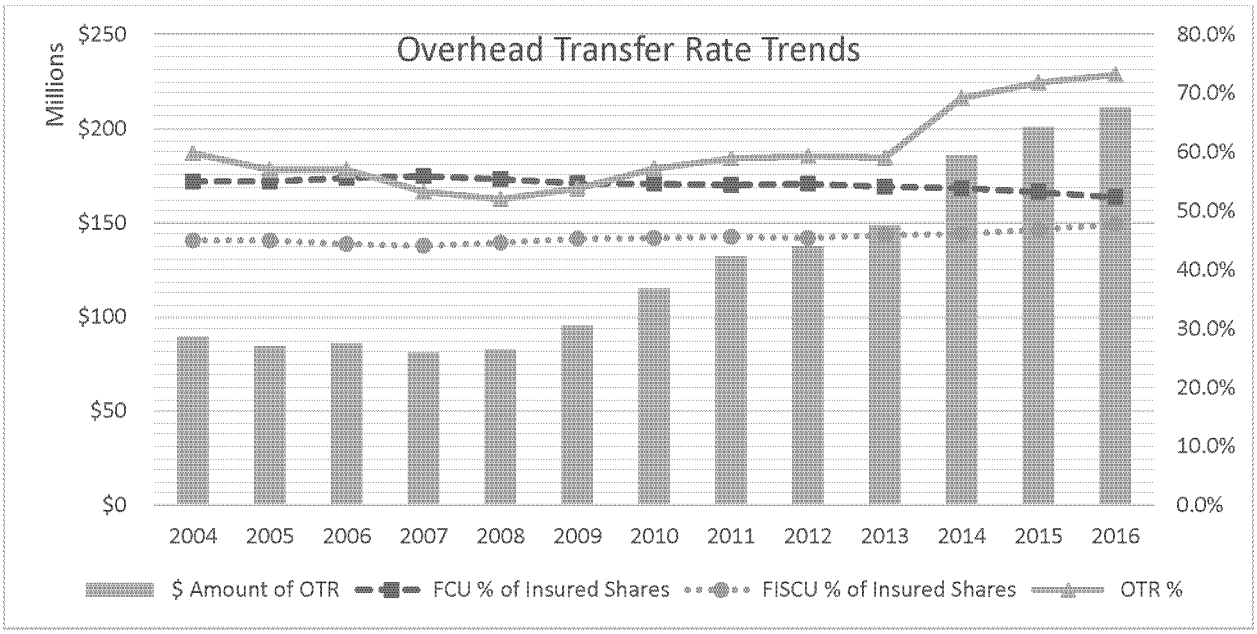

Figure 1

Since the creation of the NCUSIF in 1970, NCUA's allocation of funds between its dual roles has evolved to address changes in the credit union system and changes to NCUA operations. As credit unions have become larger and more complex, the potential risk to the NCUSIF has increased. As a result, NCUA's operations have adapted. This has resulted in an increased focus on insurance-related activities, and this focus remains in place today.

The FCU Act and NCUA Rules and Regulations have also evolved in recent history, and as a result, the agency has placed more of a focus on safeguarding the NCUSIF. In particular:

1. The Credit Union Membership Access Act (CUMAA) was enacted into law in 1998.[31] This law resulted in new obligations on credit unions and NCUA designed to protect the NCUSIF, such as:

a. Imposing new requirements on federally insured credit unions with respect to financial statements and audits, and member business loans.[32]

[29] *https://www.ncua.gov/About/Documents/Budget/2013/2013ETSAnalysis.pdf.*

[30] The dollar amount of the OTR in this graph is based on the NCUA Board approved budget, not actual expenditures. The OTR is applied to actual expenses incurred each month.

[31] *https://www.ncua.gov/Resources/Documents/LCU1998-16.pdf.*

[32] CUMAA imposed a new aggregate limit on a credit union's outstanding member business loans of the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets.

b. Establishing a new system of tiered capital requirements for all federally insured credit unions.[33]

2. During the aftermath of the financial crisis, from 2010 to 2015, the NCUA Board strengthened critical safety and soundness rules, such as:

a. Codifying interest rate risk guidance into a rule ensuring that federally insured credit unions holding the vast majority of the credit union system's assets have appropriate policies to manage interest rate risk in adverse scenarios.

b. Designing a targeted emergency liquidity rule ensuring that federally insured credit unions at various asset levels have scalable contingency plans to tap reliable sources of liquidity during a crisis.

c. Establishing concentration limits and required due diligence on loan participations.

3. From 2011 through 2015, NCUA also modernized various regulations to provide credit unions with more flexibility and authority.[34] While these modernized rules reduced compliance burdens, they resulted in examiners devoting more time to ensuring safety and soundness through the examination process rather than relying on regulatory limits. For example, NCUA:

a. Expanded regulatory relief eligibility for small and non-complex credit unions.

b. Eliminated the fixed assets cap for FCUs.

c. Eased troubled debt restructuring rules.

d. Authorized ''plain-vanilla'' derivatives for FCUs.

Since 2001, various independent third-party assessments have also resulted in recommendations to improve and refine the OTR methodology, most of which NCUA has adopted.[35] NCUA is now seeking public comment on the current OTR methodology, as described throughout the remainder of this document, for possible additional improvement.

[33] A net worth standard of 7 percent of assets was established for insured credit unions, as well as risk-based capital standards for ''complex'' credit unions as defined by NCUA. For credit unions not meeting these standards, progressively more stringent ''prompt corrective action'' requirements apply.

[34] *https://www.ncua.gov/newsroom/Pages/RegulatoryModernizationInitiativeResults.pdf.*

[35] For a discussion of recommendations not adopted and the associated rationale, see the *Overhead Transfer Rate (OTR)—Timeline* on NCUA's website at *https://www.ncua.gov/About/Documents/Budget/Misc%20Documents/overhead-transfer-rate-chronology.pdf.*

IV. Detailed Discussion of OTR Methodology

a. Examination Time Survey

NCUA's mission is to foster the safety and soundness of federally insured credit unions, which is primarily achieved through its examination program. Consequently, the majority of NCUA's resources are dedicated to the examination and supervision of federally insured credit unions. Examiners expend time on both regulatory and insurance activities during examinations and supervision contacts at FCUs. Therefore, one of the key components needed to calculate the cost for NCUA's regulatory role and insurance roles is the annual ETS. The ETS applies only to FCU examination and supervision contacts, as examinations (insurance reviews) of FISCUs have by definition the sole purpose of managing risk to the NCUSIF. The Board invites comment on the existing ETS process.

Since its inception in 1985, the ETS evolved from a manually completed form to the automated system used now. From 1985 to 1994, NCUA collected 1,000 to 1,200 manually completed survey forms annually. Survey forms were completed by participants for each FCU examination (work classification code [WCC] 10) and each FCU supervision contact (WCC 22). Since survey results were consistent, NCUA reduced the sample size considerably and instead of annual collection, moved to a 3-year cycle. In 1994, 1997, and 2000, the sample size ranged from 60 to 100 survey forms. There were no surveys completed in 2001.

In 2001 Deloitte & Touche completed a study of the ETS process and concluded it was reasonable and appropriate for use in allocating NCUA's costs between insurance-related and regulatory-related activities.[36] The study included some recommendations to enhance the survey process, such as automating the survey form, improving communications, and varying the period of collection, but did not recommend any changes to the survey's content. NCUA implemented those recommendations.

In 2002, E&I randomly selected one Supervisory Examiner (SE) group (via lottery draw) from each region to participate in the survey process. The regions selected three experienced Principal Examiners (PEs) from these SE groups to complete surveys for all FCU examination and supervision contacts initiated and completed during the ETS period. Since 2002, the participating SE groups in each region have rotated annually. The annual rotation ensures representative coverage of the population of FCUs across each region while minimizing the burden on field staff.

From 1985 through 2000, examiners completed time surveys during a set period, often occurring near the end of the exam program year. Starting in 2002, examiners completed surveys for all examination and supervision contacts they conducted during a 12-month period that starts on June 1, and ends on May 31, of the following year. Utilizing groups from all of NCUA's regions and collecting the data throughout a 12-month period provides a variety of FCUs, completion dates, and geographic locations resulting in a sample that better represents the entire population.

Prior to introducing the automated form, NCUA did not provide formal training to survey participants. Beginning in 2002, E&I held a training session and a subsequent teleconference for the selected participants, their supervisors, and a regional office analyst from each region. E&I also dedicated an email address for examiners to use to request help with the survey. In addition, E&I created a shared electronic database to store information such as answers to Frequently Asked Questions (FAQs), summary reports, and training information.

Since 2002, communications regarding the survey process have improved, which helps to ensure consistent application and reliable results. E&I provides training prior to the start of every ETS cycle; including:

- A discussion of the objectives of the ETS and its importance in determining the OTR,
- how to access and complete the ETS form,
- how to classify examination and supervision activities,
- how to correct data if necessary,
- a review of tools for reporting hours,
- expectations of the ETS participants, and
- resources available to the participants.

The instructions provided to the ETS participants are included in Appendix B.

As previously discussed, the NCUA Board approved funding for an independent review of the OTR at the November 2009 open Board meeting. PricewaterhouseCoopers' January 2011 report resulted in several changes to the

[36] The Deloitte & Touche Study is available on NCUA's public website. *https://www.ncua.gov/About/Documents/Budget/Misc%20Documents/2001DeloitteReportonOTRProcess.pdf.*

ETS.[37] The definitions used in the ETS were modified to more clearly define the work of NCUA's examination staff. Specifically, all relevant NCUA regulations were explicitly mapped to the survey classifications to provide more uniformity and consistency of reporting. The report also recommended that NCUA use sample sizes that are consistent with the calculated sample sizes for the two main types of activities (i.e. programs) under survey, and specifically, that NCUA consider increasing the sample sizes for the federal supervision program. To improve the confidence interval, E&I chose one additional SE group per region to increase the number of supervision surveys. As the report concluded the examination survey size met the desired confidence level, the additional SE group was instructed to upload only the supervision contacts the PEs completed during the ETS period. This reduced the overall burden of completing the surveys for additional examinations.

At the end of each ETS period, NCUA monitors the results of the time study to ensure the sample size is statistically valid. Using the ETS examination upload report, NCUA calculates the mean and standard deviation for percentage of consumer regulatory hours of the WCC 10 examination uploads. For the most recent ETS period, there were 142 WCC 10 examination uploads with a total of 2,621.6 consumer regulatory hours. The mean was calculated to be 13.37 percent and the standard deviation was 9.09 percent. A statistically valid sample size is calculated for 99 percent, 95 percent, and 90 percent confidence intervals using these statistics, the corresponding Z factor from a standard normal distribution table, and a 3 percent margin of error. Table 1 illustrates the calculations for the most recent ETS period. NCUA's sample size of 142 exceeds the 60.92 necessary to achieve a 99 percent confidence interval.

TABLE 1—SAMPLE SIZE

C	P = (100%-C)/2	X	S	Z	E	N = ((Z*S)/e)^2
Confidence interval	Confidence factor	Mean	Standard deviation	From standard normal tables	Margin of error	Sample size
99%	0.005	13.37	9.09	2.576	3.00	60.92
95%	0.025	13.37	9.09	1.960	3.00	35.27
90%	0.050	13.37	9.09	1.645	3.00	24.84

NCUA also performs these calculations for the sample size for WCC 22 supervision contact uploads. Using the ETS WCC 22 upload report, NCUA calculates the mean and standard deviation for percentage of consumer regulatory hours of the WCC 22 supervision contact uploads. For the most recent ETS period, there were 100 WCC 22 uploads with a total of 350.4 consumer regulatory hours. The mean was calculated to be 16.9 percent and the standard deviation was 30.9 percent. Based on these statistics, NCUA's sample size produces a confidence interval of approximately 69 percent. To achieve a 95 percent confidence interval with 3 percent margin of error, would require approximately 408 uploads. NCUA accepts a lower confidence interval for the WCC 22 uploads because the WCC 10 examination program is the primary focus of the time study and to reduce the burden on field staff. Also, the combined WCC 10 and WCC 22 contacts result in a sample size of 242 uploads with total of 2,972 hours. The mean of the combined sample calculated to be 14.84 percent and the standard deviation was 21.07 percent. Using these statistics, a sample size of 151 provides a greater than 99 percent confidence level. The sample size is sufficient to provide reliable results.

In 2013, NCUA also obtained an independent review of the mapping of the regulations.[38] The mapping of NCUA's regulations is outlined in PricewaterhouseCoopers' October 2, 2013 report, which is available on NCUA's website and in Appendix A of this document. E&I reviews the regulatory mapping prior to the beginning of each ETS cycle for any necessary updates.[39] Going forward, NCUA intends to clearly state in the preamble to proposed rules whether a rule is promulgated under its Title II authority (insurance) or its Title I authority (regulatory).

As stated earlier, two SE groups from each region participate in the ETS process. One group uploads both FCU examination contacts and FCU on-site supervision contacts while the second SE group uploads only FCU on-site supervision contacts. All PEs in the selected groups participate in the survey. PEs are selected because they possess the necessary level of experience to ensure accurate results where examiner judgment is necessary. If an SE group has less than four PEs, a second group is added to ensure an adequate number of examinations and supervision contacts are uploaded for a statistically relevant sample. The participating SE groups rotate each year in alphabetical order (Group A one year, Group B the next year, etc.) to ensure a fair distribution of work and to ensure a wider number of FCUs are captured in the survey over time. PEs who transfer to a different SE group during the ETS period continue uploading surveys until the survey cycle ends. However, PEs from a non-participating group that transfer into a group participating in the ETS do not upload any time surveys.

NCUA utilizes its Automated Integrated Regulatory Examination System (AIRES) examination system to capture the ETS information. There are twelve categories of activities on the survey form, modeled on the risk-based examination program. The scope categories are:

1. Planning/Scope Development
2. Call Report Review
3. Supervisory Committee Review
4. Financial Analysis
5. Loan Analysis
6. Investment Analysis
7. Liquidity Analysis
8. Asset Liability Management
9. Compliance
10. Information Systems Technology
11. Management Analysis

[37] *https://www.ncua.gov/About/Documents/Budget/Misc%20Documents/2011PwCOTR Review.pdf.*

[38] *https://www.ncua.gov/About/Documents/Budget/2013/2013ETSAnalysis.pdf.*

[39] The current mapping has not been updated for NCUA's most recent final rules. Similar to other activities not explicitly classified in the ETS instructions, ETS participants defer to the overarching definitions of insurance and non-insurance related activities provided in the ETS instructions (see Appendix B) to appropriately allocate time as insurance or non-insurance.

12. Contact Report/Joint Conference/Follow-Up Procedures

For each examination or supervision contact, the examiner inputs the hours spent on insurance, insurance regulatory related and non-insurance and consumer regulatory related activities in each of the categories. A full year's worth of survey results are used to calculate the percentage of hours devoted to regulatory and insurance-related (insurance and regulatory) activities for the Federal Examination and Federal Supervision Programs. As previously mentioned, the ETS period runs from June 1 to May 31. Only examinations started after June 1 and completed and uploaded by the following May 31 are included in the survey to maintain consistency.

Results of the ETS

The ETS is used to determine the percentage of Workload Budget Hours related to regulatory and insurance-related tasks for the following two programs:

- Federal Examination (WCC 10); and
- Federal Supervision (WCC 22).

NCUA uses a full year's worth of survey results when determining the regulatory cost driver applied to the budgeted workload hours for its Core Programs and Special Programs. The Workload Budget is discussed later in this document. The results of the ETS concluded on May 31, 2015 are illustrated in Table 2.

TABLE 2—RESULTS OF ETS

Contact type (WCC)	Total surveys collected	Insurance related %	Non-insurance related % (regulatory)
Examination (WCC 10)	142	86.83	13.17
Supervision (WCC 22)	100	87.21	12.79
Total	242	86.87	13.13

Table 3 shows the ETS results by the scope categories.

TABLE 3—ETS RESULTS BY SCOPE CATEGORY

Time category results	Insurance related %	Non-insurance related % (regulatory)
Planning/Scope Development	85.95	14.05
Call Report Review	95.61	4.39
Supervisory Committee	94.61	5.9
Financial Analysis	96.98	3.02
Loan Analysis	93.65	6.35
Investment Analysis	93.05	6.95
Liquidity Analysis	93.84	6.16
Asset Liability Management	96.15	3.85
Compliance	41.28	58.72
Information Systems Technology	81.28	18.72
Management	90.73	9.27
Examination Report/JC/Follow-Up	89.85	10.15
Total	86.87	13.13

NCUA also reviews the ETS results by CAMEL code. For the most recent ETS period, NCUA calculated the number of contacts by CAMEL Code as a percentage of the sample size. The results are documented in Table 4. The percentage of WCC 10 examinations by CAMEL code correlate strongly with the total FICU population at May 31, 2015. As expected the percentage of WCC 22 supervision contacts is weighted more heavily toward CAMEL 3 and CAMEL 4 FICUs since supervision is focused on credit unions with financial and operational weaknesses.

TABLE 4—CAMEL CODE DISTRIBUTION

CAMEL code	Percent of sample		
	WCC 10 examination (%)	WCC 22 supervision (%)	Total FICU population (%)
1 & 2	71.83	22.00	73.56
3	24.65	51.00	22.41
4	3.52	27.00	3.90
5	0.00	0.00	0.13

As Table 2 and Table 3 show, the ETS determined NCUA examiners spend 86.87 percent of their time on insurance related activities and 13.13 percent of their time on non-insurance related activities during examinations and supervision contacts between June 1, 2014 and May 31, 2015. As the next section will describe, the results of the ETS are applied to NCUA's budgeted workload program hours to determine the agency's budgeted hours for insurance and non-insurance related activities.

b. Workload Program Hours

This step in NCUA's OTR calculation determines the percentage of work the agency expects to perform in insurance and non-insurance related activities. Specifically, the results of the ETS,[40] and the assessment of work performed for other programs administered by other offices [41] are applied to the workload program hours derived from NCUA's annual resource budget. This results in a weighted average of program hours devoted to NCUA's regulatory and insurance roles.

NCUA's annual resource budget is a comprehensive workload analysis that captures the amount of time budgeted to conduct examinations and supervision of federally insured credit unions, and other programs necessary to carry out NCUA's dual mission as insurer and regulator. The annual resource budget estimates hours in three major categories: [42]

1. Core Programs includes NCUA's FCU and FISCU examinations and on- and off-site supervision.

2. Special Programs includes NCUA's specialized examination programs in the areas of capital markets, information systems, and lending, credit union service organization (CUSO) reviews, chartering and field of membership, and small credit union development.

3. Administrative includes NCUA field staff time related to training and staff development, leave, and travel.

The annual resource budget process starts with a planning session with management representatives from each field office,[43] OCP and E&I. During the planning session, resource requirements for programs such as focused areas of review,[44] central office details, and working groups are vetted. Examination and supervision requirements are also reviewed and guidance is issued to all field staff. NCUA field staff review each FICU in their district [45] to determine the anticipated number of workload hours [46] needed for the next calendar year. The workload estimates are refined by field management to ensure consistency. Field offices submit their final resource budget proposals to E&I for review and analysis. E&I reviews the program recommendations from the field offices and submits any recommendations for adjustments to the Executive Director. The final resource budget for each field office establishes the foundation for their budget requests and is used to allocate the results of the ETS.

Table 5 shows the 2016 budgeted hours for NCUA's core and special programs and how those hours are allocated to non-insurance related activities based on the results of the ETS. Administrative time is not allocated in this step of the OTR calculation.

TABLE 5—ALLOCATION OF BUDGETED PROGRAM HOURS

	2016 budgeted workload hours	Non-insurance percent	Non-insurance hours [47]	Allocation basis
Core Programs	728,556	na	70,691	Sum of Core Programs
Federal Examination	454,115	13.17%	59,807	Examiner time survey
Federal Supervision	53,687	12.79%	6,867	Examiner time survey
State Exam & Supervision	175,722	0%	0	FISCU work is insurance-related
State Exam Review	5,321	0%	0	FISCU work is insurance-related
5300 Program—FCU	30,503	13.17%	4,017	Uses FCU examination results from examiner time survey
5300 Program—FISCU	9,208	0%	0	FISCU work is insurance-related
Special Programs	35,637	na	2,607	Sum of Special Programs
Regional Lending Specialists	4,190	13.17%	552	Allocation based on % from time surveys
Regional Capital Market Specialists	4,130	0%	0	NCUSIF risk management program
Regional Information Systems Officers	3,320	13.17%	437	Allocation based on % from time surveys
Field of Membership & Chartering	500	100.00%	500	Regulatory program
Small Credit Unions	18,633	6.00%	1,118	Allocation based on OSCUI's time reporting results
CUSO Examinations	4,864	0%	0	NCUSIF risk management program
Total Core & Special Programs	764,193	na	[48] 73,298	
Percent of 2016 core and special programs devoted to NCUA's Non-Insurance Role			9.6%	= 73,298 ÷ 764,193

Detailed Explanation of Allocation Basis

Table 5 shows how NCUA's core and special program hours are allocated to non-insurance and thereby insurance related activities. A detailed explanation of the allocation basis for each core program and special program is outlined below.

Core Programs

NCUA's federal examination and federal supervision programs' non-insurance related activities are allocated at 13.17 percent and 12.79 percent, respectively, based on the results of the

[40] Discussed in Section IV.a.

[41] Including programs administered by the Office of Small Credit Union Initiatives (OSCUI) and the Office of Consumer Protection (OCP) as discussed in Section IV.c.

[42] Time budgeted for core and special programs is considered productive time, while administrative hours are considered non-productive time. These classifications are used during the SSA Imputed Value step of the OTR calculation.

[43] Field office refers to each of NCUA's five Regional Offices and the Office of National Examinations and Supervision (ONES).

[44] Each year NCUA issues a Letter to Credit Unions outlining the Supervisory Priorities for the year. *https://www.ncua.gov/regulation-supervision/Pages/policy-compliance/communications/letters-to-credit-unions/2016/01.aspx.*

[45] NCUA examiners are assigned a district of specific FCUs and FISCUs and are responsible for managing examination and supervision of the credit unions assigned to their district.

[46] Workload hours include hours for examinations, on- and off-site supervision, and reviews by regional and national specialized examiners.

[47] Numbers may not reconcile exactly due to rounding.

[48] These are the budgeted hours allocated to insurance-related, regulatory work in 2016.

ETS.[49] The results of the ETS from June 2014 to May 2015 determined that examiners spent 13.17 percent of their time on non-insurance related activities during the examination of FCUs and 12.79 percent of their time on non-insurance related activities during the supervision of FCUs. These percentages (13.17 percent and 12.79 percent) are respectively applied to the 2016 budgeted hours for federal examinations and federal supervision to determine the number of hours for non-insurance related activities.

NCUA examiners conduct examinations and supervision of FISCUs, and generally do so in conjunction with the governing state supervisory authority (SSA). It is also NCUA's policy to conduct reviews of examinations completed by the SSA. NCUA's FISCU related work (examinations, supervision and state exam reviews) is solely associated with the agency's role as an insurer. For purposes of calculating the OTR, 100 percent of the budgeted hours for FISCU examinations, supervision and state examination reviews are allocated to insurance-related activities.

All federally insured credit unions file quarterly 5300 Call Reports with NCUA. NCUA examiners are responsible for performing quarterly reviews of the 5300 Call Report information for all federally insured credit unions in their district. For FCUs, NCUA examiners are also responsible for validating the information submitted by the FCUs. For this reason, more time is budgeted for the federal 5300 program than for the state 5300 program. An extension of the examination program, the budgeted hours for the federal 5300 program are allocated as insurance and non-insurance hours based on the results of the ETS for federal examinations. Thus, 13.17 percent of federal 5300 program hours are allocated to non-insurance activities. Consistently, the budgeted hours for the state 5300 program are allocated the same as the FISCU examination program, 100 percent to insurance related activities.

Special Programs

Regional lending, information technology and capital market specialists participate in the examination and supervision of federally insured credit unions to perform focused reviews of more complex areas of credit union operations. Regional specialists do not participate in the ETS. The work performed by regional lending and information technology specialists is a combination of insurance and non-insurance related activities. Therefore, the budgeted hours for regional lending specialists and regional information systems officers is allocated conservatively at 13.17 percent for non-insurance related activities, based on the ETS results. The work performed by regional capital market specialists is focused on credit unions' asset liability management and serves as a risk management program for the NCUSIF. Thus, budgeted hours for regional capital market specialists is allocated 100 percent to insurance-related activities.

NCUA budgets hours for examiners to support OCP with chartering and field of membership applications and expansion requests. One-hundred percent of the hours budgeted for examiners to assist with this activity are allocated to NCUA's non-insurance function.

NCUA also budgets hours for examiners to support OSCUI with providing assistance to small credit unions. The budgeted hours for examiner participation in the small credit union program are allocated to insurance and non-insurance related activities on the same basis as the OSCUI programs. As described in the financial budget section, OSCUI conducts its own time survey each year and has determined that 6 percent of its work should be allocated to non-insurance related activities. Thus, NCUA allocates 6 percent of these budgeted workload hours to non-insurance related activities.

The agency's CUSO examination program is a risk-management program focused on protecting the NCUSIF (NCUA does not charter and has no regulatory authority over CUSOs). Thus, 100 percent of the hours budgeted for CUSO examinations is allocated to insurance related activities.

As Table 5 shows, the combination of non-insurance workload hours for core and special programs is compared to the overall workload budget for those programs, to develop the overall weighted average of non-insurance related work across all programs. The percentage of non-insurance activities derived from the ETS and the annual resource budget are applied to NCUA's Operating Budget as outlined in the Financial Budget section.

c. Financial Budget

NCUA's budget process uses the agency's strategic goals and objectives set forth in the NCUA Strategic Plan as a framework to ensure agency priorities and initiatives drive resulting resource needs and allocations. The annual budget provides the resources to execute the strategic plan and undertake tasks in NCUA's major programs.

Each NCUA office develops a budget request identifying resources required to support NCUA's mission and strategic goals and objectives. These budgets are developed using zero-based budgeting techniques to ensure each office's requirements are individually justified and consistent with the agency's overall strategic plan. One of the primary inputs in the development of the financial budget is the workload analysis described in the workload budget section. The final workload analysis establishes the foundation for the field office budget requests in addition to establishing the amount of work related to insurance and non-insurance related activities for the OTR. The workload analysis is also used to develop personnel and travel costs, and all offices develop cost estimates for fixed and recurring items such as rent or leased property, operations and maintenance, repair on owned facilities, supplies, telecommunications, and other administrative and contracted services costs. Information related to NCUA's budget process, including detailed information on the NCUA Board-approved 2016 Operating Budget are available on the agency's Web site.[50]

Table 6 shows how NCUA's 2016 Operating Budget is allocated to non-insurance related activities, using the weighted average derived from the core and special programs (9.6 percent) and the results of the assessment of insurance and non-insurance related activities for programs administered by other offices. The allocation basis for all offices is outlined in detail below Table 6. The Board invites comment on the current process for allocating NCUA's Operating Budget used in the OTR calculation.

[49] The results of the time study are documented in Tables 2 and 3.

[50] *https://www.ncua.gov/About/Pages/budget-strategic-planning/supplementary-materials.aspx.*

TABLE 6—ALLOCATION OF NCUA OPERATING BUDGET

Cost area 2016 Financial Budget	Dollar budget ($M)	Non-insurance percent	Non-insurance cost ($M)
All Regional Costs: Based on non-insurance related portion of core and special programs	$155.49	9.6%	$14.91
Asset Management Assistance Center and Assistance Program: Manages liquidation payouts, assets acquired from liquidations and assistance programs, and recoveries for the NCUSIF	$6.92	0%	$0
Office of Consumer Protection: Primarily non-insurance (regulatory) function i.e. chartering/FOM—net of work related to share insurance coverage for members and FISCUs	$9.54	82.3%	$7.86
Office of Small Credit Union Initiatives: Ensures small credit unions operate in safe and sound manner through its consulting program. However, it also addresses consumer regulatory issues	$6.37	6.0%	$0.38
Office of National Examinations and Supervision: NCUSIF risk management function to supervise corporate credit unions and large natural person credit unions. CFPB examines the natural person credit unions assigned to this office for consumer compliance	$10.48	0%	$0
Office of Minority and Women Inclusion	$2.94	86.0%	$2.53
All Other Offices[51]: Based on non-insurance percent of core and special programs	$99.18	9.6%	$9.51
Total 2016 NCUA Budget	$290.92	.....	$35.19

Explanation of Allocation Basis For Financial Budget

Regional Offices

The financial budget for the agency's five regional offices is allocated based on the weighted average of non-insurance and insurance related activities calculated in the workload budget section. Resources in the regions execute NCUA's core and special programs, thus, the budgeted costs related to these programs should receive the same allocation basis as the programs themselves—as determined by the ETS. The budget for the regional offices is allocated at 9.6 percent for non-insurance related activities.

AMAC

NCUA conducts credit union liquidations and performs management and recovery of assets through the Asset Management and Assistance Center (AMAC). AMAC assists NCUA regional offices with the review of large, complex loan portfolios and actual or potential bond claims. It also participates extensively in the operational phases of conservatorships and records reconstruction. The purpose of AMAC is to manage and reduce costs to the NCUSIF and credit union members of credit union failures. Thus, 100 percent of AMAC's activities are allocated as insurance-related.

OCP

OCP is responsible for NCUA's consumer financial literacy efforts, consumer inquiries and complaints, consumer protection compliance and rulemaking, fair lending examinations, interagency coordination and outreach, chartering and field-of-membership matters, low-income designations, charter conversions and bylaw amendments. OCP monitors time performing insurance related activities, insurance-regulatory related activities, and consumer-regulatory related activities by division. OCP has four divisions:

- Consumer Affairs,
- Consumer Compliance Policy and Outreach,
- Consumer Access, and
- Consumer Access South

The Division of Consumer Access and Division of Consumer Access South do not specifically track the amount of time devoted to insurance related, insurance regulatory related, and consumer regulatory related issues. Instead, these divisions have developed estimates by using standard factors based on the type of work inherent in each project category. The divisions assume the following, based on a blend of time among Consumer Access Analysts, Technicians, and Specialists:

- 25 percent of time is devoted to determining if any safety and soundness issues exist when processing various chartering and field of membership expansion applications;
- 10 percent of time is devoted to addressing insurance related questions, membership concerns, and bylaw disputes directly relevant to consumer related regulatory concerns; and
- The remaining 65 percent of time is devoted to regulatory issues primarily pertaining to reviewing applications for new charters and charter expansions to ensure the proposals are consistent with regulatory requirements. To a lesser extent, the Divisions of Consumer Access associate this time with the enforcement of NCUA's chartering policies.

The Division of Consumer Compliance Policy and Outreach focuses on consumer regulatory related issues and does not regularly work on matters categorized as insurance related or insurance-regulatory related in the ETS instructions. This division spends 100 percent of productive time addressing regulations the ETS instructions classify as consumer-regulatory related regulations. These regulations include regulations implementing the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act, the Truth in Lending Act, and the Real Estate Settlement Procedures Act. Therefore, OCP estimates this division spends 100 percent of its time on consumer regulatory related issues.

The Division of Consumer Affairs develops estimates based on the number of inquiries, complaints and telephone calls processed by staff, and the average amount of time needed to address those contacts. OCP estimates the Division of Consumer Affairs spends:

- 5 percent of the division's time addressing share insurance questions received from consumers;
- 90 percent on consumer-regulatory related activities; and
- 5 percent of time administering the Financial Literacy Program.

Based on the allocation method described above, 82.3 percent of OCP's work is non-insurance related. This 82.3 percent is applied to the OCP Operating Budget to determine the allocation of costs between insurance and non-insurance related activities.

OSCUI

OSCUI supports the success of small credit unions through its four main functional areas—training, grants and

[51] The weighted average, previously determined, is applied to all other cost centers (CFO, human resources, etc.) as these are overhead functions that support the agency's mission.

loans, partnership and outreach, and consulting. The office only monitors ETS activities for its consulting function. The other program areas do not regularly work on matters categorized as insurance related, insurance-regulatory related or consumer-regulatory related functions but provide support for the consulting function.

OSCUI monitors time related to the ETS categories through data collected during credit union consulting contacts. Since the consulting work covers a wide range of topics (many of which don't cleanly fit into an ETS activity category), OSCUI developed a weighting system to measure ETS related activity. The weighting system identifies the percentage of time allocated to each of the three ETS categories for each consulting topic. OSCUI consultants (Economic Development Specialists) record consulting time by topic. Time is allocated to the ETS categories by multiplying the number of consulting hours per topic, by the percentage of time allocated for the topic. The assumptions for monitoring and allocation of time to ETS categories, and used to develop the weighting system, are as follows:

- Consulting assistance that helps credit unions address safety and soundness issues is catalogued as an insurance related activity.
- Consulting assistance that addresses regulations that are not designed to protect the consumer directly are catalogued as insurance-regulatory related activity.
- Consulting assistance that addresses regulations that are designed to protect the consumer directly are catalogued as consumer-regulatory related activity.

Table 7 documents each consulting topic and OSCUI's assumptions for the ETS activity related to the topic. For example, OSCUI assigns consulting work on asset liability management to an insurance-related activity so it is weighted at 100 percent in that area; consulting work related to investments is weighted 50 percent insurance related and 50 percent insurance-regulatory related.

OSCUI's Economic Development Specialists completed 11,003 hours of assistance to credit unions enrolled in the OSCUI Consulting Program during the ETS cycle ending on May 31, 2015. The hours were allocated as follows:

- 7,952 (72 percent) insurance related activities addressing safety and soundness issues.
- 2,434 (22 percent) insurance-regulatory related activities.
- 617 (6 percent) consumer-regulatory related activities.

Based on the allocation method described above, 6 percent of OSCUI's work is non-insurance (consumer regulatory) related. This 6 percent is applied to OSCUI's Operating Budget to determine the allocation of costs between insurance and non-insurance related activities.

TABLE 7—OSCUI TIME ALLOCATION

Consulting type of work	Percent insurance related activity	Percent insurance-regulatory related activity	Percent consumer-regulatory related activity
Asset Liability Management	100	0	0
BSA/OFAC	0	0	100
Budgeting	100	0	0
Collections	75	25	0
Consumer Compliance	0	0	100
Credit Committee	60	20	20
Disaster Recovery	70	20	10
FOM Expansion	50	50	0
Grant Writing	100	0	0
Internal Controls	100	0	0
Investments	50	50	0
Lending	70	20	10
Low-Income Designation	0	100	0
Marketing	50	40	10
Merger Guidance	50	50	0
New Product Development	70	20	10
Net Worth Restoration Plan (NWRP)/Prompt Corrective Action (PCA)	0	100	0
Operational Assistance Other	70	20	10
Other Policies	70	20	10
Recordkeeping	100	0	0
Relocation of Home Base CUs	100	0	0
Secondary Capital	50	50	0
Strategic Issues Other	100	0	0
Strategic Planning	100	0	0
Succession Planning	70	20	10
Technology	70	20	10
Training	70	20	10
Training Board	70	20	10
Training Staff	70	20	10
Training Supervisory Committee	70	20	10

ONES

ONES oversees the unique examination and supervision issues related to consumer credit unions with assets greater than $10 billion and all corporate credit unions. ONES was established on January 1, 2013, but was not assigned responsibility for consumer credit unions with $10 billion or more in assets until January 1, 2014. ONES did not complete time surveys for its large natural person credit unions in 2014 or 2015, but will complete time surveys for all its large natural person credit unions in 2016.

ONES does not have the ability to automatically complete and submit the ETS for corporate credit unions since the corporate examination program is not integrated into AIRES. ONES staff

manually completed the time survey two consecutive years (2011 and 2012) for all corporate credit unions following the E&I instructions. ONES found the percentages of time allocated for the activities using the E&I guidance did not substantially change year to year and used the information from these two measurement periods as a baseline for estimating and reporting the time allocated to Insurance Related, Insurance Regulatory Related, and Consumer Regulatory Related activities for the calendar years 2013, 2014, and 2015. ONES will complete time surveys in 2016 for both corporate credit unions and assigned natural person FCUs.

Because corporate credit unions do not perform and are not responsible for Consumer Regulatory issues, this category is reported as zero. The remaining time is allocated between Insurance Related and Insurance Regulatory Related activities. ONES provides a report of corporate credit unions with a table that breaks out the following information:

- Total Examination and Supervision hours
- Total Insurance Related hours
- Total Insurance Regulatory Related hours, and
- Total Consumer Regulatory Related hours.

ONES reports the information for each corporate credit union. Total examination and supervision hours are reviewed. The time allocations derived from the 2011 and 2012 time surveys are applied to determine the specific amounts of time reported for each category. ONES also reviews each corporate credit union individually to ensure there were no special circumstances that would have warranted a deviation from the original surveyed estimates. ONES' estimates for the most recent ETS period are shown in Table 8.

TABLE 8—ONES TIME ALLOCATION

Corporate credit union	Total examination and supervision hours	Insurance related hours	Insurance regulatory related hours	Consumer regulatory related hours
A	1654	1316	338	0
B	1124	942	182	0
C	1192	1007	186	0
D	1053	913	140	0
E	1353	945	409	0
F	769	514	256	0
G	567	332	235	0
H	981	788	194	0
I	575	387	188	0
J	621	415	205	0
K	95	6	89	0
L	694	607	87	0
M	481	357	124	0
N	919	712	207	0
Totals	12,077	9,239	2,838	0
% of Total		76.5%	23.5%	0.0%

Based on the allocation method described above, 100 percent of ONES' work is insurance related. This percentage is applied to ONES' Operating Budget to determine the allocation of costs between insurance and non-insurance related activities.

Office of Women and Minority Inclusion (OMWI)

OMWI oversees the agency's equal employment opportunity program and all matters relating to measuring, monitoring and establishing policies for diversity in the agency's management, employment and business activities as well as responsibility for assessing the diversity policies and practices of entities regulated by the agency and preserving credit unions designated as minority depository institutions.

OMWI does not monitor time related to the ETS categories but does estimate staff time spent on insurance related and non-insurance related activities. The insurance related time is primarily time spent administering and reporting to Congress on various programs, including the agency's Minority Depository Institution Preservation Program and responding to requests related to insurance-regulatory issues. Staff working on tasks related to these activities includes the OMWI Director, one Diversity Outreach Program Analyst, and one Management Analyst.

OMWI estimates the percentage of time spent on these programs as compared to the total time spent performing all tasks and responsibilities for the Diversity Outreach Program Analyst, Management Analyst, and OMWI Director. OMWI applies the estimated percentage of time allotted to insurance activities to its total estimated working hours. Then, those hours are compared to the estimated number of total hours worked by all OMWI staff. OMWI's time estimates for the most recent ETS period resulted in the following allocation:

- 14 percent of staff time spent on insurance related activities; and
- 86 percent of time is spent on non-insurance activities.

Based on the allocation method described above, 86 percent of OMWI's work is non-insurance related. This percentage is applied to OMWI's Operating Budget to determine the allocation of costs between insurance and non-insurance related activities.

All Other Offices

NCUA's remaining offices do not provide estimates on their insurance and non-insurance related activities. Rather, because these offices are support functions for NCUA's main program—the examination and supervision of credit unions—the same allocation basis used for the regional offices is used to determine the costs of insurance and non-insurance related activities for these support functions. The budgeted costs for the offices of the NCUA Board, Executive Director, General Counsel, Chief Financial Officer, Chief Information Officer and Chief Economist as well as Human Resources,

Examination and Insurance, Public and Congressional Affairs, and Continuity and Security Management are allocated at 9.6 percent non-insurance related activities for purposes of calculating the OTR.

Combining the calculation steps in the workload program hours and financial budget section, the OTR methodology thus far has established the amount of NCUA's Operating Budget related to insurance and non-insurance related activities. NCUA's 2016 Operating Budget of $290.92 million includes $35.19 million allocated to non-insurance (regulatory) activities. The remaining $255.73 million of NCUA's Operating Budget is allocated to insurance-related activities. Identifying the portion of NCUA's Operating Budget allocated to insurance-related activities is the first step in determining NCUA's total insurance related costs. Consideration must also be given to the direct costs to the NCUSIF and the SSA Imputed Value, discussed in the next section.

d. Calculating NCUSIF Insurance and Non-Insurance Costs

Based on the ETS results for NCUA's core programs, the determination of insurance and non-insurance activities for special and other programs (Section IV.b) and applying the percentage of insurance and non-insurance activities to NCUA's Operating Budget (Section IV.c), the agency arrives at the dollar amount of insurance related costs included in the NCUA Operating Budget. As noted above, for 2016, this amount is $255.73 million (NCUA's 2016 Operating Budget of $290.92 million less non-insurance related costs of $35.19 million).

In addition to NCUA budgeted costs, there are operational costs charged directly to the NCUSIF which must be added to the insurance related portion of NCUA's Operating Budget when calculating the total cost of providing insurance. For 2016, these direct operational costs are budgeted at $1.56 million. The NCUSIF directly pays for the costs associated with SSA staff attendance at NCUA-sponsored training and the related travel expenses ($1.4 million), as well as SSA computer and related equipment leases ($0.16 million). These direct operational costs must be factored into the total operational costs of providing NCUSIF insurance, which needs to be absorbed by all FICUs. NCUA does not include credit union failure related costs [52] in the calculation, as these losses (charges to the NCUSIF) are already allocated based on the mutual nature of NCUSIF deposit insurance and are not costs of operating the NCUSIF.

This step of the calculation results in total insurance related costs to be absorbed by all FICUs of $257.29 million.[53] See Table 9.

TABLE 9—NCUSIF COSTS

[millions]

2016 NCUA Operating Budget	$290.92	
Non-Insurance Related Costs	−35.19	Table 6.
Direct Operational Charges to NCUSIF	+1.56	Budgeted costs for SSA training, travel, and equipment.
Total 2016 Budgeted Insurance Related Costs	257.29	

e. Allocation of Insurance Costs

This step of the OTR methodology is designed to calculate the total cost of providing share insurance, including work currently performed by SSAs, and then allocate these costs on an insured shares basis between FCUs and FISCUs. The steps in the OTR methodology thus far have determined the total budgeted operating costs and direct charges applicable to NCUA's role as insurer to be absorbed by all FICUs, $257.29 million. During the revision to the OTR methodology in 2003, the agency concluded it is appropriate to recognize NCUA relies on SSAs, to the fullest extent possible, to perform insurance related supervision of FISCUs. The cost NCUA, and thus the NCUSIF, avoids [54] should be taken into account when determining and allocating the total cost of providing NCUSIF insurance. The calculation of this imputed SSA value is a multi-step process outlined in Section IV.g, *SSA Imputed Value.* In 2016, the SSA imputed value is $40.6 million.

The OTR methodology also considers that the most fair and appropriate basis to allocate the cost of providing NCUSIF insurance between FCUs and FISCUs is the distribution of insured shares. This is consistent with the mutual nature of the insurance provided by the NCUSIF, and the statutory allocation method for any NCUSIF premiums and dividends.

Section IV.d, *Calculation of Insurance and Non-Insurance NCUSIF Costs,* determined NCUA's cost to fulfill its role as insurer is $257.29 million. However, the value provided by NCUA's reliance on SSA work should be factored in to determine the total cost to the federally insured credit union system of providing NCUSIF insurance. To do this, the imputed value of the insurance related work performed by the SSAs ($40.60 million) [55] is added to the total budgeted insurance related costs ($257.29 million):

TABLE 10—TOTAL COST OF PROVIDING NCUSIF INSURANCE

[millions]

Total 2016 Budgeted Insurance Related Costs	$257.29	Table 9.
SSA Imputed Value	+ $40.60	Value NCUA places on worked performed by SSAs. Table 32.
Total Cost of Providing NCUSIF Insurance	$297.89	

[52] Payouts on insured shares of failed institutions.

[53] Budgeted amounts are used to calculate the OTR; however, the OTR is applied to actual expenses incurred each month.

[54] NCUA relies on SSA examination work. Different SSAs are funded by various means, such as fees paid by state-chartered credit unions or through general state tax revenues.

[55] The calculation of the SSA imputed value is discuss in detail in Section IV.g.

The total cost of providing NCUSIF insurance must be allocated between FCUs and FISCUs. As mentioned, the allocation is based on their respective proportions of insured shares. FCUs and FISCUs represent 52.3 percent and 47.7 percent,[56] respectively, of the $935 billion in NCUSIF insured shares as of June 30, 2015. Thus, the distribution of costs is as follows:

TABLE 11—ALLOCATION OF TOTAL COSTS OF PROVIDING NCUSIF INSURANCE

	FCUs	FISCUs	
Total Cost of Providing NCUSIF Insurance (millions)	$297.89		Table 10.
Proportion of insured shares	× 52.3%	× 47.7%	
Allocated total insurance costs (millions)	$155.80	$142.09	

FISCUs are responsible for $142.09 million of the total costs of providing NCUSIF insurance. However, SSAs are providing $40.6 million worth of imputed value toward the cost of providing NCUSIF share insurance. Therefore, FISCUs are responsible for absorbing only $101.49 million of the total insurance costs:

TABLE 12—NET COST OF NCUSIF INSURANCE FOR FISCUS

[millions]

FISCU portion of total insurance costs	$142.09	Table 11.
SSA Imputed Value	− $40.60	Table 32.
Net Cost of NCUSIF Insurance for FISCUs	$101.49	

f. Calculating the OTR

This final step of the OTR methodology computes the OTR as a percentage of the NCUA Operating Budget. Section IV.e, *Allocation of Insurance and Non-Insurance Costs,* determined the net cost of providing NCUSIF insurance to be absorbed by FISCUs through the OTR is $101.49 million. This amount divided by the percentage of total insured shares held by FISCUs (47.7 percent) results in the total dollar cost to be absorbed by the NCUSIF for providing insurance to all federally insured credit unions. To state it another way, if FISCUs are responsible for 47.7 percent of the cost of providing NCUSIF insurance, and this represents $101.49 million, then the dollar amount of NCUA costs to be absorbed by the NCUSIF, through the OTR, must equal $212.78.[57] See Table 13.

TABLE 13—COSTS TO BE ABSORBED BY THE NCUSIF, THROUGH THE OTR

Net Cost of NCUSIF Insurance for FISCUs (millions)	$101.49	Table 12.
FISCU Proportion	÷ 47.7%	Table 11.
Costs to be Absorbed by the NCUSIF, through the OTR (millions).	$212.78	

Now that the dollar amount of the NCUA budget to be absorbed by the NCUSIF via the OTR has been calculated, the Overhead Transfer Rate itself, as a percentage of the budget can be calculated. The dollar amount of the NCUA budget to be absorbed by the NCUSIF ($212.78 million) divided by the total NCUA Budget ($290.92 million) equals the rate at which actual expenses will be funded by the NCUSIF as they are incurred each month (73.1 percent). This rate is what is called the OTR.

TABLE 14—OVERHEAD TRANSFER RATE

Costs to be Absorbed by the NCUSIF, through the OTR (millions).	$212.78	Table 13.
NCUA Operating Budget	÷ $290.92	Table 9.
Overhead Transfer Rate	73.1%	

Table 14 illustrates that 73.1 percent of NCUA's operating expenses, $212.78 million based on the 2016 budget, are funded by the NCUSIF via the OTR. The remaining 26.9 percent of NCUA's operating expenses, $78.14 million based on the 2016 budget, must be funded by other sources, primarily the FCU Operating Fee.[58] Thus, the explicit and implicit distribution of total Operating Budget costs for FCUs and FISCUs is 65.1 percent and 34.9 percent, respectively.

[56] Based on insured shares reported on NCUA's 5300 Call Report as of June 30, 2015.

[57] Mathematically, this computation must be used to arrive at the total costs (based on budget) to be absorbed by the NCUSIF, through the OTR, since this amount is the unknown to be solved for based on the addition of imputed, but not actual, costs to the budget.

[58] Other funding sources, in addition to the FCU Operating Fee (including federal corporate credit union Operating Fees) and fees collected for various services and publications.

TABLE 15—OPERATING BUDGET DISTRIBUTION

Portion of 2016 operating budget covered by:	FCUs	FISCUs
FCU Operating Fee	26.9%	0.0%
OTR × Percent of Insured Shares	38.2% (73.1% × 52.3%)	34.9% (73.1% × 47.7%)
Total	65.1%	34.9%

g. SSA Imputed Value

To develop an OTR that properly reflects the total cost to insured credit unions of providing NCUSIF insurance, it is necessary to factor in the value of the insurance related supervision provided by state examination programs and relied upon by NCUA in managing the NCUSIF. NCUA developed a four step process to calculate (impute) the value of the insurance work performed by SSAs that NCUA relies upon. The imputed value derived from these calculations is factored into the calculation of the OTR as discussed in Section IV.e.

NCUA determined the best measure available for the value of state examination programs to the NCUSIF is what it would cost NCUA to perform this work.[59] An alternative measure of the value of this work is the actual cost of SSA supervision programs. However, these do not necessarily reflect the value to NCUA in managing the NCUSIF[60] and are not readily available to NCUA. The Board invites comment on the methodology for determining the SSA imputed value including proposals for alternative methods for valuing the insurance work performed by SSAs in the OTR calculation.

Throughout this discussion, we will present the calculations used to determine the values for the 2016 OTR. In these calculations we use the following information:

- Average exam time based on 2014 actual results,
- percentage of exam time used for insurance work based on the 2015 ETS results, and
- budget projections for 2016.

Step 1—NCUA FISCU Workload Projection

The first step in this process is to determine the workload required for NCUA to examine all FISCUs. To calculate this figure, NCUA determines the examination hours that field staff expended on FCUs by asset size and CAMEL rating. The results for 2014 are documented in Table 16.

TABLE 16—FCU AVERAGE EXAMINATION TIME (HOURS) FOR 2014

	Asset range (millions)				
	<$10	$10–$100	$100–$250	$250–$500	>$500
CAMEL 1	39	80	162	192	408
CAMEL 2	41	88	186	234	445
CAMEL 3	45	100	223	279	407
CAMEL 4	65	142	312	225	438
CAMEL 5	109	219	0	0	0

NCUA then determines the distribution of FISCUs using the same asset and CAMEL rating categories. The distribution for 2014 is documented in Table 17.

TABLE 17—NUMBER OF FISCUS IN EACH CATEGORY

[as of December 2014]

	Asset range (millions)				
	<$10	$10–$100	$100–$250	$250–$500	>$500
CAMEL 1	54	99	45	30	83
CAMEL 2	342	664	205	102	147
CAMEL 3	188	230	46	16	12
CAMEL 4	40	32	5	2	4
CAMEL 5	0	0	0	0	0

[59] NCUA realizes that the imputed value may be higher or lower than what SSAs actually spend to conduct insurance related supervision programs NCUA relies upon. Nonetheless, the relevant factor for purposes of computing the OTR is the value to the NCUSIF derived from this work.

[60] Another consideration is the fact each SSA program may not represent the same percentage of insurance related supervision of institutions based on each state's unique program and cost structure, necessitating separate regulatory and insurance cost factors be calculated for each state. Such an endeavor would be costly and would require each SSA to divulge detailed financial and operating information, which they may not be inclined to provide.

The average examination time estimates from Table 16 are then applied to the distribution of FISCUs in Table 17 using the same asset and CAMEL rating categories. This provides an estimate of the examination time needed if NCUA were to conduct all of the state examination work on the same basis employed for FCUs. Based on the average examination hours for FCUs and the number of FISCUs in each asset and CAMEL category, NCUA would have needed 318,573 hours to complete examinations of all FISCUS in the same manner as it examined FCUs in 2014. The estimated hours are documented in Table 18.

TABLE 18—PROJECTED FISCU EXAM HOURS

	Asset range (millions)					
	<$10M	$10–$100	$100–$250	$250–$500	>$500	Totals [61]
CAMEL 1	2,116	7,911	7,295	5,766	33,898	56,986
CAMEL 2	13,982	58,225	38,232	23,845	65,408	199,692
CAMEL 3	8,499	22,889	10,256	4,465	4,882	50,992
CAMEL 4	2,616	4,530	1,558	449	1,750	10,902
CAMEL 5						
Totals	27,213	93,555	57,340	34,526	105,938	318,573

Step 2—Allocation of Projected Fiscu Exam Hours

Step 1 calculated that it would take 318,573 hours for NCUA to conduct examinations in all FISCUs. However, not all examination time is used to meet NCUA's role as insurer. The ETS results for cycle ending on May 31, 2015, indicate that 86.83 percent of examination time was used to meet NCUA's needs in managing risks to the NCUSIF. For consistency and fairness, this same distribution is applied to FISCUs when determining the total time it would take NCUA to supervise FISCUs to meet its role as insurer, resulting in 276,617 hours for insurance related time. Table 19 illustrates this calculation.

TABLE 19—PROJECTED FISCU EXAM HOURS USING ETS

	Hours
Gross FISCU Exam Hours	318,573
Times Insurance Factor Based on Exam Survey	× 86.83%
Equals Total Insurance Hours	= 276,617

NCUA also estimates total FISCU examination time by multiplying current NCUA budgeted FISCU examination time [62] by two. This reflects that FISCU examinations are conducted jointly with the SSA, and that all NCUA examination time is for insurance purposes. Table 20 documents this calculation.

TABLE 20—PROJECTED FISCU EXAM HOURS USING MULTIPLIER

	Hours
Current Budgeted FISCU Insurance Hours	149,914
Times 2 (Assuming Joint Examinations and 50/50 time split with SSA)	× 2
Equals Projected Examination Insurance Hours for State Program	= 299,828

The result of the calculation in Table 20 is compared to the result from Table 19 and the greater of the two numbers is selected, in this case 299,828 hours, from Table 20. Using the greater of the two results benefits the SSA imputed value as it requires more resources and, therefore, increases the imputed value.

Next, NCUA takes the results from the previous step and subtracts the current budgeted state examination program hours since they are already included in the resource budget. NCUA also makes an adjustment for additional FISCU supervision hours. NCUA's 2016 workload program budgets 25,808 hours for FISCU supervision. Since supervision is typically performed jointly with SSAs, NCUA would need an additional 25,808 hours. The result is the number of additional insurance hours necessary for NCUA to examine and supervise all FISCUs without any SSA assistance. The calculation for the 2016 OTR indicates NCUA would need an additional 175,722 hours to complete all the FISCU work. The calculation is illustrated in Table 21.

[61] Numbers may not add up exactly due to rounding.

[62] From the 2016 NCUA Workload Budget.

TABLE 21—ADDITIONAL HOURS FOR FISCU INSURANCE WORK

	Hours
Projected FISCU Insurance Hours	299,828
Less Current Budgeted FISCU Examination Hours	− 149,914
Plus Additional FISCU Supervision Hours	+ 25,808
Equals Total Additional FISCU Insurance Hours	= 175,722

Finally, NCUA deducts the time budgeted for FISCU examination report reviews to arrive at the net additional insurance hours needed to complete all FISCU examinations and supervision.[63] The FISCU examination report review time would no longer be needed if NCUA performed the FISCU examinations. NCUA's 2016 workload budget contained 5,231 hours for FISCU examination report review. Deducting those hours from the results from Table 21 results in net additional insurance hours of 170,401. This calculation is illustrated in Table 22.

TABLE 22—NET ADDITIONAL HOURS FOR FISCU INSURANCE WORK

	Hours
Total Additional FISCU Insurance Hours	175,722
Less Current Budgeted FISCU Examination Review Hours	− 5,321
Equals Net Additional FISCU Insurance Hours	= 170,401

Step 3—Projected Additional Staff Required

The next step in the calculation is to determine how many additional full-time equivalent (FTE) examiners are needed to complete the net additional FISCU insurance hours calculated in Step 2. To accomplish this, NCUA first calculates the total annual productive work hours for an FTE examiner. Total Core and Special Workload hours from the Workload Budget must be divided by Total Estimated Workload Hours to determine the productivity ratio.[64] The productivity ratio for 2016 is 52.7 percent. The productivity ratio calculation is illustrated in Table 23.

TABLE 23—EXAMINER PRODUCTIVITY RATIO

Budgeted Core and Special Workload Program Hours	764,193
Divided by Total Budgeted Workload Program Hours	÷ 1,448,716
Equals the Productivity Ratio	52.7%

Applying the productivity ratio to the total annual work hours for an examiner FTE results in the number of productive hours per year for each examiner. The budgeted productive hours for an examiner for 2016 is 1,097. This calculation is illustrated in Table 24.

TABLE 24—PRODUCTIVE HOURS PER FTE

Total Annual Work Hours per examiner FTE	2,080
Times the Productivity Ratio	× 52.7%
Equals Annual Productive Hours per examiner FTE	= 1,097

The additional number of examiner FTEs necessary to complete the net additional FISCU insurance work is calculated by dividing the net additional FISCU insurance hours from Table 22 in Step 2 by the annual productive hours per FTE. The 2016 OTR calculation resulted in 155.3 additional examiner FTEs needed to complete the additional insurance work in FISCUs. Table 25 illustrates this calculation.

TABLE 25—EXAMINER FTES NEEDED FOR ADDITIONAL FISCU WORK

Net Additional FISCU Insurance Hours	170,401
Divided by Annual Productive Hours per FTE	÷ 1,097
Equals Additional Examiner FTEs Needed	= 155.3

[63] As part of its fiduciary responsibility, NCUA examiners review all state examination reports. This time is assigned to work classification code 26.

[64] Total workload hours include various leave benefits, training, and administrative time.

Adding an additional 155.3 examiners would necessitate additional staffing in other areas, including additional Supervisory Examiners and Regional Office staff. Based on NCUA's staffing patterns and organizational structure, the following ratios of examiners to other regional positions were used to determine additional staffing needs and costs. The ratios are documented in Table 26.

TABLE 26—OTHER REGIONAL FTES NEEDED

Additional staff needed	Ratio examiners to position	FTEs per position
Examiners	1/1	155.3
Supervisory Examiners	1/9	17.3
Regional Office Analysts	1/15	10.4
Regional Office Directors	1/25	6.2
Other Regional Support Staff	1/20	7.8
Total Number of Additional Regional FTEs Needed		196.9

Step 4—Dollar Amount of the SSA Imputed Value

The next step is to calculate the dollar amount of the SSA imputed value. The first step in this process is to calculate the average cost per regional FTE. The average cost is based on the actual budget for regional offices and field staff and includes employee pay and benefits, travel, rent, communications, utilities, administrative, and contracted services. The average cost of a regional FTE for the 2016 OTR calculation was $185,508 based on 838.2 FTEs. The calculation is illustrated in Table 27.

TABLE 27—ANNUAL COST PER REGIONAL FTE

Total Cost of Regions (2016 budget)	$155,492,604
Divided by FTEs in Regions (2016 budget)	÷ 838.2
Equals Annual Cost Per Regional FTE	= $185,508

Next, NCUA applies the annual cost per regional FTE to the total number of additional FTEs necessary if NCUA were to complete all FISCU examinations and supervision. In Table 26, NCUA calculated the total number of regional FTEs to be 196.9 for 2016. Multiplying the additional FTEs by the average projected cost per FTE results in additional regional costs of $36,525,336 for 2016. Table 28 illustrates this calculation.

TABLE 28—TOTAL ADDITIONAL REGIONAL COST

Projected Average Cost per FTE for 2016	$185,508
Times Additional FTEs Needed	× 196.9
Equals Total Additional Regional Cost	= $36,525,336

The additional regional staffing would also have an impact on the workload of the following NCUA central offices:

- Office of Human Resources,
- Office of the Chief Financial Officer Division of Financial Control, and
- Office of the Chief Information Officer Division of IT Operations.

Adding 196.6 additional staff members to NCUA would represent a 15.6 percent increase in staffing. This percentage increase is calculated by dividing the number of additional regional FTEs by NCUA's existing number of FTEs, which was 1,260.2 for the 2016 OTR calculation. Table 29 illustrates the calculation.

TABLE 29—PERCENTAGE INCREASE IN FTES

Office	Budget
Additional FTEs Needed	196.9
Divided by Current Number of FTEs	÷ 1,260.2
Equals the Percentage Increase in FTEs	= 15.6%

The workload will increase for the central offices indicated above, as these offices directly support staff by processing personnel actions, providing computer support, and processing payroll and travel vouchers.[65] Therefore, NCUA applies the 15.6 percent increase to each of the above office's budget to account for additional

[65] Other central offices are considered sufficiently scalable or not directly impacted to absorb such an increase in regional positions without needing additional staff.

resources and workload. The combined budgets for these three offices for 2016 was $36,064,124. The projected increase in cost for 2016 based on the 15.6 percent increase was $5,634,664. The calculations are shown in Table 30.

TABLE 30—ADDITIONAL CENTRAL OFFICE COSTS

Office	Budget
Office of Human Resources	$15,547,400
Plus Office of the Chief Financial Officer Division of Financial Control	+ $7,956,891
Plus Office of the Chief Information Officer Division of IT Operations	+ $12,559,833
Equals Total Other Office Budgets Affected	= $36,064,124
Times 15.6 percent	× 15.6%
Equals Additional Central Office Costs	= $5,634,664

In addition to the increases in certain costs, there would be some areas of savings to NCUA if it conducted all of the insurance related FISCU work. There would be no need to pay for the training of state examiners, or provide SSAs with computers and other equipment. The cost savings projected for the 2016 OTR calculation was $1,562,408. Table 31shows the breakdown of the cost savings.

TABLE 31—TOTAL COST SAVINGS

SSA Training and Travel	$1,400,000
Plus SSA Computer Leases	+ $162,408
Equals Total Cost Savings	= $1,562,408

The SSA imputed value is calculated by adding the additional regional and central office costs from Table 28 and 30 and then subtracting the cost savings from Table 31. The SSA imputed value for the 2016 OTR is $40,597,592. Table 32 illustrates the calculation.

TABLE 32—SSA IMPUTED VALUE

Additional cost area	Cost
Additional Regional Costs	$36,525,336
Plus Additional Central Office Costs	+ $5,634,664
Less SSA Training and Equipment Cost	− $1,562,408
Equals Imputed SSA Value	= $40,597,592

The SSA Imputed Value of $40.6 million is used to determine the total costs to NCUA of providing NCUSIF insurance (Table 10) and to determine the net cost of NCUSIF insurance for FISCUs (Table 12). As previously discussed in *Section IV.e, Allocation of Insurance and Non-Insurance Costs,* NCUA includes the SSA Imputed Value in the OTR calculation to account for NCUA's reliance, to the fullest extent possible, on SSAs to perform much of the insurance related supervision of FISCUs. Therefore, the costs NCUA and thereby the NCUSIF avoid are taken into account when determining and allocating the total cost of providing NCUSIF insurance.

V. Request For Comment

The Board invites comments on all issues discussed in this document. In particular, the Board solicits specific comments on the OTR's allocation of insurance and non-insurance related activities to the Operating Budget and the methodology used to determine the value of the work performed in FISCUs by SSAs. Further, commenters should not feel constrained to limit their comments to the issues discussed above. Rather, commenters are encouraged to discuss any other relevant OTR issues they believe NCUA should consider. Commenters are encouraged to provide documentation to support any alternatives they may suggest to adjust the existing methodology or components therein.

By the National Credit Union Administration Board on January 21, 2016.

Gerard Poliquin,

Secretary of the Board.

VI. Appendix A—Mapping of NCUA Regulations

In its January 20, 2011, Overhead Transfer Rate Review, PricewaterhouseCoopers recommended that NCUA consider steps aimed at making the OTR methodology more transparent, along with all of the assumptions and steps that are utilized. In response, NCUA modified the classification of insurance and non-insurance related activities in May 2011 for the 2011–2012 ETS by establishing Insurance Related Activities, Insurance Regulatory Related Activities and Consumer Regulatory Related Activities. These definitions are mapped to the NCUA Regulations and were distributed to ETS participants as part of the ETS Instructions. The mapping of regulations deemed part of the examination process and distributed to the time study participants for the ETS period covering June 1, 2014 to May 31, 2015, is provided below. Footnotes have been added to provide additional insight. The current mapping has not yet been updated for NCUA's most recent final rules. Similar to other activities not explicitly classified in the ETS instructions, ETS participants defer to the overarching definitions of insurance and non-insurance related activities provided in the ETS instructions (see Appendix B) to appropriately allocate time as insurance or non-insurance.

NCUA Regulation	Part	Insurance regulatory related	Non-insurance and consumer regulatory related	Description
§ Part 701—Organization and Operations of FCUs[66].	.1—Federal credit union chartering, field of membership modifications, and conversions.		X	This part addresses the location of NCUA's chartering and field of membership policies
	.2—Federal Credit Union Bylaws		X	Requires FCU's to operate in accordance with their approved bylaws.
	.3—Member inspection of credit union books, records, and minutes.		X	This part grants a group of members the right to inspect the books and records of an FCU.
	.4–.5—Reserved.			
	.6—Fees paid by federal credit unions		X	This section establishes the fees to be paid by the credit union to the NCUA.
	.7–.13—Reserved.			
	.14—Change in official or senior executive officer in credit unions that are newly chartered or are in troubled condition.	X		This section establishes parameters under which a newly chartered credit union or a troubled credit union must operate with regard to management decisions and operations.
	.15–.18—Reserved.			
	.19—Benefits for employees of federal credit unions.	X		This section allows a FCU to pay employees certain benefits as part of their employment with the FCU.
	.20—Suretyship and guaranty	X		This section establishes the ability of a FCU to enter into suretyship and guaranty agreements under certain conditions and limitations.
	.21—Loans to members and lines of credit to members.	X		This section establishes the parameters for a FCU's overall lending program.
	.22—Loan participation	X		This section establishes the ability of an FCU to enter into loan participation agreements, and establishes limitations and parameters under which an FCU can do so.
	.23—Purchase, sale, and pledge of eligible obligations.	X		This section of the regulation establishes the ability of an FCU to purchase, sell, or pledge eligible obligations (loans) of the FCU.
	.24—Refund of interest	X		This section of the regulations authorizes an FCU to refund interest to members under certain conditions.
	.25—Charitable contributions and donations	X		This sections grants authority of an FCU to make charitable contributions.
	.26—Credit union service contracts	X		This sections grants authority for an FCU to enter into service contracts with other FCUs.
	.27–.29—Reserved.			
	.30—Services for nonmembers within the field of membership.		X	This section grants authority to FCUs to provide limited services to non-members within their field of membership.
	.31—Nondiscrimination requirements		X	This section prohibits an FCU from discriminating against a person or group of persons and establishes parameters under which it must operate to ensure non-discrimination and notify others of its non-discrimination policies.
	.32—Payment on shares by public units and nonmembers.	X		This section grants permission to FCUs to receive payments on shares from public units.
	.33—Reimbursement, insurance, and indemnification of officials and employees.	X		This section establishes the parameters under which an FCU may compensate officials, and volunteers.
	.34—Designation of low-income status; acceptance of secondary capital accounts by low-income designated credit unions.	X		Grants permission to LICU's to accept secondary capital accounts.[67]
	.35—Share, share draft, and share certificate accounts.		X	Regulation grants permission for credit unions to offer share, share draft and certificate accounts to members.
	.36—FCU Ownership of fixed assets	X		Sets parameters and limitations on a FCU's ownership and treatment of fixed assets
	37—Treasury Tax and Loan Depositaries; Depositaries and Financial Agents of the Government.	X		Grants permission for FCU's to act as Treasury tax and loan depositary as well as a depositary of public money.
	.38—Borrowed funds from natural persons		X	Grants permission for FCU's to borrow funds from natural persons.
	.39—Statutory lien		X	Grants permission to an FCU to establish a lien against the property of members to secure a financial obligation to the FCU by that member.

NCUA Regulation	Part	Insurance regulatory related	Non-insurance and consumer regulatory related	Description
§ 702—Prompt Corrective Action [68].	.1—Authority, purpose, scope and other supervisory authority.			This Part of the NCUA regulations (including subparts A, B, C and D) deals exclusively with safety and soundness issues that impact directly or indirectly the financial condition of the credit union.
	.2 Definitions.			
Subpart A	.101—Measures and effective date of net worth classification.	X		
	.102—Statutory net worth categories	X		
	.103—Applicability of net worth req't	X		
	.104—Risk portfolios defined	X		
	.105 Weighted-average life of investments	X		
	.106—Standard calculation of risk-based net worth requirement.	X		
	.107—Alternative components for standard calculation.	X		
	.108—Risk mitigation credit	X		
Subpart B—Mandatory and Discretionary Supervisory Actions.	.201—Prompt corrective action for ''adequately capitalized'' credit unions.	X		
	.202—Prompt corrective action for ''undercapitalized'' credit unions.	X		
	.203—Prompt corrective action for ''significantly undercapitalized'' credit unions.	X		
	.204—Prompt corrective action for ''critically undercapitalized'' credit unions.	X		
	.205—Consultation with State officials on proposed prompt corrective action.	X		
	.206—Net worth restoration plans	X		
Subpart C—Alternative Prompt Corrective Action for New Credit Unions.	.301—Scope and definition.			
	.302—Net worth categories for new credit unions.	X		
	.303—Prompt corrective action for ''adequately capitalized'' new credit unions.	X		
	.304—Prompt corrective action for ''moderately capitalized,'' ''marginally capitalized'' or ''minimally capitalized'' new credit unions.	X		
	.305—Prompt corrective action for ''uncapitalized'' new credit unions.	X		
	.306—Revised business plans for new credit unions.	X		
	.307—Incentives for new credit unions	X		
Subpart—D Reserves	.401—Reserves.			
	.402 Full and fair disclosure of financial condition.	X		
	.403—Payment of dividends	X		
§ 703—Investment and Deposit Activities [69].	.1—Purpose and scope			This part of NCUAs regulations deal with investment and deposit permissions of FCU's and the compliance or non-compliance with this section impacts either directly, or indirectly, the financial condition of the credit union.
	.2—Definitions.			
	.3—Investment policies	X		
	.4—Recordkeeping and documentation requirements.	X		
	.5—Discretionary control over Investments and investment advisers	X		
	.6—Credit Analysis	X		
§ 704—Corporate Credit Unions [70]	.1—Scope			This entire part of NCUAs regulations sets parameters on the financial operations of corporate credit unions. The compliance or non-compliance with this section could impact directly, or indirectly, the financial condition of the corporate credit union.
	.2—Definitions.			
	.3—Corporate Credit Union Capital	X		
	.4—Prompt Corrective Action	X		
	.5—Investments	X		
	.6—Credit Risk Management	X		
	.7—Lending	X		
	.8—Asset-Liability Management	X		
	.9—Liquidity Management	X		
	.10—Investment Action Plan	X		
	.11—Corporate CUSO's	X		
	.12—Permissible Services	X		
	.13—Board Responsibilities	X		
	.14—Representation	X		

NCUA Regulation	Part	Insurance regulatory related	Non-insurance and consumer regulatory related	Description
	.15—Audit Requirements	X		
	.16—Contract/Written Agreements	X		
	.17—State-chartered corporate credit unions	X		
	.18—Fidelity bond coverage	X		
	.19—Disclosure of executive compensation	X		
	.20—Reserved	X		
	.21—Enterprise Risk Management	X		
	.22—Membership Fees	X		
§ 706—Credit Practices [71]	.1—Definitions			This entire section protects the member from unfair or deceptive acts by an FCU as well as compliance with other federal law designed to protect the consumer (member).
	.2—Unfair credit practices		X	
	.3—Unfair or deceptive cosigner practices		X	
	.4—Late charges		X	
§ 707—Truth in Savings [72]	.1—Authority, purpose, coverage and effect on state laws.			This entire section protects the member from unfair or deceptive acts by an FCU as well as compliance with other federal law.
	.2—Definitions		X	
	.3—General disclosure requirements		X	
	.4—Account disclosures		X	
	.5—Subsequent disclosures		X	
	.6—Periodic statement disclosures		X	
	.7—Payment of dividends		X	
	.8—Advertising		X	
	.9—Enforcement and record retention		X	
	.10—Reserved.			
	.11—Additional disclosure requirements for overdraft services.		X	
§ 712—Credit Union Service Organizations [73].	.1—what does this part cover?			This entire section of NCUAs regulations deal with the structure and operations of a CUSO. The compliance or non-compliance with these regulations could have a direct or indirect impact on the financial condition of an FCU.
	.2—How much can an FCU invest in or loan to CUSOs, and what parties may participate?.	X		
	.3—What are the characteristics of and what requirements apply to CUSOs?.	X		
	.4—What must an FCU and a CUSO do to maintain separate corporate identities?.	X		
	.5—What activities and services are preapproved for CUSOs?.	X		
	.6—What activities and services and prohibited for CUSOs?.	X		
	.7—Reserved.			
	.8—What transaction and comp. limits apply to an FCU and a CUSO?.	X		
	.9—When must an FCU comply with this part?.	X		
	.10—How can a state supervisory authority obtain an exemption for state chartered credit unions from compliance with § 712.3(d)(3)?.	X		
§ 713—Fidelity Bond and Insurance Coverage for Federal Credit Unions [74].	.1—What is the scope of this section?			This entire section of NCUA's regulations requires credit unions to obtain fidelity bond insurance coverage. This coverage protects the credit union from covered losses and therefore protects the NCUSIF.
	.2—What are the responsibilities of a credit union's board of directors under this section?.	X		
	.3—What bond coverage must a credit union have?.	X		
	.4—What bond forms may be used?	X		
	.5—What is the required minimum dollar amount of coverage?.	X		
	.6—What is the permissible deduction?	X		
	.7—May the NCUA Board require a credit union to secure additional insurance coverage?.	X		

NCUA Regulation	Part	Insurance regulatory related	Non-insurance and consumer regulatory related	Description
§ 714—Leasing [75]	.1—What does this part cover?			This entire section of NCUAs regulations deals with the ability of FCUs to enter into leasing agreements and sets parameters on types of leases and limitations on financial arrangements. The compliance or non-compliance with this part could have a direct or indirect impact on the financial condition of the credit union.
	.2—What are the permissible leasing arrangements?.	X		
	.3—Must you own the leased property in an indirect leasing arrangement?.	X		
	.4—What are the lease requirements?	X		
	.5—What is required if you rely on an estimated residual value greater than 25% of the original cost of the leased property?.	X		
	.6—Are you required to retain salvage powers over the leased property?.	X		
	.7—What are the insurance requirements applicable to leasing?.	X		
	.8—Are the early payment provisions, or interest rate provisions, applicable in leasing arrangements?.	X		
	.9—Are indirect leasing arrangements subject to the purchase of eligible obligation limit?.	X		
	.10—What other laws must you comply with when engaged in leasing?.	X		
§ 715—Supervisory Committee Audits and Verifications [76].	.1—Scope of this part			This entire section of NCUAs regulations deals with the roles and responsibilities of the Supervisory Committee which are designed to ensure the safe and sound operation of an FCU.
	.2—Definitions used in this part	X		
	.3—General responsibilities of the Supervisory Committee.	X		
	.4—Audit responsibility of the Supervisory Committee.	X		
	.5—Audit of Federal Credit Unions	X		
	.6—Audit of Federally-insured State-chartered credit unions.	X		
	.7—Supervisory Committee audit alternatives to a financial statement audit.	X		
	.8—Requirements for verification of accounts and passbooks.	X		
	.9—Assistance from outside, compensated person.	X		
	.10—Audit report and working paper maintenance and access.	X		
	.11—Sanctions for failure to comply with this part.	X		
	.12—Statutory audit remedies for Federal credit unions.	X		
§ 716—Privacy of Consumer Financial Information [77].	1. Purpose and scope			This entire section of NCUA's regulations deals with an FCU's communication with its members and the safeguarding of member information.
	.2 Model privacy form and examples.			
	.3 Definitions.			
Subpart A—Privacy and Opt Out Notices.	.4—Initial privacy notice to consumers required.		X	
	.5 Annual privacy notices to members required.		X	
	.6 Information to be included in privacy notices.		X	
	.7—Form of opt out notice to consumers and opt out methods.		X	
	.8—Revised privacy notices		X	
	.9—Delivering privacy and opt out notices		X	
Subpart B—Limits on Disclosures	.10—Limits on disclosure of nonpublic information to third parties.		X	
	.11—Limits on re-disclosure and reuse of information.		X	
	.12—Limits on sharing of account number information for marketing purposes.		X	
Subpart C—Exceptions	.13—Exception to opt out requirements for service providers and joint marketing.		X	
	.14—Exceptions to notice and opt out requirements for processing transactions.		X	

NCUA Regulation	Part	Insurance regulatory related	Non-insurance and consumer regulatory related	Description
	.15—Other exceptions to notice and opt out requirements.		X	
Subpart D—Relation to Other Laws; Effective Date.	.16—Protection of Fair Credit Reporting Act		X	
	.17—Relation to state laws		X	
	.18—Effective date; transition rule		X	
§ 717—Fair Credit Reporting [78]	.1 Purpose, scope and effective dates.			This entire section of NCUAs regulations, including Subparts A through I, deals with the implementation of the Fair Credit Reporting Act which is designed to protect consumers (members) from unfair or deceptive practices.
	.2—Examples.			
	.3—Definitions.			
Subpart B	Reserved.			
Subpart C—Affiliate Marketing	.20—Coverage and definitions		X	
	.21—Affiliate marketing opt-out and exceptions.		X	
	.22—Scope and duration of opt-out		X	
	.23—Contents of opt-out notice; consolidated and equivalent notices.		X	
	.24—Reasonable opportunity to opt-out		X	
	.25—Reasonable and simple methods of opting out.		X	
	.26—Delivery of opt-out notices		X	
	.27—Renewal of opt-out		X	
	28—Effective date, compliance date, and prospective application.		X	
Subpart D—Medical Information	.30—Obtaining or using medical information in connection with a determination of eligibility for credit.		X	
	.31—Limits on re-disclosure of information		X	
	.32—Sharing medical information with affiliates.		X	
Subpart E—Duties of Furnishers of Information.	.40—Scope.			
	.41—Definitions.			
	.42—Reasonable policies and procedures concerning the accuracy and integrity of furnished information.		X	
	.43—Direct Disputes		X	
Subparts F–H	Reserved.			
Subpart I—Duties of Users of Consumer Reports Regarding Address Discrepancies and Records Disposal.	.80–.81 Reserved.			
	.82—Duties of users regarding address discrepancies..		X	
	.83—Disposal of consumer information		X	
	.84–.89 Reserved.			
	.90—Duties regarding the detection, prevention, and mitigation of identity theft..		X	
	.91—Duties of card issuers regarding changes of address.		X	
§ 722—Appraisals [79]	.1—Authority, Scope and Purpose			This entire section of NCUAs regulations establishes rules for obtaining appraisals on collateral securing financial obligations of members. The compliance or non-compliance with this section could have a direct or indirect impact on the financial standing of the credit union.
	.2—Definitions.			
	.3—Appraisals required; transactions requiring a State certified or licensed appraiser.	X		
	.4—Minimum appraisal standards	X		
	.5—Appraiser Independence	X		
	.6—Professional association membership; competency.	X		
	.7—Enforcement	X		
§ 723—Member Business Loans [80]	1.—What is a member business loan?			This entire section of NCUAs regulations establishes parameters under which an FCU must act in the creation, implementation and monitoring of a member business lending program, including: underwriting guidelines, loan limitations and loan types. The compliance or non-compliance with this part could impact the financial condition of an FCU.
	2.—What are prohibited activities?.			

NCUA Regulation	Part	Insurance regulatory related	Non-insurance and consumer regulatory related	Description
	.3—What are the requirements for construction and development lending?.	X		
	.4—What other regulations apply to member business lending?.	X		
	.5—How do you implement a member business loan program?.	X		
	.6—What must your member business loan policy address?.	X		
	.7—What are the collateral and security requirements?.	X		
	.8—How much may one member or a group of associated members borrow?.	X		
	.9—Reserved.			
	.10—What waivers are available?	X		
	.11—How do you obtain a waiver?	X		
	.12—What will NCUA do with my waiver request?.	X		
	.13—What options are available if the NCUA Regional Director denies my waiver request, or a portion of it?.	X		
	.14—.15—Reserved.			
	.16—What is the aggregate member business loan limit for a credit union?.	X		
	.17—Are there exceptions to the aggregate loan limit?.	X		
	.18—How do I obtain an exception?	X		
	.19—What are the recordkeeping requirements?.	X		
	.20—How can a state supervisory authority develop and enforce a member business loan regulation?.	X		
	.21—Definitions.			
§ 740—Accuracy of Advertising and Notice of Insured Status [81].	.0—Scope			This entire section of NCUA regulations requires federally insured credit unions to display signage in facilities and in advertising notifying members that deposits are insured by NCUA.
	.1—Definitions.			
	.2—Accuracy of advertising	X		
	.3—Advertising of excess insurance	X		
	.4 Requirements for the official sign	X		
	.5—Requirements for the official advertising statement.	X		
§ 741—Requirements for Insurance [82].	0—Scope.			
Subpart A—Regulations That Apply to Both Federal Credit Unions and Federally Insured State-Chartered Credit Unions and That Are Not Codified Elsewhere in NCUA's Regulations.	.1—Examination			This section, subpart A of Part 741, of NCUAs regulations governs certain actions by FCUs as well as FISCUs that relate directly to their insurance coverage under the NCUSIF.
	.2—Maximum borrowing authority	X		
	.3—Criteria	X		
	.4—Insurance premium one percent deposit	X		
	.5—Notice of termination of excess insurance coverage..	X		
	.6—Financial and statistical and other reports	X		
	.7—Conversion to a state-chartered credit union.	X		
	.8—Purchase of assets and assumption of liabilities.	X		
	.9 –Uninsured membership shares	X		
	.10—Disclosure of share insurance	X		
	.11—Foreign branching	X		
Subpart—B—Regulations Codified Elsewhere in NCUA's Regulations as Applying to Federal Credit Unions That Also Apply to Federally Insured Stated-Chartered Credit Unions.				
	.201—Minimum fidelity bond requirements	X		This section requires any credit union applying for insurance under the NCUSIF to obtain fidelity bond coverage. Failure to obtain and maintain bond coverage could impact the credit unions financial condition.

NCUA Regulation	Part	Insurance regulatory related	Non-insurance and consumer regulatory related	Description
	.202—Audit and verification requirements	X		This section requires a Supervisory Committee to make or cause to be made an audit of the credit unions books and records. Non-compliance can impact the credit union's financial condition.
	.203—Minimum loan policy requirements	X		This section establishes certain requirements for an FCU's compliance with parts 723 and 701 of NCUA regulations, and exempts FISCUs if the SSA has adopted their own rules governing certain lending programs/practices.
	.204—Maximum public unit and nonmember accounts, and low income designation.	X		This section requires compliance with part 701.32 regarding acceptance of non-member deposits.
	.205—Reporting requirements for credit unions that are newly chartered or in troubled condition.	X		This section required newly chartered credit unions in existence under 2 years or credit unions designated as in troubled condition to comply with part 701.14 of the regulations.
	.206—Corporate credit unions	X		Requires corporate credit unions to comply with part 704 of NCUA regulations.
	.207—Community development revolving loan program for credit unions.		X	This part of section 741 requires any insured credit union to adhere to part 705 of NCUA regulations governing loans to LICU's for the purposes of community investment.
	.208—Mergers of federally insured credit unions; voluntary termination or conversion of insured status.	X		Requires compliance with section 206 of the FCU act and parts 708a and 708b of the regulation regarding termination or conversion of insured status.
	.209—Management official interlocks	X		Prohibits an official of one credit union serving as an official of another, competing credit union.
	.210—Central liquidity facility	X		Requires insured credit unions to comply with part 725 of the regulation governing the membership of credit unions in the CLF.
	.211—Advertising [83]	X		This section of this part of NCUAs regulations requires an insured credit union to comply with Part 740 of the regulations governing the advertising and notification of NCUSIF insurance.
	.212—Share insurance	X		This section addresses the insurance of member accounts as prescribed in subpart A of part 745 of the regulations.
	.213—Administrative actions, adjudicative hearings, rules of practice and procedure.	X		This section addresses an insured credit unions compliance with part 747 of the regulations.
	.214—Report of crime or catastrophic act and Bank Secrecy Act compliance.		X	This section of part 741 requires insured credit unions to comply with Part 748 a regulation that deals with consumer protection.
	.215—Records preservation program		X	This section of part 741 requires and insured credit union to comply with part 749 of the regulations which addresses the preservation of credit union records, including member information.
	.216—Flood insurance		X	This section of part 741 requires and insured credit union to comply with part 760 of the regulations which addresses the requirement for flood insurance on real estate loans where required for protection of the member's property and credit unions collateral.
	.217—Truth in savings		X	This section of part 741 requires insured credit unions to comply with part 707 of the regulations which addresses compliance with the Truth in Savings act, as previously discussed above.
	.218—Involuntary liquidation and creditor claims.	X		Requires all insured credit unions to comply with part 709 of the regulation regarding involuntary liquidation and creditor claims against FCUs.
	.219—Investment requirements	X		Requires compliance of all insured credit unions to comply with Part 703 of the regulations. Part 703 is discussed earlier in this chart.
	.220—Privacy of consumer financial information.		X	Requires compliance of all insured credit unions to comply with part 716 of the regulation. Part 716 is discussed earlier in this chart.

NCUA Regulation	Part	Insurance regulatory related	Non-insurance and consumer regulatory related	Description
	.221 Suretyship and guaranty requirements	X		Requires compliance with Part 701.20 of NCUA regulations regarding an FCU entering into a suretyship arrangement, and limits a FISCUs ability to enter into such arrangements to the applicable state law.
	.222—Credit Union Service Organizations	X		Requires all insured credit unions to comply with part 712.(d)(3) and 712.4 of NCUA regulations regarding the establishment and operation of CUSOs.
§ 745—Share Insurance and Appendix [84].				This entire section, including subparts A and B, addresses membership accounts and payments to members.
Subpart A—Clarification and Definition of Account Insurance and Coverage.	.0—Scope.			
	.1 Definitions.			
	.2—General principles applicable in determining insurance of accts.	X		
	.3—Single ownership accounts	X		
	.4—Revocable trust accounts	X		
	.5 Accounts held by executors or administrators.	X		
	.6—Accounts held by a corporation, partnership or unincorporated association.	X		
	.7—Shares accepted in a foreign currency	X		
	.8—Joint ownership accounts	X		
	.9–1 Trust accounts	X		
	.9–2 Retirement and other employee benefit plan accounts.	X		
	.10—Accounts held by government depositors.	X		
	.11—Accounts evidenced by negotiable instruments.	X		
	.12—Accounts obligations for payment of items forwarded for collection by depository institution acting as agent.	X		
	.13—Notification to members/shareholders	X		
Subpart B—Payment of Share Insurance and Appeals.	.200—General.			
	.201—Processing of insurance claims	X		
	.202—Appeal	X		
	.203 Judicial review	X		
§ 748—Security Program, Report of Suspected Crimes, Suspicious Transactions, Catastrophic Acts, and Bank Secrecy Act Compliance [85].	.0—Security program			This section addresses the requirement for insured credit unions to comply with the Bank Secrecy Act (BSA).
	.1 Filing of reports		X	
	.2—Procedures for monitoring Bank Secrecy Act (BSA) compliance.		X	
§ 749—Records Preservation Program [86].	.0—Purpose and Scope			This part addresses the requirements of and best practices of preserving the records of the credit union.
	.1—Definitions.			
	.2—Vital records preservation program	X		
	.3—Vital records center	X		
	.4—Format for vital records preservation	X		
	.5—Format for records required by other NCUA regulations.	X		
§ Part 760—Loans In Areas Having Special Flood Hazards [87].	.1—Authority, Purpose and Scope			This section deals with the requirement for flood insurance where required. The obtaining of flood insurance, and proper determination of the requirement for flood insurance, protects the member's property and the credit unions collateral.
	.2—Definitions.			
	.3—Requirement to purchase flood insurance where available.		X	
	.4—Exemptions		X	
	.5 –Escrow Requirement		X	
	.6—Required use of standard flood hazard determination form.		X	
	.7—Forced placement of flood insurance		X	
	.8—Determination fees		X	
	.9—Notice of special flood hazards and availability of Federal disaster relief assistance.		X	
	.10—Notice of servicer's identity		X	

[66] Part 701 deals with the organization of FCUs. Portions of Part 701 deal with safety and soundness and are classified as Insurance Regulatory Related, other sections are Non-Insurance or Consumer Regulatory Related. Certain sections are classified as Insurance Regulatory Related not because the section authorizes the activity; but rather, the section establishes limitations and other criteria to ensure the activity is done safely and soundly.

[67] Aids in meeting the necessary net worth levels under Prompt Corrective Action.

[68] Part 702 defines the various statutory levels of net worth for all federally insured credit unions and the actions required when credit unions fall below well capitalized per the FCU Act. The entire Part protects the NCUSIF and is Insurance Regulatory Related.

[69] Part 703 is designed to provide reasonable controls to ensure FCUs conduct investing safely and soundly. The entire Part protects the NCUSIF and is Insurance Regulatory Related.

[70] Part 704 governs the organization and operations of corporate credit unions. Corporate credit unions do not have direct consumer operations and are systemically critical to the FICU system. The entire Part protects the NCUSIF and is Insurance Regulatory Related. This section has been updated since the PricewaterhouseCoopers 2013 report to reflect changes in Part 704.

[71] Recently Rescinded. Part 706 deals with FCU credit practices. Portions of 706 are designed to protect consumers from unfair credit practice while other parts are designed to ensure FCUs establish appropriate credit exposure limits in relation to their net worth. The consumer related portions of this Part are classified as Non-Insurance or Consumer Regulatory Related while those dealing with FCU safety and soundness are classified as Insurance Regulatory Related.

[72] Part 707 is designed to protect FICU members from unfair or deceptive practices by requiring adequate consumer disclosures. The entire Part is classified as Non-Insurance or Consumer Regulatory Related.

[73] Part 712 deals with CUSOs. The rule sets requirements for the legal structures and approved and prohibited activities. Since a poorly organized or operationally unsound CUSO can have a negative impact on a FICUs' net worth, the entire Part protects the NCUSIF and is classified as Insurance Regulatory Related.

[74] Part 713 governs establishes the requirements for credit union bond and insurance coverage. Bond and insurance coverage protects credit unions from losses. The entire rule is classified as Insurance Regulatory Related.

[75] Part 714 governs FCU authority to enter into lease agreements and sets requirements designed to protect FCUs from losses associated with leasing activities. The entire Part is classified as Insurance Regulatory Related.

[76] Part 715 establishes the roles and responsibilities of the Supervisory Committee. Since the Supervisory Committee performs an oversight and control function related to safety and soundness, the entire Part is classified as Insurance Regulatory Related.

[77] Part 716 deals exclusively with the safeguarding of member information and the entire Part is classified as Non-Insurance and Consumer Regulatory Related.

[78] Part 717 deals exclusively with the Fair Credit Reporting Act which is designed to protect members from unfair or deceptive reporting practices. The entire Part is classified as Non-Insurance and Consumer Regulatory Related.

[79] Part 722 establishes requirements for obtaining appraisals securing financial obligations of members. Sufficiently valued collateral can mitigate losses associated with secured loans and protects the credit union and thereby the NCUSIF from losses. The entire Part is categorized as Insurance Regulatory Related.

[80] Part 723 establishes the requirements and restrictions for FICU member business lending. This section is designed to promote safe and sound underwriting of business loans and establish reasonable concentration risk limits. This entire Part protects FICUs and the NCUSIF from losses and is classified as Insurance Regulatory Related.

[81] Part 740 establishes the requirement for federally insured credit unions to properly disclose that deposits are federally insured. This entire Part is classified as Insurance Regulatory Related.

[82] Part 741 establishes the requirements for obtaining and keeping NCUSIF insurance coverage. Certain sections of this Part are designed to promote safety and soundness and are categorized as Insurance Regulatory Related while other sections deal with requirements for the benefit of members and are categorized as Non-Insurance and Consumer Regulatory Related.

[83] In practice, section 741.211 is classified as Insurance Regulatory Related since it both invokes Part 740, which itself is Insurance Regulatory Related, and it relates to requirements for FISCUs. Previous ETS instructions contained a clerical error classifying section 741.211 as Non-Insurance and Consumer Regulatory Related. However, since section 741.211 is applicable only to FISCUs and the ETS only samples FCUs, the results of the ETS and OTR were not affected. The classification of section 741.211 has been updated here and will be reflected this way during the next ETS instruction.

[84] Part 745 defines insurance coverage by account type and establishes priority during payout. In practice, Part 745 is classified as Insurance Regulatory Related as it relates to the insurability of accounts. Previous ETS instructions contained a clerical error classifying Part 745 as Non-Insurance and Consumer Regulatory Related. AMAC and OCP primarily execute Part 745 as it relates to NCUA's payout function and consumer inquiries regarding insurance coverage. Part 745 is captured in the Financial Budget section of the OTR calculation through AMAC's and OCP's financial budgets, with 100 percent and 17.7 percent of the respective budgets allocated to insurance-related activities. Thus, the actual OTR calculation was not affected by the clerical error in the instructions. The classification of Part 745 has been updated here and will be reflected this way during the next ETS instruction.

[85] Part 748 deals with required regulatory reporting designed to protect members. The entire Part is categorized as Non-insurance and Consumer Regulatory Related.

[86] Part 749 deals with the preservation of vital FICU records necessary for ongoing operations. Failure to properly protect records could jeopardize the viability of an insured credit union and the insurance coverage of member accounts. This entire Part is categorized as Insurance Regulatory Related.

[87] Part 760 is designed to protect member's property and the entire section is categorized as Non-Insurance and Consumer Regulatory Related.

VII. Appendix B—Examination Time Survey Instructions

NCUA issues instructions to participants in the ETS prior to the start of each ETS cycle. Training for participants is also provided to ensure time spent on insurance and non-insurance related activities is captured accurately and consistently. Below is the version of instructions distributed to participants prior to the June 1, 2015 through May 31, 2016 ETS cycle.

Examination Time Survey

I. General Definitions
  A. Rules and Regs Classification
II. Specific Instructions About Individual Scope Categories
  A. Planning/Scope Development
  B. Call Report Review
  C. Supervisory Committee Review
  D. Financial Analysis
  E. Loan Analysis
  F. Investment Analysis
  G. Liquidity Analysis
  H. Asset Liability Management
  I. Compliance
  J. Information Systems Technology
  K. Management Analysis
  L. Contact Report/Joint Conference/Follow-Up Procedures

I. General Definitions

Insurance Related Examination Procedures

Insurance Related examination or supervision contact procedures address safety and soundness issues. On the time survey forms, respondents should classify the time used to evaluate safety and soundness as ''insurance related.'' ''Insurance Related'' time includes:

- Evaluating financial trends and Call Report data
- Determining the credit union's solvency position
- Evaluating risks, and potential costs, the credit union presents to the NCUSIF (when appropriate)
- Assessing management's efforts to protect earnings and net worth by identifying, evaluating, controlling, and monitoring internal and external risks
- Assessing management's abilities to develop strong policies and a reliable internal control structure

Insurance Regulatory Related Examination Procedures

Insurance Regulatory related examination or supervision contact procedures address regulations that are not designed to protect consumers directly. This includes assessing compliance with all regulations outside of consumer oriented regulations—see listing of consumer regulations in the following section—Consumer Regulatory examination procedures.

Insurance Regulatory related regulations include those regulations that address safety and soundness issues. Examples include (this is not all inclusive):

- 701.21—Loans to Members and Lines of Credit to Members
  - Includes total loan limit to one individual, limitation on maturity, rate of interest, and security.
- 702—Prompt Corrective Action
  - Establishes net worth categories and mandatory and discretionary supervisory actions
- 703—Investments and Deposit Activities
  - Establishes permissible investments and requires credit analysis prior to purchase and requires ongoing monitoring of securities
- 712—Credit Union Service Organizations
  - Establishes investment and loan limits as well as outlines permissible activities
- 713—Fidelity Bond and Insurance Coverage
  - Requires minimum bond coverage
- 715—Supervisory Committee Audits and

Verifications
- 722—Appraisals
  - Establishes minimum appraisal standards based on loan size
- 723—Member Business Loans
  - Establishes prohibited activities, requires specific policies and sets overall loan limits as well as limits to one member or group of associated members

Consumer Regulatory Related Examination Procedures

Consumer Regulatory Related examination or supervision contact procedures address compliance with consumer regulations. The regulations include:

- Reg. B—Equal Credit Opportunity Act
- BSA—Bank Secrecy Act
- Reg. C—Home Mortgage Disclosure Act
- Reg. CC—Expedited Funds Availability
- COPPA—Children's Online Privacy Protection Act
- Reg. D—Reserve Requirements
- Reg. E—Electronic Funds Transfer Act
- FACTA—Fair and Accurate Credit Transactions Act
- FCPR—Fair Credit Practice Rule
- FCRA—Fair Credit Reporting Act
- FDCPA—Fair Debt Collections Practices Act
- FDPA—Flood Disaster Protection Act
- FHA—Fair Housing Act
- GLBA—Gramm-Leach Bliley Act
- HOEPA—Home Ownership and Equity Protection Act
- HOPA—Home Owner's Protection Act
- Reg. M—Consumer Leasing
- OFAC—Office of Foreign Asset Control
- PCFI—Privacy of Consumer Financial Information
- RFPA—Right to Financial Privacy Act
- SCRA—Service Members Civil Relief Act
- Reg.—X Real Estate Settlement Procedures Act
- Credit Card Act
- Unlawful Internet Gaming Enforcement Act
- SAFE Act—Secure and Fair Enforcement for Mortgage Licensing Act
- Reg.—Z Truth in Lending
- Rules and Regulations Part 706—Credit Practices
- Rules and Regulations Part 707—Truth in Savings
- Rules and Regulations Part 717—Fair Credit Reporting

The chart below will help you determine the appropriate regulatory category (Insurance Regulatory or Non-Insurance and Consumer Regulatory) for all regulations. [*The chart normally embedded here is shown as Appendix A in this document*].

II. Specific Instructions about Individual Scope Categories

Note: *The procedures referenced within each time category of the survey are not all encompassing. These guidelines merely provide examples respondents should consider when estimating the allocation of their time.*

A. Planning/Scope Development

1. Time related to Insurance Issues includes the time required for tasks such as:
  - Reviewing prior contact reports to identify historical safety and soundness concerns;
  - Reviewing scope workbook to become familiar with potential safety and soundness concerns;
  - Reviewing correspondence between contacts that address safety and soundness issues;
  - Reviewing recent financial trends;
  - Evaluating changes to the credit union's product and service mix that could present new safety and soundness concerns;
  - Determining whether a Subject Matter Examiner could assist during the supervision process in addressing safety and soundness concerns;
  - Considering whether additional resources (i.e., grants, technical assistance, low-income designation) are available to assist management in addressing safety and soundness concerns;
  - Evaluating prevailing economic conditions;
  - Reviewing risk management reports;
  - Interviewing key officials to learn status of action taken to correct previously identified safety and soundness concerns;
  - Developing on-site procedures for evaluating safety and soundness concerns;
  - Completing portions of scope workbook that pertain to safety and soundness concerns; and
  - Updating scope workbook to document new information about safety and soundness issues.

2. Time related to Insurance Regulatory Issues includes the time for tasks related to Insurance Regulatory compliance such as:
  - Reviewing prior contact reports for previously cited noncompliance and regulatory violations related to Insurance Regulatory issues;
  - Reviewing correspondence between contacts that addresses Insurance Regulatory concerns;
  - Determining the potential applicability of new Insurance Regulatory requirements;
  - Considering whether additional resources (i.e., grants, technical assistance, low-income designation) are available to assist management in addressing Insurance Regulatory compliance concerns;
  - Interviewing key officials to determine management's level of expertise regarding, and attitude toward, Insurance Regulatory compliance;
  - Developing on-site procedures for evaluating Insurance Regulatory concerns;
  - Completing portions of scope workbook that pertain to Insurance Regulatory concerns; and
  - Updating scope workbook to document new information about Insurance Regulatory issues.

3. Time related to Consumer Regulatory Issues includes the time for tasks related to consumer regulations such as:
  - Reviewing prior contact reports for previously cited noncompliance issues and regulatory violations related to Consumer Regulatory issues;
  - Reviewing scope workbook to become familiar with potential Consumer Regulatory concerns;
  - Reviewing correspondence between contacts that addresses Consumer Regulatory concerns;
  - Determining the potential applicability of new Consumer Regulatory requirements;
  - Determining whether a Subject Matter Examiner could assist during the supervision process in addressing Consumer Regulatory compliance concerns;
  - Considering whether additional resources (i.e., grants, technical assistance, low-income designation) are available to assist management in addressing Consumer Regulatory compliance concerns;
  - Evaluating changes to the credit union's product and service mix that could require an expanded review of Consumer Regulatory compliance;
  - Interviewing key officials to determine management's level of expertise regarding, and attitude toward, Consumer Regulatory compliance;
  - Developing on-site procedures for evaluating Consumer Regulatory concerns;
  - Completing portions of scope workbook that pertain to Consumer Regulatory concerns; and
  - Updating scope workbook to document new information about Consumer Regulatory issues.

B. Call Report Review

1. Time related to Insurance Issues includes the time required for tasks such as:
  - Determining if factors causing inaccuracies in Call Reports are symptoms of internal control weaknesses;
  - Reviewing Call Report trends for potential risk indicators;

2. Time related to Insurance Regulatory Issues includes the time for tasks related to Insurance Regulatory compliance such as:
  - Verifying the accuracy and timeliness of Call Reports filed by management.

3. Time related to Consumer Regulatory Issues while reviewing the Call Report is not applicable considering no consumer regulations are addressed in the Call Report.

C. Supervisory Committee Review

1. Time related to Insurance Issues includes the time required for tasks such as:
  - Reviewing general internal controls and segregation of duties;
  - Evaluating if the supervisory committee serves as a legitimate ''check'' upon management activity; and
  - Determining whether supervisory committee is effective in correcting identified internal control weaknesses.

2. Time related to Insurance Regulatory Issues includes the time for tasks related to Insurance Regulatory compliance such as:
  - Ensuring the supervisory committee is carrying out its fiduciary responsibility to ensure member account verifications and annual audits are complete and timely and meeting the supervisory committee's regulatory requirements.
  - Reviewing the actual documentation from the supervisory committee audit and member account verification.

3. Time related to Consumer Regulatory Issues includes the time for tasks such as:
  - Review of follow-up actions related to Consumer Regulatory violations.

D. Financial Analysis

1. Time related to Insurance Issues includes the time required for tasks such as:
○ Reviewing the current financial trends; and
○ Determining whether management has adequate controls and risk management systems in place.
2. Time related to Insurance Regulatory Issues includes the time for tasks such as:
○ Reviewing general accounting procedures to ensure compliance with the Accounting Manual for Federal Credit Unions;
○ Verifying that current financial statements reflect the balances in the general ledger;
○ Determining that management is maintaining adequate subsidiary ledgers; and
○ Testing the validity of delinquency computation and income accrual procedures.
3. Time related to Non-Insurance Issues is not applicable considering no consumer regulations are addressed during the review of this area.

E. Loan Analysis

1. Time related to Insurance Issues includes the time required for tasks such as:
○ Reviewing loan underwriting procedures;
○ Determining the risk associated with the product mix;
○ Evaluating loan policies to determine if sound practices exist;
○ Reviewing collection efforts for timeliness;
○ Evaluating whether the level of the credit union's reserves is consistent with the loan products offered by the credit union.
○ Assessing the controls management has over loan losses.
2. Time related to Insurance Regulatory Issues includes the time for tasks related to compliance with the following regulations:
○ 701.21—Loans to Members and Lines of Credit to Members Assessing
○ 702.22—Loan participation
○ 722—Appraisals
○ 723—Member Business Loans
3. Time related to Consumer Regulatory Issues includes the time for tasks such as:
○ Evaluating compliance with consumer and mortgage compliance laws and regulations—Refer to listing under General Definitions; and
○ Ensuring the written policies comply with all applicable lending regulations.

F. Investment Analysis

1. Time related to Insurance Issues includes the time required for tasks such as:
○ Reviewing appropriateness of the investment portfolio and overall practices;
○ Determining the adequacy of the internal controls related to investments;
○ Assessing investment trends;
○ Ensuring adequate safekeeping procedures are in place; and
○ Evaluating management's effectiveness in addressing investment risks.
2. Time related to Insurance Regulatory Issues includes the time for tasks related to compliance with the following regulations:
○ Reviewing the permissibility of the investments included in the portfolio—703—Investments and Deposit Activities; and
○ Reviewing the written investment policy to ensure the policy includes all elements discussed in the regulations.
3. Time related to Consumer Regulatory Issues is not applicable considering no consumer regulations are addressed in the review of investments.

G. Liquidity Analysis

1. Time related to Insurance Issues includes the time required for tasks such as:
○ Determining whether the credit union has sufficient liquidity to cash needs for loan and share transactions; and
○ Evaluating whether management has sound contingency plans for addressing unanticipated liquidity needs.
○ Ensuring risk management processes (measuring, monitoring, controlling, and reporting) are appropriate for credit union.
2. Time related to Insurance Regulatory Issues includes the time for tasks related to compliance with the following:
○ Ensuring management is complying with statutory borrowing limitations.
3. Time related to Consumer Regulatory Issues is not applicable considering no consumer regulations are addressed in the review of liquidity.

H. Asset Liability Management

1. Time related to Insurance Issues includes the time required for tasks such as:
○ Determining if management has adequate controls in place and assigns clear responsibilities to address the credit union's overall exposure to interest rate risk;
○ Reviewing the adequacy of the credit union's modeling and risk monitoring procedures; and
○ Ensuring that management initiates corrective action when internal analysis identifies concerns relative to interest rate risk.
2. Time related to Insurance Regulatory Issues includes the time for tasks related to compliance with the following:
○ Ensuring written asset liability management policies do not contain provisions that are inconsistent with regulations that apply to loans, investments, or shares.
3. Time related to Consumer Regulatory Issues is not applicable considering no consumer regulations are addressed in the review of asset liability management.

I. Compliance

1. Time related to Insurance Issues includes the time required for tasks such as:
○ Determining whether any identified regulatory violations could cause the credit union to have financial risk exposure.
2. Time related to Insurance Regulatory Issues includes the time reviewing compliance with the following regulations:
○ 701.21—Loans to Members and Lines of Credit to Members
○ 701—Prompt Corrective Action
○ 703—Investments and Deposit Activities
○ 712—Credit Union Service Organizations
○ 713—Fidelity Bond and Insurance Coverage
○ 715—Supervisory Committee Audits and Verifications
○ 722—Appraisals
○ 723—Member Business Loans
3. Time related to Consumer Regulatory Issues includes Assessing management's compliance with the consumer and mortgage compliance laws and regulations. This includes:
○ Reg. B—Equal Credit Opportunity Act
○ BSA—Bank Secrecy Act
○ Reg. C—Home Mortgage Disclosure Act
○ Reg. CC—Expedited Funds Availability
○ COPPA—Children's Online Privacy Protection Act
○ Reg. D—Reserve Requirements
○ Reg. E—Electronic Funds Transfer Act
○ FACTA—Fair and Accurate Credit Transactions Act
○ FCPR—Fair Credit Practice Rule
○ FCRA—Fair Credit Reporting Act
○ FDCPA—Fair Debt Collections Practices Act
○ FDPA—Flood Disaster Protection Act
○ FHA—Fair Housing Act
○ GLBA—Gramm-Leach Bliley Act
○ HOEPA—Home Ownership and Equity Protection Act
○ HOPA—Home Owner's Protection Act
○ Reg. M—Consumer Leasing
○ OFAC—Office of Foreign Asset Control
○ PCFI—Privacy of Consumer Financial Information
○ RFPA—Right to Financial Privacy Act
○ SCRA—Service Members Civil Relief Act
○ Reg.—X Real Estate Settlement Procedures Act
○ Credit Card Act
○ Unlawful Internet Gaming Enforcement Act
○ SAFE Act—Secure and Fair Enforcement for Mortgage Licensing Act
○ Reg.—Z Truth in Lending
○ Rules and Regulations Part 706—Credit Practices
○ Rules and Regulations Part 707—Truth in Savings
○ Rules and Regulations Part 717—Fair Credit Reporting

J. Information Systems Technology

1. Time related to Insurance Issues includes the time required for tasks such as:
○ Ensuring that the credit union's written policies contribute toward the establishment and maintenance of a system of sound internal controls; and
○ Determining if weakness in the control structure presents any exposure to financial risks.
2. Time related to Insurance Regulatory Issues includes the time for tasks related to compliance with the following:
○ Ensuring that all agreements with outside parties meet applicable legal requirements.
3. Time related to Consumer Regulatory Issues includes Assessing management's compliance with the following consumer regulations:
○ Children's Online Privacy Protection Act (COPPA)
○ Gramm-Leach-Bliley Act (GLBA) related to guidance on identity theft.

K. Management Analysis

1. Time related to Insurance Issues includes the time required for tasks such as:

○ Reviewing planning and general business practices for overall soundness;

○ Reviewing income/expense budget process and controls; and

○ Assessing management's capabilities in implementing strategies to address risks.

2. Time related to Insurance Regulatory Issues includes the time for tasks related to compliance with the following:

○ Reviewing compliance with Federal Credit Union Bylaws;

○ Reviewing Board minutes to ensure meetings take place in accordance with the Federal Credit Union Act and Bylaws; and

○ Ensuring that all written policies are consistent with applicable Insurance Regulatory laws and regulations.

3. Time related to Consumer Regulatory Issues includes the time for tasks such as:

○ Ensuring that all consumer and mortgage written policies are consistent with applicable laws and regulations.

○ Review of compliance with implementing corrective action related to regulatory violations associated with consumer and mortgage loans

○ Ensuring that all written policies are consistent with applicable Consumer compliance laws and regulations.

L. Contact Report/Joint Conference/Follow-Up Procedures

1. Time related to Insurance Issues includes the time required for tasks such as:

○ Communicating safety and soundness or risk management issues to credit union officials and employees during the exit interview process;

○ Documenting supervision plans for monitoring safety and soundness concerns noted during an on-site contact;

○ Discussing safety and soundness or risk management concerns with management during the joint conference;

○ Preparing written reports that provide guidelines for correcting safety and soundness concerns;

○ Drafting correspondence for the Regional Director's signature that discuss safety and soundness concerns;

○ Preparing internal monitoring reports that assess management's progress in addressing safety and soundness or risk management issues; and

○ Implementing administrative remedies designed to correct safety and soundness or risk management concerns.

2. Time related to Insurance Regulatory Issues includes the time for tasks related to compliance with the following:

○ Communicating regulatory violations related to Insurance Regulatory issues;

○ Documenting supervision plans for monitoring for Insurance Regulatory violations noted during an on-site contact;

○ Discussing Insurance Regulatory concerns with management during the joint conference;

○ Preparing written reports that provide guidelines for complying with Insurance Regulatory issues; and

○ Drafting correspondence for the Regional Director's signature that discuss Insurance Regulatory concerns.

3. Time related to Consumer Regulatory Issues includes the time for tasks such as:

○ Communicating regulatory violations related to consumer and mortgage loans

○ Documenting supervision plans for monitoring Consumer Regulatory violations noted during an on-site contact;

○ Discussing Consumer Regulatory concerns with management during the joint conference;

○ Preparing written reports that provide guidelines for complying with consumer regulations that do not specifically pertain to insurance-related concerns; and

○ Drafting correspondence for the Regional Director's signature that discuss Consumer Regulatory concerns.

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Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 226

Endangered and Threatened Species; Critical Habitat for Endangered North Atlantic Right Whale; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 100217099–5999–03]

RIN 0648–AY54

Endangered and Threatened Species; Critical Habitat for Endangered North Atlantic Right Whale

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

ACTION: Final rule.

SUMMARY: We (NMFS) are issuing this final rule to replace the critical habitat for right whales in the North Atlantic with two new areas. The areas being designated as critical habitat contain approximately 29,763 nm ^{2} of marine habitat in the Gulf of Maine and Georges Bank region (Unit 1) and off the Southeast U.S. coast (Unit 2). We have considered positive and negative economic, national security, and other relevant impacts of the critical habitat. We are not excluding any particular area from the final critical habitat.

A Biological Source Document provides the basis for our identification of the physical and biological features essential to the conservation of the species that may require special management considerations or protection. A report was also prepared pursuant to section 4(b)(2) of the Endangered Species Act (ESA) in support of this rule.

DATES: This rule is effective February 26, 2016.

ADDRESSES: The final rule as well as comments and information received, and accompanying documents are available at *www.greateratlantic.fisheries.noaa.gov* or by contacting Mark Minton, NMFS, Greater Atlantic Regional Fisheries Office (GARFO) 55 Great Republic Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Mark Minton, NMFS, Greater Atlantic Regional Fisheries Office (GARFO), 978–282–8484, *Mark.Minton@noaa.gov;* Barb Zoodsma, NMFS, Southeast Regional Office, 904–321–2806, *Barb.Zoodsma@noaa.gov;* Lisa Manning, NMFS, Office of Protected Resources, 301–427–8466, *Lisa.Manning@noaa.gov.*

SUPPLEMENTARY INFORMATION:

The Biological Source Document (NMFS 2015a) and ESA Section 4(b)(2) Report (NMFS 2015b) are available on our Web site at *www.greateratlantic.fisheries.noaa.gov,* on the Federal eRulemaking Web site at *www.regulations.gov,* or upon request (see **ADDRESSES**).

Background

In 1970, right whales, *Eubalaena* spp. were listed as endangered (35 FR 18319, December 2, 1970). At that time, we considered the northern right whale species (*Eubalaena glacialis*) to consist of two populations—one occurring in the North Atlantic Ocean and the other in the North Pacific Ocean. In 1994, we designated critical habitat for the northern right whale population in the North Atlantic Ocean (59 FR 28805, June 3, 1994). This critical habitat designation included portions of Cape Cod Bay and Stellwagen Bank, the Great South Channel (each off the coast of Massachusetts), and waters adjacent to the coasts of Georgia and the east coast of Florida. These areas were determined to provide critical feeding, nursery, and calving habitat for the North Atlantic population of northern right whales. This critical habitat was revised in 2006 to include two foraging areas in the North Pacific Ocean—one in the Bering Sea and one in the Gulf of Alaska (71 FR 38277, July 6, 2006).

In 2006, we published a comprehensive right whale status review, which concluded that recent genetic data provided unequivocal support to distinguish three right whale lineages as separate phylogenetic species (Rosenbaum *et al.* 2000). They are: (1) The North Atlantic right whale (*Eubalaena glacialis*) ranging in the North Atlantic Ocean, (2) The North Pacific right whale (*Eubalaena japonica*), ranging in the North Pacific Ocean, and (3) The southern right whale (*Eubalaena australis*), historically ranging throughout the southern hemisphere's oceans. Based on these findings, we published proposed and final determinations listing right whales in the North Atlantic, North Pacific, and southern hemisphere as separate endangered species under the ESA (71 FR 77704, December 27, 2006; 73 FR 12024, March 6, 2008). In April 2008, a final critical habitat designation was published for the North Pacific right whale (73 FR 19000, April 8, 2008).

On October 1, 2009, we received a petition to revise the 1994 critical habitat designation for right whales in the North Atlantic. In response, pursuant to section 4(b)(3)(D), we published a combined 90-day finding and 12-month determination on October 6, 2010 (75 FR 61690), that the petition presented substantial scientific information indicating that the requested revision may be warranted, and that we intended to issue a proposed rule to revise critical habitat for the North Atlantic right whale. As noted in that finding, the biological basis and analysis for the 1994 critical habitat designation were based on the North Atlantic population of right whales, so that designation continued to apply to North Atlantic right whales after they were listed as a separate species in 2008. On February 20, 2015 (80 FR 9314), we proposed replacing the 1994 critical habitat designation for the population of right whales in the North Atlantic Ocean with two new areas of critical habitat for the North Atlantic right whale.

In the proposed rule we requested public comment through April 21, 2015. For a complete description of our proposed action, including the natural history of the North Atlantic right whale, please see the proposed rule (80 FR 9314, February 20, 2015).

We are making one change from the proposed rule to the areas designated as right whale critical habitat. The one change is based on public comments received and further review of the best available scientific data. We are extending Unit 2 further to the south to include an area that is a portion of the 1994-designated critical habitat, increasing Unit 2 by approximately 341 nm ^{2}. Unit 2 now includes nearshore and offshore waters of the southeastern U.S., extending from Cape Fear, North Carolina south to approximately 27 nm below Cape Canaveral, Florida.

Summary of Comments and Responses

We received 261 letters and general comments on the proposed rule and supporting analyses via Regulations.gov, letter, fax, and email. In addition, 20,826 form letters were also received via letter and email. We received 20,325 form letters from an environmental advocacy group stating their general support for the proposed designation of critical habitat and urging NMFS to include a migratory corridor in the final designation. We received an additional 500 form letters from a second environmental advocacy group as well as 210 (additional) form letters that contained slight variations to the main form letter. We also received two petitions from environmental advocacy groups with approximately 17,420 and 2,069 signatures, respectively stating general support for designating critical habitat and urging the inclusion of a migratory corridor.

Many comments urged imposing restrictions on Navy activities as well as oil and gas exploration and

development, expanding existing fishing gear restrictions, and expanding seasonal management areas (SMAs) to reduce the risk to right whales due to ship strikes and vessel speeds as part of this rulemaking; however, these issues are not within the scope of this critical habitat rulemaking.

Unit 1 Boundaries

Comment 1: One commenter stated that in proposing to designate Unit 1, we mistakenly proposed to designate a large area in which right whales congregate, rather than identifying the ''specific areas'' on which essential foraging features ''are found.'' As a result, the proposed Unit 1 designation is overbroad and should be more narrowly tailored, consistent with the ESA. The comment states that the proposed boundaries of Unit 1 are not based upon the established presence of the essential features.

Response: We disagree with this comment. The proposed boundaries of Unit 1 encompass the combination of physical and biological features of foraging habitat that are essential to right whale conservation and that may require special management considerations or protection. We did not simply propose to designate the area depicted as Unit 1 based on where ''right whales congregate'' as the comment suggests. As discussed in detail in the Biological Source Document, the seasonal distributions and general patterns of abundance of *C. finmarchicus* within the Gulf of Maine and Cape Cod Bay have been documented. The geographic scales and depths at which copepods are sampled only rarely match the fine-scale at which right whales forage (Mayo and Marx 1990, Baumgartner and Mate 2003). Basin-scale zooplankton monitoring schemes have proved ineffective in detecting the high concentrations usually present in the vicinity of actively feeding whales. Furthermore, using direct copepod sampling efforts to identify where dense aggregations occur would be unproductive because sufficient data are not available to establish a specific threshold density of *C. finmarchicus* that triggers feeding. For these reasons, the specific area on which are found dense aggregations of late stage *C. finmarchicus* cannot be defined by relying on data from such efforts to sample copepod aggregations directly throughout the vast Gulf of Maine and Georges Bank region. Instead, we used an alternative ''whale centric'' approach for detecting dense prey patches. The location of actively foraging right whales provides a proxy for the distribution of dense copepod patches (Marx and Mayo 1990, Wishner *et al.* 1995, Pace and Merrick 2008). We used the protocol for determining the whale density and residency indicative of feeding behavior developed by Clapham and Pace (2001) for the Dynamic Area Management (DAM) program to determine where the dense patches of *C. finmarchicus* are found. The boundaries of Unit 1 are not solely based on the presence of the dense *C. finmarchicus* patches, as determined by the foraging right whale proxy, but also by the presence of the physical oceanographic features and the biological feature of diapausing copepods identified in this rulemaking (see responses to comment 36 and 49).

Comment 2: The State of Maine Department of Marine Resources stated that it disagreed with the use of the current exemption line identified in the Atlantic Large Whale Take Reduction Plan (ALWTRP, 50 CFR 229.32) as the inshore boundary of the proposed critical habitat. It suggested that NMFS should use the 100 meter isobath contour as the near shore boundary to better align with the biological and physical features identified as supporting the aggregation and distribution of copepods. This commenter stated that the proposed boundary (the exemption line) does not have any bearing on the biological and physical oceanographic features that have been identified as drivers for copepod production, distribution, aggregation, and retention in the Gulf of Maine, nor is there a biological justification for using the exemption line as the inshore boundary given the location of right whale sightings. The commenter noted that the agency analyzed 35 years of DAM-qualified sightings but identified only one aggregation of right whales near the coast of Maine (Pace and Merrick 2008). They noted that all other identified aggregations occurred beyond the 100 meter contour, which is well seaward of the ALWTRP's exemption line. The commenter also cited a study completed by Runge *et al.* (2010) who found that densities of late stage copepods were statistically significantly higher at offshore stations (>100 m) than inshore area and that copepods were not aggregating in water depths less than 100 meters. The commenter also stated that this finding was consistent with the statement in Runge *et al.* (2010) that the Maine Coastal Current centers at the 100 m contour.

Response: After review of this comment and the study cited, we conclude that the use of the ALWTRP Exemption line remains appropriate as the inshore boundary of the area on which the essential foraging features of right whale critical habitat are found.

The study provided by the commenter in support of the requested change was somewhat limited both spatially and temporally. The study of copepod densities cited was based on the sampling that was conducted over a three-year period with sampling occurring only during the months of July and August. Also, there is uncertainty as to what exact density of copepods triggers feeding, with the density seeming to vary both temporally and spatially.

Asaro (2012) depicts an overlay of the DAMs and Dynamic Management Areas (DMAs) in the western Gulf of Maine. The inshore extent of the plots of these events in the western Gulf of Maine closely approximates the Maine exemption line. While there are several instances of buffered DAMs and DMAs extending into Maine inshore waters, the sightings themselves were not located in these waters (Asaro 2012). This analysis does provide some evidence of right whale foraging activities in areas seaward and adjacent to the Maine exemption line. As we tried to explain in the proposed rule and its supporting documents and clarify now, the essential biological feature of dense patches of copepods is present in areas seaward and adjacent to the Maine exemption line. Therefore, the Maine exemption line does have bearing on the presence of this biological feature and is a reasonable approximation of the shoreward boundary of critical habitat in Unit 1.

In addition, the decision to retain the Maine Exemption line, as proposed, for the inshore boundary of right whale critical habitat is based on the presence of one of the physical oceanographic features identified as being essential to the conservation of the species—specifically, the oceanographic conditions and structures of the Gulf of Maine and Georges Bank region that combine to distribute and aggregate copepods for right whale foraging, namely prevailing currents and circulation patterns. The Maine Coastal Current (MCC) is one of the major oceanographic features in the western Gulf of Maine that is essential to the conservation of North Atlantic right whales because of its role in aggregating and distributing copepods. The MCC has two major components, the Eastern Maine Coastal Current (EMCC) off Maine's northeast coastline and the Western Maine Coastal Current (WMCC) off the coastlines of southern Maine, New Hampshire, and Massachusetts. Manning *et al.* (2009) report that the

MMC is centered from approximately the 71 m isobath inshore to the 117 m isobath seaward. Churchill *et al.* (2005) report that the EMMC is 20 km wide, with its shoreward extent at about 10 km from shore. Manning *et al.* (2009) report that on average, the core of the WMCC is centered at the depth of 67 m. As these studies document, the center of both of the two major components of the MMC are shoreward of the 100 m isobath proposed by the commenter as the inshore boundary of critical habitat. Although the MMC coastal current is highly variable, the ALWTRP exemption line generally follows the 50 meter isobath and is also the approximate inshore boundary of the MMC. Further, as the depths reported represent the core of the two MMC currents; both the EMCC and the WMCC are present further inshore. The MMC is very dynamic with interannual variability due to such factors as wind and water temperature.

Based on our review of the proposed use of the 100 m isobaths as the inshore boundary of critical habitat instead of the Maine exemption line, we conclude that the Maine exemption line corresponds more closely to the inshore extent of the essential physical oceanographic feature that is the MCC.

Comment 3: Several fishing industry comments supported the designation of additional right whale critical habitat that is essential to the conservation and recovery of the North Atlantic right whale. However, they opposed the designation area as proposed. The commenters agreed with Maine Department of Marine Resources' (DMR) review of the scientific literature on the physical oceanographic conditions and structures of the Gulf of Maine as well as foraging aggregations. They strongly supported DMR's recommendation that the shoreward boundary of the proposed Gulf of Maine critical habitat (Unit 1) follow the 100 m contour and not the Maine exemption line defined in the Atlantic Large Whale Take Reduction Plan. The commenters stated that Maine's exemption line has no direct bearing on the four physical and biological features identified by us as being essential to defining this critical habitat. They stated that in the absence of this adjustment, they would oppose the change in the Gulf of Maine current critical habitat designation.

Response: See response to Comment 2.

Comment 4: One commenter requested the expansion of critical habitat in the Northeast to include all waters in the Gulf of Maine and Georges Bank from the Hague Line to the shoreline based on the best available science indicating that the area contains physical and biological features essential for the survival of the species. The commenter sought to extend the critical habitat boundary to the shoreline in Maine beyond the Maine Exemption line. The commenter questioned the agency's determination that the essential physical and biological foraging features are not found inshore of the Maine exemption line. The commenter cited several factors in support of the expansion of the critical habitat boundary to the shoreline. The factors cited by the commenter include: (1) Limited systematic sightings effort inside the ALWTRP Maine exemption line as well as a recent analysis by Industrial Economics, Inc., evaluating the co-occurrence of whales and vertical lines used in commercial fisheries in the northeast shows large areas in inshore Maine, indicating that there was no survey effort in large segments of the inshore area; (2) the NMFS program of dynamic management; currently for ship traffic, but formerly for fishing gear as well, has resulted in the imposition of dynamic management measures in inshore Maine waters; and (3) the results of a satellite telemetry study that was done targeting right whales in the northeast. The commenter stated that in that study at least 2 of the 14 tagged right whales (approximately 14%) showed tracks that appear to be within the areas of coastal Maine that were not included in the proposed Unit 1 critical habitat.

Response: As discussed in our response to Comment 2, we used foraging right whales as a proxy for identifying areas where the essential feature of dense aggregations of late-stage copepods are found. As part of that process, we analyzed 35 years of DAM-qualified sightings and identified only one aggregation of foraging right whales near the coast of Maine inshore of the Maine exemption line (see response to Comment 15 for additional discussion). This analysis provides strong support for our determination that late stage copepods in quantities sufficient to trigger right whale foraging are not present inshore of the Maine exemption line. While the commenter is correct that some areas have been surveyed more extensively than others within the Gulf of Maine and Georges Bank region, we are required to use the best available data. With regard to the results of the telemetry studies cited by the commenter (Baumgartner and Mate 2005), the telemetry data were included in the 35 years of DAM-qualified sightings data we analyzed. The two right whales referenced by the commenter did not trigger a DAM qualified sighting (aggregations of three or more feeding right whales in a specified area), indicating the whales were not foraging and were spatially and/or temporally separate from each other while in the inshore waters. As such, these data do not indicate that one or more of the essential physical and biological features were present.

Comment 5: One commenter stated that the regular imposition of multiple dynamic management measures that extended into the inshore waters of Maine in a number of instances casts doubt on the conclusion that whales are unlikely to use the inshore area with any regularity.

Response: We disagree. As stated in our response to Comment 2, Asaro (2012) depicts an overlay of the DAMs and Dynamic Management Areas (DMAs) in the western Gulf of Maine. The inshore extent of the plots of these events in the western Gulf of Maine closely approximates the Maine exemption line. While there are several instances of buffered DAM and DMAs areas extending into Maine inshore waters, the sightings themselves were not located in these waters, just the buffer zone(s) associated with the DAM(s) and DMA(s) (Asaro 2012). This analysis does provide some evidence of right whale foraging activities in areas seaward and adjacent to the Maine exemption line and thus, provides support for its use as the shoreward boundary of critical habitat in Unit 1.

Comment 6: A commenter stated that regardless of right whale sightings, the inshore waters of Maine contribute to the circulation patterns of the Gulf of Maine, which support and concentrate *C. finmarchicus*—the primary forage of North Atlantic right whales. The commenter stated that, according to NMFS, ''freshwater inflow from numerous rivers (*e.g.,* the St. John, Penobscot, Kennebec, Androscoggin, and Merrimac Rivers) within the Gulf of Maine watershed contributes to the density driven circulation pattern.'' The commenter asserts that therefore the inshore waters of Maine contain the physical and biological features necessary to maintain food resources for right whales, and that area is therefore essential to the survival of the species. The commenter stated that because the currents in the Gulf of Maine are strongly influenced by density gradients between the high-salinity slope water entering from the Atlantic and fresher waters, which form in the Gulf of Maine or enter from the Scotian Shelf, the freshwater inflow from these and other rivers within the Gulf of Maine

watershed that contributes to the density driven circulation pattern must be adequately protected. The commenter further stated that the bays and inlets into which these rivers flow may require special management to ensure that this flow is not impeded by development such as hydroelectric or hydrokinetic projects designed to provide alternative energy to the region.

Response: The physical features in question here are the physical oceanographic conditions and structures that combine to distribute and aggregate copepods in sufficient densities to support right whale foraging and energetic requirements. We agree that freshwater inflow from numerous rivers (including the St. John, Penobscot, Kennebec, Androscoggin, and Merrimac Rivers) are one of several external environmental processes within the Gulf of Maine watershed that may influence the density driven circulation pattern. However, these influences are not physical oceanographic features. Rather they simply have the potential to influence the identified oceanographic features. The physical oceanographic features of the Gulf of Maine Georges Bank region are influenced by a variety of conditions including several outside of the Gulf of Maine. For example, the North Atlantic Oscillation (NAO) (a climatic phenomenon in the North Atlantic Ocean of fluctuations in the difference of atmospheric pressure at sea-level between the Icelandic low and the Azores high) influences the relative location within the Atlantic Ocean of warm Gulf Stream waters that approach the Gulf of Maine from the south, and the colder Labrador Current waters that flow toward the area from the north. Small-scale changes in the North Atlantic can produce large-scale changes in the Gulf of Maine. There are large-scale coastal circulation patterns that influence the Gulf of Maine that originate from the Labrador Sea. The circulation and water properties within the Gulf of Maine therefore may depend as much on influences originating over 1,000 km away as on local processes (Thompson 2010).

In addition, there are other local environmental processes that influence the physical oceanographic conditions inside the Gulf of Maine including such factors as wind, tidal mixing, the periodic cooler and more fresh inflow from the Scotian Shelf, winter cooling, summer heating, the deep warmer and more saline inflow of the slope water, and river runoff including from those identified by the commenter (Xue *et al.* 2000, Thompson 2010).

Further, the information cited by the commenter regarding freshwater input into the Gulf of Maine is taken out of context and relates to the ''may require special management considerations or protection'' analysis we conducted to determine if the areas containing the physical oceanographic conditions and structures met the definition of critical habitat. Consequently, we did not identify the external freshwater input associated with river inflow from the various sources, including rivers within the Gulf of Maine watershed, as part of the physical feature. We have updated the Biological Source Document accordingly to clarify this issue.

Unit 2 Boundaries

Comment 7: A number of comments were received concerning the location of the southern boundary of the proposed revised calving area critical habitat. Comments requested to (1) move the proposed revised boundary southward (commenter did not specify how far south), (2) keep the southern boundary for the proposed revised critical habitat the same as current critical habitat designated in 1994, and (3) move the proposed revised boundary south of the current critical habitat designated in 1994. One commenter was concerned that the proposed Unit 2 would exclude Port Canaveral and noted one mother-calf pair was observed in the Canaveral ship channel while cruise ships were departing the port. Commenters supported a more southerly boundary because: (1) Sightings of mother/calf pairs (available at *http://www.nefsc.noaa.gov/psb/surveys/)* reported since Good's analysis indicate that waters south of proposed Unit 2 are used consistently—including by mother-calf pairs, (2) the agency previously recognized the area as critical to calving right whales, (3) calves are observed in the area so the areas should be protected even though they are not part of the area selected by the habitat models, (4) Good's model (available at: *http://dukespace.lib.duke.edu/dspace/handle/10161/588*) predicts calving habitat in the area for at least part of the calving season, and (5) right whales utilize the area at above-average densities.

Response: We agree with the commenters and have modified the southern boundary of Unit 2. We originally considered an alternative retaining the southern portion of the 1994 designated calving area critical habitat, discussed in the consideration of alternatives for the Initial Regulatory Flexibility Analysis (see Appendix B in the draft ESA Section 4(b)(2) Report). We noted that retaining the southern boundary as designated in 1994 would have captured suitable habitat predicted by Good's (2008) combined model for one month. However, in that analysis we noted that Garrison's (2007) habitat model did not predict suitable calving habitat that far south, yet it captured 91% of observed mother-calf pairs.

In response to public comments, we investigated observations of mother-calf pairs collected subsequent to the data used in the cited models and re-examined Garrison (2007), Good (2008), and Keller *et al.* (2006). We reviewed the North Atlantic Right Whale Consortium Database (2015) (available at *http://www.narwc.org/index.php?mc=8&p=28*) for mother-calf pair sightings south of the proposed Unit 2 and from the 2001–2002 calving season to present. We used this timeframe because Garrison (2007) and Keller *et al.* (2006) used Consortium data through March 2001. We found 39 mother-calf pair sightings at an annual sighting rate of just under three mother-calf pairs (highest annual number of pair sightings was 10). Of these, January and February sightings were most prevalent and totaled 12 and 19, respectively. While the number of sightings varies among years, sightings of mother-calf pairs within that area are predictable and consistent, as noted by some of the commenters. Because occupied critical habitat must be based on the presence of features essential to the species' conservation that may require special management considerations or protection, we re-evaluated the predictive habitat model results in terms of temporal distribution of the essential depth, temperature, and sea surface roughness features. First, we reviewed the models and temporal scales of model outputs. Garrison's (2007) and Keller *et al.'s* (2006) models at the 4-month (season-level) temporal resolution (as illustrated in Garrison's Figure 19 and Keller *et al.'s* Figure 7), which were used for the proposed designation, do not predict presence of all the essential features south of the proposed boundary. This is because the 4-month scale obscured the areas containing the essential features for a smaller timeframe (*i.e.,* one month). Garrison's (2007) model output at a finer temporal resolution (monthly scale) does predict presence of the essential features south of the proposed revised critical habitat for at least a portion of the calving season (in January and February) (see Garrison's Figure 21 and 22). Good's (2008) model outputs are similar. The presence of all the essential features are not predicted to simultaneously co-occur south of the proposed unit boundary for the coarser temporal scale of 3 or 4 months, but the

essential features are expected to simultaneously co-occur over a contiguous area in the finer, 1-month temporal scale. Good's model also predicts presence of the essential features south of the proposed revised critical habitat in January and February, and to a lesser degree, in December. Thus, this southern area contains the essential features at times when the majority of the right whale mother-calf pairs have been observed there in the years since the models were published. Mother/calf pairs in the area were most often seen swimming (n = 23) but other behaviors were observed (diving-7, breaching-1, and slapping the water with flippers or tails-2) (Right Whale Consortium 2015). The high number of observations of swimming mother/calf pairs in this area is consistent with our analysis, discussed in the Biological Source Document for the Critical Habitat Designation, that mother-calf pairs likely loop many miles up and down the coast in the calving area to strengthen calves' swimming abilities. Apparent nursing was also observed in the area (n = 4), and mother-calf pairs were also seen in physical contact with each other (n = 9).

Therefore, we believe the available data show consistent and predictable presence of right whale mother-calf pairs in this southern area, during the months the habitat models predict presence of all the essential features. The features here may require special management considerations or protections for the same reasons as the rest of Unit 2: Because of possible negative impacts from activities and events of offshore energy development, large-scale offshore aquaculture operations, and global climate change. These activities and their potential broad-scale impacts on the essential features are discussed in detail in the Biological Source Document (NMFS 2015). For these reasons, we agree with the commenters that the southern boundary of the calving area critical habitat should be moved southward from where we proposed. Next, we identified new coordinates for including this area in Unit 2. Based on the above information and Good's (2008) one-month model, the Southeast Calving Area (Unit 2) boundaries were developed by drawing straight lines around the modelled one-month area extending from Daytona Beach to just south of Melbourne, Florida, trying to use the fewest number of waypoints as possible, and rounding waypoints to the nearest minute to the greatest extent possible. This extension represents an approximate 4% increase in the area of Unit 2 from the proposed rule and retains critical habitat in Atlantic waters adjacent to Port Canaveral.

To evaluate and consider the economic impacts of including this area in the designation, we followed the same methodology described in the proposed rule (80 FR 9314, February 20, 2015) and in the Section 4(b)(2) Report. Similar to the proposed Unit 2 area, we identified three categories of activities that have occurred and are likely to recur in the future and have the potential to affect the essential features in the expanded Unit 2 area: (1) U.S. Army Corps of Engineers (USACE) maintenance dredging or permitting of dredge and disposal activities under the Clean Water Act; (2) USACE permitting of marine construction, including shoreline restoration and artificial reef placement under the Rivers and Harbors Act and/or Clean Water Act; and (3) Bureau of Ocean Energy and Management permitting of sand and gravel extraction under the Outer Continental Shelf Lands Act.

Additionally, we identified one category of activities that has not occurred in the expanded Unit 2 area in the past but, based on available information, may occur in the future. The projected activity is offshore renewable/alternative energy development. If this activity occurs, it may adversely affect the essential features. In the proposed rule (80 FR 9314, February 20, 2015), we described our justification for determining relative levels of impacts (*i.e.,* incremental, or co-extensive) for all of these activities. We repeated that process, to consider the impacts of adding the southern extension to the designation. Based on our analysis of past consultation history, we project that over the next ten years, there will be 22 consultations, or about two consultations per year, in this area which may affect the features of critical habitat. Eleven of these projects would involve dredging and/or disposal by the U.S. Army Corps of Engineers, and 11 projects would involve permitting of marine construction or artificial reef placement by the U.S. Army Corps of Engineers. Thus, adding the southern extension would involve no additional federal agencies or actions that are different from those that will be conducted in the rest of Unit 2 and were evaluated in the Draft Section 4(b)(2) report. As discussed in the Section 4(b)(2) Report, these activities are only expected to involve incremental administrative costs of consultation as a result of this designation. Annual administrative costs for these projected consultations are $10,160 (at $5,080 per consultation—see the Economics Impact section in the proposed rule and the Section 4(b)(2) Report for background information on the costs for conducting consultations).

Relative to projected, new activities, offshore renewable/alternative energy may occur in the southern extension area, given its proximity to shore and available information about where and how these activities might be implemented (*http://www.boem.gov/Florida/*). Because there are no records in NMFS's consultation history for offshore renewable or alternative energy projects occurring within Unit 2, we are unable to (a) predict how many section 7 consultations may result from projects of this type over the next 10 years or (b) calculate the projected incremental costs resulting from this action. We are not aware of any other future new federal activity that may be implemented in the southern extension area.

We also contacted Department of Defense agencies that are active in the area to determine if they anticipated any impacts from critical habitat designation on their activities within the additional southern area that would pose national security concerns. Their responses were similar to those submitted for the proposed Unit 2 area in that they did not anticipate their activities would destroy or adversely modify the essential features of calving habitat. Therefore, other than the administrative costs of consultation for about 2 consultations annually over the next 2 years, there will be no economic or national security impacts of this addition. Yet, as the sightings data demonstrate, there appear to be measurable conservation benefits to right whale mother-calf pairs that use this particular area every year.

Finally, we evaluated whether the data suggest the Unit 2 boundaries should be expanded on a similar basis elsewhere. In other words, whether there is consistent mother-calf pair usage of other areas predicted by the habitat suitability models to contain the essential features in one month of the calving season evaluated in the models. Good's (2008) model generally predicts calving habitat in one month (two months in some portions of the area) north of the proposed Unit 2 boundaries, from Cape Fear to approximately Cape Hatteras, North Carolina. Nine mother/calf pair sightings occurred in the approximately 2,386 nm^2 area from the 2001/2002 calving season to present (Right Whale Consortium, 2015) and at an annual sighting rate of just under one pair (highest number of pair sightings is four in one season). In other words, the area

off North Carolina is approximately 600% larger than the area off Florida, yet it has 75% fewer sightings of mother/calf pairs of right whales. Mother-calf pair sightings occurred in three different calving seasons. Two mother calf pairs observed off North Carolina in April 2010 were likely migrating northward as both were observed earlier in the calving season off Florida and Georgia (Right Whale Consortium, 2015a). Since available data do not demonstrate that mother-calf pair usage of the area off North Carolina and north of the proposed Unit 2 boundary is as consistent and predictable as off Florida south of proposed Unit 2 during the peak calving season (North Atlantic Right Whale Consortium sighting database), we are not expanding the Unit 2 boundaries to the north at this time.

Consequently, at this time we are extending Unit 2 further to the south to include a portion of the 1994-designated critical habitat. We find that this is supported because: (a) Garrison (2007) and Good (2008) confirm the presence of the essential features of critical habitat in the area for at least a portion of the right whale calving season; (b) we confirmed mother-calf pairs were sighted in the area most frequently when the essential features are expected to be in that area, and (c) multiple mother-calf pairs consistently and predictably occur there every year.

Comment 8: One commenter recommended extending calving area critical habitat eastward off Florida to include the location of an observed March 20, 2010, right whale birthing event.

Response: We are not extending the calving area critical habitat boundary farther to the east off South Carolina or Florida. The March 20, 2010, right whale calving event was at least 15 nm east of predicted suitable right whale calving habitat—at any temporal resolution (see response to Comment 23).

Comment 9: One commenter suggested extending calving critical habitat into the Gulf of Mexico because the area was occupied by right whales at the time the species was listed and because of recent calving events there.

Response: NMFS is not aware of known incidents of right whale calves being born in the Gulf of Mexico. Right whales have been observed only rarely in the Gulf of Mexico. The few published sightings (Moore and Clark 1963; Schmidly and Melcher 1974; Ward-Geiger *et al.* 2011) represent either right whale presence that is abnormal (*i.e.* outliers) or a more extensive historical range beyond the current sole known calving and wintering ground in the waters of the southeastern United States (Waring *et al.* 2009). We also concur with other right whale researchers that the Gulf Stream serves as a thermal barrier preventing right whales from routinely using the Gulf of Mexico (Keller *et al.* 2006, Good 2008, Keller *et al.* 2012). Therefore, we are not extending the critical habitat to include the Gulf of Mexico.

Comment 10: One commenter stated that Unit 2 should match the area in Action 1 Alternative 9a of Regulatory Amendment 16 (Reg-16) under consideration by the South Atlantic Fishery Management Council for the Snapper-Grouper Fishery Management Plan (S–G FMP).

Response: We do not agree with matching the boundaries as specified by the commenter. The area created for S–G FMP Reg-16 meets the needs of a fishery management plan development process but is not consistent with the ESA-specific requirements for designation of critical habitat. Based on the statutory definition of critical habitat we applied a step-wise approach to identifying occupied areas that may be designated as critical habitat for North Atlantic right whales. Briefly, the steps we followed included: (1) Identifying the right whale range, (2) identifying areas within that range where physical or biological features essential to right whale conservation are found, and (3) determining if those features may require special management considerations or protections. The boundaries of Alternative 9a do not contain the full area identified by us as containing physical features essential to the conservation of the North Atlantic right whale, particularly off South and North Carolina.

Comment 11: A number of comments supported the designation of Unit 2 as critical habitat. Comments included (a) the calving area critical habitat should be expanded to incorporate the entire area proposed as Unit 2, (b) strong support for the area proposed for critical habitat, and (c) the Bureau of Ocean Energy Management (BOEM) is supportive of the proposal to replace critical habitat for the North Atlantic right whale.

Response: NMFS appreciates the support.

Comment 12: One commenter suggested considering additional information to better support the calving area critical habitat designation including:

(a) Identifying the relative value of various nursery areas (*e.g.* track the location where an individual was born to see if differential growth or survival occurs) as has been done in fishery science;

(b) using opportunistic sightings;

(c) changing distribution of calves due to climate change—a northward shift in cow-calf distribution may mean a greater need to protect additional northern habitat, while expanding distribution to north and south could be due to increased abundance of whales;

(d) using a depth contour that captures 90% of right whale cow-calf pairs.

Response: As mentioned in the **Federal Register** Notice of Proposed Rulemaking and Biological Source Document, the ESA definition of critical habitat provides NMFS with a step-wise approach to identifying areas that may be designated as critical habitat for North Atlantic right whales. Briefly, the steps we follow include: (1) Identifying the right whale range, (2) identifying areas within that range where physical or biological features essential to right whale conservation are found, and (3) determining if those features may require special management considerations or protection. Calving is essential to the species' conservation and the physical features that are essential to successful calving include: (1) Calm sea surface conditions associated with Force 4 or less on the Beaufort Scale, (2) sea surface temperatures from 7 °C through 17 °C, and (3) water depths of 6 to 28 meters where these features simultaneously co-occur over contiguous areas of at least 231 km 2 during the months of November through April. The distribution of optimal values of these features changes throughout a calving season, and between calving seasons. Further, the needs cow-calf pairs' have for each of the individual parameters change over the course of rearing, and the pairs move across broad swaths of the calving area to seek out optimal conditions and to condition the calf. Therefore, we believe that all of Unit 2 is highly valuable to calving right whales.

Opportunistic sightings lack associated information on search effort so are not included in efforts to statistically analyze and predict right whale habitat. Thus, Garrison (2007), Good (2008), and Keller *et al.* (2012) did not use opportunistic sightings in their work. However, we reviewed opportunistic sightings when considering the importance of calving habitat south of proposed Unit 2. Opportunistic sightings were used to assess the consistency of calving right whale use of that area.

We also considered climate change effects on calving right whale (including calf) distribution using the same step-wise approach to identify critical habitat. We determined that increased temperatures and hurricane activity due to global climate change may alter sea surface conditions within the specific area such that the area capable of providing dynamic, optimal combinations of the essential features is reduced and the ability of the specific area to support the key conservation objective of facilitating successful calving is reduced. We determined that the essential features of the calving habitat may require special management considerations or protection due to future climate change impacts. Existing predictions of climate change impacts do not provide fine enough information to determine how the distribution of essential features in the SAB will change in the future, and thus setting boundaries based on future climate change impacts would be speculative at this time.

Comment 13: One commenter submitted a number of comments on the underlying models used to identify the Unit 2 proposed critical habitat. Comments included: (1) Concern about averaging and aggregating data, (2) the treatment of zero-inflated data, (3) suggestions for other parameters (water density, underwater currents, substrate, and salinity) to include, (4) the nonrandom nature of survey design used to collect underlying data, (5) concern over model fit, (6) the use of limited information, (7) use Easting (relative east-west location) and Northing (relative north-south location) or the interaction parameter of the two variables, and (8) models should be updated and viewed with caution. Another commenter suggested that we utilize the Duke University Marine Geospatial Ecology Lab (MGEL) and Atlantic Marine Assessment Program for Protected Species (AMAPPS) models of marine mammal habitat utilization when making decisions on North Atlantic right whale (NARW) Critical Habitat boundaries.

Response: The first comment is focused on methods used in generating models described in publications we used to inform critical habitat, and changing those analyses is beyond the scope of the actions proposed in this rule. In general, we use information from a wide variety of sources. We are required to gather, review, and evaluate available information to ensure it is reliable, credible, and represents the best scientific and commercial data available. We reviewed Garrison (2008), Keller *et al.* (2012), and Good (2008) and found these to be the best scientific and commercial data available at the time the proposed rule was published in the **Federal Register**. As far as updating models: We did not, nor does the ESA require us, to develop new models as part of the rulemaking. Moreover, based on our review of whale sightings dated after publication of the models (see response to comment 7), the models are performing well in predicting the overall boundaries of the calving area. However, we will continue to monitor ongoing studies and publications to determine if new information will enhance our understanding of right whale habitat, and the ESA allows us to revise critical habitat when appropriate.

We are aware that the Duke Marine Geospatial Ecology Lab and AMAPPs are modeling densities and abundance of right whales; however, those products were not available at the time this final rule was developed.

Comment 14: One commenter noted that Good *et al.* (2008) stated that bottom type is an important habitat component that was not included in either modeling approach. This commenter also reported that the bottom type had been mapped for a significant portion of the area where right whales occur in the Southeast U.S. Atlantic (A screenshot of the SAFMC Habitat and Ecosystem Viewer was included with the comment, which we assume was taken from *http://ocean.floridamarine.org/SA_Fisheries/*). The commenter went on to state that including this available information into the modeling approach might improve our understanding of habitat selection by right whales.

Response: We agree that additional information into the modeling approach might improve our understanding of habitat selection by right whales. However, the information in Good (2008), also said this about substrate type: ''Substrate was not considered because of lack of suitable data for the broader Atlantic Ocean and because available substrate data for the [South Atlantic Bight] showed little variation.'' Therefore, it was concluded that the inclusion of the substrate information as provided in Good (2008) was not warranted at this time. In addition, see our response to comment 13 above.

Comment 15: One commenter stated that Good's (2008) box-plots showed that the majority of mother-calf pairs in the southeastern U.S. were observed from 6 through 20 m depth and 11° through 21 °C sea surface temperature (SST) in calm waters. However, the proposed right whale critical habitat (Unit 2) includes waters with SSTs ranging from 8° through 17° C and depths of 6 through 28 m, which are beyond the range where right whales are typically observed.

Response: We assume the commenter is referring to Good's (2008) box-plots of habitat conditions illustrated in Figure 3. This figure compares habitat conditions associated with mother-calf sightings against the survey search area. The data and, by extension, the figure illustrate that mother-calf pairs occurred in shallower and cooler waters compared to available conditions throughout the study area. Good (2008) used Mantel tests to evaluate the association of mother-calf pairs with habitat conditions. Although she found SST and depth were significant predictors, Good (2008) didn't specify what proportion of observed or predicted sightings, corrected for effort, would occur with the various SST and depth ranges. For that information, we looked to Garrison (2007).

Garrison (2007) generated a figure that illustrates percentile of predicted sightings per unit of effort by water depth and temperature (see Garrison's Figure 16). For reasons specified in the Notice of Proposed Rulemaking and Biological Source Document, we concluded Garrison's (2007) 75th percentile and Good's (2008) habitat selected in 3 and 4 months were the most appropriate bases for determining the best distribution of essential features of right whale calving habitat. Garrison's (2007) Figure 16 illustrate that SST ranging from 7–17 °C and depth ranging from 6–28 m are habitat features associated with the 75th percentile of predicted sightings per unit of effort. Thus, the physical features essential to the conservation of the North Atlantic right whale, which provide calving area functions in Unit 2 include sea surface temperatures of 7 °C to 17 °C, and water depths of 6 to 28 meters.

Comment 16: One commenter stated that the proposed critical habitat is strongly based on areas from Keller *et al.* (2012) that indicate the probability of right whale sightings based on SST alone (see Figure 8b in Keller *et al.* (2012)). Depth should have been included in the model similar to cell mapping in Good *et al.* (2008).

Response: We acknowledge that Unit 2 closely resembles Figure 8b from Keller *et al.* (2012). As indicated in the Source Document, in order to identify the area that contains essential features of calving habitat, we used the predictive models of Garrison (2007), Good (2008), and Keller *et al.* (2012). All of these authors included water depth and sea surface temperature in their models because they found depth and sea surface temperature were significant

variables in predicting the spatial distribution of calving right whales. Keller *et al.*'s (2012) Figure 8b illustrates where their model, which does include bathymetry, predicts right whales to be distributed based on SST in December through March (as opposed to June through September). This temporal delineation rightfully constrains the model to predicting calving habitat during the known right whale core calving season of December through March.

Comment 17: One commenter noted that Good *et al.* (2008) limited their dataset to presence only to reduce the influence of the zero observations. This commenter was concerned that eliminating the zeros could give a false increase in the preferred habitat and, resultantly, in protecting calving habitats that are not truly critical habitat for right whales.

Response: We concur with Good *et al.* (2008) in that this is a suitable approach for a very small population. As that author states: ''if habitat conditions associated with whale absence are incorporated into a model as 'unsuitable', the outcome may be biased away from suitable habitat due to limited species dispersal.'' This would be particularly true with a small, remnant population like right whales. Therefore, we do not agree that eliminating zeros from the data will result in protecting calving habitats that are not truly critical habitat for right whales.

Comment 18: The justification for choosing the 75th percentile of the predicted whale sightings stated that 91% of the observed whale sightings were included in the selected model. This transforms the goal of the modeling exercise from an exercise to select the best habitat based on environmental parameters to a selection of a model to best cover the data. Therefore, the selection of the model to describe the critical habitat may not give a realistic representation of the environmental parameter's influence on the distribution of the species.

Response: Garrison (2007), Keller *et al.* (2012), and Good (2008) found that sea surface temperature and water depth were significant predictors of calving right whale spatial distribution. Good (2008) also found surface roughness to be a significant predictor. The extent to which calving right whales select the range and combination of these features is best represented as a spatial gradient between the most suitable and least suitable environments. There is no discrete spatial boundary for the habitat (*e.g.* shore line, watershed boundary, etc.). Therefore, NMFS defined a geographic area that contained a significant amount of the habitat features used by a large proportion of calving right whales (*i.e.* ''best'' plus ''good'' habitat) over the entirety of the calving season. When selecting boundaries of critical habitat, we used the model results, but we also considered the behaviors, physiologies, and growth and development of cow-calf pairs during the calving season, including the significant amount of movement of pairs over the period. We also considered the fact that the distribution of temperature and surface roughness values changes over the course of calving seasons, and between calving seasons. The purpose of a critical habitat designation is to facilitate compliance with section 7 of the ESA, year in and year out, to ensure that actions of federal agencies do not destroy or adversely modify critical habitat. This objective is accomplished by evaluating whale presence and behavior, and status of essential features, in specific project areas at the time they are proposed to be implemented. The critical habitat features and boundaries being designated will facilitate compliance with ESA section 7.

Comment 19: One commenter inquired about the portion of the population that uses the proposed critical habitats during the winter months. The commenter also asked at what point does the critical habitat no longer become vital on a monthly basis. This information would be useful for planning purposes.

Response: It is not entirely clear, but we believe this commenter is inquiring about either the demographic segments or how many right whales are in the calving area critical habitat on a monthly basis. We know all demographic segments (adult females and males, juveniles, and calves) may be found within the calving area critical habitat in the winter months. As far as the proportion of the total right whale population that uses the calving area critical habitat then, we do not know. We know that as many as 243 different whales have been seen in the Southeast U.S. during one winter (P. Hamilton pers. Comm., April 11, 2014). We interpret the second question to be asking when are potential impacts to right whales in this area no longer of concern. From Good (2008), we know that at least 85% of all observed right whale mother-calf pair sightings from January 2000 through March 2005 are located within the modified calving area critical habitat (Good 2008). Generally, by the end of March, mother-calf pairs have begun moving northward out of the area.

Designation of a Migratory Corridor

A number of comments focused on the agency's determination that we are unable to identify physical or biological feature associated with right whale migration. These ranged from comments in favor of the agency designating a migratory corridor and comments in support of the agency's determination that identification of features associated with migration is not possible at this time. This determination was based on our review of the best available information.

Many of the comments received advocating the designation of a migratory corridor focused on the presence of right whales but provide little if any additional information on the characteristics of physical and biological features that enable the agency to identify and define critical habitat.

Comment 20: A number of commenters stated that the agency must designate a migratory corridor for the North Atlantic right whale in the mid-Atlantic, asserting there is no other route between the southern calving and northern feeding grounds. They stated that the agency undervalued the data in the available studies and other data the agency has relied upon in other rulemakings regarding protections for North Atlantic right whales. The commenters stated that the agency's summary in the proposed rule relied primarily on a single study of the broad movements of two tagged animals to conclude that not all right whales migrate within 30 miles of shore, the distance referenced in the petition to revise critical habitat. The commenters stated that the study in question (Schick *et al.* 2009) showed that while not all right whales are found within 30 miles of the coast, the tagging data from Schick *et al.* (2009) show that the tagged whales were primarily found within 30 miles of the coast of the mid-Atlantic and only appeared to travel significantly farther from shore off of the Delaware Bay area toward Block Island Sound. The commenters also stated that a recently published report of the tagging of two right whales in 2014 showed a similar nearshore travel pattern, with all movements on the narrow shelf to the Chesapeake Bay and only farther offshore northward of that area where the shelf is broader.

Response: Given that large-scale migratory movements between feeding habitat in the northeast and calving habitat in the southeast are a necessary component in the life-history of the

North Atlantic right whale, we agree with the commenters that facilitating successful migration by protecting the species' migratory area is a key conservation objective that could be supported by designation of critical habitat for the species. As described in the Biological Source Document, we explored the possibility of using known occurrences of North Atlantic right whales in the mid-Atlantic to identify the specific areas used for migration and essential physical and biological features in those areas. Data and information considered by NMFS included sightings data used while developing the rule to implement ship speed restrictions to reduce the threat of ship collisions to North Atlantic right whales (73 FR 60173, October 10, 2008); the studies by, Knowlton *et al.* (2002), and Firestone *et al.* (2008); and telemetry data and model results used in Schick *et al.* (2009).

The authors of these three publications expressed whale distribution in terms of distance from shore. For example, of the sightings used in support of the ship speed rule, NMFS found that approximately 83 percent of all observed right whale sightings occurred within 20 nm (37 km) of the coast, and approximately 90 percent of all right whale sightings occurred within 30 nm (55.6 km) of the coast (73 FR 60173). Schick *et al.* (2009) found that, based on telemetry data for two tagged whales, peak habitat suitability occurred in the range of 17 to 108 nm from shore for one tagged whale (a mother-calf pair), and for the other, peak suitability occurred in the range of 8 to 40 nm from shore for the other. Regardless of the distance from shore in which right whales have been documented along the mid-Atlantic, we found no evidence to support a conclusion that ''distance from shore'' is a physical or biological habitat feature essential to the conservation of right whales. In other words, we found no basis to suggest that right whales key in on distance from shore, or somehow use distance from shore, to facilitate migration.

The commenter also cited the recently published report of two tagged right whales from 2014. We are aware of this three-year ongoing North Atlantic right whale telemetry project that tagged three right whales in 2014, and we did consider the preliminary results of this work. Estimated tracks of two of the whales were well publicized and made available on *www.alaskasealife.org.* However, we are also aware that there are varying levels of error and uncertainty associated with those preliminary telemetry tracks, and the data have not been processed completely to account for those errors (thus, the Web site correctly refers to the tracks as ''estimated tracks''). Further, similar to the discussion of the Schick *et al.* (2009) study above, these preliminary data do not provide us with any indication of physical or biological features essential to the conservation of right whales and whether any such features warranted any special management considerations. Therefore, we determined that those data are preliminary and do not represent the best available information present at the time of this final rule. For the reasons stated above, we conclude it is not possible to designate migratory critical habitat at this time.

Comment 21: Several commenters stated that they supported our conclusion that there is no basis for the designation of a migratory corridor as critical habitat because there are no reliable data by which the physical and biological features of migratory critical habitat can be determined.

Response: We agree with this comment.

Comment 22: One commenter stated that right whales seasonally residing in Cape Cod waters are known to travel along the mid-Atlantic coastal waters as part of their migration between calving grounds offshore of the southeastern United States and feeding areas in Cape Cod Bay and the Gulf of Maine. Both the Biological Source Document and the proposed rule reference Schick *et al.* (2009) in support of the statement that ''The space used by right whales along their migration remains almost entirely unknown.'' The commenter suggested that, while these data and analyses may not be judged sufficient to designate a critical habitat along a migratory corridor, the compilation of sightings data from 1974–2002 prepared as part of the analyses for the Ship Strike Reduction Program (*http://www.greateratlantic.fisheries.noaa.gov/shipstrike/doc/Historical%20sightings.htm*), and the papers of Knowlton *et al.* (2002), Firestone *et al.* (2008), Asaro (2012), Laist *et al.* (2014), LaBrecque *et al.* (2015), and Andrews (2015) highlight areas of migratory importance and should be considered for designation.

Response: The sightings data referenced compiled from 1974–2002 prepared as part of the analyses for the Ship Strike Reduction Program were considered. For the purposes of the ship strike rule analysis, the focus was to determine the risk of ship strikes of right whales in the vicinity of ports. As discussed, the best available data are limited in scope, and do not provide a complete description of migratory habitat (*i.e.,* survey data were biased near shore, and not all right whales migrated within 30 nm of shore). Since the vast majority of the survey effort was focused close to shore, the fact that the majority of migrating whales were observed close to shore is not surprising and does not indicate that distance from shore and shallow habitat contain or comprise essential features for migration. The one completed study that removes the associated biases related to survey effort and location was based on two telemetry tagged whales and the movements of those whales were much broader and variable (Schick *et al.* 2009).

Comment 23: One commenter stated that the rationale for not designating a migratory corridor is not convincing. The commenter stated that female right whales are seen both in nearshore areas within 30 nm of shore and also much farther offshore, which suggests that the migratory corridor may be wide, not that it is non-existent or impossible to delineate in some form. The commenter stated that adequate information exists, along with viable models, to provide the necessary data to develop a migratory corridor that would provide the minimum necessary requirement to enhance survivability of the right whale populations under consideration (Firestone *et al.* 2008, LaBreque 2015, Pendoley *et al.* 2014, Schick *et al.* 2009, Whitt *et al.* 2013).

Response: See response to Comment 20.

Comment 24: One commenter stated that ensuring that mothers and calves are not disturbed as they transit the Mid-Atlantic on their way to the southern calving grounds is a special management consideration associated with migration. The comment stated that this is essential to the conservation of the species and that this area and the essential life activities that occur in it may be impacted by the activities we have identified for Unit 2, as well as by oil and gas activities, vessel traffic, and other federal actions.

Response: We agree that migrating right whales, including mothers and calves, need to be protected. The potential impacts identified in the comment, however, relate to potential impacts to individual whales, which would be addressed through a jeopardy analysis as required under section 7 of the ESA. The impacts identified by the commenter do not relate to physical and biological features associated with possible critical habitat used by migrating whales. Designated critical habitat receives protection pursuant to section 7 of the ESA through a separate

provision and process in which potential adverse modification or destruction of the habitat must be evaluated. The protection of physical and biological features of critical habitat is distinct from the protection the animals themselves receive under section 7 of the ESA.

Comment 25: One commenter stated that the importance of migratory corridors as a Biologically Important Area (BIA) is discussed in the Aquatic Mammals Journal Special Issue on BIAs for Cetaceans within U.S. waters. The four categories of BIAs identified in the journal articles are: Reproductive areas, feeding areas, migratory corridors, and areas in which small and resident populations are concentrated. NOAA's Cetsound Web site (*cetsound.noaa.gov*) includes a CetMap module that can display Migration BIAs for numerous cetacean species, including the North Atlantic right whale. Migration BIAs cover an extensive area of the Atlantic coast from Maine to Florida. The commenter recognized that the CetMap migratory corridor was not intended as a regulatory boundary, but the absence of a migratory corridor of any size within the proposed rule means that one of the major BIA categories important for the survival of the North Atlantic right whale has been omitted.

Response: Schick *et al.* (2009) provide the only unbiased data and analysis on the actual extent of movements of right whales in the Mid-Atlantic. Although we acknowledge that some portion of the right whale population is sighted transiting through the waters of the Mid-Atlantic, designating migratory critical habitat requires more than just a general understanding of where some whales may be seen transiting (see Response 20 above). The paper identified by the commenter, LaBrecque *et al.* (2015), which discusses a migratory corridor for right whales relies on the same studies that we analyzed in our efforts to identify essential physical and biological features associated with migratory behavior in right whales. Although the authors identify a ''migratory BIA'' for right whales, this paper, like the others evaluated through this rulemaking, do not provide us with a basis for identifying physical or biological features used by right whales to facilitate their migration.

Comment 26: One commenter stated that the features of migratory habitat are: Shallow, minimal slope, nearshore. Another commenter stated that the primary physical features for a migratory habitat would appear to be the existence of a contiguous volume of ocean water, within an appropriate range of temperatures which provides a path through which North Atlantic right whales migrate from their foraging areas to their calving areas and return.

Response: The non-specific terms ''shallow,'' ''minimal slope'' and ''nearshore'' simply describe the general bathymetry of nearshore shallow continental shelf benthic habitat. The comment did not include any data or specific information that would allow us to define the appropriate or essential values of depth or slope within right whale migratory habitat, nor are we aware of any such data. The suggestion that right whale migratory habitat appears to be the existence of a contiguous volume of ocean water, within an appropriate range of temperatures that provides a path through which North Atlantic right whales migrate from their foraging areas to their calving areas and return is also non-specific. Again, the comment did not include any additional data or information that would allow us to define an appropriate volume of water or range of water temperatures that are essential for the conservation of right whales. What the range of temperatures that may be essential for right whale migration is unknown but is a potential focus of future research and analysis.

Comment 27: One commenter stated that many of the same habitat features identified as essential for calving and nursing whales south of Cape Fear (*i.e.*, relatively calm, shallow waters between 7–17 °C) are present in the coastal waters between southern North Carolina and southern Massachusetts. The commenter states that although empirical data to support a conclusion are lacking, it seems reasonable to assume that calves and their mothers would continue to prefer waters with those characteristics as long as possible along their migratory route. This is consistent with observations that mother-calf pairs do not follow a straight-line route between the calving and feeding grounds, which would take them far off shore, but rather follow the coast line to at least the Chesapeake Bay where those same conditions also occur.

Response: The commenter is correct in noting that there are no empirical data to support the suggestion that right whale mother-calf pairs' migratory movements are linked to the temperature and sea states similar to essential calving features. Also, as discussed previously, data from two tagged female right whales, one with a calf, demonstrate that one migrating right whale (the mother calf pair) moved with a range of peak habitat suitability of 17 to 108 nm from shore, and for the other whale, peak suitability occurred in the range of 8 to 40 nm from shore (Schick *et al.* 2009). This contradicts the statement by the commenter that transiting right whales ''follow the coastline.'' While two recently tagged animals provide additional information regarding right whale movements, Schick *et al.* (2009) still provide the best available data related to movements of migrating whales. The comment itself does suggest to us potential future research into whether temperature and sea state are possibly being actively selected by transiting right whales.

Comment 28: One commenter stated that the agency used the same studies the commenter considered in analysis of whether it is possible to identify essential migratory features in prior rulemakings to protect North Atlantic right whales. The commenter states that the agency inexplicably dismissed them for purposes of this rulemaking, by claiming that they are effort-biased (*i.e.*, most effort is within 30 miles of shore).

Response: The commenter may be referring to the ship strike rule analysis (73 FR 60173, October 10, 2008). For the purposes of the ship strike rule analysis, the nearshore area was of greatest interest for determining risk in the vicinity of ports. The data were used to determine the risk to the species in order to mitigate the threat of ship strikes of right whales in these areas, not to identify a migratory corridor or physical and biological features essential to the conservation of the species which may require special management considerations or protection. The difficultly in using the data for identification of critical habitat is also discussed above.

Comment 29: One commenter stated that with regard to identifying features essential to conservation of the species along its migratory route, Knowlton *et al.* (2002), which is cited in the Biological Source Document found that 93% of all sightings are within 25 fathoms of water and 80.5% of the sightings are within 15 fathoms of water indicating reliable physical parameters that are likely features for the mid-Atlantic migratory corridor.

Response: In terms of water depth, Knowlton *et al.* (2002) found that a majority of the sightings were within 5 to 10 fathoms of water, with the second highest number of sightings in 0 to 5 fathoms of water. The analysis indicated that 93 percent of sightings are in water depths of 25 fathoms or less, and 80.5 percent are in water depths of 15 fathoms or less. As noted above, in so far as the sightings were positively biased towards shore, it would also be expected that the water depth analysis would be positively biased towards shallow water.

Comment 30: One commenter stated that we should take the same approach to assessing the inclusion of migratory habitat in the designation as we did for calving and feeding habitat. Not all calving and feeding occurs within the areas identified in the proposed designation. However, the best available scientific information indicates that most whales use those areas for calving and feeding and supports inclusion of those areas in the critical habitat designation.

Response 30: As described in the proposed rule and Biological Source Document, we identified essential calving and foraging features that meet the definition of critical habitat. The areas we are designating as right whale critical habitat are the areas in which are found the essential forging and calving features. As discussed in the Biological Source Document, the areas where right whales feed and calve are well established and thus we were able to analyze what specific physical and biological features are found in these areas that meet the definition of critical habitat as required by the ESA. Currently, based on the best available information, we do not know the actual route or routes that right whales typically use to transit between other habitats, nor do we have data to identify the essential physical and biological features of a migratory route. Some individuals advocate that because right whales are sighted in nearshore waters, those areas should be designated as critical habitat. This approach, however, fails to acknowledge the limitations of virtually all of the available sightings data and overlook the data provided by Schick *et al.* (2009), which show broad scale offshore movements of migrating right whales far beyond nearshore waters. Additional research is needed to help identify what areas are typically used by right whales for migration, so that we can begin to try to identify what physical and biological features are associated with such an area and whether or not, these as yet unidentified features may require special management and as such qualify for designation as critical habitat under the ESA.

Comment 31: One commenter stated that the rationale for excluding all areas along the migratory corridor from the proposed designation fails to recognize the importance of this corridor to the conservation of the species and the fact that most whales migrate through a fairly well-defined area. The commenter stated that although the data documenting right whale migratory patterns are less extensive than those for other activities in other areas, available data from whale sightings and the increasing number of tagging and passive acoustic studies strongly indicate that waters within 30 nm of shore are an important component of the migratory corridor likely used by most pregnant and nursing females and calves, as well as by other whales for overwintering (Kraus *et al.* 1986, Kenny *et al.* 2001, Knowlton *et al.* 2002, Schick *et al.* 2009, Van Parjis *et al.* 2009, and Morano *et al.* 2012). The commenter stated that most right whales migrate between the calving and feeding grounds within a fairly well defined corridor, that we should expand the proposed critical habitat to include all waters that provide migratory and overwintering habitat for North Atlantic right whales within 30 nm of the coast between the proposed critical habitats areas in the northeastern and southeastern United States. Another commenter stated that there is little doubt that virtually all females and calves that use the calving grounds in winter pass through waters over the continental shelf between North Carolina and the known feeding grounds. The comment stated that the conservation of the species will be undermined if whales have no other way to transit between the two areas.

Response: See response to Comment 20.

Comment 32: One commenter stated that historical whaling records provide support for designating waters in the Mid-Atlantic region as migratory and overwintering areas in the critical habitat designation. The commenter stated that whaling records indicate that nearshore waters between Cape Lookout, North Carolina, and Nantucket, Massachusetts, at least historically, were important habitat for right whales from November through April. The commenter cited Reeves *et al.* (2007) who, based on a review of historical whaling records along the U.S. East Coast, estimated that at least 5,500 right whales were killed by whalers in the western North Atlantic between 1630 and 1950, with perhaps 80 to 90 percent killed during a 50-year period between 1680 and 1730. The commenter stated that most of that whaling occurred between the months of November and May and was conducted by shore-based whalers operating between North Carolina and Nantucket.

Response: Historical whaling records indicate the historic presence of North Atlantic right whales and are another source of non-systematic data that were collected for the purpose of documenting the harvest of whales for commercial purposes. These records merely provide broad geographic information concerning general locations of right whales during harvesting operations. The harvesting records do not provide information that can be used to identify the physical or biological features that promote the conservation of the species and which may require special management protections.

Identification of Additional Essential Features

Comment 33: One commenter stated that the proposed rule does not specifically identify features that may require special management considerations or protections, although these are discussed in the preamble.

Response: A detailed description of the physical and biological features we identified as essential to the conservation of the species and that may require special management considerations or protections are provided in the proposed rule as well as in the Biological Source Document and Section 4(b)(2) Report.

Comment 34: One commenter recommended that we expand the list of essential physical and biological features for North Atlantic right whales in all critical habitat areas to include the acoustic qualities that allow right whales to communicate efficiently and carry out other essential biological functions.

Response: The acoustic qualities or features of the habitat that are essential to the conservation of North Atlantic right whales are currently unknown. Clark *et al.* (2009) noted that specific questions and uncertainty exists regarding large whale communications and the potential for communication loss to lead to impacts to the conservation of right whales. These researchers concluded that ''At present, we can only speculate because we do not know enough details about when and how whales use their calls to communicate relative to the behavioral and ecological contexts, and how reductions in these capabilities translate to biological cost.'' In addition Clark *et al.* (2009), with regard to bioacoustic effects of ocean noise states ''. . . the greatest uncertainties in our abilities to estimate the impacts of communication masking come from our ignorance of spatial and temporal scales over which animals engage in their bioacoustic activities. Very little is known about the ranges over which the large whales actually communicate . . .'' Therefore, an expansion of the list of essential physical and biological features for North Atlantic right whales to include the acoustic qualities that allow them to

communicate efficiently and carry out other essential biological functions is not warranted at this time. As new information becomes available, we will take appropriate action if warranted.

Comment 35: One commenter stated that we should identify water quality capable of sustaining robust copepod blooms without risk of passing contaminant concentrations through the food web to right whales as an essential habitat feature. The commenter stated that successful foraging also requires clean ocean waters that support healthy copepod populations on which right whales depend. Several activities discussed in the preamble to the proposed rule were identified as potentially requiring special management attention because of their effects on water quality (*e.g.*, sewage outfalls and offshore oil and gas development). Water quality, however, was not identified as an essential habitat feature.

Response: Although we did not include water quality as an essential feature of the critical habitat, we did consider impacts associated with water quality. The available information on the impacts of contaminants directly on copepod abundance and reproduction is lacking. Copepods are widely distributed over a vast expanse in the feeding area. While contaminants could impact particular parts of this vast oceanic expanse, it is unlikely that contaminant concentrations would be of such magnitude as to negatively affect copepod blooms throughout the entire feeding area. Further, many of the contaminants such as DDT and PCBs have been banned in the United States for many years, and as such, contaminant inputs have decreased in many areas. Additionally, within our Section 4(b)(2) Report we identified two categories of activities, one under the Environmental Protection Agency's (EPA's) jurisdiction and one under the U.S. Coast Guard's (USCG's) authority, that may require modifications specifically to avoid adverse modification of the essential features. These activities are Water Quality/National Pollutant Discharge Elimination System (NPDES) and oil spill response. Effluent may affect the foraging feature by influencing the phytoplankton community structure. Similarly, dispersants used in oil spill response may have direct impact to the foraging features. Both of these activities would be subject to consultation requirements to ensure they do not destroy or adversely modify the essential features of the critical habitat.

With respect to the issue of contamination and passing contaminants throughout the food web to right whales, there is currently no evidence for significant contaminant-related problems in baleen whales (O'Shea and Brownell 1994, Weisbrod *et al.* 2000). Weisbrod *et al.* (2000) found that the PCB and pesticide concentrations in the right whale biopsies were relatively low and did not provide evidence that the endangered right whales bioaccumulate hazardous concentrations of organochlorines. We do not have evidence that the endangered whales bioaccumulate hazardous concentrations of organochlorines (Weisbrod *et al.* 2000). Although more research is needed, the existing data on mysticetes support the view that the lower trophic levels at which these animals feed should result in lower levels of contaminant accumulation than would be expected in many odontocetes, which typically show concentrations that differ from those of baleen whales by an order of magnitude (O'Shea and Brownell 1994, Weisbrod *et al.* 2000). However, the manner in which pollutants negatively impact animals is complex and difficult to study, particularly in taxa for which many of the key variables and pathways are unknown (such as large whales) (Aguilar 1987; O'Shea and Brownell 1994).

Comment 36: The Marine Mammal Commission recommended that we should expand the list of essential physical and biological features for designated feeding areas to include (1) water quality able to sustain and maintain blooms of copepods, particularly *Calanus finmarchicus*, and (2) waters free of materials that could impede or interfere with the filter-feeding behavior of North Atlantic right whales.

Response: Regarding the recommendation to include water quality as a feature, please see response to Comment 35. We do not agree with the commenter's recommendation that we should identify ''waters free of materials that could impede or interfere with the filter-feeding behavior of North Atlantic right whales'' as an essential foraging feature, and that this proposed feature may need special management attention because placement of fishing or other lines in the water column could interfere with right whale filter feeding or become caught in right whale baleen. Although we agree that addressing direct impacts to right whales as they forage is important to the overall recovery and conservation of the species, this rule addresses impacts to the physical and biological features of the foraging habitat, not direct impacts to the species itself.

As provided throughout this rule, the features of right whale foraging habitat that are essential to the conservation of the North Atlantic right whale are a combination of the following biological and physical oceanographic features: (1) The physical oceanographic conditions and structures of the Gulf of Maine and Georges Bank region that combine to distribute and aggregate *C. finmarchicus* for right whale foraging, namely prevailing currents and circulation patterns, bathymetric features (basins, banks, and channels), oceanic fronts, density gradients, and temperature regimes; (2) Low flow velocities in Jordan, Wilkinson, and Georges Basins that allow diapausing *C. finmarchicus* to aggregate passively below the convective layer so that the copepods are retained in the basins; (3) Late stage *C. finmarchicus* in dense aggregations in the Gulf of Maine and Georges Bank region; and (4) Diapausing *C. finmarchicus* in aggregations in the Gulf of Maine and Georges Bank region. Facilitating successful feeding by protecting these physical and biological features that characterize feeding habitat is a key conservation objective that is supported by designation of critical habitat for the species.

With respect to activities that may impede or interfere with filter-feeding behavior of right whales, such as placement of fishing or other lines in the water column that could interfere with right whale filter feeding or become caught in right whale baleen and thus pose direct impacts to the species itself, these impacts are not effects to the physical and biological features of the foraging habitat. These direct impacts to the species itself are already provided protection through Sections 7 and 9 of the ESA and through the MMPA.

Inclusion of Area to the South of Cape Cod/Nantucket in the Critical Habitat Designation

Comment 37: One commenter recommended that NOAA support research focused upon two areas likely critical to the NARW population: (1) The entire migratory corridor between the Southeast U.S. and the Gulf of Maine, and (2) a potentially important feeding, residency, and nursery area south of Cape Cod, Martha's Vineyard, and Nantucket.

Response: We agree and will continue to support research focused on identifying those physical and biological features that promote conservation for North Atlantic right whales.

Comment 38: Several commenters stated that we have inappropriately

excluded the waters south of Cape Cod, specifically the waters south of Nantucket and Martha's Vineyard from the Unit 1 designation. While the agency concluded that right whale sightings in Block Island Sound have not been consistent annually, sightings of right whales off Nantucket and Martha's Vineyard have been consistent and may be increasing. The commenter referenced statements found in the Biological Source Document as evidence that Nantucket Shoals is a physical feature of right whale foraging habitat and therefore stated that we should include areas south of Cape Cod in the Unit 1 critical habitat designation.

Response: We acknowledge that sightings occur to the south and east of Unit 1 as depicted in Figure 9 in the Biological Source Document, including Nantucket Sound and Block Island Sound. There is no basis that we are aware of for the statement that sightings ''may be increasing.'' Typically, whales were sighted in these areas in one year, but were not seen again in these areas on an annual basis. Therefore, a pattern of repeated annual observations is not evident in these areas. As a result, we have concluded that the combination of the physical and biological foraging features; including the dense aggregations of late stage *C. finmarchicus* are not present in these areas as found in the Gulf of Maine/Georges Bank region. We have concluded that most likely, these are sightings of transiting whales that may feed opportunistically while migrating to the Gulf of Maine/Georges Bank region (Richard Merrick, Pers. Comm., May 2010). As discussed in the Source Document, researchers have documented that right whales forage on the copepods other than *Calanus finmarchicus*, including *Pseudocalanus and Centropages typicus* as well as barnacle larvae (Mayo and Marx 1990, Baumgartner *et al.* 2007). These researchers note, that right whales quickly ceased foraging on these zooplankton assemblages indicating that the prey was likely not suitable to meet their energetic requirements (Baumgartner *et al.* 2007). In addition, recent survey effort in the areas south of Cape Cod off of Nantucket, Martha's Vineyard and in Rhode Island Sound have observed socially active groups (reproductive behavior) of right whales, which provides some additional insight into the behaviors of right whales present in these areas (Kraus *et al.* 2014).

We have considered additional sightings data available (see Kraus *et al.* 2014, Khan, C. *et al.* 2010, 2011, 2012, 2014, Gatzke J. *et al.* 2013). Their inclusion does not fundamentally change the outcome of the analysis provided by Pace and Merrick 2008 in light of the 35 years of sightings data already used in that analysis (Richard Merrick, Pers. Comm., May 2010). However, we will continue to monitor sightings in these areas and will take appropriate action if warranted.

Therefore, we have concluded that the combination of physical and biological foraging features, including the dense aggregations of late stage *C. finmarchicus*, are not present in these areas and thus do not include these areas south of the Gulf of Maine-Georges Bank region in the boundaries of right whale critical habitat. We will continue to monitor sightings in these areas and will take appropriate action if warranted.

Comment 39: One commenter stated that we have acknowledged the importance of the areas surrounding Nantucket Sound for spring aggregations of copepods. The agency has stated in a separate resource document that the early spring abundances of *C. finmarchicus* increase throughout the ecosystem, but are highest in the shallower portions of the Gulf of Maine, on Georges Bank and on Nantucket Shoals. Abundance continues to increase into late spring, with high abundance throughout the Gulf of Maine, Georges Bank, the Southern New England shelf and the outer Middle Atlantic Bight shelf. The comment referenced the following NMFS document: Seasonal and Spatial Trends' in Ecology of the Northeast Continental Shelf: Zooplankton. Retrieved from: *www.nefsc.noaa.gov/ecosys/ecology/Zooplankton/.*

Response: The Web site cited by the commenter describes our current understanding of ecosystem properties of the Northeast U.S. Continental Shelf Large Marine Ecosystem (NES LME). As described, the commenter is correct that *C. finmarchicus* is found seasonally throughout the Gulf of Maine, Georges Bank, the Southern New England shelf and the outer Middle Atlantic Bight shelf including Nantucket Shoals. As noted, given the diversity of zooplankton (>100 species), it is difficult to generalize seasonal and interannual trends; the dynamics of individual species can be very different. As discussed in the Biological Source Document, right whales must locate and exploit extremely dense patches of zooplankton to feed efficiently (Mayo and Marx 1990).

Bi *et al.* (2014) studied the abundance of the subarctic copepod, *Calanus finmarchicus,* and temperate, shelf copepod, *Centropages typicus,* over the Northeast U.S. continental shelf (NEUS) from 1977–2010. These researchers studied variation in long term trends and seasonal patterns for the two copepod species for four sub-regions: The Gulf of Maine (GOM), Georges Bank (GB), Southern New England (SNE), and Mid-Atlantic Bight (MAB). Results suggested that there was significant difference in long term variation between northern region (GOM and GB), and the MAB for both species. *Calanus finmarchicus* had the highest abundance in the Gulf of Maine and Georges Bank followed in Southern New England region. Relative to the Gulf of Maine and Georges Bank, the long term trend of *C. finmarchicus* showed more variation in the SNE but less variation than the Mid-Atlantic Bight (MAB). The long term abundance of *C. finmarchicus* showed more fluctuation in the Mid-Atlantic Bight than the Gulf of Maine Georges Banks region (Bi *et al.* 2014).

As described above and in the Biological Source Document we have used foraging right whales as a proxy for the presence of essential foraging features because basin-scale zooplankton monitoring schemes have proved ineffective in detecting the high concentrations usually present in the vicinity of actively feeding whales. Furthermore, zooplankton such as *C. finmarchicus* are found throughout the ocean, but frequently at concentrations far too low to meet right whales' energetic requirements (Baumgartner *et al.* 2007). As discussed, using direct copepod sampling efforts to identify where dense aggregations occur is also confounded by the fact that sufficient data are not available to establish a specific threshold density of *C. finmarchicus* that triggers feeding.

While *C. finmarchicus* is present in the waters south of Cape Cod including Nantucket Sound and Martha's Vineyard, we have concluded that those areas do not have the combination essential physical and biological features, including late stage *C. finmarchicus* in dense aggregations that are evident in the GoM-Georges Bank region.

4(b)(2) Report

Comment 40: One commenter stated that our Section 4(b)(2) Report does not present a clear assessment of the costs and benefits of the proposed designation. In addition, the commenter stated that the report underestimates the total section 7 administrative costs that will be incurred because of the proposed critical habitat designation. The commenter stated the 4(b)(2) Report's estimated section 7 consultation administrative costs are

extraordinarily low and are inconsistent with other recent section 4(b)(2) cost assessments performed by NMFS. The commenter cited two recent administrative cost estimates they believe provide more accurate administrative cost estimates including the recent 4(b)(2) impact analysis prepared for the Northwest Atlantic Ocean Distinct Population Segment of the Loggerhead Sea Turtle critical habitat designation.

The commenter stated that we improperly concluded that we are unable to estimate the critical habitat-related section 7 administrative costs associated with oil and gas exploration and development in Unit 1 on the basis that there is not a consultation history on this activity. The commenter stated that section 7 consultations for actions involving offshore oil and gas-related activities that have been completed in other areas, such as the Gulf of Mexico and Alaska, as well as for certain areas in the Atlantic Ocean, could be used as the basis for estimating the costs of future oil and gas-related consultations in Unit 1.

Response: We disagree. As discussed in the 4(b)(2) Report, we concluded that no categories of future federal actions would require consultation solely due to the critical habitat; all future activities will involve consultation on impacts both to the species and to critical habitat. The administrative costs we estimated as being associated with the critical habitat consultations represent the incremental costs of conducting critical habitat analyses in consultations on federal actions that ''may affect'' the essential features of the critical habitat. According to our regulations, we are required to analyze the incremental (*i.e.*, the portion of) costs attributable to the critical habitat. Therefore, consistent with our previous critical habitat designations, any administrative costs associated with evaluating impacts to the species are not included in the administrative costs we estimated for the proposed North Atlantic right whale critical habitat.

Based on our review of past consultations and on comments received, we have identified six categories of activities that may affect the critical habitat: National Pollution Discharge Elimination System (NPDES) permitting, oil spill response, dredging and spoil disposal, marine construction permitting, construction and operation of offshore liquefied natural gas (LNG) facilities, and construction and operation of energy facilities and sand extraction on the Outer Continental Shelf. Of these six categories, we identified two categories of activities, one under the Environmental Protection Agency's (EPA's) jurisdiction and one under the U.S. Coast Guard's (USCG's) authority, that may require unique modifications specifically to avoid adverse modification of the essential features, in addition to modifications that may be required to address impacts to the whales. We have also identified four new (*i.e.*, not previously consulted on) categories of federal activities that may occur in the future and, if they do occur, may affect the essential features. These potential activities are: Oil and gas exploration and development activities, offshore alternative energy development activities, directed copepod fisheries, and marine aquaculture. Due to uncertainty in timing of these activities and a lack of a consultation history for these four new categories, we are not able to project annual administrative costs for future consultations because we don't know how many such activities might occur. However, we expect any of these consultations would each result in incremental administrative costs for the agencies and applicants involved of $5,080 per action, again, because these activities will also require consultation due to impacts to the whales.

As discussed in the Section 4(b)(2) Report, we used administrative cost estimates for section 7 consultations developed by Industrial Economics, Inc. (IEc 2014, See exhibit 2–1 at page 2–11 in: Industrial Economics (2014) Economic Analysis of Critical Habitat Designation of Marine Habitat for the Northwest Atlantic Ocean Distinct Population Segment of the Loggerhead Sea Turtle, Final Report, April 29, 2014, prepared for NMFS, 220 pp, *http://www.nmfs.noaa.gov/pr/species/documents/loggerhead_sea_turtle_fea-final.pdf*). The IEc (2014) report provides estimates of administrative costs for different categories of consultations as follows: (1) New consultations resulting entirely from critical habitat designation; (2) new consultations considering only adverse modification (unoccupied habitat); (3) re-initiation of consultation to address adverse modification; and (4) additional consultation effort to address adverse modification in a new consultation. Given that all the consultations we project to result from this designation will be co-extensive consultations on new actions that would be evaluating impacts to the whales as well as impacts to critical habitat, the administrative costs would all be in category 4 above. As discussed in the Section 4(b)(2) Report, we applied the conservative assumption that all potential future consultations will be formal consultations (as opposed to less expensive informal consultations); therefore, the incremental administrative costs for the agencies and applicants likely represents an overestimation of the costs.

The example of the higher administrative cost estimate provided by the commenter of $20,000 per formal consultation was taken from the IEc (2014) report and represents the cost of a new consultation resulting entirely from a critical habitat designation (See exhibit 2–1 at page 2–11 (IEc 2014)). As explained above, this scenario does not apply to the North Atlantic right whale critical habitat designation.

The commenter asserted we improperly concluded that we are unable to estimate the critical habitat-related section 7 administrative costs associated with oil and gas exploration and development in Unit 1 on the basis that we do not have a consultation history on this activity and are therefore unable to estimate the number of projected section 7 consultations, and their associated costs, due to uncertainty about the nature, scope, and scale of future activities. The commenter referenced previous section 7 consultations for actions involving offshore oil and gas-related activities that have been completed in other areas, such as the Gulf of Mexico and Alaska, as well as for certain areas in the Atlantic Ocean. The commenter states that these consultations could easily be used as the basis for estimating the costs of future oil and gas-related consultations in Unit 1. However, the number of past section 7 consultations that have taken place in Alaska, the Gulf of Mexico, and the Mid-Atlantic does not provide a basis by which we can estimate the number of potential future oil and gas related activities in Unit 1, as these planning areas and their state of development are vastly different from each other. As discussed, we have identified the incremental costs of future section 7 consultations associated with the designation of North Atlantic right whale critical habitat in our 4(b)(2) analysis. As discussed in the Biological Source Document and 4(b)(2) Report, we have identified oil and gas exploration and development as potential future activities that may affect the essential features of right whale critical habitat. Unit 1 is currently under a moratorium for oil and gas exploration. Within Unit 1, the current moratorium is due to expire in 2017 in U.S. waters. The scope and nature of the previous projects as well as the ecological settings vary between geographic region, each

presenting unique environmental impacts and mitigation needs.

Comment 41: One commenter stated that the Section 4(b)(2) Report is disorganized, at times internally inconsistent, and does not provide a clear accounting or comparison of the projected costs and the projected benefits of the proposed designation. The commenter states that therefore it is difficult to provide specific responsive comments because the report does not provide a straightforward or specific explanation of what we have considered to be the costs of the designation.

Response: The commenter did not provide specific examples of what they believe is disorganized, unclear, or internally inconsistent with the Section 4(b)(2) Report. While we disagree with the comment, we have reviewed the Section 4(b)(2) Report in response to this comment and have made several minor organizational changes and updates. We believe that the Section 4(b)(2) Report provides as clear a non-speculative assessment of the economic, national security, and other relevant impacts of the designation of critical habitat for the North Atlantic right whale as is possible given the nature of projecting the type, scale, number and timing of future activities that may trigger consultation. As discussed in the Section 4(b)(2) Report, the joint NMFS and Fish and Wildlife Service (FWS) regulations at 50 CFR 424.19 require NMFS and FWS to conduct an ''incremental analysis'' by considering economic impacts attributable to the proposed designation and to describe the impacts either qualitatively or quantitatively. In order to estimate the incremental costs of the proposed designation, we attempted to identify whether the potential impacts of any activities would require efforts to specifically avoid adverse modification or destruction of the proposed critical habitat. Any such efforts were considered incremental economic costs of the proposed critical habitat designation. In addition, the added administrative costs associated with evaluating impacts to the critical habitat are considered incremental costs of the proposed designation. While it was not possible to provide quantitative estimates for all the projected benefits and costs that may be uniquely attributable to North Atlantic right whale critical habitat, the analysis attempts to comprehensively identify (and, wherever practicable, quantify) benefits and costs attributable to the proposed action. We expect that this critical habitat designation will result in both direct and indirect benefits, with non-consumptive use and non-use values representing a significant component of the benefits derived from the critical habitat. These values are described qualitatively in the Section 4(b)(2) Report because the economic studies needed to quantify those benefits are not available. See also the Response 42.

Comment 42: One commenter stated that we incorrectly assumed that section 7 consultations for actions that are more likely to affect listed species than affect essential habitat features have zero costs associated with critical habitat. Further, the commenter stated that consultation involving a species for which critical habitat has been designated results in additional costs that are attributable to the critical habitat designation, specifically as it relates to analysis contained in biological opinions. The commenter stated that the report therefore underestimates the total section 7-related costs incurred as a result of the designation of North Atlantic right whale critical habitat.

Response: The comment is not correct. We identified incremental administrative costs for each future action we projected would require consultation due to potential impacts to critical habitat. Administrative section 7 costs estimated at $95,504 are presented in the Section 4(b)(2) Report and represent the annual, incremental (*i.e.*, additional), administrative cost of conducting critical habitat assessments for a projected 188 formal consultations per year over the next ten years. The estimated incremental administrative cost for the agencies and applicants involved in the consultations we identified totaled $5,080 per action. The incremental administrative costs were derived from data from the Federal Government Schedule Rates, Office of Personnel Management, 2013, and a review of consultation records from several Service field offices across the country. In calculating these estimates, we assumed all future consultations would be ''formal'' (as opposed to some being informal); this assumption was applied to avoid underestimating the administrative costs associated with the critical habitat.

In terms of project modification costs, we identified those activities for which project modifications to address impacts to critical habitat could be required and would be different from any modifications needed to address impacts to the whales. We could not monetize project modification costs, because there are too many variables about potential future actions (*e.g.*, size, location, timing) that make it impossible to project exactly what type or combination of project modifications might be needed.

Special Management Considerations and Impacts of the Designation

Comment 43: Several organizations agreed with concerns we raised in the Biological Source Document that fragmented habitat may have an adverse impact on successful calving. Several of these commenters identified additional activities that they believed could fragment calving habitat and therefore be subject to federal consultation requirements. Among these were activities that could alter the acoustic habitat necessary for whale communication including seismic airguns, pile driving, underwater detonations, military sonar, and vessel traffic that could interfere with essential physical or biological features of calving habitat. One organization stated that installation and operation of oil and gas rigs and supportive structures could act as a type of barrier to calving right whales and prevent them from moving around to find optimal combinations of essential calving area features.

Response: As stated in the Biological Source Document, activities or conditions that fragment the contiguousness of the essential features or reduce or eliminate the ''selectability'' of dynamic, optimal combination of the essential features may have negative impacts on right whale calving. However, we do not agree that oil and gas rigs will reduce or eliminate the selectability of dynamic, optimal combination of the essential calving features. The BOEM presently implements a 50-mile no-leasing buffer from the Georgia, South Carolina, and North Carolina coastlines for oil and gas leasing, and the buffer is being proposed for the 2017–2022 lease sale. Unit 2 off Florida is not within BOEM's South Atlantic Planning Area (*i.e.*, there are no oil and gas leases proposed through 2022), based on objections from the State. Consequently, no oil or gas rigs are projected to be located within Unit 2.

As stated in the Biological Source Document, activities or conditions that fragment the contiguousness of the essential features or reduce or eliminate the ''selectability'' of dynamic, optimal combination of the essential features may have negative impacts on right whale calving. The Section 4(b)(2) report also outlines the process and set of activities we expect may affect the features of the calving habitat. The activities identified by the commenter may have impacts on right whales themselves but are not be expected to affect the essential physical and

biological features of calving habitat. Therefore, we would consult on the effect of those activities on the listed species, not the designated critical habitat.

Comment 44: One commenter stated that the impacts of overlapping North Atlantic right whale calves and wind farms off Southeast North Carolina has not been studied and should be added as a future management concern. This commenter further advocated that no marine wind energy construction be allowed until impacts on right whales are understood.

Response: We are also unaware of any studies that investigate the effects of wind farms on right whales, including calves. In the proposed rule and Biological Source Document, we identified wind farms (*i.e.*, offshore energy development) as a reason the calving habitat essential features may require special management considerations or protection, given potential impacts on (1) the essential physical features of North Atlantic right whale calving habitat and (2) the contiguousness and selectability of the essential features. Construction and presence of large arrays of permanent structures may limit the availability of essential habitat features to calving right whales. Arrays of structures may also act as physical barriers and prevent or limit the ability of right whale mothers and calves to select dynamic combinations of the essential habitat features. Windfarms may also impact the contiguousness the physical habitat features essential for successful calving. By explicitly acknowledging these potential impacts to calving right whale critical habitat, we encourage Federal agencies and applicants whose actions may affect critical habitat features in these ways to consider and address these concerns to critical habitat in early planning of such activities.

Comment 45: One commenter stated that hydrokinetic energy is proposed for coastal Maine and was evaluated by the Department of Energy (DOE). The commenter stated that the DOE report, though acknowledging the lack of information on large-scale operations, also acknowledges that there could be adverse ''effects on bottom habitats, hydrographic conditions, or animal movements.'' The commenter further stated that the DOE Report indicated that floating and submerged structures, mooring lines, and transmission cables associated with large ocean energy facilities could interfere with the movement of animals and it cites entanglement risk for right whales that has been documented in other lines and cables.

Response: In Unit 1, we considered the potential impacts of wave and tidal energy facilities, should they be developed, on dense aggregations of copepods and concluded based on the information available that the activity would not likely affect the survivability of dense copepod aggregations. We do not believe that hydrokinetic energy facilities will impact essential physical features in Unit 1. The basin-wide scale of the physical oceanographic features we have identified as essential features of foraging habitat in Unit 1 will not be affected by the relatively localized impacts of hydrokinetics energy facilities.

Most of ocean energy and hydrokinetic renewable energy technologies remain at the conceptual stage and have not yet been developed as full-scale prototypes or tested in the field (DOE 2009). Several potential hydrokinetic tidal energy sites have been identified in Maine as part of Maine Tidal Power Initiative (Available at: *http://umaine.edu/mtpi/overview*). These sites are all located inshore, either at the lower reaches of rivers or bays. Studies are underway at a potential tidal turbine site in Eastport, Maine to better understand the impact a tidal energy project could have on fish.

The DOE (2009) report, cited by the commenter, indicates that ''effects on bottom habitats, hydrographic conditions, or animal movements'' may possibly need further investigation as part of siting and licensing a project investigation, not that there could be adverse effects as suggested. Future proposals for development of hydrokinetic energy and deployment of arrays will provide an opportunity to evaluate the potential impacts to the essential features and the species through the section 7 consultation process.

We considered the potential impacts of the construction and operation of energy production technologies including hydrokinetic on the dynamically distributed essential features of calving habitat and their selectability by right whales. In Unit 2, we concluded that the installation and operation of offshore energy development facilities are not likely to negatively impact the preferred ranges of sea surface roughness, sea surface temperatures, or water depths, in that it will not raise or lower the available value ranges for these features. However, installation and operation of these technologies may fragment large, continuous areas where the essential features are present. Additionally, installation and operation of these technologies may limit the availability of the essential features such that right whales are not able to select dynamic, optimal combinations of the features necessary for successful calving.

Comment 46: Multiple commenters stated that with regard to the installation of offshore wind energy facilities, the Biological Source Document discusses potential offshore wind energy projects only with regard to the possible adverse impacts on the essential features of calving habitat in Unit 2. One comment stated that the concerns and cautions raised for the installation of offshore wind energy facilities in calving grounds are also applicable to the installation of these facilities in the northeast, and cited an application for a lease site in federal waters approximately 12 miles off of Portland, Maine. The commenter stated that so-called ''floating'' turbines such as are proposed for this project are anchored to the bottom by heavy cables that could, as discussed in the Biological Source Document for Unit 2, impede passage or disrupt current flows, possibly disrupting some of the physical features of this critical feeding habitat.

Additionally, installation and operation of these technologies may limit the availability of the essential features such that right whales are not able to select dynamic, optimal combinations of the features. This document also stated that ''[l]arger whales may have difficulty passing through an energy facility with numerous, closely spaced mooring or transmission lines.''

Response: We disagree with the statement that special management considerations and protections associated with the potential impacts of offshore wind energy development on the essential features of calving habitat in Unit 2 are applicable in Unit 1. The special management considerations and protections associated with calving and foraging habitat are different, as are the routes of potential impacts, because the features are defined differently. We considered the potential impacts from the construction, operation, and decommissioning of wind farms on the essential physical and biological foraging features in Unit 1. We concluded there would be no impacts to the essential features.

The effects on passage and a whale's ability to feed that the commenter suggested might be associated with the activity would constitute impacts on the species and not critical habitat features. On December 30, 2010, we completed a formal section 7 consultation on the proposed Cape Wind Energy Project. We

concluded that all effects to whales from the proposed project were insignificant or discountable, and therefore the proposed action was not likely to adversely affect listed whales, including right whales.

While impacts to critical habitat were not considered for this project because there is none designated within the project's action area, the potential environmental impacts of the Cape Wind Energy Project were analyzed (DOE 2012). As part of the analysis, the potential impact associated with possible alterations to circulation patterns and currents were considered and determined to be negligible (DOE 2012). We believe that this would be the case in other future wind energy projects should they be proposed within Unit 1. Therefore, there would be no impacts to essential physical foraging features in Unit 1. Furthermore, we cannot currently identify any mechanisms by which the construction, operation or decommissioning of a wind energy project would affect the other essential foraging features we have identified in Unit 1.

However, future proposals for development of offshore wind facilities will provide an opportunity to evaluate the potential impacts to the essential features and the species through the section 7 consultation process.

Comment 47: One commenter stated that for both the Unit 1 and Unit 2 proposed designations, we summarily concluded that future special management measures may be needed to address possible, but uncertain, future consequences of climate change. The comment stated that, we did not identify any special management measures that may address those projected consequences. Because there is no support for the proposed climate change-related special management finding, the commenter recommended that we eliminate it in any final rule that is issued. The comment stated that critical habitat designations must be supported by a finding that the essential habitat features ''may require special management considerations or protection[s].'' 16 U.S.C. 1532(5)(A)(i)(II). The comment stated that any special management ''methods or procedures'' identified by the agency must be ''useful in protecting physical and biological features of the environment for the conservation of listed species.'' 50 CFR 424.02(j). The comment stated that for both Unit 1 and Unit 2, we recited a number of possible future consequences that the agency believes may be related to climate change and then summarily concluded that future special management measures may be needed to address those possible, but uncertain, future consequences. The commenter stated that we did not speculate as to what type of special management measures (if any) may be needed with respect to projected climate change effects. The comment provided previous cases and legal standards that they believe support this recommendation, such as ''Cape Hatteras Pres. Alliance, F. Supp. 2d at 124.''

Response: We disagree with this comment. A review of the decision in *Cape Hatteras Access Preservation Alliance* v. *U.S. Dep't of the Interior et al.*, 344 F. Supp. 2d 108 (D.D.C., Nov. 1, 2004), reveals that the court remanded the critical habitat designation to the U.S Fish and Wildlife Service (FWS) because they failed to make a determination as to whether the essential features (''PCEs'') they identified in the designation of critical habitat may require special management considerations or protections. The ruling was not that FWS must make the determinations and also identify specific special management measures that may be needed with respect to possible future effects.

In the proposed rule, we identified specific routes, where possible by which we believe that the essential foraging and calving features could be impacted by climate change and thus why the features might require special management considerations or protections in the future (See pages 117–131 for Unit 1 essential features and pages 139–143 for Unit 2 in the Biological Source Document).

Comment 48: The commenter stated that one special management situation for Unit 1 that was not considered is a proposed increase in shellfish aquaculture. The commenter provided a specific example of a project under consideration on Jeffreys Ledge as being illustrative of this particular concern and provided a number of potential impacts including the introduction of vertical lines and mooring and buoy lines into the water column. The commenter asserted that this type of facility might block free passage of whales or disrupt foraging behavior and increase entanglement risks. The commenter noted that there are proposals to site other facilities outside of the area in which the essential foraging features are found (*e.g.*, Nantucket Sound). The commenter stated that these activities have not been adequately considered by the agency with regard to potential threats to right whales and whether they may potentially disrupt foraging behavior to determine if special management considerations or protections are necessary.

Response: During the development of the proposed rule and the supporting documents (*e.g.*, Biological Source Document, Section 4(b)(2) Report), we conducted an in-depth and thorough analysis of the potential for a variety of activities to impact the essential features of foraging and calving habitat including offshore aquaculture. The potential impacts of the activities cited by the commenter were not identified as reasons the essential features may require special management, or as activities that would require section 7 consultation because they might adversely affect the essential features of foraging habitat. The introduction of vertical lines, mooring, and buoy lines into the water column associated with the development of offshore shellfish aquaculture may present an entanglement risk for large whales, including right whales, but is not a route of effects to the essential foraging features of the critical habitat. Thus, the agency would consider those impacts during a section 7 consultation to insure those activities are not likely to jeopardize the continued existence of North Atlantic right whales.

Comment 49: One commenter states that the proposed rule discusses several activities that may adversely affect essential physical or biological features and that require special management considerations or protection. The commenter stated that while they recognize that it may be unrealistic to list all such activities, a more extensive discussion of the range of activities that may affect essential physical and biological features should be provided. The commenter states that for their recommended feature of ''acoustic habitat necessary for whale communication or other essential whale behavior'' we should note in the preamble that seismic airguns, pile driving, underwater detonations, military sonar, and vessel traffic could interfere with essential physical or biological features, prompting the need for special management considerations. With regard to feeding areas, it would be appropriate to note that activities that discharge contaminants, in addition to those already mentioned in the proposed rule, and could affect the reproduction or abundance of copepods, also may trigger special management action. Similarly, the placement of fishing or other lines in the water column that could interfere with right whale filter feeding or become caught in right whale baleen may need special management attention as well.

Response: The ''special management considerations'' that the commenter identifies apply to physical and biological features that the Marine Mammal Commission recommended be identified as essential right whale critical habitat features. We have considered their recommendations and have concluded that the features they propose are not appropriate for identification as such (see responses to comments 34, 35 and 36). Further, many of the activities that they identify and that they believe require special management are issues related to the takings of right whales, not impacts to essential features of critical habitat. The activities identified by the commenter would affect right whale individuals and not critical habitat itself. Therefore, these were not identified as part of the impact analysis as having the potential to affect the essential features.

Comment 50: One commenter stated that the impacts of overlapping North Atlantic right whale calves and wind farms off Southeast North Carolina has not been studied and should be added as a future management concern. This commenter further advocated that no marine wind energy construction be allowed until impacts on right whales are understood.

Response: We are also unaware of any studies that investigate the effects of wind farms on right whales, including calves. In the proposed rule and Biological Source Document, we identified wind farms (*i.e.*, offshore energy development) as a reason the calving habitat essential features may require special management considerations or protection, given potential impacts on (1) the essential physical features of North Atlantic right whale calving habitat and (2) the contiguousness and selectability of the essential features. Construction and presence of large arrays of permanent structures may limit the availability of essential habitat features to calving right whales. Arrays of structures may also act as physical barriers and prevent or limit the ability of right whale mothers and calves to select dynamic combinations of the essential habitat features. Windfarms may also impact the contiguousness the physical habitat features essential for successful calving. By explicitly acknowledging these potential impacts to calving right whale critical habitat, we encourage Federal agencies and applicants whose actions may affect critical habitat features in these ways to consider and address these concerns to critical habitat in early planning of such activities.

Comment 51: BOEM commented that their Marine Minerals Program has a role in sand resources leasing to support identified U.S. Army Corps of Engineers actions. However, the proposed rule and ESA Section 4(b)(2) Report did not, but should, consider BOEM's administrative costs for these actions.

Response: In response to this comment, we modified the Section 4(b)(2) Report to reflect BOEM's sand leasing activities and administrative costs associated with section 7 consultations.

Comment 52: Several comments discussed the relationship between critical habitat and take avoidance measures implemented to protect the species during geological and geophysical activities. One commenter asked if protection measures would change to accommodate the change in critical habitat. Another commenter supported extending protection measures from the 1994-designated critical habitat area to the modified critical habitat. Finally, one commenter suggested considering the impact of oil spills from oil and gas activities off the Southeast U.S. coast on calves and lactating mothers.

Response: The ESA requires Federal agencies, in consultation with us, to ensure that ''any action authorized, funded, or carried out'' by the action agency is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of the species' habitat (16 U.S.C. 1536(a)(2)). The purpose of the referenced protection measures is to avoid harm to right whales (the animals themselves). The purpose of consulting on critical habitat is to avoid destroying or adversely modifying critical habitat. We are not aware of how measures protecting the species from physical harm (*e.g.*, injury from vessel strike) would protect habitat essential features (*e.g.*, water depth in Unit 2); consequently, we do not anticipate the protection measures will change as the result of modification to critical habitat. However, protection measures may change as we all learn more about the North Atlantic right whales—including their distribution patterns. As far as oil spills, we would analyze those possible impacts to the animals during ESA section 7 consultations.

Comment 53: One commenter requested that we consider impacts associated with coastally-located industrial electric generators (*e.g.*, Pilgrim Nuclear Power Station, Seabrook Nuclear power station, Mirant Canal Power Plant) as a cause for special management considerations or protections. The comment stated that the proposed critical habitat area includes the large embayments of Cape Cod Bay and Massachusetts Bay and deep underwater basins, incorporating state and federal waters from Maine through Massachusetts, but inshore waters were not considered. The commenter stated that over the last several years, there have been increasing concentrations of right whales in the western portion of Cape Cod Bay, including inshore areas off the shore of Plymouth, MA. The commenter recommended that we consider including these inshore areas where high concentrations of right whales have been sighted. The commenter also stated that there may be cumulative impacts to copepods or other foraging habitat features due to industrial electric generators operating on the shoreline, such as Entergy's Pilgrim Nuclear Power Station (PNPS) on the shore of Cape Cod Bay (Plymouth, MA), Seabrook Station Nuclear Power Plant (SBNPP) (Seabrook, NH), and Mirant Canal Power Plant (MCPP) (Sandwich, MA). The commenter stated that negative impacts include entrainment of copepods and other planktonic species, as well as chemical, thermal and radioactive discharges occurring in important foraging areas. The comment stated that this issue should be included as a cause for special management considerations or protections.

Response: We agree that in recent years there has been an increase in the concentration of right whales in Western Cape Cod Bay, which has been included in this critical habitat designation. We have conducted informal consultations for the relicensing of the named power plants. The consultations concluded that the relicensing and continued operation of the power plants was not likely to adversely affect any NMFS ESA-listed species under our jurisdiction and would be would be extremely unlikely to adversely affect right whale critical habitat as it was designated at the time.

The best available scientific information, derived from recent modeling, indicates that population level effects of zooplankton/copepods removal due to entrainment in liquefied natural gas (LNG) operations involving water withdrawals would be so minor that the change would be indistinguishable from natural variability (NMFS 2007, Robert Kenney in October 11, 2011, letter to NMFS). While some copepods are likely lost to entrainment at Pilgrim each year, approximately 85% of entrained zooplankton are believed to survive. As such, the essential feature of dense aggregations of late stage *C. finmarchicus* does not require special

management considerations or protection due to entrainment by the PNPS, SBNPP or MCPP.

Comment 54: One commenter questioned how critical habitat designation will impact the efficiency and overall processes for future ESA consultations for BOEM's three programs of Oil and Gas, Renewable Energy, and Marine Minerals.

Response: The impacts of designating critical habitat on BOEM's programs are considered in the Economic Impacts section of the proposed rule and accompanying ESA Section 4(b)(2) Report. How the critical habitat designation will affect the efficiency and overall process for future ESA consultations is contingent upon whether BOEM's particular proposed activity has the potential to adversely affect essential features in Unit 2, and on the project scope, and routes of effects. For BOEM's renewable energy programs only, we concluded proposed actions will more likely affect the essential features of critical habitat than the species in Unit 2. However, because there are no records in our consultation history for offshore renewable or alternative energy projects occurring within Unit 2, we are unable to (a) predict how many section 7 consultations may result from projects of this type or (b) calculate the projected incremental costs resulting from this action. Ultimately, proposed projects will have to be analyzed on a case-by-case basis and we encourage BOEM to coordinate with us early in the project development phase.

Comment 55: We received a number of comments from BOEM regarding Atlantic geological and geophysical (seismic) activities in Unit 2. Comments included: A request to identify and address effects of Geological and Geophysical Data Acquisition on critical habitat or further offshore; an inquiry as to whether the revised critical habitat would affect existing mitigation measures that are tied to existing critical habitat or require additional protection measures for the species (BOEM stated that additional measures were required in recent consultations on Navy dredging and disposal activities within the 1994-designated critical habitat); information on and examples of possible special considerations or protections that may be required as the result of changes to critical habitat was requested.

Response: We are not aware of any routes of impact concerning seismic activity that would potentially create adverse effects on the essential features of Unit 2 of North Atlantic right whale critical habitat—*i.e.*, the physical features of sea surface conditions or temperature, or water depths, or their selectability over large contiguous areas. Consequently, we believe that seismic activities are more likely to affect the species in Unit 2 than the physical features of critical habitat. As far as the effects of seismic activity on the species, we would analyze those possible impacts to the animals during ESA section 7 consultations.

Comment 56: BOEM requested that the administrative costs associated with the changes in critical habitat be captured in the Section 4(b)(2) Report for BOEM's three program areas: Marine minerals, renewable energy, and oil and gas. BOEM commented that possible additional protections and special considerations resulting from the modified critical habitat were not included in the analysis estimating BOEM's costs for future renewable energy programs. BOEM believes $5,080 per action underestimates BOEM's true administrative cost so the Section 4(b)(2) Report should be revised.

Response: As mentioned in the Economic Impacts section of the proposed rule (80 FR 9314, February 20, 2015), we are unable to quantify the number of potential future consultations and thus the annualized incremental administrative costs associated with renewable energy activities in the calving area. The reason for this is that these are future activities for which there is no past consultation history, and we received a correspondence from BOEM that stated they have no specific or planned project proposals. We disagree that $5,080 per action underestimates true incremental administrative costs for consultations on impacts to critical habitat that will be required as a result of this rulemaking. We used costs for consultations developed by Industrial Economics, Inc. (IEc 2014). The administrative costs associated with critical habitat consultations are low because they represent the incremental costs of adding critical habitat analyses to consultations that would be required to address potential impacts to the species. The costs of consultation that would occur even in the absence of critical habitat are not incremental costs of this designation.

Comment 57: One commenter stated although the 4(b)(2) Report correctly recognizes the potential for oil and gas exploration and development in Units 1 and 2, we incorrectly assume that project modifications associated with critical habitat may occur in Unit 1 but not in Unit 2 for these activities. However, project modifications have already been proposed in Unit 2 for currently proposed actions that are solely attributable to right whale critical habitat. For example, the Bureau of Ocean Energy Management's Record of Decision for the Atlantic OCS Proposed Geological and Geophysical Activities Mid-Atlantic and South Atlantic Planning Areas, Final Environmental Impact Statement recommends an expansion of the time-area closure applicable to right whale critical habitat to a continuous 37 km wide zone and includes protective restrictions. None of the costs associated with these restrictions are identified in the Report and consequently the Report underestimates critical habitat related costs for oil and gas activities in Unit 2.

Response: We do not agree that the Section 4(b)(2) Report should be updated to recognize potential project modifications to oil and gas exploration and development activities in Units 2. The BOEM Record of Decision (ROD) for the Atlantic OCS Proposed Geological and Geophysical Activities Mid-Atlantic and South Atlantic Planning Areas, Final Environmental Impact Statement (FEIS) contains mitigation measures intended to avoid or minimize effects to right whales themselves (and other environmental impacts) related to oil and gas geological and geophysical (G&G) activities and other proposed G&G activities throughout the Mid- and South Atlantic Planning areas. These mitigation measures include guidance for ship strike avoidance, mitigation measures for seismic airgun surveys and mitigation measures for high resolution geophysical (HRG) surveys. The mitigation measures are not intended to provide protection measures for critical habitat features but are intended to reduce the risk of acoustic and vessel strike impacts to North Atlantic right whales. Based on our 4(b)(2) impact analysis, we have not identified any routes of effects for acoustic impacts to the essential calving features. Any costs associated with the implementation of such G&G mitigation measures are not attributable to the designation of right whale critical habitat. As such, the Section 4(b)(2) Report does not underestimate critical habitat-related costs for oil and gas activities in Unit 2.

Fishing and Critical Habitat

Comment 58: Several commenters noted that while the proposed rule does not include any new restrictions for commercial fishing commenters are concerned about the waters being proposed for designation. The commenters stated that while we have determined ''current fishing practices and techniques will not affect the essential foraging features'' and we do

not anticipate ''fishery related activities that would trigger consultation on the basis of critical habitat designation,'' commenters feel it is not a guarantee. The commenters could not support a formal designation with the potential to negatively impact fishermen without concrete scientific evidence of its need.

Response: As part of its impact analysis, we concluded that commercial fishing activities, as currently conducted, are not expected to affect the essential features of right whale foraging habitat with the exception of a potential future directed copepod fishery. Gear restrictions currently in place to protect large whales, including right whales, were established by the regulations implementing the Marine Mammal Protection Act's Atlantic Large Whale Take Reduction Plan. Changes to gear restrictions are beyond the scope of this rulemaking to designate critical habitat under the ESA. The Atlantic Large Whale Take Reduction Team process is the proper venue to consider the adequacy of gear restrictions. Consequently, we are not making any changes to the current gear restrictions as part of this critical habitat rule.

Comment 59: One commenter stated that Maine's lobster industry has been engaged in the Take Reduction Team process since its inception and fishermen have worked diligently over nearly two decades to implement changes in fishing practices to aid in the recovery of right whales. The commenter questioned the potential impact of new federal regulations on fishermen and doubted that the proposed designation area reflects a balanced review of the best available science, nor does it properly consider the economic impacts that will result from using an arbitrarily drawn critical habitat area that fails to exclude all areas that are not essential for conservation and recovery of the species.

Response: We have identified the areas on which are found the physical and biological features which are essential to the conservation of the species and which may require special management considerations or protections as required by the ESA. The boundaries of the proposed critical habitat encompass the essential foraging and calving features. In identifying the essential calving and foraging features and considering the economic impacts of the designation, we have used the best available data and information. See also Response to Comment 58 regarding commercial fishing.

Comment 60: Multiple commenters stated that while they support the concept of expanding the existing critical habitat areas where essential to the conservation and recovery of the right whale, this support for the proposed expansion is predicated on our finding in the Section 4(b)(2) Report that neither commercial nor recreational fishery-related activities are expected to affect the essential features of right whale foraging habitat with the exception of a directed copepod fishery.

Response: See response to Comment 58.

Other Comments

Comment 61: Several organizations commented that we should not exclude areas from critical habitat based on economic or other impacts.

Response: As required by section 4(b)(2) of the ESA, we considered the economic, national security, and any other relevant impact, of specifying any particular area as critical habitat. Section 4(b)(2) allows, but does not require, us to consider excluding a particular area from a designation, but only if the benefits of excluding that area outweigh the benefits of including it in the designation, and if the exclusion will not result in extinction of the species. We considered the economic impacts of specifying North Atlantic critical habitat; however, based on those considerations, we are not exercising our discretion to exclude any areas from the designation.

Comment 62: One commenter stated that we can exclude any area where the costs of designation, including economic impacts, outweigh the conservation or economic benefits of designation. Such exclusions avoid unnecessarily burdening economic activity and designating areas as critical habitat where there is little or no benefit in doing so. The comment further stated that the ESA does not require us, in making section 4(b)(2) decisions, to limit our analysis to only those economic impacts that are certain and quantifiable. Instead, the economic analysis is a reasoned projection of what human activities may happen in the future and the economic impacts that the designation may have on those future activities.

Response: See response to Comment 61.

Comment 63: Several commenters noted that they supported our determinations not to designate a migratory corridor or breeding areas as critical habitat or to designate unoccupied areas as critical habitat.

Response: We acknowledge these comments.

Comment 64: One commenter was concerned about possible impacts of the proposed critical habitat designation on ferry service in the coastal waters and islands of Maine, New Hampshire and Boston Harbor/Massachusetts Bay that are served by existing or likely ferry routes. The commenter recommended that the Secretary exercise her discretion under section 4(b)(2) of the Endangered Species Act and exclude coastal ferry routes from the critical habitat designation. The commenter stated that they believe that the expansion of critical habitat in the coastal waters of Unit 1 will lead to proposals to expand or create seasonal management areas with mandatory speed limits. The commenter expressed concern that we did not evaluate the potential economic impact of the proposed designation on ferry operators, the majority of whom are classified as small businesses or entities under the criteria of the U.S. Small Business Administration. The commenter noted they recognize that the critical habitat designation alone will impose no direct or immediate burden or impact on the ferry systems.

Response: We do not believe that the normal transit of coastal ferries through areas designated as critical habitat will have any impact on the essential foraging features present in Unit 1 waters of the Gulf of Maine and Georges Bank. We have concluded that transiting vessels, whether military, civilian, or commercial do not impact the essential foraging features of critical habitat. Furthermore, we are not aware of a federal nexus regarding routine operation of the ferries such that this activity would be subject to the federal consultation requirements of section 7 of the ESA. Therefore, there will be no impact to the operation of ferries as a result of the designation of critical habitat and as such, no impacts to these small business entities. Under the ship speed rule (73 FR 6017, December 10, 2008), vessels greater than 65′ in length are required to not exceed 10 knots seasonally in certain locations covered by seasonal management areas (SMAs) or are recommended to maintain speeds of 10 knots or less in dynamic management areas in certain times and locations. These measures are in place to reduce the risk of serious injury and mortality to right whales due to ship strikes.

Beyond the Scope of This Action

Comment 65: One commenter stated that we failed to mention the potential impacts of noise on right whale mothers and calves and their need to stay together during the calving and nursing season. The need for ''noise levels to remain below those that would cause abandonment of critical habitat'' has

previously been recognized by us in our designation of critical habitat for other sound dependent marine mammals. This commenter cited our designation of critical habitat for Cook Inlet Beluga Whale. The commenter also stated that activities, such as seismic airguns, pile driving, underwater detonations, military sonar, and vessel traffic, could alter the acoustic habitat necessary for whale communication and interfere with the use of calving habitat; and therefore, sound qualifies as an essential feature that may require special management considerations.

Response: As stated in the **Federal Register** Notice of Proposed Rulemaking for Cook Inlet Beluga Whale Critical Habitat (74 FR 63080, December 2, 2009), beluga whales are known to be among the most adept users of sound of all marine mammals, using sound rather than sight for many important functions, especially in the highly turbid waters of upper Cook Inlet. Beluga whales use sound to communicate, locate prey, and navigate, and may make different sounds in response to different stimuli. Beluga whales produce high frequency sounds which they use as a type of sonar for finding and pursuing prey. For these, and other reasons, we consider ''quiet'' areas in which noise levels do not interfere with important life history functions and behavior of these whales to be an essential feature of Cook Inlet Beluga Whale critical habitat.

In contrast, in our final rule to designate critical habitat for the southern resident killer whale, we discussed the lack of sufficient information to include noise as an essential feature, but noted that we would continue to consider sound in any future revisions of that critical habitat (71 FR 69054, November 29, 2006). In that rule, we acknowledged the many observations about the potential for sound to startle or even physically injure killer whales. These effects, however, are direct effects to the animal itself and not to its habitat.

Physical and biological features that are identified as essential to the conservation of a species vary among species. Similar to southern resident killer whales, we lack sufficient information to include noise as an essential feature for North Atlantic right whale calving area critical habitat. Unlike the other physical features identified as essential to the conservation of right whales because they facilitate successful calving, we are not aware of any information on acoustic thresholds that facilitate successful calving in right whales or other baleen whales. However, the agency has conducted and will continue to conduct ESA section 7 consultations on noise impacts of construction and geologic and geophysical exploration activities, and in completed consultations, measures have been included to avoid direct impacts to the whales as a consequence of noise associated with the proposed activities.

Comment 66: One commenter recommended that the agency expand Seasonal Management Areas that reduce ship strikes to include all portions of the proposed critical habitat in the northeast and critical habitat in the mid-Atlantic migratory corridor out to 30 nm as well as areas in the Southeast Atlantic.

Response: The commenters assertion that the SMA boundaries be reconfigured and extended out to 30 nautical miles from shore are beyond the scope of this rulemaking as the SMA rulemaking was concerning risk reduction to large whale interactions directly with North Atlantic right whales not its habitat. The purpose of the Seasonal Management Area (SMA) program is to promote direct protection to North Atlantic right whales by reducing the likelihood of death and serious injury that may result from collisions with ships. The SMA boundaries were based on right whale sightings not the presence of physical and biological features associated with right whale migration. The SMA program is not intended to provide protections to the essential features of right whale critical habitat.

Comment 67: A commenter stated that the right whale population data used to support the proposed designation is not based on the best available science. The commenter noted the discrepancy between the North Atlantic Right Whale Consortium's 2012 and 2014 Right Whale Report Cards, which indicated that the population was at least 509 and 522 whales, respectively; and the 450 population number referenced by us. The commenter stated that we should amend our rule to reflect this best available science.

Response: The current abundance of North Atlantic right whales is not directly relevant to designating critical habitat, and we disagree with the assertion that we did not rely on the best available science when determining which areas meet the definition of critical habitat under the ESA. Furthermore, although not relevant to this rulemaking, we offer the following explanation of the differing abundance estimates cited by the commenter. The estimates provided in the North Atlantic Right Whale Consortium's reports state, ''This 'best estimate' is based upon the number of photographed whales, but it excludes potential unphotographed whales, and therefore, should not be considered a 'population estimate.' '' Therefore, it is not considered to be an appropriate estimate to use for right whale abundance. However, the Marine Mammal Protection Act requires that we use the minimum population estimate to ensure a more precautionary, conservative approach in the management of the marine mammal species. The 2014 Final NMFS Marine Mammal Stock Assessment Report (SARs) indicates 465 individually recognized North Atlantic right whales were known to be alive in 2011 (Waring *et al.* 2015)—this is a direct count, represents a minimum population size, is peer-reviewed, published, and is considered the best available science. We are required to use the minimum population developed by the NOAA Fisheries Northeast Fisheries Science Center for the annual Marine Mammal Stock Assessment Reports in our management actions.

Comment 68: One commenter expressed concerns about the lack of regulation in Canadian waters, noting that, right whales traverse international borders and yet there has been no effort made to establish uniform regulations across U.S. and Canadian waters. The commenter also appreciated our caution in not designating a mating habitat area.

Response: As stated in the proposed rule, we are not authorized to designate critical habitat outside of U.S. jurisdiction. However, we acknowledge the commenter's view concerning the non-designation of a critical habitat associated with mating, and we will continue to work with our Canadian counterparts to coordinate and implement measures necessary to promote the conservation and recovery of protected species including the North Atlantic right whale.

Comment 69: One commenter recommended that right whales be protected from gear entanglement through expanded SMAs and expanding entanglement regulations to encourage the use of gear innovations such as sinking or neutrally buoyant line to reduce and prevent entanglement and to promote science based catch quotas.

Response: The commenter's suggestion is beyond the scope of this rulemaking (see response to Comment 58).

Comment 70: A number of commenters expressed concerns about seismic exploration for oil and gas in proposed critical habitat. Concerns for right whales included: Habitat displacement, injuries, mortalities, behavioral disruption, acoustic masking, increase in noise pollution (particularly

as climate change impacts increase), and impacts to reproduction and survival. One commenter suggested that oil and gas rigs may act as a type of barrier similar to types of barriers we identify with regard to other activities. One commenter stated that oil and gas activities may require management considerations similar to the installation and operation of offshore energy development facilities. Seismic testing, drilling, vessel traffic, construction of infrastructure, and industrialization of the coast may fragment large, contiguous areas containing the optimum ranges of all essential features that are necessary for right whale calving and rearing.

Response: In the Biological Source Document and Section 4(b)(2) Report, we concluded that future potential oil and gas leasing development was one of the reasons the essential features may require special management considerations or protection in Unit 1. However, we do not anticipate oil and gas rig construction in Unit 2, because BOEM presently implements a 50-mile no-leasing buffer from the coastline for oil and gas leasing off Georgia and South and North Carolina. That buffer is being proposed for the year 2017 through 2022. No oil and gas leases off Florida are planned through 2022. We have clarified that in the final Section 4(b)(2) Report and Biological Source Document. We will work with BOEM to determine whether any of the activities listed by the commenters and proposed or authorized by BOEM may affect right whales (or any other listed species under our purview) or may affect right whale critical habitat, and thus require section 7 consultation.

Comment 71: One commenter recommended that right whales be protected from proposed oil and gas exploration and development in the Atlantic Ocean through rules that prevent or limit the seismic airgun activity.

Response: See response to comment 49. Based on our analysis of past and potential future activities that may affect critical habitat, we identified a number of activities with the potential to affect the essential features of right whale critical habitat. Seismic airguns were not identified as having the potential to impact right whale critical habitat. The effects of any oil and gas exploration activities and their potential to impact right whales as well as critical habitat will be analyzed in section 7 consultations.

Information Quality Act and Peer Review

The data and analyses supporting this designation have undergone a pre-dissemination review and have been determined to be in compliance with applicable information quality guidelines implementing the Information Quality Act (IQA) (Section 515 of Pub. L. 106–554). In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review pursuant to the IQA. The Bulletin established minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation with regard to certain types of information disseminated by the Federal Government. The peer review requirements of the OMB Bulletin apply to influential or highly influential scientific information disseminated on or after June 16, 2005. To satisfy our requirements under the OMB Bulletin, we obtained independent peer review of the Biological Source Document and Section 4(b)(2) Impacts Report that support the designation of critical habitat for the North Atlantic right whale, and we incorporated the peer review comments prior to publishing the proposed rule. The final peer review report is available along with all materials related to the peer review on the agency's Web site at: *http://www.cio.noaa.gov/services_programs/prplans/ID259.html.* The majority of the peer review comments were editorial in nature, and no substantive comments were received. For additional information on the specific comments received please see the Web site identified above.

Changes From Proposed Rule

We are making one change from the proposed rule to the areas designated as right whale critical habitat. The one change is based on public comments received and further review of the best available scientific data. We are extending Unit 2 further to the south to include an area that is a portion of the critical habitat designated in 1994, expanding the area south and increasing Unit 2 by approximately 341 nm^2. Unit 2 now includes nearshore and offshore waters of the southeastern U.S., extending from Cape Fear, North Carolina south to approximately 27 nm below Cape Canaveral, Florida.

In addition to this change, we corrected an inadvertent omission of coordinates by which we have determined that following inshore waters associated with the harbors of Sandwich, Scorton and Barnstable should be excluded from the proposed critical habitat area of Unit 1. We also corrected a few omissions from the Section 4(b)(2) report, based on input from commenters.

Critical Habitat Identification and Designation

Critical habitat is defined by section 3 of the ESA as (1) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (a) essential to the conservation of the species and (b) which may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Geographical Areas Occupied by the Species

''Geographical areas occupied'' in the definition of critical habitat is interpreted to mean the entire range of the species at the time it was listed, inclusive of all areas they use and move through seasonally (45 FR 13011, February 27, 1980). Prior to extensive exploitation, the North Atlantic right whale occurred in temperate, subarctic, coastal and continental shelf waters throughout the North Atlantic Ocean rim (Perry *et al.* 1999). Considerable sightings data document the use of areas in the western North Atlantic Ocean where right whales presently occur. The current known distribution of North Atlantic right whales is largely limited to the western North Atlantic Ocean. In the western North Atlantic, right whales migrate along the North American coast between areas as far south as Florida, and northward to the Gulf of Maine, the Bay of Fundy, the Gulf of St. Lawrence and the Scotian shelf, extending to the waters of Greenland and Iceland (Waring *et al.* 2011).

Right whales have also been rarely observed in the Gulf of Mexico. The few published sightings (Moore and Clark 1963; Schmidly and Melcher 1974; Ward-Geiger *et al.* 2011) represent either geographic anomalies or a more extensive historic range beyond the sole known calving and wintering ground in the waters of the southeastern United States (Waring *et al.* 2009). Therefore, the Gulf of Mexico is not considered part of the geographical area occupied by the species ''at the time it was listed.''

Our regulations at 50 CFR 424.12(h) state: ''Critical habitat shall not be designated within foreign countries or

in other areas outside of United States jurisdiction.'' Although North Atlantic right whales have been sighted in coastal waters of Canada, Greenland, Iceland, and Norway, these areas cannot be considered for designation. The geographical area occupied by listed North Atlantic right whales that is within the jurisdiction of the United States is therefore limited to waters off the U.S. east coast between Maine and Florida, seaward to the boundary of the U.S. Exclusive Economic Zone.

Physical or Biological Features Essential for Conservation of the Species

Within the geographical area occupied, critical habitat consists of specific areas on which those physical or biological features essential to the conservation of the species are found (hereafter referred to as ''essential features'') and that may require special management considerations or protection. Section 3 of the ESA (16 U.S.C. 1532(3)) defines the terms ''conserve,'' ''conserving,'' and ''conservation'' in part to mean: ''To use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary.'' Further, our regulations at 50 CFR 424.12(b) for designating critical habitat state that physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection may include: (1) Space for individual and population growth and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal, and generally; (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

As noted previously, we produced a Biological Source Document (NMFS 2015a) that discusses our application of the ESA's definition of critical habitat for right whales in detail. When defining critical habitat for right whales, we considered the physical and/or biological features of foraging and calving habitats. The features of right whale foraging habitat that are essential to the conservation of the North Atlantic right whale are a combination of the following biological and physical oceanographic features:

(1) The physical oceanographic conditions and structures of the Gulf of Maine and Georges Bank region that combine to distribute and aggregate *C. finmarchicus* for right whale foraging, namely prevailing currents and circulation patterns, bathymetric features (basins, banks, and channels), oceanic fronts, density gradients, and temperature regimes;

(2) Low flow velocities in Jordan, Wilkinson, and Georges Basins that allow diapausing *C. finmarchicus* to aggregate passively below the convective layer so that the copepods are retained in the basins;

(3) Late stage *C. finmarchicus* in dense aggregations in the Gulf of Maine and Georges Bank region; and

(4) Diapausing *C. finmarchicus* in aggregations in the Gulf of Maine and Georges Bank region.

The physical and biological features of right whale calving habitat that are essential to the conservation of the North Atlantic right whale are: (1) Calm sea surface conditions of Force 4 or less on the Beaufort Wind Scale; (2) sea surface temperatures from a minimum of 7 °C, and never more than 17 °C; and (3) water depths of 6 to 28 meters, where these features simultaneously co-occur over contiguous areas of at least 231 nm^2 of ocean waters during the months of November through April. When these features are available, they are selected by right whale cows and calves in dynamic combinations that are suitable for calving, nursing, and rearing, and which vary, within the ranges specified, depending on factors such as weather and age of the calves.

Beyond the uncertainty over the location of one or more migratory corridors, we cannot currently identify any specific physical or biological features that define migratory habitat. Therefore, we have concluded that it is not currently possible to define critical habitat associated with right whale migratory behaviors.

Large-scale migratory movements between feeding habitat in the northeast and calving habitat in the southeast are a necessary component in the life history of the North Atlantic right whale. A proportion of the population makes this migration annually, and the most valuable life-history stage (calving females) must make this migration for successful reproduction. The subset of the North Atlantic right whale population that has been observed migrating between the northern feeding grounds and southern calving grounds is comprised disproportionately of reproductively mature females, pregnant females, juveniles, and young calves (Ward-Geiger *et al.* 2005; Fujiwara and Caswell 2001; Kraus *et al.* 1986, as cited by Firestone *et al.* 2008). For logistical reasons, survey efforts have also been disproportionally focused in the nearshore area (within 30 nm of shore). The Biological Source Document (NMFS 2015a) contains a thorough discussion of the available data we considered in our analysis.

Likewise, we have concluded that it is not possible to identify essential physical or biological features related to breeding habitat, primarily because we cannot identify areas where breeding occurs. Right whales are known to aggregate in large groups known as Surface Active Groups (SAGs). While indicative of courtship and reproductive behavior, not all SAGs are reproductive in nature (Kraus *et al.* 2007). SAGs are observed year round, both in the northeast feeding areas as well as in the southeast calving grounds. SAGS are usually observed opportunistically during directed survey efforts as well as other random sightings.

Specific Areas Within the Geographical Area Occupied by the Species

The definition of critical habitat instructs us to identify specific areas on which the physical or biological features essential to the species' conservation are found. Our regulations state that critical habitat will be defined by specific limits using reference points and lines on standard topographic maps of the area, and referencing each area by the state, county, or other local governmental unit in which it is located (50 CFR 424.12(c)). Our regulations also state that when several habitats, each satisfying requirements for designation as critical habitat, are located in proximity to one another, an inclusive area may be designated as critical habitat (50 CFR 424.12(d)). We identified two ''specific areas'' within the geographical area occupied by the species, at the time of listing, that contain the essential features for right whale foraging and calving habitat.

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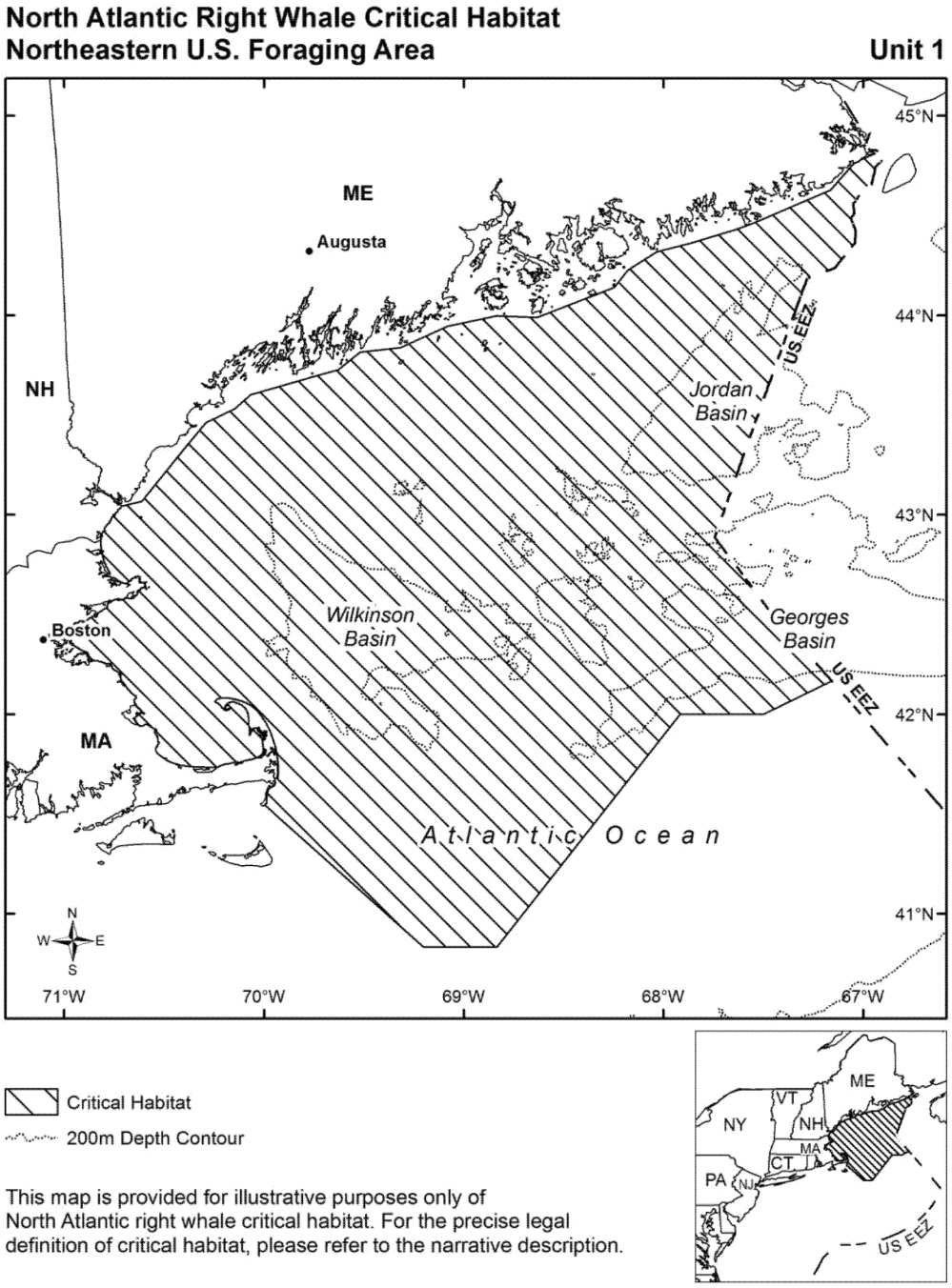

Figure 1. The specific area on which the essential features of North Atlantic right whale foraging habitat are found.

Consistent with our regulations (50 CFR 424.12(c)), we have identified one ''specific area'' within the geographical area occupied by the species at the time of listing, that contains the identified physical and biological features of foraging habitat that are essential to the conservation of North Atlantic right whales. This encompasses a large area within the Gulf of Maine and Georges Bank region, including the large embayments of Cape Cod Bay and Massachusetts Bay and deep underwater basins. This area also incorporates state waters, except for inshore areas, bays, harbors, and inlets, from Maine through Massachusetts in addition to federal waters.

The specific area on which the physical and biological features essential to foraging and thus to the conservation of the North Atlantic right whale are found includes all waters, seaward of the boundary depicted in Figure 1 (see below for actual coordinates). The boundary of the critical habitat for Unit 1 is delineated generally by a line connecting the geographic coordinates and landmarks as follows: From the southern tip of Monomoy Island (Cape Cod) (41°38.39′ N., 69°57.32′ W.) extending southeasterly to 40°50′ N., 69°12′ W. (the Great South Channel), then east to 40°50′ N. 68°50′ W. From this point, the boundary extends northeasterly

direction to 42°00′ N., 67°55′ W. and then in an easterly direction to 42°00′ N. 67°30′ W. From this point, the boundary extends northeast along the northern edge of Georges Bank to the intersection of the U.S.-Canada maritime boundary at 42°10′ N., 67°09.38′ W. The boundary then follows the U.S.-Canada maritime boundary north to the intersection of 44°49.727′ N., 66°57.952′ W. From this point, moving southwest along the coast of Maine, the specific area is located seaward of the Maine exemption line developed as part of the Atlantic Large Whale Take Reduction Plan to the point (43°02.55′ N., 70°43.33′ W.) on the coast of New Hampshire south of Portsmouth, NH. The boundary of the area then follows the coastline southward along the coasts of New Hampshire and Massachusetts along Cape Cod to Provincetown southward along the eastern edge of Cape Cod to the southern tip of Monomoy Island. As noted, the specific area includes the large embayments of Cape Cod Bay and Massachusetts Bay but does not include inshore areas, bays, harbors and inlets. In addition, the specific area does not include waters landward of the 72 COLREGS lines (33 CFR part 80) as described below.

The second ''specific area'' we identified contains the essential features identified for North Atlantic right whale calving. The southeast right whale calving area consists of all marine waters from Cape Fear, North Carolina, southward to approximately 27 nm below Cape Canaveral, Florida, within the area bounded on the west by the shoreline and the 72 COLREGS lines, and on the east by rhumb lines connecting the specific points described below.

Based on the prior discussion and consistent with our regulations (50 CFR 424.12(d)), we identified one ''specific area'' within the geographical area occupied by the species, at the time of listing, that contains the essential features for calving right whales in the southeastern U.S (Figure 2). This area comprises waters of Brunswick County, North Carolina; Horry, Georgetown, Charleston, Colleton, Beaufort, and Jasper Counties, South Carolina; Chatham, Bryan, Liberty, McIntosh, Glynn, and Camden Counties, Georgia; and Nassau, Duval, St. John's, Flagler, Volusia, and Brevard Counties, Florida.

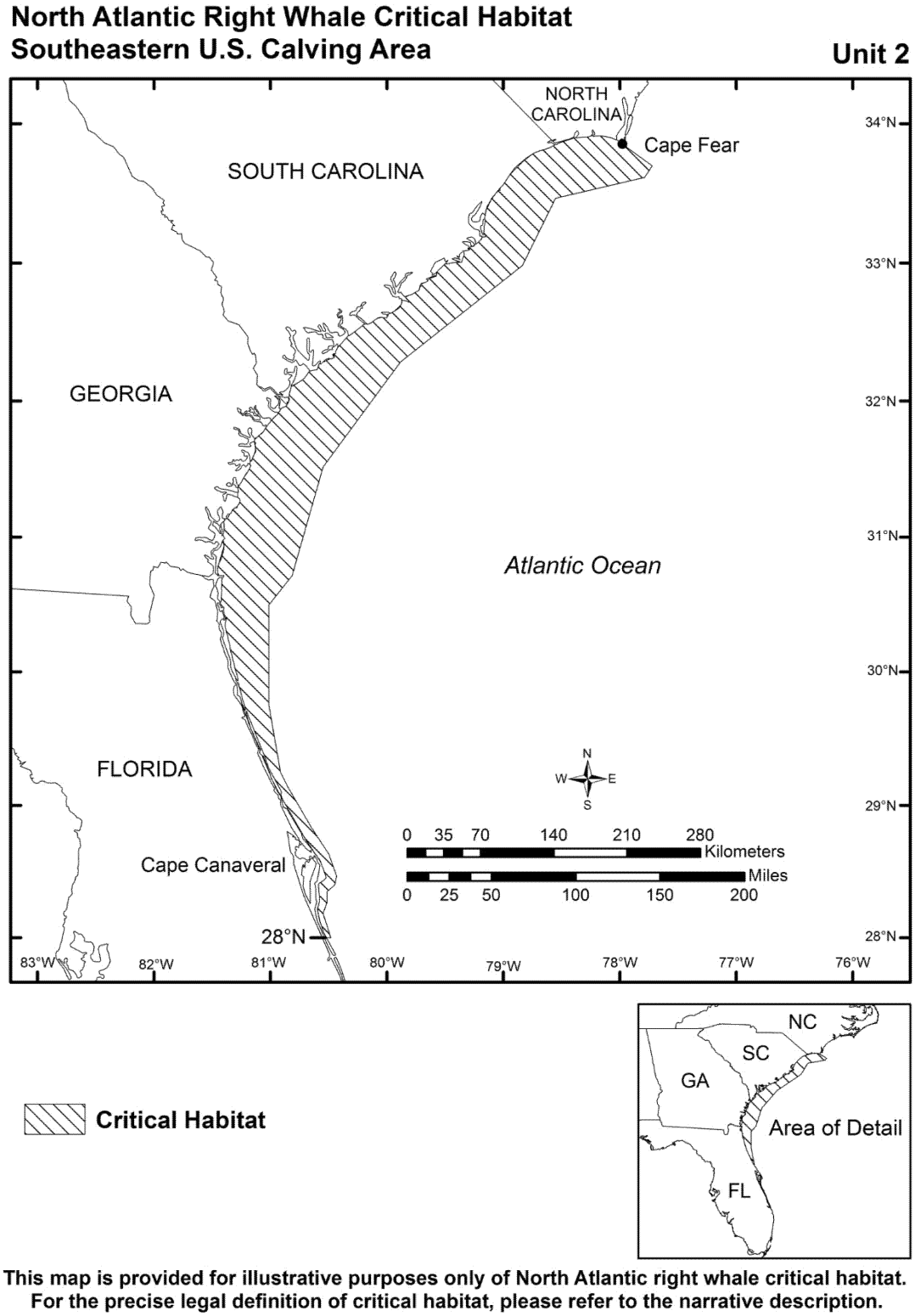

Figure 2. Area designated as North Atlantic right whale southeastern calving critical habitat.

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Special Management Considerations or Protection

Specific areas within the geographical area occupied by a species may be designated as critical habitat only if they contain physical or biological features that ''may require special management considerations or protection.'' To meet

the definition of critical habitat, it is not necessary that the features currently require special management considerations or protection, only that they *may require* special management considerations or protections. Our regulations define ''special management considerations or protections'' to mean ''any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species'' (50 CFR 424.02(j)). As noted previously, we produced a Biological Source Document (NMFS 2015a) that discusses our application of the ESA's definition of critical habitat for right whales in detail, including evaluation of whether essential features ''may require special management considerations or protections.''

As summarized in the Biological Source Document (NMFS 2015a), the essential features of right whale foraging habitat may require special management considerations or protections because of possible negative impacts from the following activities and events: (1) Zooplankton fisheries, (2) effluent discharge from municipal outfalls, (3) discharges and spills of petroleum products to the marine environment as a result of oil and gas exploration, development and transportation, and (4) climate change.

The essential features of right whale calving habitat may require special management considerations or protections because of possible negative impacts from the following activities and events: Offshore energy development, large-scale offshore aquaculture operations, and global climate change. These activities and their potential broad-scale impacts on the essential features are discussed in detail in the Biological Source Document (NMFS 2015a).

Unoccupied Areas

ESA section 3(5)(A)(ii) defines critical habitat to include specific areas outside the geographical area occupied if the areas are determined by the Secretary to be essential for the conservation of the species. Regulations at 50 CFR 424.12(e) specify that we shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species. Our regulations at 50 CFR 424.12(h) also state: ''Critical habitat shall not be designated within foreign countries or in other areas outside of United States jurisdiction.'' At the present time, the geographical area occupied by listed North Atlantic right whales which is within the jurisdiction of the United States is limited to waters off the U.S. east coast from Maine through Florida, seaward to the boundary of the U.S. Exclusive Economic Zone. As discussed previously, the Gulf of Mexico is not considered part of the geographical area occupied by the species, nor do we consider it an unoccupied area essential to the species' conservation given the infrequent use of the area by right whales in the past. We have not identified any other areas outside the geographical area occupied by the species that are essential for their conservation and therefore are not proposing to designate any unoccupied areas as critical habitat for the North Atlantic right whale.

Application of ESA Section 4(a)(3)(B)(i) (Military Lands)

Section 4(a)(3)(B)(i) prohibits designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DOD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP), if we determine that such a plan provides a benefit to the species (16 U.S.C. 1533(a)(3)(B)).

No areas within the specific areas designated are covered by INRMPs. Therefore, there are no military lands ineligible for designation as critical habitat within Unit 1 and Unit 2.

Application of ESA Section 4(b)(2)

The foregoing discussion described the specific areas within U.S. jurisdiction that fall within the ESA section 3(5) definition of critical habitat in that they contain the physical and biological features essential to the North Atlantic right whale's conservation that may require special management considerations or protection. Section 4(b)(2) of the ESA requires that we consider the economic impact, impact on national security, and any other relevant impact, of designating any particular area as critical habitat. Additionally, the Secretary has the discretion to consider excluding any area from critical habitat if she determines the benefits of exclusion (that is, avoiding some or all of the impacts that would result from designation) outweigh the benefits of designation based upon the best scientific and commercial data available. The Secretary may not exclude an area from designation if exclusion will result in the extinction of the species. Because the authority to exclude is discretionary, exclusion is not required for any particular area under any circumstances.

The following discussion of impacts summarizes the analysis contained in our ESA Section 4(b)(2) Report (NMFS 2015b), which identifies the economic, national security, and other relevant impacts that we projected would result from including each of the two specific areas in the critical habitat designation. We considered these impacts when deciding whether to exercise our discretion to propose excluding particular areas from the designation. Both positive and negative impacts were identified and considered (these terms are used interchangeably with benefits and costs, respectively). Impacts were evaluated in quantitative terms where feasible, but qualitative appraisals were used where that was more appropriate to particular impacts. The ESA Section 4(b)(2) Report (NMFS 2015b) is available on our Web site at *www.greateratlantic.fisheries.noaa.gov.*

The primary impacts of a critical habitat designation result from the ESA section 7(a)(2) requirement that Federal agencies ensure their actions are not likely to result in the destruction or adverse modification of critical habitat, and that they consult with us in fulfilling this requirement. Determining these impacts is complicated by the fact that section 7(a)(2) also requires that Federal agencies ensure their actions are not likely to jeopardize the species' continued existence. One incremental impact of designation is the extent to which Federal agencies modify their proposed actions to ensure they are not likely to destroy or adversely modify the critical habitat beyond any modifications they would make because of listing and the jeopardy requirement. When the same modification would be required due to impacts to both the species and critical habitat, the impact of the designation is co-extensive with the ESA listing of the species (*i.e.,* attributable to both the listing of the species and the designation critical habitat). To the extent possible, our analysis identified impacts that were incremental to the designation of critical habitat—meaning those impacts that are over and above impacts attributable to the species' listing or any other existing regulatory protections. Relevant, existing regulatory protections (including the species' listing) are referred to as the ''baseline'' and are also discussed in the Section 4(b)(2) Report.

The ESA Section 4(b)(2) Report describes the projected future federal activities that would trigger section 7 consultation requirements because they may affect the essential features, and consequently may result in economic

costs or negative impacts. Additionally, the report describes broad categories of project modifications that may reduce impacts to the essential features, and states whether the modifications are likely to be solely a result of the critical habitat designation or co-extensive with another regulation, including the ESA listing of the species. The report also identifies the potential national security and other relevant impacts that may arise due to the critical habitat designation, such as positive impacts that may arise from conservation of the species and its habitat, state and local protections that may be triggered as a result of designation, and education of the public to the importance of an area for species conservation.

Economic Impacts

Economic impacts of the critical habitat designation result through implementation of section 7 of the ESA in consultations with Federal agencies to ensure their proposed actions are not likely to destroy or adversely modify critical habitat. These economic impacts are discussed in further detail in the Section 4(b)(2) Report (NMFS 2015b) and the proposed rule of this action. Changes to Economic Impacts as a result of the change in area to Unit 2 are described below.

Six categories of activities were identified as likely to recur in the future and have the potential to affect the essential features:

1. Environmental Protection Agency (EPA) Clean Water Act permitting or management of pollution discharges through the NPDES programs in Unit 1;
2. United States Coast Guard (USCG) authorization or use of dispersants during an oil spill response in Unit 1;
3. U.S. Army Corps of Engineers (USACE) maintenance dredging or permitting of dredge and disposal activities under the Clean Water Act in Unit 2;
4. USACE permitting of marine construction, including shoreline restoration and artificial reef placement under the Rivers and Harbors Act and/or Clean Water Act in Unit 2;
5. The Maritime Administration's permitting of siting and construction of offshore liquefied natural gas facilities in Unit 1;
6. The Bureau of Ocean Energy Management's (BOEM's) permitting of sand extraction on the Outer Continental Shelf in Unit 2.

As discussed in more detail in our ESA Section 4(b)(2) Report (NMFS 2015b), we determined that two of these federal actions, Water Quality/NPDES related actions and oil spill response activities implemented respectively by the EPA and the USCG, could result in incremental impacts from section 7 consultations related to the critical habitat.

Additionally, we identified four categories of activities that have not occurred in the critical habitat areas in the past but based on available information and discussions with action agencies, may occur in the future. If they do occur, these activities may adversely affect the essential features. These projected activities are: Oil and gas exploration and development activities, directed copepod fisheries, offshore alternative energy development activities, and marine aquaculture. As with past or ongoing federal activities in the critical habitat areas, these four categories of projected future actions may trigger consultation because they have the potential to adversely affect both the essential features and the whales themselves. Three categories of future activities were judged as being likely to have incremental impacts due to the critical habitat: Oil and gas exploration and development activities (Unit 1), directed copepod fishery (Unit 1), and offshore alternative or renewable energy activities (Unit 2). Consequently, costs of project modifications required through section 7 were considered to be incremental impacts of the designation.

As previously mentioned, we assumed that all future activities that may affect the essential features will require formal consultations. Based on analyses conducted by Industrial Economics, Inc. (Industrial Economics 2014), we project that each formal consultation will result in the following additional costs to address critical habitat impacts: $1,400 in NMFS' costs; $1,600 in action agency costs; and $880 in third party (*e.g.,* permittee) costs, if applicable. Administrative costs for the projected number of formal consultations representing incremental costs of the critical habitat designation were estimated in the proposed rule to total approximately $82,296 per year. Based on the addition of 22 consultations that may occur as a result of the expanded Unit 2 area, the incremental administrative costs of the critical habitat designation are now expected to total approximately $95,504 per year. As discussed in responses to comments, to evaluate and consider the economic impacts of including this area to Unit 2, we followed the same methodology described in the proposed rule (80 FR 9314, February 20, 2015) and in the Section 4(b)(2) Report (NMFS 2015b).

Based on our analysis of past consultation history, we project that over the next ten years, there will be 22 consultations, or about 2 consultations per year, in this area which may affect the features of critical habitat. Eleven of these projects are expected to involve dredging and/or disposal by the U.S. Army Corps of Engineers. Eleven projects are expected to involve permitting of marine construction or artificial reef placement by the U.S. Army Corps of Engineers. Thus, adding the southern extension is not expected to involve additional federal agency nor additional federal actions that are different from those that will be conducted in the rest of Unit 2. As discussed in the Section 4(b)(2) Report, these activities are only expected to involve incremental administrative costs of consultation, as a result of this designation. Annual administrative costs for these projected consultations is $10,160 (at $5,080 per consultation—see the Economics Impact section in the Notice of Proposed Rulemaking and the Section 4(b)(2) Report for background information on the costs for conducting consultations).

Relative to projected, new activities, offshore renewable/alternative energy may occur in the southern extension area, given its proximity to shore and available information about where and how these activities might be implemented (*www.boem.gov/Florida/*). Because there are no records in our consultation history for offshore renewable or alternative energy projects occurring within Unit 2, we are unable to (a) predict how many section 7 consultations may result from projects of this type over the next 10 years or (b) calculate the projected incremental costs resulting from this action. We are not aware of any other future new federal activity that may be implemented in the southern extension area.

National Security Impacts

Previous critical habitat designations have recognized that impacts to national security result if a designation would trigger future ESA section 7 consultations because a proposed military activity ''may affect'' the physical or biological features essential to the listed species' conservation. Anticipated interference with mission-essential training or testing or unit readiness, either through delays caused by the consultation process or through expected requirements to modify the action to prevent adverse modification of critical habitat, has been identified as a negative impact of critical habitat designations. (See, *e.g.,* Proposed Designation of Critical Habitat for the Pacific Coast Population of the Western Snowy Plover (71 FR 34571, June 15,

2006, at 34583); and Proposed Designation of Critical Habitat for Southern Resident Killer Whales (69 FR 75608, December 17, 2004, at 75633).)

Based on the past consultation history and information submitted by DOD for this analysis, it is unlikely that consultations with respect to DOD activities will be triggered as a result of the critical habitat designation.

In September 2009, and again in November 2010, we sent letters to DOD requesting information on national security impacts of the proposed critical habitat designation, and we received responses from the Navy, United States Marine Corps (USMC), USCG, Department of Homeland Security (DHS), and the United States Air Force (USAF). We discuss the information contained within the responses thoroughly in the Section 4(b)(2) Report (NMFS 2015b).

Based on a review of the information provided by the Navy, USMC, and USCG, DHS, and USAF, and on our review of the activities conducted by these entities associated with national security within the specific areas designated as right whale critical habitat, their activities have no routes of potential adverse effects to the essential features and will not require consultation to prevent adverse effects to critical habitat (see Section 4(b)(2) Report, NMFS 2015b). Therefore, based on information available at this time, we do not anticipate there will be national security impacts associated with the critical habitat for the North Atlantic right whale.

Other Relevant Impacts

Other relevant impacts of critical habitat designations can include conservation benefits to the species and to society, and impacts to governmental and private entities. Our Section 4(b)(2) Report (NMFS 2015b) discusses conservation benefits of designating the two specific areas, and the benefits of conserving the right whale to society, in both ecological and economic metrics.

As discussed in the Section 4(b)(2) Report (NMFS 2015b) and summarized here, large whales, including the North Atlantic right whale, currently provide a range of benefits to society. Given the positive benefits of protecting the physical and biological features essential to the conservation of the right whale, this protection will in turn contribute to an increase in the benefits of this species to society in the future as the species recovers. While we can neither quantify nor monetize these benefits, we believe they are not negligible and would be an incremental benefit of this designation. However, although the features are essential to the conservation of right whales, critical habitat designation alone will not bring about the recovery of the species. The benefits of conserving right whales are, and will continue to be, the result of several laws and regulations.

We identified in the Section 4(b)(2) Report (NMFS 2015b) both consumptive (*e.g.,* commercial and recreational fishing) and non-consumptive (*e.g.,* wildlife viewing) activities that occur in the critical habitat area. Commercial and recreational fishing are components of the economy related to the ecosystem services provided by the resources within the right whale critical habitat areas. The essential features provide for abundant fish species diversity. Commercial fishing is the largest revenue generating activity occurring within the critical habitat area, and protection of the essential features will contribute to sustaining this activity.

Further, the economic value of right whales can be estimated in part by such metrics as increased visitation and user enjoyment measured by the value of whale watching activities.

Education and awareness benefits stem from the critical habitat designation when non-federal government entities or members of the general public responsible for, or interested in, North Atlantic right whale conservation change their behavior or activities when they become aware of the designation and the importance of the critical habitat areas and features. Designation of critical habitat raises the public's awareness that there are special considerations that may need to be taken within the area. Similarly, state and local governments may be prompted to carry out programs to complement the critical habitat designation and benefit the North Atlantic right whale. Those programs would likely result in additional impacts of the designation. However, it is impossible to quantify the beneficial effects of the awareness gained or the secondary impacts from state and local programs resulting from the critical habitat designation

Exclusions Under Section 4(b)(2)

On the basis of our impacts analysis, we are not excluding any particular areas from the critical habitat designation. This has not changed since the proposed rule.

We have analyzed the economic, national security, and other relevant impacts of designating critical habitat. While we have utilized the best available information and an approach designed to avoid underestimating impacts, many of the potential impacts are speculative and may not occur in the future. Our conservative identification of potential incremental economic impacts indicates that any such impacts would be very small, resulting from very few (less than 18) federal section 7 consultations annually. Furthermore, the analysis indicates that there is no particular area within the areas designated as critical habitat where economic impacts would be particularly high or concentrated. No impacts to national security are expected. Other relevant impacts include conservation benefits of the designation, both to the species and to society. Because the features that form the basis of the critical habitat designation are essential to the conservation of North Atlantic right whales, the protection of critical habitat from destruction or adverse modification may at minimum prevent loss of the benefits currently provided by the species and may contribute to an increase in the benefits of these species to society in the future. While we can neither quantify nor monetize the benefits, we believe they are not negligible and would be an incremental benefit of this designation. Moreover, our analysis indicates that all potential future section 7 consultations on impacts to critical habitat features would also be conducted for the projects' potential impacts on the species, resulting in at least partial co-extensive impacts of the designation and the baseline listing of the species. Therefore, we have concluded that there is no basis to exclude any particular area from the critical habitat.

Final Determinations and Critical Habitat Designation

We conclude that specific areas meet the definition of critical habitat, comprising approximately 29,763 nm^2 of marine habitat within the geographical area occupied by North Atlantic right whales at the time of its listing. The two units designated as critical habitat are in the Gulf of Maine and Georges Bank region (Unit 1) and in waters off the Southeast U.S coast (Unit 2).

Activities That May Be Affected

ESA section 4(b)(8) requires in any proposed or final regulation to designate or revise critical habitat an evaluation and brief description of those activities (whether public or private) that may adversely modify such habitat or that may be affected by such designation. A variety of activities may affect the critical habitat and may be subject to the ESA section 7 consultation process when carried out, funded, or authorized by a Federal agency. As indicated above

and in the Section 4(b)(2) Report, activities (3) through (6) and (9) are only predicted to result in incremental administrative costs of consultation. As discussed previously, the activities most likely to be affected by this critical habitat designation are: (1) Water Quality/NPDES permitting and regulatory activities (Unit 1), (2) Oil Spill Response (Unit 1), (3) Maintenance Dredging and Disposal or Dredging (Unit 2), (4) Construction Permitting (Unit 2), (5) Offshore Liquid Natural Gas Facilities (Unit 1), (6) Oil and Gas Exploration and Development (Unit 1), (7) Offshore alternative energy development activities (Unit 2), (8) Directed copepod fisheries (Unit 1), and (9) Marine aquaculture (Unit 2). Private entities may also be affected by this critical habitat designation if a Federal permit is required, Federal funding is received, or the entity is involved in or receives benefits from a Federal project. These activities will need to be evaluated with respect to their potential to destroy or adversely modify critical habitat. Changes to the actions to avoid destruction or adverse modification of critical habitat may result in changes to some activities. Please see the ESA Section 4(b)(2) Report (NMFS 2015b) for more details and examples of changes that may need to occur in order for activities to avoid destruction or adverse modification of designated critical habitat. Questions regarding whether specific activities will constitute destruction or adverse modification of critical habitat should be directed to NMFS (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

Classification

Regulatory Planning and Review (E.O. 12866)

This rule has been determined to be ''not significant'' under Executive Order (E.O.) 12866.

National Environmental Policy Act

An environmental analysis as provided for under the National Environmental Policy Act (NEPA) for critical habitat designations made pursuant to the ESA is not required. See *Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996).

Regulatory Flexibility Act

We prepared a Final Regulatory Flexibility Analysis (FRFA) pursuant to section 604 of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). The FRFA is found in Appendix B of the ESA Section 4(b)(2) Report and is available upon request (see **ADDRESSES**). A summary of the analysis follows.

This rule is needed in order to comply with the ESA's requirement to designate critical habitat to the maximum extent prudent and determinable when species are listed as threatened or endangered, and to respond to a petition to revise critical habitat for right whales in the North Atlantic. The objectives of this action are to help conserve endangered North Atlantic right whales by identifying critical habitat areas, consistent with the best available scientific information, that contain the physical and biological features essential to the conservation of the species and which may require special management considerations or protection. Once designated, this critical habitat can be protected through the ESA section 7 consultation process in which NMFS and federal action agencies review the effects of federal actions on the survival and recovery of North Atlantic right whales.

Along with the proposed rule, the Initial Regulatory Flexibility Analysis (IRFA) was published for public comment. None of the public comments received focused specifically on the IRFA, which was presented in the draft Section 4(b)(2) Report. However, one comment expressed concern that we did not evaluate the potential economic impact of the proposed designation on ferry operators, the majority of whom are classified as small business or entities according to the commenter. We did not identify the coastal ferry services as a small business that might be impacted by this rule, because we concluded that transiting vessels, whether military, civilian, or commercial do not impact the essential foraging features of critical habitat. As a result, there will be no impact to the operation of ferries as a result of the designation of critical habitat and, as such, no impacts to small business entities. We did not amend the rule or our analysis as a result of this comment (see response to comment 64).

Prior to the publication of the proposed rule and the Initial Regulatory Flexibility Analysis (IRFA), the Chief Counsel of the Small Business Administration (SBA) provided several comments concerning the analysis that relate to small entities and the impacts to these entities. The SBA stated that the Regulatory Flexibility Act requires an IRFA to identify the number and type of small businesses that may be affected. Because the potentially affected industries were identified, SBA recommended that NMFS research whether Census information may be available that would aid in identifying the number of small businesses as well as the impact the estimated costs could have on their yearly income and revenue. To address this comment, we solicited public comments through the proposed rule on all aspects of the proposed action including impacts to small businesses. We also directly consulted with the members of the Atlantic Large Take Reduction Team (ALWTRT), which includes industry representatives. However, no new information became available to alter our analysis, and no additional comments were received. In addition, the available Census data were not informative such that we could further refine our analysis of the number and type of small entities that may be affected by this rule.

SBA also stated that there did not appear to be any basis for concluding in our IRFA that potential project modifications that may be required to avoid adverse modification of critical habitat are unit costs such that total project modification costs would be proportional to the size of the project, and therefore it is not unreasonable to assume that larger entities would be involved in implementing the larger projects with proportionally larger project modification costs. SBA asked us to consider whether the modification costs are similar regardless of the size of the project, which could lead to proportionally larger costs for small projects than for larger projects. To respond in part to this comment, we noted that the particular statement referenced in the IRFA did not indicate an absolute conclusion, but instead indicated we were making what can be considered a 'reasonable assumption.' A more detailed response is presented in our FRFA.

Lastly, SBA asked how the agency came to the conclusion that the maximum, estimated, annualized, administrative cost to third parties of $33,696—some portion of which could be borne by small entities—won't have a significant effect on small entities if we aren't clear on the relative number of small entities that will be affected. To help address this question, we clarified in the IRFA and the proposed rule that this amount represents the cost to NMFS, other federal agencies, and third parties, combined. The total estimated annualized cost to third parties is $14,256, and the estimated cost for development of Biological Assessments (BA), which may be borne at least in part by third parties, is $19,440. The maximum total the annualized administrative cost to third parties is thus $33,696, some portion of which could be borne by small entities.

The critical habitat rule does not directly apply to any particular entity, small or large. The rule would operate in conjunction with ESA section 7(a)(2), which requires that federal agencies ensure, in consultation with NMFS, that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of listed species or destroy or adversely modify critical habitat. Consultations may result in economic impacts to federal agencies and proponents of proposed actions. Those economic impacts may be in the form of administrative costs of participating in a section 7 consultation and, if the consultation results in required measures to protect critical habitat, project modification costs. As discussed in the Section 4(b)(2) Report, which serves as the basis for the FRFA and this summary, we determined that six types of federal actions that have occurred in the critical habitat areas in the past could result in incremental impacts from section 7 consultations related to the critical habitat. These activities are: Clean Water Act water quality/NPDES related actions implemented by the EPA; oil spill response actions by the USCG; dredging and spoil disposal implemented or permitted by the USACE; marine construction permitting by the USACE, including restoration and artificial reef placement; offshore energy regulation by BOEM; and authorization of sand extraction on the Outer Continental Shelf by BOEM. We project that 188 actions in these categories will be implemented over the next 10 years. However, we also determined that these activities would not require consultation solely due to impacts to critical habitat. Instead, these activities would require consultation due to impacts to the whale themselves, even in the absence of designated critical habitat. Additionally, we identified four categories of activities that have not occurred in the critical habitat areas in the past but, based on available information and discussions with action agencies, may occur in the future. If they do occur, these activities may adversely affect the essential features. These projected activities are: Oil and gas exploration and development activities, directed copepod fisheries, offshore alternative energy development activities, and marine aquaculture. As with past or ongoing federal activities in the critical habitat areas, these four categories of projected future actions may trigger consultation because they have the potential to adversely affect both the essential features and the whales themselves. However, we could not project the number of actions in these categories that would occur in the future, due to the lack of a consultation history or concrete plans by action agencies to implement these activities. Three categories of future activities were judged as being likely to have incremental impacts due to critical habitat impacts that would require project modifications to avoid these impacts, above and beyond any modifications required to address impacts to the whales: Oil and gas exploration and development activities (Unit 1), directed copepod fishery (Unit 1), and offshore alternative or renewable energy activities (Unit 2). Consequently, costs of project modifications required through section 7 were considered to be incremental impacts of the designation.

We applied the conservative assumption that all future activities that may affect the essential features will require formal consultations. Based on analyses conducted by Industrial Economics, Inc. (Industrial Economics 2014), we project that each formal consultation will result in the following additional costs to address critical habitat impacts: $1,400 in NMFS' costs; $1,600 in action agency costs; and $880 in third party (*e.g.,* permittee) costs, if applicable. Administrative costs for the projected number of formal consultations representing incremental costs of the critical habitat designation were estimated in the proposed rule to total approximately $82,296 per year. Based on the addition of 22 consultations that may occur as a result of the expanded Unit 2 area, the incremental administrative costs of the critical habitat designation are now expected to total approximately $95,504 per year. The rule, implemented through ESA section 7(a)(2) consultations, may indirectly affect small businesses, small nonprofit organizations, and small governmental jurisdictions that engage in the 10 categories of activities listed above, through accrual of administrative costs ($880 per action). Small entities that engage in water quality/NPDES related actions, oil spill response activities, oil and gas exploration and development activities, directed copepod fisheries, offshore alternative energy development activities, and marine aquaculture activities authorized or funded by a federal agency that may affect the essential features could also incur costs in the way of project modifications necessary to avoid destroying or adversely modifying critical habitat. As we discuss in the Section 4(b)(2) report (NMFS 2015b), it is not possible for us to estimate what these costs might be, individually or collectively. The rule may also indirectly benefit small entities that benefit from or strive for the protection of the essential features, such as fishing operations and whale watch companies.

We do know from the consultation record that applicants for federal permits or funds have included small entities. However, our consultation tracking database does not track the identity of past permit recipients or whether the recipients were small entities; therefore, it does not provide a basis to estimate the number of small businesses that may be indirectly affected by this rule. It is also difficult to estimate the number of small entities that may be affected indirectly by this rule due to a lack of specific information regarding the nature, scope, and timing of future projects that would undergo section 7 consultations.

Within Unit 1, the Gulf of Maine-Georges Bank Region, virtually all current fishing operations in the eastern U.S. are small businesses. We have determined that there were 483 dealers and 8,094 fishing vessels in 2014 that meet the definition of small business entities. These numbers provide an estimate of the total number of vessels and fish dealers engaged in the harvest of seafood within Unit 1 that may benefit from this rule.

With regard to a potential copepod fishery, this rule could affect small businesses if fishermen choose to prosecute a copepod fishery in the future as virtually all fishing interests in Unit 1 are considered small businesses under the SBA small business entity size standards. Currently, there are no proposals to conduct a copepod fishery within Unit 1; nor have there been any in the past. Therefore, we have no basis to estimate the number of vessels that would be classified as small business entities in a copepod fishery.

Other small business entities include the approximately 55–70 whale-watching companies that operate within Unit 1. Neither current fishing operations nor whale watching companies would be negatively affected by this action as their activities were not identified as having the potential to affect the features. There is the potential for some unquantifiable positive benefit to accrue to these small businesses as a result of the preservation and maintenance of the ecosystem benefits associated with the essential foraging features.

In Unit 1, another potentially impacted group of small entities is small municipalities. A review of the consultation history indicates that we have consulted with the EPA on small

governmental jurisdictions' (population less than or equal to 50,000) municipal wastewater discharges adjacent to the area under consideration for designation as critical habitat. Based on our review of past consultation history, we are projecting a total of 21 consultations over the next 10 years involving primarily small municipalities and NPDES/Water Quality activities. Of the states bordering Unit 1, EPA administers the discharge permit program only in Massachusetts and New Hampshire; therefore, consultations with EPA would be required for municipal discharges only from those two states. Thus, the number of small municipalities that might be impacted would be equal to or less than the 21 predicted to be involved in consultations from all states bordering Unit 1, over the next 10 years.

We have determined that this rule will not likely have an impact on small business entities engaged in oil and gas exploration and development or have a disproportionate impact on them compared to large entities. Currently no specific or planned oil and gas exploration and development activities for this activity in Unit 1 as it is under an oil and gas exploration and development moratorium. Furthermore, business entities involved in offshore oil and gas exploration are generally large scale business entities as the technological capabilities to engage in offshore oil and gas development require large amounts of capital for these types of endeavors.

We have also determined this rule will not have any impact on small business entities engaged in oil spill response activities related to the at-sea use of oil dispersants. The SBA small business entity size standards for environmental remediation services establish an employee threshold of 500 individuals or less as a small business entity. Entities that are involved in offshore emergency oil spill response are generally either governmental agencies and/or large scale business entities. For example, the USCG is responsible for implementing the Oil Pollution Act including emergency oil spill responses responding to oil spills. The type of platform assets (*e.g.*, aerial, vessel) and technological capabilities necessary to respond to an oil spill in the marine involvement, specifically the application of oil dispersants, require large amounts of capital for these types of endeavors.

In Unit 2, the Southeastern calving habitat, the only category of activity that might potentially impact small entities through requirements and costs of project modifications necessary to avoid destroying or adversely modifying critical habitat is offshore energy development (*e.g.*, wind energy farms). Because there is no past consultation history or any specific or planned federal proposals for wind energy facilities in Unit 2, we are unable to estimate the number of potential projects in this category that may require consultation due to critical habitat impacts over the next 10 years. Therefore, we have no basis to estimate the number of small entities that might be involved.

It is unclear whether small entities would be placed at a competitive disadvantage compared to large entities as a result of this rule. Because the costs of many potential project modifications that may be required to avoid adverse effects to the essential features of critical habitat are unit costs such that total project modification costs would be proportional to the size of the project, it is not unreasonable to assume that larger entities would be involved in implementing the larger projects with proportionally larger project modification costs. In addition, though it is not possible to determine the exact cost of any given project modification resulting from consultation, the smaller projects most likely to be undertaken by small entities would likely result in relatively small modification costs. Finally, many of the modifications identified to reduce the impact of a project on critical habitat may be a baseline requirement either due to the ESA listing of the species or under another regulatory authority, notably the Clean Water Act.

There are no record-keeping or reporting requirements associated with the rule. Similarly, there are no other compliance requirements in the rule. There are no professional skills necessary for preparation of any report or record.

We considered the effect to small businesses throughout our analysis and, as stated above, there will be no significant economic impact to small businesses. We have thus not made any changes from the proposed rule that would minimize significant economic impacts on small entities. We expect many small entities to benefit from this rule. We also estimate the average per consultation administrative costs for third parties, some of which may be small entities, is approximately $880. It is unlikely that the rule will significantly reduce profits or revenue for small businesses. Although it is not possible to determine the exact cost of any given project modification resulting from consultation, the smaller projects most likely to be undertaken by small entities would likely result in relatively small modification costs.

In the IRFA, we considered the alternative of not proposing new critical habitat for the North Atlantic right whale. We rejected this alternative because we determined designating critical habitat for the North Atlantic right whale listed in 2008 was prudent and determinable, and the ESA requires critical habitat designation at the time of listing in that circumstance. Also, new scientific information has become available since the 1994 designation that supports expansion of the foraging and calving habitat areas.

In the IRFA, we also analyzed the proposed rule's preferred alternative. This alternative, would have expanded calving habitat to the north and east compared to the 1994 designation, but it would not have included a portion of the 1994 designation that extends approximately 27 nm south of Cape Canaveral, FL. However, in response to public comments on our proposal, we reviewed the best available scientific information again. We rejected what we had called the preferred alternative in the proposed rule, because we believe the available data show consistent and predictable presence of right whale mother-calf pairs in this southern area, during the months the habitat models predict presence of all the essential features. The features here may require special management considerations or protections for the same reasons as the rest of Unit 2—because of possible negative impacts from activities and events of offshore energy development, large-scale offshore aquaculture operations, and global climate change. These activities and their potential broad-scale impacts on the essential features are discussed in detail in the Biological Source Document (NMFS 2015). For these reasons, we agreed with the commenters that the southern boundary of the calving area critical habitat should be moved southward from where we proposed. We updated the economic impact analysis in the Section 4(b)(2) Report and FRFA to reflect this change.

Finally, in the IRFA we also considered an alternative in which the boundaries of both Unit 1 and Unit 2 would be expanded compared to the proposed rule's preferred alternative. Specifically, under the expanded alternative, Unit 1 would encompass additional right whale sightings within the Gulf of Maine-Georges Bank region (particularly inshore waters along the coasts of Maine, New Hampshire and Massachusetts) and it would be expanded south and east of the southern boundary of proposed Unit 1 (south and

east of Cape Cod). The expanded alternative would also have extended Unit 2 boundaries south of Cape Canaveral, Florida, similar to the 1994 calving critical habitat. As discussed above, in response to public comments, we chose in the final rule to extend Unit 2 boundaries south of Cape Canaveral, Florida, as considered in this alternative. However, for Unit 1, we rejected this alternative to expand Unit 1 boundaries closer inshore in the Gulf of Maine-Georges Bank region and south and east of Cape Cod. We rejected the expansion of Unit 1 boundaries because, based on the best available scientific information, we determined that the essential features of foraging habitat were not present in those areas. As discussed in our FRFA, we considered the nature and number of additional consultations that may be required to address impacts to critical habitat given the extended calving area. The addition of this area did not change our assessment of impacts to small entities.

Coastal Zone Management Act

We have determined that this action will have no reasonably foreseeable effects on the coastal uses and resources of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida. Upon publication of the proposed rule, these determinations were submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. No comments were received on this Coastal Zone Management Act determination.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain a new or revised collection of information. This rule would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

Federalism (E.O. 13132)

Pursuant to the Executive Order on Federalism, E.O. 13132, we determined that this rule does not have significant Federalism effects and that a Federalism assessment is not required. However, in keeping with Department of Commerce policies and consistent with ESA regulations at 50 CFR 424.16(c)(1)(ii), we requested information from, and coordinated this critical habitat designation with, appropriate state resource agencies in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, and Florida.

Energy Supply, Distribution, and Use (E.O. 13211)

On May 18, 2001, the President issued an Executive Order on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking an action expected to lead to the promulgation of a final rule or regulation that is a significant regulatory action under E.O. 12866 and is likely to have a significant adverse effect on the supply, distribution, or use of energy. We have considered the potential impacts of this action on the supply, distribution, or use of energy. The critical habitat designation will not affect the distribution or use of energy and would not affect supply. This rule will not have a significant adverse effect on the supply, distribution, or use of energy. Therefore, we have not prepared a Statement of Energy Effects. The rationale for this is discussed in the proposed rule (80 FR 9314) and Section 4(b)(2) Report (NMFS 2015b).

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, NMFS makes the following findings:

(A) This final rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, Tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal government's responsibility to provide funding'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.'' The designation of critical habitat does not impose an enforceable duty on non-Federal government entities or private parties. The only regulatory effect of a critical habitat designation is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under ESA section 7. Non-Federal entities that receive funding, assistance, or permits from Federal agencies, or otherwise require approval or authorization from a Federal agency for an action may be indirectly affected by the designation of critical habitat. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed previously to State governments.

(B) We do not anticipate that this final rule will significantly or uniquely affect small governments. As such, a Small Government Agency Plan is not required.

Takings (E.O. 12630)

Under E.O. 12630, Federal agencies must consider the effects of their actions on constitutionally protected private property rights and avoid unnecessary takings of property. A taking of property includes actions that result in physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use. In accordance with E.O. 12630, this rule would not have significant takings implications. A takings implication assessment is not required. The designation of critical habitat in the marine environment does not affect private property, and it affects only Federal agency actions.

References

A complete list of all references cited in this rulemaking can be found on our Web site at *www.greateratlantic.fisheries.noaa.gov/* and is available upon request from the NMFS Greater Atlantic Regional Office in Gloucester, Massachusetts (see **ADDRESSES**).

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: January 21, 2016.

Eileen Sobeck,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, we amend 50 CFR part 226 as follows:

PART 226—DESIGNATED CRITICAL HABITAT

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

■ 2. Revise § 226.203 to read as follows:

§ 226.203 Critical habitat for North Atlantic right whales (*Eubalaena glacialis*).

Critical habitat is designated for North Atlantic right whales as described in this section. The textual descriptions in paragraph (b) of this section are the definitive source for determining the critical habitat boundaries. The maps of the critical habitat units provided in paragraph (c) of this section are for illustrative purposes only.

(a) Physical and biological features essential to the conservation of endangered North Atlantic right whales.

(1) *Unit 1.* The physical and biological features essential to the conservation of the North Atlantic right whale, which provide foraging area functions in Unit 1 are: The physical oceanographic conditions and structures of the Gulf of Maine and Georges Bank region that combine to distribute and aggregate *C. finmarchicus* for right whale foraging, namely prevailing currents and circulation patterns, bathymetric features (basins, banks, and channels), oceanic fronts, density gradients, and temperature regimes; low flow velocities in Jordan, Wilkinson, and Georges Basins that allow diapausing *C. finmarchicus* to aggregate passively below the convective layer so that the copepods are retained in the basins; late stage *C. finmarchicus* in dense aggregations in the Gulf of Maine and Georges Bank region; and diapausing *C. finmarchicus* in aggregations in the Gulf of Maine and Georges Bank region.

(2) *Unit 2.* The physical features essential to the conservation of the North Atlantic right whale, which provide calving area functions in Unit 2, are:

(i) Sea surface conditions associated with Force 4 or less on the Beaufort Scale,

(ii) Sea surface temperatures of 7 °C to 17 °C, and

(iii) Water depths of 6 to 28 meters, where these features simultaneously co-occur over contiguous areas of at least 231 nmi² of ocean waters during the months of November through April. When these features are available, they are selected by right whale cows and calves in dynamic combinations that are suitable for calving, nursing, and rearing, and which vary, within the ranges specified, depending on factors such as weather and age of the calves.

(b) *Critical habitat boundaries.* Critical habitat includes two areas (Units) located in the Gulf of Maine and Georges Bank Region (Unit 1) and off the coast of North Carolina, South Carolina, Georgia and Florida (Unit 2).

(1) *Unit 1.* The specific area on which are found the physical and biological features essential to the conservation of the North Atlantic right whale include all waters, seaward of the boundary delineated by the line connecting the geographic coordinates and landmarks identified herein:

(i) The southern tip of Nauset Beach (Cape Cod) (41°38.39′ N./69°57.32′ W.).

(ii) From this point, southwesterly to 41°37.19′ N./69°59.11′ W.

(iii) From this point, southward along the eastern shore of South Monomoy Island to 41°32.76′ N./69°59.73′ W.

(iv) From this point, southeasterly to 40°50′ N./69°12′ W.

(v) From this point, east to 40°50′ N. 68°50′ W.

(vi) From this point, northeasterly to 42°00′ N. 67°55′ W.

(vii) From this point, east to 42°00′ N. 67°30′ W.

(viii) From this point, northeast to the intersection of the U.S.-Canada maritime boundary and 42°10′ N.

(ix) From this point, following the U.S.-Canada maritime boundary north to the intersection of 44°49.727′ N./66°57.952′ W.; From this point, moving southwest along the coast of Maine, the specific area is located seaward of the line connecting the following points:

Latitude	Longitude
44°49.727′ N.	66°57.952′ W.
44°49.67′ N.	66°57.77′ W.
44°48.64′ N.	66°56.43′ W.
44°47.36′ N.	66°59.25′ W.
44°45.51′ N.	67°2.87′ W.
44°37.7′ N.	67°9.75′ W.
44°27.77′ N.	67°32.86′ W.
44°25.74′ N.	67°38.39′ W.
44°21.66′ N.	67°51.78′ W.
44°19.08′ N.	68°2.05′ W.
44°13.55′ N.	68°10.71′ W.
44°8.36′ N.	68°14.75′ W.
43°59.36′ N.	68°37.95′ W.
43°59.83′ N.	68°50.06′ W.
43°56.72′ N.	69°4.89′ W.
43°50.28′ N.	69°18.86′ W.
43°48.96′ N.	69°31.15′ W.
43°43.64′ N.	69°37.58′ W.
43°41.44′ N.	69°45.27′ W.
43°36.04′ N.	70°3.98′ W.
43°31.94′ N.	70°8.68′ W.
43°27.63′ N.	70°17.48′ W.
43°20.23′ N.	70°23.64′ W.
43°4.06′ N.	70°36.70′ W.
43°2.93′ N.	70°41.47′ W.

(x) From this point (43°2.93′ N/70°41.47′ W.) on the coast of New Hampshire south of Portsmouth, the boundary of the specific area follows the coastline southward along the coasts of New Hampshire and Massachusetts along Cape Cod to Provincetown southward along the eastern edge of Cape Cod to the southern tip of Nauset Beach (Cape Cod) (41°38.39′ N./69°57.32′ W.) with the exception of the area landward of the lines drawn by connecting the following points:

42°59.986′ N	70°44.654′ W	TO	Rye Harbor.
42°59.956′ N.	70°44.737′ W.	.....	Rye Harbor.
42°53.691′ N.	70°48.516′ W.	TO	Hampton Harbor.
42°53.516′ N.	70°48.748′ W.	.....	Hampton Harbor.
42°49.136′ N.	70°48.242′ W.	TO	Newburyport Harbor.
42°48.964′ N.	70°48.282′ W.	.....	Newburyport Harbor.
42°42.145′ N.	70°46.995′ W.	TO	Plum Island Sound.
42°41.523′ N.	70°47.356′ W.	.....	Plum Island Sound.
42°40.266′ N.	70°43.838′ W.	TO	Essex Bay.
42°39.778′ N.	70°43.142′ W.	.....	Essex Bay.
42°39.645′ N.	70°36.715′ W.	TO	Rockport Harbor.
42°39.613′ N.	70°36.60′ W.	.....	Rockport Harbor.
42°20.665′ N.	70°57.205′ W.	TO	Boston Harbor.
42°20.009′ N.	70°55.803′ W.	.....	Boston Harbor.
42°19.548′ N.	70°55.436′ W.	TO	Boston Harbor.
42°18.599′ N.	70°52.961′ W.	.....	Boston Harbor.
42°15.203′ N.	70°46.324′ W.	TO	Cohasset Harbor.

42°15.214′ N.	70°47.352′ W.		Cohasset Harbor.
42°12.09′ N.	70°42.98′ W.	TO	Scituate Harbor.
42°12.211′ N.	70°43.002 W.		Scituate Harbor.
42°09.724′ N.	70°42.378′ W.	TO	New Inlet.
42°10.085′ N.	70°42.875′ W.		New Inlet.
42°04.64′ N.	70°38.587′ W.	TO	Green Harbor.
42°04.583′ N.	70°38.631′ W.		Green Harbor.
41°59.686′ N.	70°37.948′ W.	TO	Duxbury Bay/Plymouth Harbor.
41°58.75′ N.	70°39.052′ W.		Duxbury Bay/Plymouth Harbor.
41°50.395′ N.	70°31.943′ W.	TO	Ellisville Harbor.
41°50.369′ N.	70°32.145′ W.		Ellisville Harbor.
41°45.87′ N.	70°28.62′ W.	TO	Sandwich Harbor.
41°45.75′ N.	70°28.40′ W.		Sandwich Harbor.
41°44.93′ N.	70°25.74′ W.	TO	Scorton Harbor.
41°44.90′ N.	70°25.60′ W.		Scorton Harbor.
41°44.00′ N.	70°17.50′ W.	TO	Barnstable Harbor.
41°44.00′ N.	70°13.90′ W.		Barnstable Harbor.
41°45.53′ N.	70°09.387′ W.	TO	Sesuit Harbor.
41°45.523′ N.	70°09.307′ W.		Sesuit Harbor.
41°45.546′ N.	70°07.39′ W.	TO	Quivett Creek.
41°45.551′ N.	70°07.32′ W.		Quivett Creek.
41°47.269′ N.	70°01.411′ W.	TO	Namskaket Creek.
41°47.418′ N.	70°01.306′ W.		Namskaket Creek.
41°47.961′ N.	70°0.561′ W.	TO	Rock Harbor Creek.
41°48.07′ N.	70°0.514′ W.		Rock Harbor Creek.
41°48.932′ N.	70°0.286′ W.	TO	Boat Meadow River.
41°48.483′ N.	70°0.216′ W.		Boat Meadow River.
41°48.777′ N.	70°0.317′ W.	TO	Herring River.
41°48.983′ N.	70°0.196′ W.		Herring River.
41°55.501′ N.	70°03.51′ W.	TO	Herring River, inside Wellfleet Harbor.
41°55.322′ N.	70°03.191′ W.		Herring River, inside Wellfleet Harbor.
41°53.922′ N.	70°01.333′ W.	TO	Blackfish Creek/Loagy Bay.
41°54.497′ N.	70°01.182′ W.		Blackfish Creek/Loagy Bay.
41°55.503′ N.	70°02.07′ W.	TO	Duck Creek.
41°55.753′ N.	70°02.281′ W.		Duck Creek.
41°59.481′ N.	70°04.779′ W.	TO	Pamet River.
41°59.563′ N.	70°04.718′ W.		Pamet River.
42°03.601′ N.	70°14.269′ W.	TO	Hatches Harbor.
42°03.601′ N.	70°14.416′ W.		Hatches Harbor.
41°48.708′ N.	69°56.319′ W.	TO	Nauset Harbor.
41°48.554′ N.	69°56.238′ W.		Nauset Harbor.
41°40.685′ N.	69°56.781′ W.	TO	Chatham Harbor.
41°40.884′ N.	69°56.28′ W.		Chatham Harbor.

(xi) In addition, the specific area does not include waters landward of the 72 COLREGS lines (33 CFR part 80) described below.

(A) *Portland Head, ME to Cape Ann, MA.*

(*1*) A line drawn from the northernmost extremity of Farm Point to Annisquam Harbor Light.

(*2*) [Reserved]

(B) *Cape Ann MA to Marblehead Neck, MA.*

(*1*) A line drawn from Gloucester Harbor Breakwater Light to the twin towers charted at latitude 42°35.1′ N. longitude 70°41.6′ W.

(*2*) A line drawn from the westernmost extremity of Gales Point to the easternmost extremity of House Island; thence to Bakers Island Light; thence to Marblehead Light.

(C) *Hull, MA to Race Point, MA.*

(1) A line drawn from Canal Breakwater Light 4 south to the shoreline.

(2) [Reserved]

(2) *Unit 2.* Unit 2 includes marine waters from Cape Fear, North Carolina, southward to 28° N . latitude (approximately 31 miles south of Cape Canaveral, Florida) within the area bounded on the west by the shoreline and the 72 COLREGS lines, and on the east by rhumb lines connecting the following points in the order stated from north to south.

Latitude	Longitude
33°51′ N.	at shoreline.
33°42′ N.	77°43′ W.
33°37′ N.	77°47′ W.
33°28′ N.	78°33′ W.
32°59′ N.	78°50′ W.
32°17′ N.	79°53′ W.
31°31′ N.	80°33′ W.
30°43′ N.	80°49′ W.
30°30′ N.	81°01′ W.
29°45′ N.	81°01′ W.
29°15′ N.	80°55′ W.
29°08′ N.	80°51′ W.
28°50′ N.	80°39′ W.
28°38′ N.	80°30′ W.
28°28′ N.	80°26′ W.
28°24′ N.	80°27′ W.
28°21′ N.	80°31′ W.
28°16′ N.	80°31′ W.
28°11′ N.	80°33′ W.
28°00′	80°29′ W.
28°00′ N.	At shoreline.

(c) Overview maps of the designated critical habitat for the North Atlantic right whale follow.

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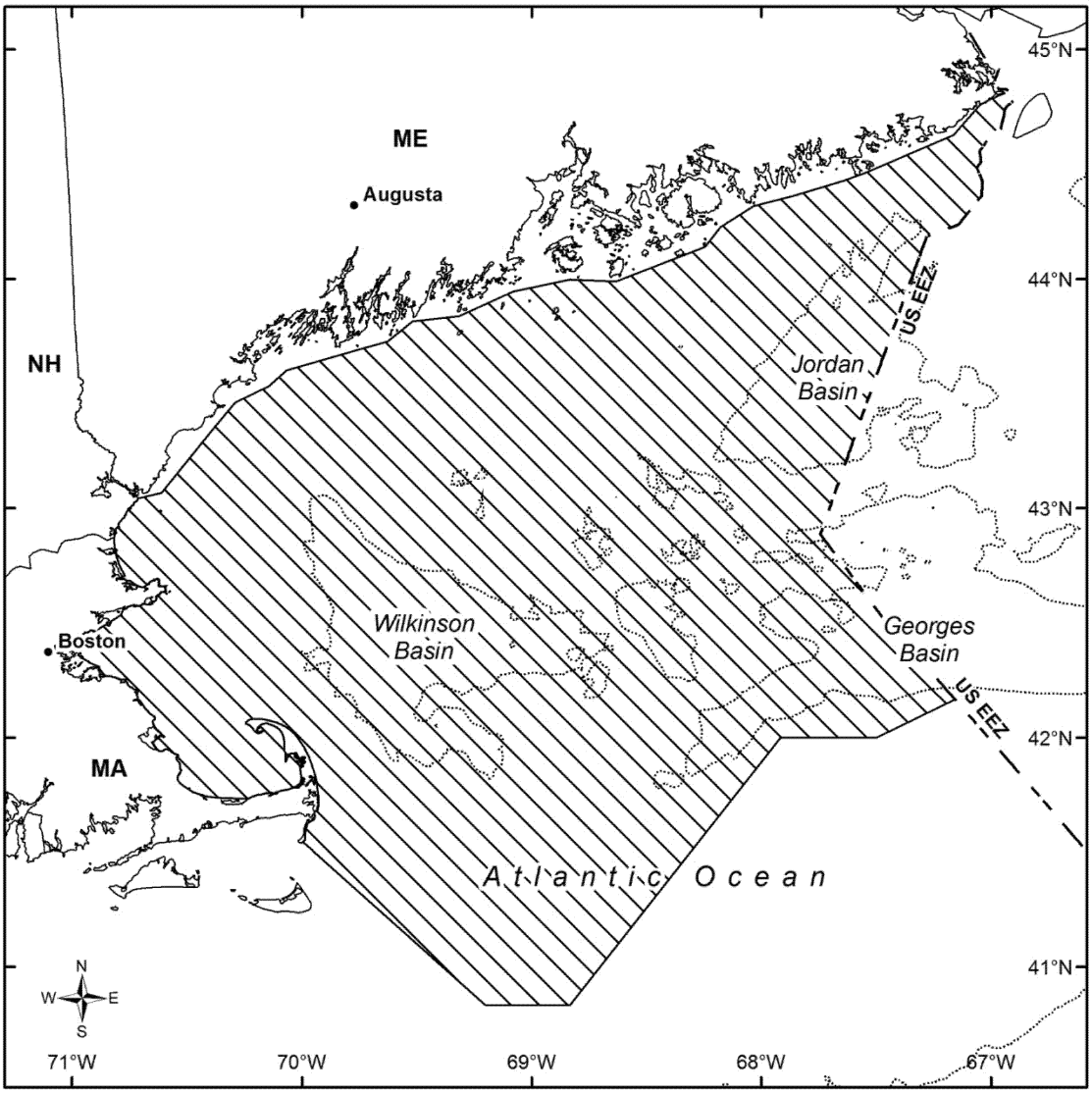
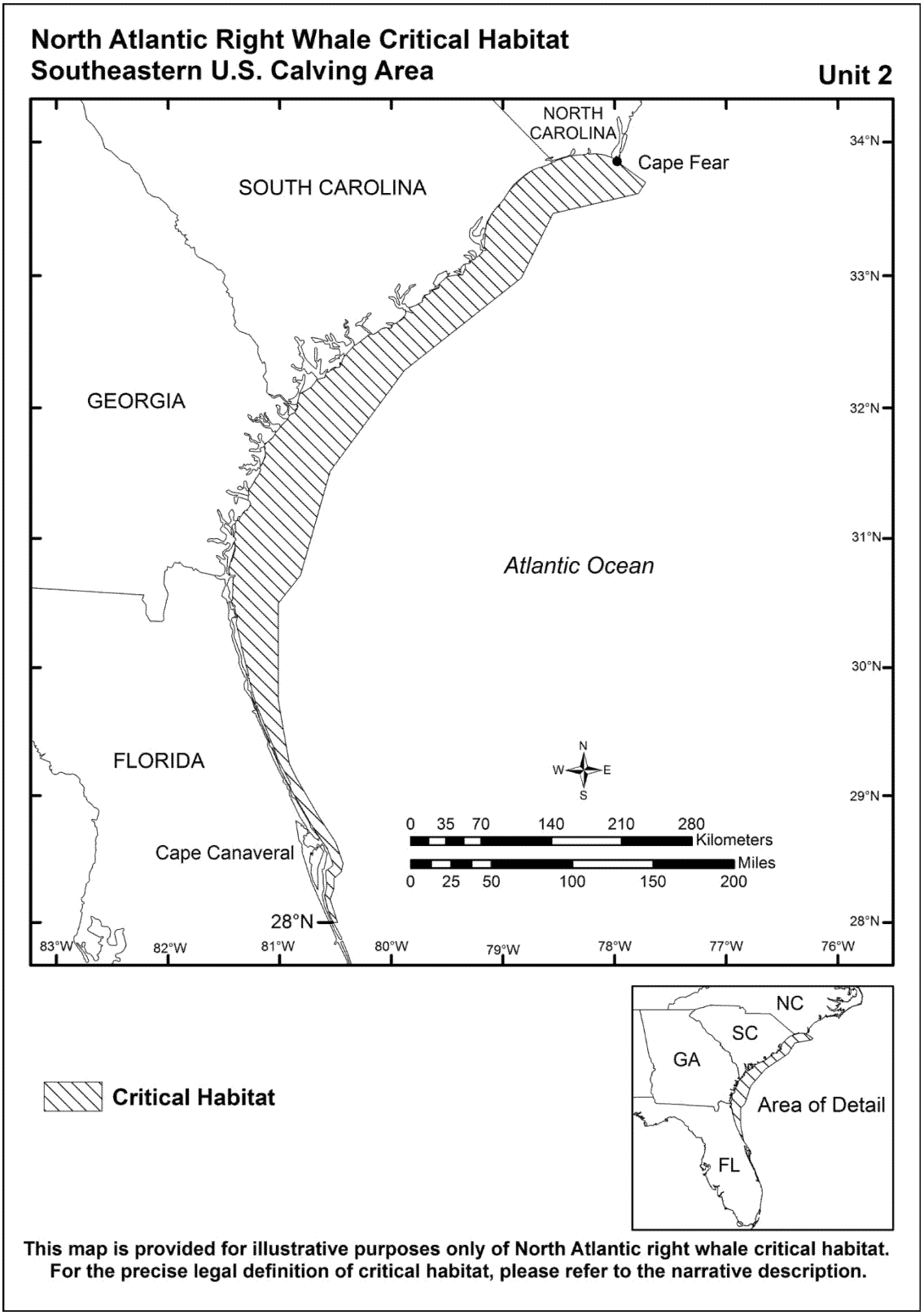
North Atlantic Right Whale Critical Habitat
Northeastern U.S. Foraging Area **Unit 1**



Critical Habitat

200m Depth Contour

This map is provided for illustrative purposes only of North Atlantic right whale critical habitat. For the precise legal definition of critical habitat, please refer to the narrative description.



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